REPUBLIC OF COSTA RICA

RESPONSE TO THE MESICIC / OAS QUESTIONNAIRE – 2nd ROUND

NOVEMBER 2006

QUESTIONNAIRE ON IMPLEMENTATION OF THE PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION SELECTED IN THE SECOND FOUND AND FOR FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE FIRST ROUND

Also attached hereto is a report of the progress made in implementing the recommendations formulated by the Committee in the national report during the first round.

SECTION I

Questions on implementation of the Convention provisions selected for review in the Second Round

CHAPTER ONE

Systems of Government Hiring and Procurement of Goods and Services (Article III [5] of the Convention)

1. Government hiring systems.

a) Are there laws and/or measures in your country establishing government hiring systems? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.

Also describe how those systems ensure openness, equity and efficiency in your country.

First of all please refer to the website www.pgr.go.cr and clicking on the option *SCIJ (SINALEVI)* which takes you to *Sistema Costarricense de Información Jurídica* (Costa Rican Legal Information System). There you can consult the legal framework and court decisions quoted in this report. You can also consult the regulations and documents issued by the Office of the Comptroller General of the Republic (CGR) at website www.cgr.go.cr.

There are different systems in the Republic of Costa Rica for hiring government officials regarding matters of substance. For instance Article 11 of the Political Constitution[1] reads as follows:

"Article 11.- Public officials are merely the depositaries of the authority vested in them. They are required to fulfill their duties in accordance with the law and must not exceed the powers granted to them thereby. They must swear to abide by and fulfill this Constitution and the laws. They are publicly accountable for any criminal acts they commit. The way in which public administration, in the broadest sense of the term, is undertaken shall be evaluated. The results of public administration will be evaluated and public officials shall be individually accountable for fulfilling their duties. The law shall provide mechanisms to ensure that oversight and accountability function as a system that covers all public institutions.

(Reworded as per Law N° 8003 of June 8, 2000) "

The provisions of Articles 191 and 192 of Title XV, "Civil Service", of the Constitution are particularly important and make up **the basis of the government hiring system**:

"ARTICLE 191.- The relationship between the State and civil servants will be regulated by a civil service statute in order to guarantee efficient administration."

"ARTICLE 192.- Save for the exceptions contained in this Constitution and the Civil Service Statute, civil servants shall be appointed to office based on their proven suitability and may only be dismissed therefrom if for justified reasons as provided for in the labor legislation, or made redundant if cutbacks in services are required due to insufficient funds or the need to organize them better."

In view of the foregoing, we must point out that both respect for these constitutional rights of civil servants, and selection based on proven suitability and merit, are compulsory for all systems government hiring systems.

- **Definitions of a civil servant.**

In 2004 the Legislative Assembly passed the Law on Corruption and Illicit Enrichment of Public Servants, Law N° 8422 dated October 6, 2004.

This law expands upon the definition of a civil servant used up to now and contemplated in the General Law on Public Administration, Law N° 6227 of May 2, 1978, in the following terms:

> "Article 111.-
> 1. A civil servant is anyone who provides services to the administration or for the name or account thereof, as part of its organization, by virtue of a valid and effective act of investiture, entirely independent of the imperative, representative, remunerated, permanent or public nature of the respective activity..
> 2. To that effect the following terms shall be considered equivalents: "public official," "civil servant," "public employee," "government official" and other similar terms, and the system governing the relationship shall be the same for all of them, unless the nature of the situation indicates otherwise.
> 3. Employees of State enterprises or services that operate in accordance with the provisions of common law are not considered public servants."

Recently, for the purposes of its enforcement, the Law on Corruption defined the concept of civil servant as follows:

> "Article 2º— **Civil servant**. For the purposes of this Law, a civil servant shall mean anyone who provides services in State and non-State Public Administration bodies and entities on behalf, for the account and as part of its organization, by virtue of an act of investiture and entirely independently of the imperative, representative, remunerated, permanent or public nature of the respective activity. The terms civil servant and public employee have the same meaning for the purposes of this Law.

> The provisions of this Law shall apply to *de facto* officials and anyone who works in any kind of State enterprise and for public entities that are required to perform functions in accordance with the provisions of common law. They shall also apply to the agents, administrators, managers and legal representatives of bodies corporate responsible for managing the custody, administration or use of Government funds, goods or services, in any capacity or through any means.

In view of the above, we refer to Decision N° C-114-2006 of March 16, 2006 of the Office of the Attorney General of the Republic regarding the distinction between the General Law and the Law on Corruption, inasmuch as the following aspects are concerned:

> "II.- Law on Corruption and Illicit Enrichment of Public Servants and its field of application**.**
> For the purposes of this consultation, it is unquestionable that anyone who work in, is employed by or provides a service to Public Administration, and even private individuals who exercise any form of public function, either because they manage the custody, administration or use funds, goods or services in any capacity or through any means, are not only required to fulfill their specific functions faithfully, as an essential part of their duties, but their duties as public officials may also require that they adhere to a series of prohibitions, impediments and incompatibilities that are regulated to ensure the transparency of Public Administration which is currently one of the fundamental principles governing administrative activities. All this is essential in order to ensure that public functions are exercised correctly and efficiently. *(Decisions C-061-2001 of March 6, 2001, C-316-2005 of September 5, 2005 and C-030-2006 dated January 30, 2006).*
> According to the doctrine on the matter, from the point of view of the institutional or public interest, the duties of public servants are regulated in such a way as to protect certain "juridical values", and are among constitutional principles such as legality and efficacy that are specifically covered by our Constitution. Others such as hierarchy, obedience, impartiality or objectivity are acknowledged as principles by constitutional jurisprudence, insofar as they are rights are concerned, etc. So we could refer to them in general as the "system of functional duties."
> Within this context, the Law on Corruption and Illicit Enrichment of Public Servants – *Nº 8422 dated October 6, 2004-,* which affords more importance to the need for probity in the service (Art. 3º), unquestionably and considerably complements the system of functional duties of public employment, and at least, within the vast organizational complex that comprises *both centralized and decentralized* Public Administrations, represents an initial effort to achieve integration. But we have to admit that despite the progress made in this area, we are still a long way from achieving a single system that covers the entire Public Sector.
> In principle, the application of the system of incompatibilities – *as it can also be called* – contained in Law Nº 8422, is not a particular problem in the case of a typical public official. Doubts may arise with regard to other individuals who are not public officials in the strict sense, but who undertake public functions within public administration. They could be employees of State enterprises of enterprises or services that operate in accordance with the provisions of common law *(Article 111 [3] of the General Law on Public*

Administration); as well as workers in Public Administration, linked thereto by a non-statutory labor relationship, as well as temporary workers or free-lane employees *(Article 11[2] Ibídem)*.

Merely because there is a legal relationship between a public entity and a worker or employee who is not a public official, is governed by Labor Law or Mercantile Law *(Art. 112 [2º] Ibídem)*, does not justify their exclusion from the application of the legislation on the matter – *Law Nº 8422* – particularly inasmuch as their work may be linked, albeit indirectly, to the public management of the respective administration, in other words to the performance of public functions such as the provision of a public service or the exercise of a public competency.
Note that even Article 112 (3) of the General Law on Public Administration states that, in order to guarantee administrative legality and morality, a worker or employee of this kind who does not participate in public management shall be subject to the legal provisions of Public Law, and this unquestionably includes provisions related to the system of functional duties or incompatibilities, among others.
Even though, based on the above considerations, it might seem as if the scope of application of the Law on Corruption and Illicit Enrichment of Public Servants, as its name indicates, and as reaffirmed in Article 1 only refers to "public functions," Article 2 of that law, according to the criterion of sub-paragraph 112 (3)(of the General Law on Public Administration, expands its coverage under the meaning of " civil servant" given in Article 111 of the same law; and even goes so far as to cover both *de facto* officials and anyone who works in any type of State enterprise or service that operates in accordance with the provisions of common law, that are excluded from that meaning by the General Law (Art. 111 (3) Ibid.); and also to agents, administrators, managers and legal representatives of bodies corporate responsible for managing the custody, administration or use of government funds, goods or services in any capacity or through any means.

The event of this coverage is reaffirmed when one sees the similarity between Article 1 of the General Law and Article 1 (4) of the Law Regulating Contentious-Administrative Jurisdiction, whereby Public Administration is constituted by the State (the Executive, Legislative and Judicial Branches, in that exceptionally they undertake an administrative function) and the other public entities (municipalities, autonomous institutions and other Public Law entities) *(See, for instance, Decisions C-024-2005, C-061-2005, C-238-2005 and C-246-2005)*.

It is thus vitally important to note within the framework of the objectives of the Inter-American Convention against Corruption, that Article 2 of Law N° 8422, extends the coverage of anti-corruption legislation to private individuals responsible for managing the custody, administration or use of the funds, goods and services of Public Administration, *"in any capacity or through any method"*, thereby extending the scope of the State's action for example to employees of private concession-holding companies that might in the future manage ports or electrical or telecommunications services, in their endeavor to combat corruption.

Based on the constitutional framework described above, note that paragraph 9 of the Constitution states the following with regard to the organization of the State:

"Article 9º— The Government of the Republic is elected by the people and is representative, participatory, alternating and accountable. It is exercised by the people and three separate, independent branches of power: the legislative, the executive and the judiciary.
(Reworded as per Law N° 8364 of July 1, 2003)

None of the above branches of power may delegate their inherent functions.

A Supreme Electoral Court *(Supreme Elections Tribunal)* which is independent of the above branches of power, is exclusively and independently responsible for the organization, management and surveillance of electoral acts and all other functions attributed to it by this Constitution and the law."
(This paragraph was added by Law No.5704 of June 5, 1975)

It then deals with the existing systems connected with each of the branches mentioned, as well as the autonomous institutions and local governments, in order to cover all the organization of the State as far as the hiring of public servants is concerned.

Regarding the foregoing, refer to the following aspects:

i.- Governing or administrating authorities of the system and control mechanisms.

Notwithstanding what is stated further on about each of the institutions, it is important to note that the governing or administrating authorities in the different state bodies and entities we will be describing are the following:

The Executive

The governing authority is the Civil Service Directorate General.

The Legislature

This is the Directorate General of the Legislative Assembly.

The Judiciary

Exercised by the Personnel Department together with the Judiciary Council.

Supreme Elections Tribunal

The Human Resources area which reports to the Executive Directorates is in charge of matters concerning the staff of the Tribunal.

Comptroller General of the Republic

The Human Resources Unit is the body in charge of the service relationship.

The Public Ombudsman *(Defensor de los Habitantes)*:

The Human Resources Department is in charge of staff recruitment and selection.

Autonomous Institutions:

The responsibility of the human resources departments in coordination with senior officials.

Municipalities

The responsibility of the Municipal Mayor in coordination with the human resources departments.

State universities

The attributions are exercised by the University Council in coordination with the human resources offices.

ii. Access to the civil service through a merit-based system.
iii. Advertisement for the selection of civil servants, indicating the qualifications for the selection.
iv. Ways to challenge a decision.
v. Relevant exceptions to the above.

To facilitate the understanding and review of the issues relating to each question, we shall answer them within the context of each of the different institutions and branches of State power.

- **THE EXECUTIVE**
  The General Civil Service System

Costa Rica's Executive Branch of Power[2] is governed by Law N° 1581 (Civil Service Statute) and its regulations (Executive Decree N° 21). It is the country's largest public employer.

The Civil Service System is a legal-administrative system created to recruit and retain the best staff available for the civil service, in an endeavor to guarantee an efficient Public Administration, safeguard the rights of civil servants and maintain a well-ordered, equitable relationship in the administration of public employment.

The creation of the Civil Service System proved to be one of the main civic and democratic achievements of the people of Costa Rica. In effect, such important values as freedom and equality before the law are two of the principles on which it is based. The system opens up opportunities for all citizens regardless of ideology, religion, ethnic or political background. They all have the chance to demonstrate their aptitudes, merits and capacity to join the civil service and progress within it with the only selection criteria being scientific, technical and ethical.

This equality relationship clearly demonstrates that the Civil Service System is a merit-based system providing access and the opportunity for advancement for citizens who stand out for their preparation, intellectual gifts and in particular their human and moral quality.

It is comprised by many inter-related elements: institutions, people, laws, technical principles and philosophical or doctrinal principles. Let us look at these in detail:

a. The institutions: are the different state institutions whose staff is comprised by employees who are subject to the regulations governing employment in the Civil Service, and those involved in its administration.
b. The people: are Public Servants who come under the Civil Service System and who are therefore appointed in accordance with the standards and procedures stipulated in the Civil Service Statute.
c. The laws: are the different regulatory provisions that form the legal basis of the Civil Service System. The main ones are Articles 191 and 192 of the Constitution, the Civil Service Statute, its Rules, Laws and related Decrees.

d. The technical principles: are the different scientific, theoretical and practical resources used to regulate the employment relationship between the Executive and its servants efficiently.
e. The philosophical and doctrinal principles: are the central ideas, spirit and thinking that inspired the creation and functioning of the Civil Service System and endeavor to maintain an efficient Public Administration, in which the employment relationship between the State and the civil servants evolves in an environment of order, justice, technical criteria and ethics. Those principles are also the theoretical contributions of universally applied legal and scientific sources that identify with a civic, democratic and equitable vision of how civil servants should be managed. The philosophy, or doctrine, is the soul of the Civil Service System, enabling it to operate historically through the country's laws, institutions, theories and people.

The main objective of the Civil Service System is to guarantee efficient Public Administration in order to provide society with an excellent service. The following specific objectives are derived therefrom:

a. Protect the right of public servants appointed in accordance with the provisions of the Civil Service Statute.
b. Select, appoint and promote public servants based on their merits and proven suitability, excluding political, ideological, ethnic, family and religious preferences.
c. Guarantee the stability of public servants so that they can progress and develop in their positions and only be dismissed for a justified reason.
d. Guarantee order and equal opportunities in public employment.

The Civil Service System covers the different ministries of the Executive Branch, the bodies attached thereto and the National Institute of Learning.

The institutions attached to the civil service are:

- The Institute on Alcoholism and Drug Dependency,
- The National Youth Movement,
- The Attorney General's Office,
- The National Press, the National Archive and
- The Costa Rican Institute of Research and Teaching on Nutrition and Health (INCIENSA).

The following institutions are <u>excluded</u> from the Civil Service System:

- The National Banking System,
- The Judiciary,
- The Supreme Elections Tribunal,
- The Universities, Municipalities and
- autonomous and semi-autonomous institutions:
  - The Costa Rican Electricity Institute,
  - The National Insurance Institute,
  - The Social Welfare Institute *(Instituto Mixto de Ayuda Social)*,
  - The Children's Board of Costa Rica *(Patronato Nacional de la Infancia)*,
  - The Costa Rican Social Security Fund,
  - The Agrarian Development Institute and
  - The National Electricity Service.

The Civil Service System covers the servants of the different ministries and bodies of the Executive Branch. The careers of civil servants fall under two broad categories:

- Administrative Careers and
- Teaching Careers.

The former correspond to non-teaching programs or services, and the latter are teaching, technical and administrative staff employed in the field of education.

Civil Servants in Administrative Careers are regulated by the provisions of Title I of the Civil Service Statute (Law N° 1581 of May 30, 1953) and those in Teaching careers by Title II thereof (Law N° 4565 of May 4, 1970).

Publicly elected officials are excluded from the Civil Service System:

- Deputies
- Municipal Workers and Municipal Executives
- Members of the Police Forces
- Civil Servants paid by special services hired for specific tasks
- Employees who provide temporary or free-lance services or technical services under special contract
- Physicians providing social service
- Trainee primary school teachers
- Heads of Diplomatic Missions and Diplomats on temporary secondment
- Provincial Governors, Senior Ministerial Officials
- Ministers' chauffeurs and chauffeurs of servants who report directly to the Ministers or Deputy Ministers.

The following officials are also excluded from this system:

- The Attorney General of the Republic
- The Treasurer and the Deputy Treasurer of the Nation
- The Head of the Budget Office
- The Director of Migration
- The Head of the Department of Foreigners
- The Administrative Director of the Higher Council of Traffic.
- The Inspector General and the Provincial Inspectors of Authority and Communications
- The Secretary and other personal assistants reporting directly to the President of the Republic.

The Civil Service System has the following administrative levels that enforce the regulatory, doctrinal and technical principles of the Civil Service correctly in the institutions of the Executive Branch.

a. A Civil Service Directorate General.
b. Human Resources Offices at the Ministries and Institutions attached to it.
c. A Civil Service Tribunal.

The Civil Service Directorate General: is the governing institution in charge of directing and administering the application of the Civil Service Statute in the different institutions of the Civil Service. We shall cover this institution in greater detail in part B of this document.

The Human Resources Offices: are the dependencies in charge of implementing the standards, policies and procedures issuing from the Statute and the Civil Service Directorate General.

The Civil Service Tribunal: is the body in charge of hearing and settling labor disputes between civil servants and the State regarding, for instance, dismissals and complaints against provisions of the Civil Service Directorate General or the employees' superiors.

Based on the above-mentioned Article 191 of the Political Constitution, the Civil Service Statute of May 30, 1953 was passed. This Statute originally consisted only of Law N° 1581 which regulated the Administrative Career. Subsequently the Law on Careers in Teaching, N° 4565 of May 4, 1970 was added and, ultimately, the Law on the Civil Service Tribunal, N° 6155 of November 28, 1977.

The general rule is that the servants of Executive Branch are covered by a Civil Service Statute and Rules, in order to guarantee stability, suitability and efficiency in the public service.

These principles are contained in the above-mentioned Articles 191 and 192 of the Constitution, as follows:

Principle of Suitability: public servants can only be appointed, "with the exceptions determined in this Constitution or the Civil Service Statute," it they meet the characteristics and conditions that enable them to perform with excellence in their job, position or public office, i.e. they must have the merits required by the function.

Principle of Efficiency: not only must they perform their public functions efficiently (with "efficacy," as understood in Administrative Science), but as well as possible (good quality and lower or minimum costs, for instance).

Principle of Stability: public officials may only be removed from office for justified reasons as provided for in labor legislation, or if services need to be cut back, either due to insufficient funds or to improve their organization.[3]

- **Teaching Career System:**

This is a decentralized level of the National Civil Service Directorate which comes directly under the Civil Service Directorate General.

The system functions in line with the competencies conferred upon it by the Civil Service Directorate General in Title Two of the Civil Service Statute and added through Law Nº 4565. It is designed to facilitate its participation in and contribution to the regulation of relations between the Ministry of Public Education and its teaching staff, and its assistance in the recruitment and selection of teaching, technical and administrative staff and in job classification and related activities in the field of education, in order to achieve a higher level of efficiency in Public Education.

The foregoing is particularly important because it is the largest body of educators in the country and as such makes up the largest segment of public employees in Costa Rica.

- **Appointment of Teaching Staff:**

ii. Access to the civil service through a merit-based system

In Costa Rica, Article 1 of the Regulations on the Teaching Career[4] and the Civil Service Statute, Title Two, regulate relations between the Ministry of Public Education and its civil service teachers, in keeping with the objectives stated in Article 53 of the Statute, in order to make public education more efficient and guarantee the rights of educators under the Teaching Careers Law (Law Nº 4565 dated May 4, 1970).

Civil service teachers[5] are those covered by Article 54 of the Teaching System Law and the Teaching Career Law, and are divided into:

a) Civil servants who are teachers and exercise their profession, teaching at any education level in accordance with the official programs;

b) Civil servants who are technical staff working in the field of teaching, undertaking planning, advisory or guidance or any other technical activity that is closely linked to national education policy formulation; and

c) Civil servants who are administrative staff working in the field of teaching, involved in management, supervisory and other administrative activities related to the education process where a degree or certificate that allows them to teach is required. (Law Nº 4889 dated November 17, 1971).

Requirements for entering a career in teaching[6] are:

a) To fulfill the formalities and requisites contained in Article 55[7] of the Statute.

b) To present an offer of services on the forms provided by the teaching staff selection department. On the Data Sheet the public servant must swear on oath that the information provided is true and that the candidate's physical condition allows him do the job in question, and that he is free of any commitment such as another job, profession or obligations that prevent him from properly performing the duties inherent to the vacancy.

c) To provide any other documents considered essential by said Department so candidates can demonstrate their professional, moral and physical suitability for the position. Compliance with the provisions of Article 9 of the Regulations of Title One of the State may be required for that purpose.

In order to fill teaching vacancies[8] at any education level, the following procedures must be followed:

Preference will be given to active and trainee teachers, in the following order:

1.- Regular graduate teachers who were dismissed as a result of cutbacks and had to change to other education centers;

2.- Regular graduate teachers who have not reached the maximum number of lessons established by the law. Preference shall be given to such teachers at schools where there is a vacancy and to those who require the least number of lessons to complete the maximum number required by the law.

Equal preference will be given to teachers who have completed the maximum number of required lessons, but distributed over different education centers and who request that all their work be located at the same center.

Each particular case will be decided based on service, experience, studies and other conditions applicable to educators.

3.- Teachers who have the highest score on the Directorate General's Register of Eligible Candidates, for the type of position and location in question, subject to a competitive examination. Appointments in this case shall be made in strict descending order of qualification. Equal preference shall be given to graduate teachers affected by the application of Article 101 (b and c) of the Statute.

If no graduate staff who meet the above conditions are found, the authorized teachers shall be appointed in the following order of priority.

Applicants at the top of the Register of Eligible Candidates who do not accept any of the positions offered shall be removed from the Register for the rest of the school year. However, subject to Civil Service approval, temporary (interim) appointments may be made to fill positions for which there are no qualified applicants for a vacancy to fill in for someone on leave or someone who was suspended for some reason, provided that the applicants hold equivalent positions. (Article 32 of the Regulations on the Teaching Career).

- **Ways to challenge a decision**

A teaching appointment approved and proposed by the Directorate General, may only be challenged by the Ministry of Education[9] for justified reasons. If the objections are considered reasonable, the Directorate General shall exclude from the name of the candidate from the Register of Eligible Applicants through a resolution notifying the interested party.

The candidate shall have three working days to challenge the decision before the Civil Service Tribunal, in accordance with the provisions contained Article 14 (b) of the Statute[10].

The procedure through which officials are chosen from a list of three candidates, as stipulated in Title One of the Statute and its Regulations shall be followed for the selection and appointment of technical and administrative staff in the field of education. Candidates will be graded by the Teacher Recruitment Department, independently of them having been assigned to professional groups on the career ladder for other purposes, such as selection of staff for strictly teaching posts (Article 34 of the Regulations).

- **Appointment of temporary staff:**

Temporary (interim) staff[11] shall be appointed as provided for in Articles 38 and 39 of the Regulations on the Teaching Career:

> "ARTICLE 38.- When a teacher is needed to fill in for someone who is on leave or absent for any reason for more than one year, a temporary civil servant shall be appointed from the list of eligible staff, in descending order of priority, provided the candidate does not hold an equivalent position.

In the afore-mentioned cases, teachers who were appointed as temporary teachers on the basis of their score may continue to work in the same locations if it has not been possible to fill the vacancies or if no permanent employee is found.

ARTICLE 39.-Only if there are no staff that meet the requisites contained in the Descriptive Manual of Teaching categories are available, or if recruitment for temporary staff for administrative or technical staff in the field of education has been insufficient, may temporary candidates who do not fill such requisites be appointed.

In order to do so, the Civil Service Directorate General shall establish the technical procedures and mechanisms it considers to be needed and whether recruitment was ineffective or insufficient.
(Reworded as per Article 1 of Executive Decree Nº 18280 dated June 27, 1988)"

- **THE LEGISLATURE**

All employees in the service of the Legislative Assembly (Congress of the Republic), appointed through a formal agreement by the Board published in the Official Diary, shall be considered its civil servants. They shall be divided into ordinary officials and trusted officials.

- **Governing or administrative authorities of the system**

The Directorate General is responsible for recruiting and selecting staff for the Legislative Assembly following the statutory and regulatory procedures of the Civil Service System (Article 8 of the Law on Legislative Assembly Staff).

- **Regular Public Officials:**

The requirements for candidates wishing to enter the regular service of the Legislative Assembly[12] are:

- Suitable moral and physical aptitude for the position;
- The requisites established in the Manual;
- Demonstrate their suitability through tests, examinations and or competitions held by the Directorate General;
- Not be spouses or relatives of direct or collateral sanguinity, up to and including the third degree of affinity, of regular public servants of the Assembly, or to Deputies; and
- Complete the trial period established in the Manual.

- **Access to the public service through merit-based systems.**

When a vacancy that will not be filled through a promotion arises, the Administrative Director sends the Directorate General a request for staff, stating the corresponding job title, according to the Manual, and listing the essential conditions required of the civil servant[13].

If the Directorate General has no eligible candidates to fill the vacancy, it shall, at the earliest opportunity, invite the three best qualified applicants on the list of candidates to sit a competitive examination. If the request for staff relates to more than one vacant position, another candidate will be added for each vacancy, always keeping the respective order of qualification.[14]

The Board[15] must chose a civil servant from the candidates within eight working days after the list is submitted, unless there are sufficient reasons to challenge a decision. If the Directorate General accepts the reasons, it shall replace the candidate whose appointment was questioned. If they are not accepted, a higher court will rule on the matter.[16]

The Civil Service Tribunal is authorized to consider petitions, complaints, dismissals and limitations. Statements by the "Minister" or "Ministry" shall be taken as being issued by the "Directorate" and the Tribunal shall hear any challenges against decisions related to the selection systems.

- **Trusted Officials.**

Chapter XV of the Law on Legislative Assembly Staff regulates matters concerning trusted officials. The following come under this category:

1.- The Private Secretary of the President of the Legislative Assembly.
2.- The employees of the different legislative fractions.

Both of them must be appointed by the board of the Assembly which is the body in charge of dismissals, for the following reasons:

1.- When the official is the President's Private Secretary, at the President's request;
2.- When the officials are employees of the fraction, by recommendation and formal agreement from the respective fraction; and
3.- When any of the grounds established in the Labor Rules of Procedure or the Code on the matter exist. In such cases a reasoned report drawn up by the Administrative Director of the Assembly must be presented. (Article 46 of the Law on Legislative Assembly Staff).

With respect to the scope of trusted officials, this is a category of employee determined by the functions performed, and one of the consequences is the limitation of labor rights, basically as regards the right of public employees to labor stability.

The existing difference between trusted officials and administrative career employees lies in the conditions under which they are appointed, and the system of stability that protects the latter. Thus career officials can demonstrate their suitability for the position through the fulfillment of a series of requisites and even by sitting objective aptitude tests – if applicable – whereas trusted officials are freely appointed to and removed from office by a higher authority with the discretionary power to appoint them.

The Constitutional Tribunal has referred to the basis of the relationship of trust pointing out that "…depending on the requirements of the position, this may be based on purely subjective aspects of a personal nature; but it can also be derived from objective aspects arising from an ideological (political in the positive sense of the term) community, necessary for proper public management, in accordance with plans and programs. Exceptional cases of course must be qualified, with the afore-mentioned special characteristics that justified unequal treatment. Thus, through an unjustified exception, a legislator can declare invalid the constitutional provision

aimed at guaranteeing the public employee's job stability, and the rationality of the recruitment as a general rule. But something in particular justifies such exceptional cases, the exception will be valid" (The Constitutional Court of the Supreme Court of Justice Nº 1190-90 of 14:00 hours on September 18, 1990).

It is important to point out that loss of trust as grounds for dismissal must be based on reasonable fact and not merely be an unlimited discretionary power of the employer.[17]

- **THE JUDICIARY**

The relationship between the Judiciary and its servants is regulated by Article 1 of the Judicial Service Statute as follows: "This Statute and its regulations control the relationship between the Judiciary and its servants, in order to guarantee the efficiency of the judicial function and protect those servants."[18]

To that effect, pursuant to Article 2 of the Judicial Service Statute, servants of the Judiciary are "those appointed by agreement of the Full Court *(Corte Plena)* and remunerated through the salary system".

As provided for in the written law, excluded from application of this Statute are Magistrates who, in accordance with the Constitution, are appointed by the Legislative Assembly.[19] It should be noted that the *Corte Plena* is made up of twenty-two magistrates and is the Higher Court of the Judiciary which has powers to govern and regulate.

Hence, Article 47 of the Organic Law of the Judiciary, Law N° 7333, states:

> "Anyone working in the Judiciary shall be referred to, in general, as a "servant". However, when this Law refers to "officials who administer justice" this shall be taken to mean magistrates and judges; the term "official" refers to anyone, aside from the afore-mentioned, whose attributions, powers and responsibilities are determined by the law and "employees" shall refer to anyone else occupying positions remunerated by the salary system.
> The prohibitions established in this law shall apply both to judicial servants appointed in their own right, and temporary servants, unless otherwise established by the law. Use of the word "Court" in this law shall mean the Supreme Court of Justice or Full Court *(Corte Plena)* and when, in the Codes of Procedure, the term "Organic Law", without any qualification, is used, this shall mean this law. The word "Council" shall mean the Higher Judiciary Council.
> (Reworded as per Article 1 of Judicial Reorganization Law No.7728 of December 15, 1997)"

In other words, judicial servants are public officials, precisely because their function, which is granted by constitutional mandate, is to administer justice rapidly and appropriately.

There are three types of official in the Judiciary:

1.- Officials who administer justice, i.e. magistrates, superior court judges, judges and members of three-judge courts.

2.- Officials with their own attributions, excluding the afore-mentioned ones, such as: the court clerk, process servers, the Judicial Inspector, the Judicial Account, the Librarian, the Chief Archivist, members of the Superior Council, the Prosecutors, the Executive Director, the Head and Deputy Head of the Judicial Investigation Organization (OIJ) and the Public Defenders.

3.- The other servants remunerated through the Judicial Power salary system. The Law on Salaries in the Judiciary is the official remuneration system for all the jobs included in the Judiciary's Job Description Manual *(Manual Descriptivo de Clases)* [20] of the Judiciary.

Candidates wishing to enter the Judiciary must undergo a selection process consisting of a merit-based competitive examination. This selection process is held by the Department of Judiciary Staff. After that the new servant undergoes a one-year trial period, which begins on the date the servant starts the new job and upon completion of which the appropriate statute will be applied.

Candidates wishing to enter the Judicial Service[21] must meet the following requirements:

1.- Be of legal age.
2.- Be morally and physically apt to perform the functions of the position, which will be ascertained by the Personnel Department.
3.- Fulfill the requisites established in the Classification Manual, for the type of position in question.
4.- Not to be married or related by direct or collateral sanguinity up to and including the first degree of affinity, to any Magistrate, superior court judge, judge, actuary, mayor, inspector general or assistant, or any official who administers justice.
5.- Prove suitable, through such tests, examinations or competitions as provided for in the law or determined by the Personnel Department.
6.- Be chosen from the list of three candidates sent by the Personnel Department, as necessary.
7.- Swear the oath required by the Constitution.
8.- Complete the trial period.

Anyone who is married or related, under the terms of item 4 above, to heads or other servants of the respective tribunal or office may not work in the same dependency. If this situation were to occur as a result of marriage or for any other reason, the Court shall transfer that person to another dependency but will not demote the individual from the position held.

Secretaries, prosecretaries, process servers, clerks and other servants referred to in the Job Description Manual must have completed at least middle school education; but if there is no potential candidate, one whose qualifications fall short of these requisite may be appointed[22].

- **Appointment of judges[23]:**

Superior judges may be Costa Ricans by birth or naturalization, with ten years of residence in the country after naturalization; citizens whose citizen rights have not been revoked, laymen, over thirty years of age and lawyers, graduates whose degree was issued or is legally recognized in Costa Rica and who have practiced law for at least five years. They shall be appointed for four-year periods, in the second half of the corresponding month of May. They shall take office on the first day of the following June and must post a bond of ten thousand colones.

If, following the announcement of a vacancy for a superior judge there are no applicants who meet the age or professional requirements stated above, the Supreme Court of Justice may appoint someone who does not meet those requisites, provided that person is a lawyer.

Judges, actuaries, members of three-judge courts and mayors must be lawyers. However, a law graduate or student of the Faculty of Law who has studied and passed all the subjects, may serve as mayor, and failing this, someone who does not meet those conditions. In this latter case, appointment as an official shall be subject to the candidate passing the training courses given by the Judicial School if he has not already passed them. The Full Court shall indicate the term within which these requirements must be filled, heeding the opinion of the Board of Governors of the Judicial School. An employee who is required to fill a temporary position for less than one month shall not be required to hold a degree, but preference must be given to graduates.

Officials who hold positions as mayors and do not hold a law degree can be reelected and retain their posts as long as their appointment is not revoked..

These officials must attend training courses given at the Judicial School during working hours when the Board of Governors deems this necessary.

- **Staff selection**[24]

The Personnel Department is responsible for selecting eligible candidates for positions in the judiciary, unless otherwise provided for by the law.

The selection shall be made through merit-based competitive examinations which may only be sat by people who meet the requirements established in Chapter V of the Judicial Service Statute.

The Department may seek advice from the Staff Board and other officials or institutions on the preparation and grading of tests.

Tests sat by candidates shall be graded on a scale of one to a hundred. The minimum acceptable score is seventy.

When the Personnel Department receives the request for eligible candidates, the Head of the Judicial Office must, without delay, shortlist three candidates based on suitability and background, choose the one it deems most suitable and send the shortlist to the Full Court recommending the candidate. If the Head of the Office reasonably believes that none is suitable, he must request a list of three more candidates, giving his reasons for rejecting the first three in writing.

If the Department considers the objections justified, it will prepare a new shortlist.. Otherwise the Staff Council will reach a decision. If it decides that the original list should stand, it will return it to the Head of the Office.

Once the procedure has been complied with and a candidate chosen by the Head of the Office or appointed from the shortlist, the Full Court shall make the election. If no-one received sufficient votes, the Court shall inform the Head of the Office so that he can request a new shortlist from the Personnel Department.

No temporary appointment to fill a permanent vacancy or stand in for someone on leave for longer than a month can exceed one month.

Any appointment that contravenes the Statute shall be null and void; but if the employee or official has already occupied the position or exercised function and his performance was in keeping with the law, it shall be deemed to be valid.

The "Judicial Career" falls under the Judicial branch of power and its purpose is to ensure the suitability and to enhance the administration of justice.

The Judicial Career offers the following rights and incentives:

a) Job stability, notwithstanding the provisions of the law regarding the suitability of the public service.
b) Promotion to higher levels in accordance with the result of competitive examinations..
c) Transfer to other equal or lower ranking positions, at the request of the interested official, if agreed upon by the Supreme Court of Justice or the Judiciary Council, whichever is applicable.
ch) Periodic training, according to the possibilities and programs of the Judicial School or with other national or foreign education institutions, if deemed of interest to the Judiciary, by decision of the appropriate administrative bodies.

- **Competitions[25]:**

The Judiciary Council must hold merit-based competitive examinations periodically to recruit or promote employees, either simultaneously or separately.

Eligible candidates are invited to apply whether or not there is a current vacancy. Invitations are published in the Judicial Bulletin and in a major newspaper. The specifications must indicate: the job title, location, salary, requirements, aspects to be graded and closing date for applications.

Participants are examined and graded based on experience, length of service, proven capacity and quality of service in previous positions - within and outside the Judiciary - relevant courses, specialization, university level teaching experience, research and papers published.

Candidates are interviewed and tested based on their personality, knowledge in the judicial technique and field of specialty relevant to the position. Additional medical and psychological tests are applied if these are deemed to be necessary.

The examining tribunal grades applicants according to the particular subject and the regulations of the Supreme Court of Justice. Applicants who pass the competitive examination are put on the Career Register, showing the grade obtained and notified of their acceptance. No candidate who obtains less than seventy percent is accepted.

When competitions are held in response to needs arising from staff turnover, vacancies are filled by the candidates with the highest scores, in descending order.

Candidate who are disqualified from a competition may not participate in the following one; and if they fail on subsequent occasions, in each case they may not take part in subsequent competitions.

The Personnel Department keeps a file on each judicial career official, with the data indicated in the respective regulations. This file is for use by the Judiciary Council. The Department also assists the Council if it is requested to do so.

When a vacancy arises, the Secretariat of the Supreme Court of Justice or the Higher Judiciary Council immediately informs the Judiciary Council which, within the following five days, sends it a shortlist of three eligible candidates that obtained the highest scores. A candidate on that list can only be excluded if he has given his consent in writing..

If after three votes none of the candidates on the shortlist is elected, a single request can be made for a new list, beginning with the next eligible candidate not included on the original list. Candidates can still be chosen from the ones on the first shortlist.

If there are no eligible candidates for a particular position, someone on the Judiciary Council's list of eligible candidates for a lower rank, or failing that someone on the list of eligible candidates for other ranks, can be appointed to fill it as a serving official.

Only if there are no candidates for these positions in the Judiciary Career can external lawyers be appointed to a position in the administration of justice, in the same capacity as a career official. The Judiciary Council must hold a merit-based competitive examination for such professionals.

Serving officials will not enjoy the benefits granted by this law to career officials and shall remain in office for a maximum period of six years, in accordance with the Organic Law of the Judiciary. Upon completion of their period in office they shall be given preference for a repeat term as career officials, subject to eligibility at the time. Failing that, the vacancy will remain open and be filled in accordance with the law.

- **Exception to the Judicial Career- Appointment of Magistrates[26]:**

The Magistrates of the Supreme Court of Justice are elected for an eight-year period by two thirds of all the members of the Legislative Assembly (Congress). They must perform their functions efficiently and are considered reelected for equal periods unless they are voted out of office by at least two thirds of the members of the Legislative Assembly. Vacancies shall be filled for complete eight-year periods.

Magistrates must:

1) Be Costa Rican by birth or naturalization with ten years of residence in the country after naturalization.
2) Be Costa Rican by birth alone in the case of the President of the Supreme Court of Justice;
3) Be a citizen whose citizen rights have not been revoked
4 Be a layman;
5) Be over thirty-five years of age;
6) Hold a degree in law, issued and legally recognized in Costa Rica, and have practiced law for at least ten years, except in the case of judicial officials with no less than five years judicial practice.

Prior to entering office, Magistrates must provide the guarantee established by the law.

Anyone who is related to a member of the Supreme Court of Justice by blood or marriage up to and including the third degree may not be elected as a Magistrate.

- **SUPREME ELECTIONS TRIBUNAL:**

The Supreme Elections Tribunal is the higher Constitutional Body on electoral matters and as such is responsible for organizing, directing and supervising activities related to voting. It functions independently. The other Electoral Bodies, such as the Civil Register and the Electoral Boards come under the Tribunal. Both of them are temporary in nature and composed of District Boards *(Juntas Cantonales)* and Vote Receiving Boards *(Juntas Receptoras de Votos)*. The Supreme Elections Tribunal must make the final decision on resolutions concerning the Civil Register by virtue of an appeal or consultation.

The Supreme Elections Tribunal is normally made of three principal magistrates and six alternate magistrates appointed by the Supreme Court of Justice elected with the votes of two thirds of its members. From six months to one year after the general election for the President of the Republic and Vice Presidents or Deputies to the Legislative Assembly are held, the Tribunal consists of the three principal magistrates and two alternates chosen by the Supreme Court of Justice, making up a five-member tribunal for that period.

The Institution's magistrates and its staff are banned from any party-political involvement. They are only entitled to vote on the day of the general election.

The Tribunal's functions are such as determined in the Constitution, the Organic Law, the Electoral Code and any others conferred upon it by the laws of the Republic.

The Human Resources area comes under the Executive Directorate and is responsible for matters concerning the staff of the Tribunal and the Register, following the legal provisions issued by the Tribunal on the matter. Its main functions are to ensure that the entry of new servants in the Institution is based on suitability and capacity, demonstrated by testing the candidates.

The Law on Salaries and the Merit System of the Supreme Elections Tribunal and the Civil Register, Law N° 4519, regulates the administrative career and merit systems of the Supreme and the Civil Register to guarantee efficiency.

Staff wishing to enter institutions, in addition to complying with the specific conditions established in the Organic Law of the Supreme Elections Tribunal and the Civil Register, must meet the following requirements[27],

a) Be morally apt to perform the job, which will be ascertained through information on background and lifestyle.
b) Those established in the Job Description Manual approved by the Supreme Elections Tribunal for its dependencies and for the Civil Register.
c) Demonstrate their suitability for the position, subject to tests held by the Office of Personnel.
d) Spend a minimum three-month trial in the job.

In order to appoint staff to the Civil Register, the Director General shall sent a shortlist of three candidates for each vacancy, chosen from the Personnel Office's list of eligible candidates, in keeping with the requirements for the post contained in the Job Description Manual.

The same procedure will be followed to select staff for the Tribunal's administrative offices, but in this case the shortlist of three will be drawn up by the Secretary of the Organization from the lists of eligible candidates provided by the Office of Personnel.

Vacancies can be filled by promoting staff to the next grade, subject to a recommendation by the Senior Officials of the Civil or Electoral Departments, whichever is the case, or by the Director of the Register in the case of employees who do not depend directly any either of those Departments. Employees of the offices of the Tribunal itself shall be appointed upon recommendation by the Secretary.

To make the recommendation, periodical employee assessments, seniority and other factors, shall be taken into account, provided candidates for promotion comply with the requirements established in the Job Classification Manual for the position to which they are to be promoted.

- **Ways to challenge a decision**

The only way to challenge a decision is through the appeal contemplated in Article 9 of the above-mentioned Law. It states that a public servant who disagrees with a grading must lodge a complaint with the Director of the Civil Register or the Secretary of the Tribunal, as applicable, so they can determine whether the grounds for appeal are acceptable, based on the reasons given by both parties. The Tribunal will be consulted on the resolutions of the Director of the Civil Register and the Secretary of the Tribunal.

- **Exceptions- Appointment of Magistrates to the Supreme Elections Tribunal:**[28]

We mentioned above that the Supreme Elections Tribunal is normally made up of three principal Magistrates and six alternates, appointed by the Supreme Court of Justice elected through the votes of two thirds of all the members. They must all meet the same conditions and have the same responsibilities as the Magistrates of the Court.

From six months to one year after the general elections for the President of the Republic or Deputies of the Legislative Assembly are held, the Supreme Elections Tribunal must add two more alternate Magistrates to make up a five-member tribunal for that period.

The Magistrates of the Supreme Elections Tribunal are subject to compliance with the working conditions and minimum working day established in the Organic Law of the Judiciary for Magistrates of the Court of Appeals. They are remunerated in accordance with the amounts established for those positions[29].

Magistrates shall remain in office for six years. One principal magistrate and two alternates must be replaced every two years, but they may be reelected. They enjoy the immunities and prerogatives corresponding to the members of the Supreme Branches of Power.

- **OFFICE OF THE COMPTROLLER GENERAL OF THE REPUBLIC**

The Office of the **Comptroller** General of the Republic is a fundamental constitutional body of the State. It is the arm of the Legislative Assembly that oversees the National Treasury and the governing body of the inspection system contemplated in its organic law.

- **Principle of Stability:**

Civil servants employed in the **Office of the Comptroller General**can only be removed from office for a justified reason or if the position is eliminated. This must be justified in writing in the corresponding file. Redundancy benefits must be paid in the last two cases, but not in the case of removal for a justified reason.

If public servants are removed from office for a justified reason, they are entitled to a hearing and are guaranteed the right to defend themselves.

- **Appointments:**

Candidates wishing to join the staff of the Office of the **Comptroller**General of the Republic must comply with the following requirements:[30]

a) Be morally apt to perform the job, which shall be ascertained through information on background and lifestyle;
b) Meet the requirements established in the **Office of the Comptroller General**Job Description Manual for the vacancy;
c) Demonstrate their suitability through tests held by the Office of Personnel; and
d) Complete a minimum three-month trial period in the job.

In order to appoint staff, the **Comptroller)** General chooses candidates from a list that must be submitted for each vacancy by the Human Resources Unit, showing the scores obtained by the applicants in descending order of excellence.

The Human Resources Unit keeps a personal file on each servant, containing documentation on the official's background, inasmuch as this relates exclusively to the service relationship.

Officials are employed by the Office of the **Comptroller** General of the Republic under different categories of service relationship:

a) Senior Management [31]
b) Trusted officials[32]
c) Management staff[33]
d) Regular staff[34]
e) Special Services staff[35]

- **Exceptions- Appointment of the Comptroller and the Deputy Comptroller**

The exceptions to the administrative career of the **Office of the Comptroller General** refer to the appointments of the **Comptroller** and the Deputy **Comptroller**..

The Legislative Assembly appoints the **Comptroller**General and the Deputy **Comptroller** General of the Republic, pursuant to the provisions of Article 121 (12) of the Constitution.

The **Comptroller** and Deputy **Comptroller**must:

a) Be Costa Rican by birth or naturalization, resident in the country for ten years after naturalization and be citizens whose citizen rights have not been revoked.
b) Be over thirty-five years of age.
c) Be recognized as honorable citizens.

The following persons may not be appointed as **Comptroller** General or Deputy **Comptroller** General:

1.- The spouse of the **Comptroller** General or the Deputy General.
2.- Relatives of direct or collateral sanguinity up to an including the fourth degree of affinity, or with a civil link, up to and including the fourth degree of affinity.
3.- Relatives of the President of the Republic, of the Vice Presidents of the Republic and of the Ministers, up to an including the fourth degree of affinity, or with a civil link, up to the same degree of affinity.

Infringement of these prohibitions shall result in the absolute nullity of the appointment.

- **PUBLIC OMBUDSMAN'S OFFICE *(DEFENSORÍA DE LOS HABITANTES OF THE REPUBLIC)*:**

The Public Ombudsman's Office is the body in charge of safeguarding the rights and interests of all citizens.

This institution ensures that the public sector operates with morality and justice and in keeping with the Constitution, laws, conventions, treaties and agreements signed by the Government and the general principles of Law. It also promotes and disseminates citizen rights.

The "Administrative Career"[36] operates within the Ombudsman's Office.

The purpose of the administrative career is to regulate staff promotions and appointments, through merit-based competitive examinations, with the exception of the positions of Ombudsman and the Deputy Ombudsman and staff appointed to positions of trust under the Law of the Ombudsman.

- **Competitive merit-based examinations**

Incumbents are appointed by the administration subject to an internal merit-based competition. If there are no suitable candidates, an external examination must be held.

Internal examinations are competition processes through which officials with proven suitability for the job are recruited and selected. Incumbents can then be promoted as and when a vacancy arises.

In the case of an internal competitive examination, the Human Resources Department, in coordination with the Area Director or Head of Department where the vacancy occurs, reviews the selection predictors and the scores, taking into account the nature of the vacancy, and presents them to the Commission, which may in turn ask the department to make the necessary modifications, giving its reasons.

The Human Resources Department must advertise the competition and ensure that the information reaches any interested and potentially eligible officials.

During the period scheduled for receiving applications, the Human Resources Department studies them. Any that fail to meet the selection criteria of the Job Description Manual and the competition are rejected and reasons given.

If there are no candidates at all, or none of the candidates meet the characteristics of the vacancy, the Human Resources Office will inform the Commission, which in turn must ask the Ombudsman to open an External Competition Processes –giving the reasons for the request – which shall be governed entirely by the Statute.

The list must consist of the three candidates who scored highest in the selection process. If there are more candidates with an equal score, they too will be shortlisted.

The Area Director or Head of Department shall recommend a candidate to the Ombudsman from the list presented to the Selection and Appointments Commission, after the competition is held. The Ombudsman is the person ultimately responsible for selecting, appointing or promoting a person to the position, and is not compelled to choose someone who was recommended by the Area Director or Head of Department, or the person who obtained the highest score.

The vacancy must be filled by one of the officials on the shortlist presented by the Human Resources Department, on the understanding that no candidate who was not on the list may be included.

Candidates must obtain a score of at least 80% to be considered for the shortlist. In the case of some predictors a lower score may be permitted.

An external competition shall only be held if, after holding an internal competition it is determined that no suitable candidate is available or that the applicants do not meet the characteristics of the vacancy.

The governing authorities or persons responsible for the selection[37] who shall make sure that the provisions of the Statute are complied with, shall be:

- the Public Ombudsman
- the Area Directors of the Institution
- the Human Resources Department
- the Appointments Selection Commission

- **Ways to challenge a decision[38]:**

In the event of a disagreement between the Selection and Appointments Commission and the Human Resources Department, the Ombudsman shall determine what action should be taken, using the attributions conferred by the Law.

Officials who feel they were jeopardized by the conditions or the result of the competition may lodge a formal objection for reconsideration of the decision with the Selection and Appointments Committee within three days from the date of notification. If the official still

disagrees, he may lodge an appeal with the Ombudsman. The Ombudsman must reach a decision within three working days and that decision is the last recourse to administrative action.

If there are no objections to the competition processes, the scores shall be final.

Officials who feel that they were jeopardized by the decision may lodge a formal appeal for reconsideration with the Ombudsman, within three working days after the result is announced. The Ombudsman shall have three working days in which to decide on the appeal. The resolution reached is the last recourse to administrative action. The results of competitions must be announced directly to the participants in accordance with the provisions on the matter.

All appointments and promotions made through the above processes are subject to a three-month trial period. Within that time, the incumbent conserves the rights of the position from which he came in the institution.

If the appointment of the official is not approved, the new list of candidates for appointment or promotion may include the remaining candidates with lower scores shortlisted for the vacancy and selected in accordance with the criteria defined in this statute.

- **Exceptions- Appointment of the Ombudsman and the Deputy Ombudsman[39]:**

The Legislative Assembly appoints the Ombudsman for a four-year period, through a vote by the absolute majority of the deputies present. The Ombudsman can only be reelected for one new term.

The Ombudsman must be a Costa Rican whose civil and political rights have not been revoked, over thirty years of age, and of renowned moral and professional solvency and prestige.

The Legislative Assembly will appoint a Special Commission to review the documents of applicants to the office of the Ombudsman of the Republic, pursuant to the provisions of the Legislative Assembly's Rules of Procedure on Order, Direction and Discipline.

The Legislative Assembly shall appoint the Deputy Ombudsman from a list of three candidates proposed by the Ombudsman, at the latest one month after the Ombudsman's appointment. The Deputy Ombudsman must comply with the same requirements as the Ombudsman.

The Deputy Ombudsman collaborates directly with the Ombudsman and must fulfill the functions assigned and stand in for the Ombudsman during temporary absences.

- **AUTONOMOUS INSTITUTIONS[40]**

Costa Rica has many autonomous State institutions which enjoy administrative independence and are governed by domestic legislation. Their directors are accountable for their management.

The following institutions are autonomous:

1) State banks;
2) State insurance institutions;

3) Any established by the Constitution, and new bodies that will be created by the Legislative Assembly through a vote by at least two thirds of all of its members.

Within these institutions created by the law, first and foremost, those that provide basic public services (functional autonomy). The following are examples of such public service institutes: Instituto Costarricense de Electricidad (Electricity), Instituto Costarricense de Acueductos y Alcantarillados (Water Works), Refinadora Costarricense de Petróleo (Oil), Radiográfica Costarricense (Radiography), Instituto Nacional de Seguros (Insurance), Instituto Nacional de Vivienda y Urbanismo (Housing), Compañía Nacional de Fuerza y Luz (Power & Light), Banco Nacional de Costa Rica, Banco de Costa Rica, Banco Central de Costa Rica (Central Bank), Banco Crédito Agrícola de Cartago, Consejo Nacional de Producción (Production), Instituto Costarricense de Puertos del Pacífico (Ports), Instituto de Fomento y Asesoría Municipal (Development), Instituto Mixto de Ayuda Social (Social Welfare) and Instituto Nacional de Aprendizaje (Learning), etc.

The Costa Rican Social Security Fund *(Caja Costarricense de Seguro Social)* and the Children's Board of Costa Rica *(Patronato Nacional de la Infancia)* are autonomous institutions created directly by the Constitution, given the importance of their social functions.

According to national doctrine, these institutions are autonomous based on the following concept:

> "(…) the capacity of an entity to issue general rules and regulations, as seen in point a, regulations, every entity as such has the dual power to regulate, autonomously and independently of prior formal law, both its internal organization and its services (autonomous regulations on organization and service) (…) In any event, when the legal system attributes the power to issue rules, either by virtue of general principle (in the case of autonomous regulations), or by virtue of the law (in the case of executive regulations) this leads to what is known as autonomy" (ORTIZ ORTIZ, Eduardo; Tesis de Derecho Administrativo, Edition 2002, Volume I, Editorial Stradtmann, San José: 2002, p. 368.)

So, when issuing their own regulations on service, the autonomous institutions must respect the principles of job suitability and stability contained in the Constitution.

It is important to point out that in all the autonomous institutions endeavor to guarantee civil servants promotion within the administrative career which begins when they are recruited.

Suitability for the position must be demonstrated before the appointment is made and the profile is ascertained by the institution through aptitude tests.

Officials are entitled to enjoy job stability and can only be dismissed if it is proven that they have actually committed a serious misdemeanor that is classified as grounds for dismissal (the classification is regulated by each institution through service statutes and other regulations formulated to that effect).

- **THE MUNICIPALITIES[41] (LOCAL GOVERNMENTS)**

For the purposes of Public Administration, the national territory is divided into provinces, the provinces into *cantones* (counties) and these in turn into districts.

The Municipal Government is responsible for administering local services and interests in each *cantón*, making up a deliberating body of municipal councilors *(regidores)* elected by the people, and by an executive official appointed in accordance with the law, as well as by all the professional, technical and administrative support staff needed to manage the interests of the corresponding locality.

- **Municipal Staff**[42]

Municipal staff are employed by the municipalities where they follow the municipal administrative career in which they can develop and achieve promotion. This is an integral system that regulates employment and labor relations between civil servants and the municipal administration. The system encourages responsibility-based remuneration in keeping with the mechanisms that establish the career ladder and define the levels of authority.

Each municipality is governed by the general parameters established for the Administrative Career and scopes and goals are intended to foster respect for the civil service and make optimum use of its human resources to fulfill the attributions and competencies of the municipality.

All municipal officials are safeguard by the Municipal Code, and municipal workers recruited through the merit-based selection process, pursuant to the law and paid from each municipality's budget, are accountable for its provisions.

- **Exceptions: Temporary Employees and Trusted Officials**

Temporary municipal officials and trusted officials do not enjoy the same rights and benefits as municipal administrative career staff, even if they perform the same jobs as permanent staff.

Temporary officials are appointed to stand in for permanent staff during their temporary absences and paid from a special budget established for that purpose or hired for a particular contract or task and their salaries covered by a budget for special services or free-lance assignments.

Trusted officials are hired for a fixed term and paid from the afore-mentioned budget to provide a direct service to the mayor, the Municipal President and Vice Presidents and the political fractions making up the Municipal Council.

- **Access to the Municipal Administrative Career**

The following requirements must be met in order to join the civil service under the municipal system:

a) Meet the minimum requirements established in the Job Description Manual for the category of vacancy.
b) Proven suitability by sitting tests, exams or the competitions contemplated in this law and its regulations.
c) Be chosen from the list sent by the staff recruitment office.
d) Swear on oath before the municipal mayor, as established in Article 194 of the Constitution.

e) Sign a sworn declaration guaranteeing that there is no legal impediment that prevents them from entering into a labor relationship with the municipal public administration.
f) Fill any other requirements contained in the regulations and other legal provisions.

The municipalities must adapt and update the General Job Description Manual based on a comprehensive descriptive manual for the municipal system, which will contain a brief but comprehensive description of the typical and supplementary tasks of the positions, duties, responsibilities and the minimum requirements for each rank, as well as other environmental and organizational conditions. The National Union of Local Governments will be responsible for designing and updating the descriptive Manual.

In order to design and update the general Manual and adapt it to each municipality, both the National Union of Local Governments and the municipalities can request the cooperation of the Civil Service Directorate General.

Municipal staff are appointed to and removed from office by the municipal mayor, subject to a technical report on the candidates' suitability.

Staff are selected through suitability tests and only those who meet the above-mentioned requisites are admitted. The characteristics of these tests and the other requisites correspond to the updated criteria of the modern recruitment and selection systems and are governed by the specific and internal regulations of the municipalities. The municipalities may also ask the Civil Service Directorate General for technical cooperation to help them prepare the exams.

The municipalities must keep the respective Recruitment and Selection Manual up to date, based on the general Manual which will establish guidelines in order to guarantee the procedures, uniformity and equity criteria required by this Manual. The National Union of Local Governments is responsible for designing and updating the General Recruitment and Selection Manual is the responsibility of the National Union of Local Governments, through the appropriate technical level.

When a vacancy arises the municipality must fill it in keeping with the following options:

a) As a result of the direct promotion of the official qualified for that purpose, if the promotion is to the next grade up.
b) If the former procedure proves to be ineffective, an internal vacancy announcement will be published inviting employees from the Institution to apply.
c) If the previous procedures is ineffective, an external vacancy announcement will be published in a major national newspaper under the same conditions as the internal invitation.

As a result of the competitions referred to, the Human Resources Office presents the mayor with a shortlist of at least three eligible candidates, in strict descending order of qualification. Based on this the mayor chooses the replacement.

While the internal or external competition is being held, the mayor can authorize the temporary appointment or promotion of a worker for a period of up to two months.

In order for a mayor to authorize exchanges or horizontal transfers by civil servants, their immediate bosses must first be consulted and a report drawn up. The move is authorized if it does not appear to jeopardize anyone and effectively meets the needs of the municipality.

All municipal servants must satisfactorily complete a three-month trial period in service, starting from the date the agreement on the appointment enters into force.

- **Limitations**

Spouses or relatives of direct or collateral sanguinity up to and including the third degree, of a councilor, mayor, **Comptroller**, director or head of personnel of the staff recruitment and selection units, or in general those in charge of choosing candidates for municipal positions, may not be municipal employees.

If any of the officials indicated in the previous paragraph are designated, municipal employees who are married or related to them, will not be affected if they were already appointed.

- **STATE UNIVERSITIES** [43]

Costa Rica has four State universities:

- Universidad de Costa Rica
- Instituto Tecnológico de Costa Rica
- Universidad Nacional
- Universidad Estatal a Distancia

The University of Costa Rica and the other public universities are higher learning institutions which enjoy independence[44] in the performance of their functions and have full legal capacity to acquire rights and contract obligations, as well as to determine their own organization and form of government. The State provides them with their own capital and helps to fund them.

Decision N° C-269-2003 dated September 12, 2003 of the Attorney General of the Republic illustrates the legal system governing the universities' autonomy[45].

> "In this order of ideas, self-management powers include the autonomous administration of human resources which covers such aspects as issuing rules, supervising, disciplining and regulating behavior, specifically or through circulars; as well as controlling legality and appropriateness, and reviewing, replacing, advocating or delegating. These aspects are typical of any decentralized entity insofar as they stem from the minimum powers required to attain their objectives. Hence those powers are related not to organizational autonomy but to administrative autonomy (cf. Decision N° C-184-97 dated September 25, 1997 regarding application of the provisions contained in the General Law on UNED Salaries)."

So, it is quite clear that the universities, in exercising the competencies and attributions mentioned, regulate staff hiring in accordance with the their respective manuals, but always based on merit and suitability for the position and the principle of stability applicable to all civil servants.

b) In relation to question a), state the objective results obtained, including any available statistical data.

As indicated throughout this document, the whole of the public sector has selection and contracting systems to recruit officials in accordance with the applicable regulations and under the same constitutional principles. In practice the results are objective and in keeping with the principle of transparency in this field.

Central government employees the largest staff and includes all the officials employed in the Executive Branch, in addition to teachers, who make up the most significant proportion of civil servants, more than one hundred thousand.

By comparison, the Judiciary has a total of 7,863 public officials. Some autonomous institutions (decentralized sector) also have a fairly large staff. Examples are Social Security *(Caja Costarricense de Seguro Social)* which has a total of 43,014 civil servants (8,486 temporary and 34,528 permanent); Electricity *(Instituto Costarricense de Electricidad)*, with a total of 13,003 public employees (10,906 permanent and 2,097 temporary), which together account for the bulk of the civil servants employed in this sector, compared to the average for small institutions, such as Radiography *(Radiográfica Costarricense)*, with 288 public employees.

c) If no such laws and/or measures exist, briefly indicate whether your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government hiring systems, in accordance with Article III (5) of the Convention

R/ This question does not apply in the case of Costa Rica (see previous response).

2.- GOVERNMENT SYSTEMS FOR PROCUREMENT OF GOODS AND SERVICES

a) Are there laws and/or measures in your country establishing government systems, indicating their characteristics for procurement of goods and services? If so, briefly describe the main systems, indicating their characteristics and principles, and list and attach a copy of the related provisions and documents.

Also describe how the above systems ensure openness, equity and efficiency in your country.

- ***Background on the government system for procurement of goods and services***

The first experience in this area in Costa Rica appears in the Fiscal Code of 1885 which required that purchases by the State be subject to public tender. Various decrees and agreements were subsequently passed to regulate public works contracts and the procurement of goods and services.[46]

The Constituent Assembly of 1949, which enacted the Constitution that governs our State of Law to this day, made it compulsory, as a general constitutional principle, to invite tenders for government purchases. Documentary records of the legislative discussions that took place at the

time reveal that the intention to afford this principle constitutional protection was to put an end to the "untendered contracts" of the previous administration, as they were known as, which were harshly criticized by the Opposition.[47]

The intention of the Constituent Assembly was not to introduce public tenders as the general rule for all the goods, service and construction works purchased by the State, the reason being that the Constituent members themselves recognize that this does not always manage to achieve the goal sought. It therefore established the principle that tenders, being competitive procedures, are unquestionably the most appropriate way to select a contractor, but it left it to the law to create and regulate the different categories, depending on the nature of the activity and the goods or works to be procured.

The Costa Rican Constitutional Tribunal, in one of its most representative rulings on government procurement, Resolution Nº 998-98 of February 16, 1998, referring to the contents of Article 182 of the Constitution, states:

"Hence tendering is the mechanism, method, means or set of principles that the State – in the broadest sense of the term – must adhere when engaging in its procurement activity, since it is the process that complies with the constitutional principles on administrative contracting: free competition, equality, openness, transparency and controls, among others, that are subsequently developed. It is an administrative procedure characterized by a series of activities whose main purpose is to ensure that the most suitable contractor is selected. This involves a public and general invitation to potential applicants to tender their bids to the procuring administration, so they can be reviewed, classified and the contracted awarded, on the basis of the conditions established in the invitation. Alternatively, if the bids fail to meet the conditions established, the tender process is declared void and the process is repeated as to guarantee that public funds are administered appropriately (...)."

Other important resolutions by the Constitutional Tribunal have gradually outlined the importance of this rule, indicating that jurisprudence, “Insomuch as it affects the State, does its utmost to ensure the quality of the public services provided to users and, depending on the nature of each case, to guarantee the economic conditions. In the case of private individuals, the “open” nature of bidding processes giving potential bidders the most ample guarantee of free competition in contracting procedures, under conditions of absolute equality.” (Decision N° 6453-94 of 1994)

So, it is important not to lose sight of the fact that the ultimate goal in a State procurement process is to satisfy the implicit public interest in the work or purchase in question as far as possible by selecting the best contractor. Hence, as intended by the Constituent members, the tender is the means and not the end in itself.

It is clear from the above that the intelligence of Article 182 lies in its defense of **tenders** as a means of guaranteeing the proper use of public funds for State procurement. Hence the importance of tenders because they are the mechanism through which contractors can compete among themselves so that the best one is selected.

That is precisely why– as admitted by the Constitutional Tribunal in numerous decisions – it is valid from the constitutional point for less rigorous mechanisms than public tendering to be used to achieve the public goal sought by the procurement process. This in no way a means of ignoring the principles contained in Article 182 cited above.

In that context, alternative bidding procedures - which are quicker but less rigorous than public tenders - such as short tenders, are allowed. There are other justifications for procurement by direct contracting. Examples are: Sole Bidder, Regular Activity, Classified Information for Security Reasons. Constitutional jurisprudence on the matter contemplates all the cases where such mechanisms are valid from a constitutional point of view.[48]

As shall be seen, both the way the law deals with procurement and the way it has evolved through the administrative decisions of the appropriate authorities, by setting compulsory guidelines for the Administration,[49] for instance in the case of direct contracts for small amounts, is respected and preserves the essence of bidding processes, as well as the postulates derived from the important development regarding the constitutional standing acquired by the following constitutional principles: openness, free competition, equal treatment, legality or transparency, legal certainty, formalism, good faith, balance of interests, variability of the contract, intangibility of capital assets and control of procedures.

Bearing that constitutional framework in mind, we have listed the following regular and general regulations applicable in Costa Rica to processes for the procurement of goods and services:

- Law on Administrative Contracting (Law N° 7494)
- Regulations on Administrative Contracting (Decree N° 33411)
- General Law on the Concession of Public Works with Public Services (Law N°. 7762)
- Organic Law of the Office of the Comptroller General of the Republic (Law N° 7428)
- Law on Financial Administration and Public Budgets (Law N° 8131)
- Law on Corruption and Illicit Enrichment of Public Servants (Law N° 8422)
- Law on Certificates, Digital Signatures and Electronic Documents (Law N° 8454)
- General Law on Internal Control (Law N° 8292)
- National Law on Emergencies and Risk Prevention (Law N° 8488)
- Regulations on the Law on Financial Administration and Public Budgets (Decree N° 32988)
- Regulations on the Operation of Institutional Supply Agencies (Decree N° 30640)
- Regulations on the Use of the Register of Suppliers (Decree N° 25113)
- Regulations for the Registry and Control of Property of the Central Administration (Decree N° 30720)
- Regulations on the Use of the Public Procurement System *Comprared* (Decree N° 32717)
- Regulations on the Endorsement of Government Contracts (R-CO-33-2006 issued by the Office of the Comptroller General at 2 p.m. on March 8, 2006.
- Regulations on the joint exercise of the competencies of the Office of the Comptroller General over administrative contracting and procedures, issued by the Office of the Comptroller General at 10 a.m. on January 25, 2006.
- Restrictions on administrative contracting procedures and remedies. (Resolution by the Office of the Comptroller General N° R-SC-03-2006, published in *Alcance* No. 10 of official journal, L*a Gaceta*, N° 42 of February 28, 2006).
- Average budgets for the purchase of non-personal goods and services. (Resolution of the Office of the Comptroller General, N° R-SC-02-2006 published in *Alcance* N° 10 of the official journal, *La Gaceta* N° 42 of February 28, 2006)
- Guidelines on authorizations for direct contracting, under Articles 2 (h) of the Law on Administrative Contracting and 83 of the General Regulations (Resolution of the Office of the Comptroller General published in the official journal, *La Gaceta*, No. 34 of

February 17, 2000)

- Law amending the Law Creating the Costa Rican Social Security Fund and introducing the special procedure for the procurement of drugs and raw materials (Law N° 6914)

It should be noted here that apart from these general regulations, usually the autonomous institutions (which are independent from the Central Administration), issue their own supplementary regulations which are basically intended to enhance the procurement process. The following examples this:

-The Municipality of San José (local government of the capital of Costa Rica) has its own "Regulations on the procurement of goods, services and works," as well as the "Procedure manual of the Supply Department *(Departamento de Proveeduría)*."

-The national radiography company, *Radiográfica Costarricense* (RACSA), which provides Internet services under the monopoly system, has its "Rules of Procedure on the Administrative Contracting of Goods and Services" and a "Manual on the Administration of Contracts and its Regulations." This company has two special regulations that were authorized by the Office of the Comptroller General (registration subject to pre-qualification method) for the external plant breakdown repairs; as for hiring authorized agents to sell Internet services and business network services and to follow up traffic.

-The *Instituto Costarricense de Electricidad* (Electricity Institute*)* has Regulations on Contracting Vehicle Maintenance Services, Regulations on the Procurement of External Plant and Civil, Electromechanical and Transport Services, under the terms of the register of eligible suppliers; and Regulations on Contracting Services and Works Construction in the Strategic Business Unit for Electricity Customer Services. The Institute also has Regulations on the Provision of Services by Collection Agents.

-The *Instituto Costarricense de Acueductos y Alcantarillados* (Waterworks Institute) has a "Manual on Procedures and Functions for the Goods, Services and Works Contracting Units" and "Regulations on the Procurement of Services directly or through Registered Suppliers."[50]

- *Banco Crédito Agrícola de Cartago* (State-owned agricultural bank) has its "Regulations on Public Procurement," "Regulations on Small-Scale Procurement" and special regulations on the hiring of experts.

- Banco de Costa Rica (State-owned bank) has "Regulations on the Public Procurement of Goods and Services"

- Banco Popular y de Desarrollo Comunal (a public but not State-owned bank) issued its "Supplementary Regulations on Public Procurement.[51]

- Refinadora Costarricense de Petróleo (Oil Refinery) has "Regulations on Procurement" and "Regulations on the Procurement of Vehicle Maintenance Services".

- **Law on Administrative Contracting (N° 7494 dated May 2, 1995)**

We should start by pointing out that the entire process for procuring goods and services revolves around the Public Procurement Law N° 7494 mentioned earlier. It is crucial for readers to bear this in mind in order to follow the vision intended by this report, in that **as far as**

government procurement is concerned, all the country's public institutions are governed by a single law.

In view of this, a brief description of its provisions is warranted, and we shall refer principally to those mechanisms that are designed to prevent corruption by making the process a transparent one.

First of all, note that a series of important articles in this law were amended through Law N° 8511 of May 16, 2006. Although the law will not come into force until January 4, 2007, since by the time this report is reviewed, its entry into force will be imminent, we consider it pertinent to make reference to the legislation as it stands in the amended text, rather than the current version which is about to lose effect.

Recently, on November 2, 2006, Executive Decree N° 33411 approving a comprehensive amendment of the *Regulations on Administrative Contracting* was published. This legislation will also come into force on January 4, 2007. In this case too, for the reason just given, we feel it would be more appropriate to make reference in this report to the new provisions.

Pursuant to the terms of Article 1 of the Law on Administrative Contracting (LCA), any procurement activity undertaken by the Executive, the Judiciary, the Legislative, the Supreme Elections Tribunal, the Office of the Comptroller General, the Public Ombudsman's Office, the decentralized territorial and institutional sector, non-State public entities and public enterprises – in other words the whole of the structure of Public Administration in its broadest sense - shall be governed by its provisions.

The law also states that when public funds are partially or entirely used, the contractual activities of any other kind of individual or body corporate will be subject to the principles of that law. That mandate is particularly important insomuch as its principles guarantee the transparency, efficiency and openness for purchases financed by public funds, even if they are administered by a private entity (for instance a foundation or community development association) to which public funds have been donated or transferred.

- **Principles of government procurement**

Our Constitution contains a series of principles governing public procurement activities which have gradually been strengthened through the jurisprudence issued by the Constitutional Tribunal. Pursuant to Article 13 of the Law on Constitutional Jurisdiction, these precedents are binding *erga omnes,* making them compulsory references for the activities of Public Administration.

This system of principles governing the State's contractual activities is contained in the afore-mentioned Decision N° 998-98 of February 16, 1998 as follows:

"The principles that orient and regulate tenders include: **1.- principle of free competition**, designed to strengthen the possibility of bidders challenging one another and competing among themselves within the prerogatives of freedom of enterprise regulated in Article 46 of the Constitution, whose purpose is to promote and encourage a competitive market in which many bidders can participate in order to give the Administration a wide variety of options so that it can choose the best conditions available; **2.- principles of equal treatment among all bidders.**. This principle complements the previous one and has the dual purpose of ensuring that the participants' interests and rights as contractors, bidders and individuals are protected, i.e. that the State may not restrict access to the

bid, either by passing **legal or regulatory provisions** for that purpose, or by specific action; and also of safeguarding the Administration while increasing the possibility of choosing the best contractor available. All this is guaranteed by the constitutional framework afforded by Article 33 of the Constitution; **3.- principle of openness**, based on the budget and principles guaranteed as already commented on, the purpose being to ensure free competition by participants in public procurement processes under conditions of absolute equality and ensures that the invitation to tender is a general one, open to as many applicants as possible, and that the announcement is advertised as widely as possible, guaranteeing the broadest possible access to the bidding terms and conditions, reports, resolution and the entire process; **4.- principle of legality or transparency of procedures**, as regards the procedures for selecting contractors which must be specifically defined in advance so that the administration cannot ignore the rules predefined in the legislation on the framework of action, or the provisions contained thereon in the Constitution; **5.- principle of legal certainty**, which is derived from the previous principle, because as the public contracting procedures comply with the rules contained in the legal provisions on the matter, bidders are guaranteed security when they participate; **6.- principle of formalism in bidding processes**, in that formalities must be fulfilled and these act as endogenous oversight controls over public action; so there are no obstacles to free competition; **7.- principle of the balance of interests**, in that the contractors and the administration must have equal rights and obligations to enable the contractor to benefit the State by acting in the best public interest; **8.- principle of good faith**, in that in all tender processes and in general in all matters concerning government procurement, it is a basic moral principle that the administration and the participants act in good faith, and that the actions of both parties are characterized by clear and ethical rules in which the public interest prevails over all else; **8.- principle of the variability of contracts**, since the administration has the power and prerogatives necessary to make changes in contracts, so they fulfill their public mission which must be protected and realized; **9.- principle of the intangibility of capital assets,** by virtue whereof the administration must always maintain the financial balance of the contract, compensate the co-contractor for any negative effects caused by its own decisions, either due to the principle of variability, or for reasons of convenience or public interest or for any other general or special interest that may affect the initial economic level, always readjusting the variations that may occur in each and every cost in the sum total of the contract, in order to maintain the economic level originally agreed upon intact (price readjustments that might result from the legal doctrine underlying change of circumstances, unforeseen circumstance, *rebus sic stantibus,* sovereign acts and above all what is known as the equilibrium of the financial equation of the contract); and **10.- principle of control of procedures**, whereby all public contracting activities are supervised and controlled in order to ascertain at least the proper use of public funds. So, in any public procurement procedure it is necessary at least to ascertain that the following controls are in place: **legal controls**, to make sure that no entity or official carries out any act or behave in any way to break the law, carried out by ascertaining the prior existence of funds; **accounting controls**, to examine the accounts of the dependencies and officials responsible for managing State funds and assets, through the ongoing systematic review of all operations that affect the budget appropriations approved by the Legislative Assembly or the Office of the Comptroller General, so that financial commitments have financial backing and are in line with the classification established. These controls are exercised by the budgetary oversight offices of each contracting entity or institution; **financial controls** consist of ascertaining the source of income and the legality of public spending, and are exercised by the financial offices of the institutions, the National Treasury, the Budget Office and the Office of the Comptroller General; and **economic oversight or control of results**, undertaken to determine the efficiency and efficacy of financial management, in other words the results of their financial management, determining compliance with the established goals and the optimization of funds. These controls are exercised very partially by the institutions and were not designed as an effective managerial and institutional development instrument."

Article 4° of the Law on Administrative Contracting stipulates the **Principles of Efficacy and Efficiency** that guarantee the selection of the bid that most satisfies the general interest and complies with the aims, goals and objectives of the Administration, through the efficient use of institutional funds. The law stresses the prevalence of the contents as regards procedure; defends the interpretations of acts and actions designed to conserve it; facilitates the adoption of the final report and allows for the correction procedural, nonsubstantial errors that are not serious enough to warrant rejection of the bid.

Free competition means that the Administration must encourage as many bidders as possible to participate in competitive processes, except in exceptional circumstances that are incompatible with bidding processes which we shall see further on. The principles of equal treatment and openness (Articles 5 and 6 of the LCA) are important. The former puts participants on equal ground vis-à-vis the tender and the latter refers to transparency and open communication in all aspects of the tender. The contracting procedure commences with a public invitation to tender which will be included at the beginning of the bidding terms and conditions which must be prepared and made available for consultation by any interested party (Article 7).

The recently amended regulations cover the principles of efficiency, efficacy, openness, free competition, competition, equality, sound capital and intangibility of capital assets. Their content is explained and contracting activity must be undertaken under those conditions (Article 2).

- **Regime of prohibitions**

  Particularly important in the fight against corruption are a series of prohibitions on public contracting which are provided for in the LCA. They are designed fundamentally to prevent officials with decision-making power in the field of procurement from using any loopholes. Further, the specific provisions that regulate this aspect were amended through the Law on Corruption and Illicit Enrichment of Public Servants (N° 8422 of October 6, 2004).

The prohibition on entering into government contracts covers participation in contracting procedures and the contract's execution phase.

Officials who are subject to such prohibition must abstain from taking part in, giving their opinion on or in any way influencing the execution of a contract. Failure to comply with this obligation shall be deemed serious misconduct.

In general, senior officials of the different institutions and heads of supply departments are not allowed to participate as bidders in public contracting procedures. This limitation also applies to public officials with influence or with decision-making power at any stage of the public contracting procedure, and even during subsequent inspection.

It also applies to advisers to officials to whom that prohibition applies, bodies corporate in which any of the officials subject to these limitations owns a share, anyone in a management position and the agents of such officials.

This regime also applies to the spouse or partner of an official covered by the prohibition, and their relatives of direct or collateral sanguinity up to and including the third degree and bodies corporate in which such relatives own more than twenty-five percent (25%) of the capital or have a management position or are agents.

Individuals or bodies corporate that participated as advisers in any stage of the contracting process, which participated in preparing the specifications, designs and plans, or will later participate in their inspection, during the execution or construction phase are also subject to it.

There are, nevertheless, certain exceptions to the regime, and it is also possible to ask that the incompatibility be lifted, subject to fulfillment of some conditions contained in the regulations on the matter.

Also regulated are the ban on influences for people covered by the system and the absolute nullity of a contract awarded to person banned. This circumstance is grounds for punishing the offending party with the sanctions provided for under that Law (Articles 22, 22 bis, 23, 24 and 25).

As stated in the regulations[52], neither individuals nor bodies corporate who have been disqualified because they were sanctioned under the terms of Article 100 of the Law on Administrative Contracting, are allowed to enter into government contracts. The ban also applies to anyone disqualified from trading or anyone declared bankrupt or insolvent.

In relation to the above, refer, among others, to the following aspects:

i. Procurement systems with a public tender and without a public tender.

- **Types of contracting procedure**

There are various different procedures. Let us first look at ***public tenders*** (Article 27 LCA). The amount involved depends on the size of the administration's budget for which there is a series of bands and purchases that exceed a particular sum of money are subject to public tender.[53]

Under the LCA, the Office of the Comptroller General of the Republic must prepare and send a list with the name of each administration and the amount of their budget they are authorized as support for the procurement of non-personal goods and services. This will be published in the official journal, *La Gaceta* by second half of February of each year at the latest. To establish that amount, the average of the sums budgeted during the current period and in the two preceding periods is taken account to support need to procure non-personal goods and services.

The sums established are adjusted annually, taking as a reference, among other things, the percentage variation of the consumer price index. During the second half of February each year, at the latest, the Office of the Comptroller General of the Republic issues a resolution containing the increases and specifying the parameters in force for each body and entity covered by that Law.

The minimum public tender requirements include preparation of the bidding terms and conditions, the general conditions and technical, financial and quality specifications, containing the conditions for qualifying and comparing bids; development of a bid evaluation; publication in the official journal, *La Gaceta*, of an invitation to tender, and publication of any changes to the bidding terms and conditions and the award decision; announcement of all the procedures to be followed and access to all the technical studies pre-prepared by or for the Administration; the possibility to challenge the bidding terms and conditions if there it is deemed that any of the

general contracting principles have been infringed; the reasons for the award decision and the possibility of filing a remedy, pursuant to the terms of that law (Article 42).

Another important factor is that the contractor's rights and obligations cannot be assigned without prior express authorization from the contracting Administration, through a reasoned report. If the assignment is for more than fifty percent of the contract, authorization from the Office of the Comptroller General is required, and in no case may the assignment be granted if it violates the system of prohibitions described above (Article 36).

The Administration must not break up assets or services in order to circumvent the contracting procedure applicable. This measure is designed to prevent the use of direct contracts for small amounts for the purpose of undermining bidding procedures that guarantee openness and freer participation (Article 37).

The new reform has introduced ***short tenders*** that replace and combine the former *licitación por registro* and limited tender procedures (applied to date). Since the latter two procedures have been the ones used and these are reflected in the statistics given further on, it is worth explaining briefly that in the case of the *licitación por registro* all registered suppliers of goods or services are invited to bid. Aspects not covered are subject to the guidelines established for public tenders, provided they are compatible with the nature thereof. In the case of a *limited bid (licitación restringida)* at least five suppliers on the respective register must be invited to bid.

Short tenders are used in the case of contracts for smaller amounts than public tender contracts, determined according to the table of amounts contained in Article 27. In this case a minimum of five suppliers of goods or services, on the corresponding register, must be invited to bid, and if less than five suppliers registered, the Administration must publish an invitation in the official journal, *La Gaceta*. As in the previous system, all the provisions already mentioned for public tenders shall also apply in such cases, as long as they are compatible with the nature thereof.

Another procedure, ***sale by auction*** *(remate)***,** can be used to sell or lease goods or movable or real property, if this is in the best interests of the Administration (Article 49).

Article 51 envisages other contracting methods, authorizing the Administration to add, among other procedures, ***pre-qualification, awards by Dutch auction and Bid plus finance*** *(precalificación, adjudicación por subasta a la baja, licitación con financiamiento).*

- ***Other methods of State contracting***

Having looked at the different types of bidding procedures contemplated by the law, we feel we should refer briefly to some contracting methods that can be used if the appropriate procedure is applied. Hence, sub-paragraph 55 of the LCA regulates ***open types***, so the Administration still has the opportunity to define regulations for any type of contract designed to satisfy the general interest, always in accordance with the general framework and the ordinary procedures established in this law, giving it a good measure of flexibility and a margin of adaptability to the legal framework, without obviating the controls and guarantees envisaged in the law.

The Regulations issued for that purpose must first be consulted on with the Office of the Comptroller General so that it can make the necessary recommendations on aspects within its competence, even if they are not binding..

Contracts for the supply of goods and contracting of services must also be handled depending on the type of procedure (public tender or short tender, or direct contract), depending on the amount estimated (Articles 63 and 64). We should mention that the law expressly states that entering into a contract for technical or professional services does not create an employment relationship between the Administration and the contractor, except in the case of professional services at a fixed salary (Article 65). In the latter case, public entities are authorized to engage the professionals they require to undertake operations, valuations and inspections or attend to judicial or administrative proceedings or provide any other kind of professional services required for a fixed salary through the normal system (Article 67). In such cases the decision to award a contract shall be based on the personal, professional or business conditions of the participants and that price shall not be the only factor used to compare offers.

Lastly we should mention, that in order to ***attach real property*** it is necessary to use the public tender or sale by auction procedure, whichever best suits the public interest (Article 68). To ***purchase real property,*** the Administration must also use public tenders, unless it has expropriation or direct purchasing powers. In effect, a property may be purchased directly, subject to authorization by the Office of the Comptroller General, if its location, nature, conditions and situation make it the most appropriate right for the purpose intended (Article 71).

A public installations concession (Article 72) can also be granted through a public tender to enable other individuals or bodies corporate to provide supplementary services (for instance if they sell food or refreshments, fiscal stamps and paper, photocopying services, etc.)

Concessions to manage utilities are also subject to public tender, in the case of utilities that the Administration has a duty to provide and which, because of their economic content, could be commercially exploited. This of course is not possible if the provision of the service involves exercising discretionary powers or acts of authority. Moreover, the Administration always retains the power to supervise and intervene as necessary in order to ensure the smooth functioning of public services (Article 74).

Leases of real property or equipment are subject to public tender, short tender or direct contracting, depending on the amount involved (Articles 76 and 78).

Lastly, in ***cases of urgency***, in order to safeguard the public interest and prevent serious harm to persons or irreparable damage to objects, one or all of the contracting procedure can be obviated, and procedures may even be created to substitute them. However, in such cases, to guarantee the corresponding control and inspection, the Administration is obliged to request authorization from the Office of the Comptroller General to use this mechanism (Article 80). If necessary authorization may even be given verbally.

- **Exceptions to competitive bidding procedures (direct contracting)**

Paragraph 2 of the LCA and Chapter IX of the respective regulations regulate all cases excluded from the bidding procedures envisaged in the law. Those exceptions refer to the following cases:

- *The Administration's ordinary activity*.

This case is understood as the direct supply of services to their user or recipient, pursuant to the law or the regulations on the matter.

It covers the activity of the Administration which, due to the constant volume and movement, and the immediate relationship with users, is clearly incompatible with competitive bidding procedures. For instance, the ordinary activity of the institution in Costa Rica that operates telecommunications service as a monopoly (the Costa Rican Electricity Institute) is the sale of telephony services to users; the activity of the Costa Rican Waterworks Institute is to provide the population with a drinking water service; and the activity of the National Insurance Institute is to sell insurance policies to customers.

It is important to clarify that this is an exception. It is subject to restrictions and obviously does not cover purchases of all the goods and services the institution needs for the service it provides (i.e. in the case of a citizen-State relationship) which must be put out to tender.[54] We should also make it clear that when services are provided directly by the Administration they can be considered part of its ordinary activity, but while there is an interest in transferring it to private individuals, they can be contracted through ordinary bidding procedures (for example, if a local government hires a private company to provide a garbage collection service to a community, or if the National Insurance Institute contracts insurance brokerage companies).

- *Agreements entered into with other States or subject to public international law.*

- *Contracting activities that take place between public law entities ("contratos interadministrativos")*

- *Contracts for small amounts.*

In this case, bearing in mind that a significant amount of contracts involve small amounts, it is important to mention that the law states, in its new text, that in this case the administration will invite at least three potentially appropriate suppliers, if they exist, and will award to offer to the lowest bidder, although other relevant factors may be evaluated and this must be defined in the invitation.

- *Sole bidder*.

In this case the Administration must accredit that there is only one person or company capable of supplying the goods or providing the service, if there are no other options in the market that would fill the institution's needs. Based on that, it must be decided whether the option proposed is not just the most convenient, but the most appropriate one available. The regulations[55] expressly state that this case covers the purchase of articles produced by a sole company as a result of an invention patent; and the purchase of genuine spare parts, but that if there are several spare parts distributors, they will all be invited to bid.

It is also important to mention that in cases of renewable contracts, before renewing them the Administration must study the market to determine whether there are any better options available, in which case it must take the steps to initiate the appropriate bidding process..

- *Special reasons for classified information.*

These are cases in which classified and confidential information has to be disclosed in order to prepare a bid. In any event, Public Administration must certify that compared with similar benefits or in terms of the applications and the technology, the price is reasonable.

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- *Extreme urgency.*
- *Purchases made from the limited fund ("caja chica").*
- *Contracts entered into for the construction, installation or provisioning of offices or services abroad.*
- *Activities that are excluded, in accordance with the law or the international instruments in force in Costa Rica.*
- *Artistic or intellectual goods or services.*
- *The media. Refers to contracts for broadcasting messages related to institutional management. It should be noted that the services of advertising agencies should be contracted through other procurement methods.*
- *Subscriptions and purchases of bibliographic material.*
- *Training services.*

This item only covers circumstances involving open training, which is when the general public is invited, the program is not intended to meet the specific needs of an Administration and it is necessary for the purpose of the institution. Contracts to meet each entity's specific training needs must be tendered based on an estimate, except when the company and the instructor are foreign, the ideal ones and, because of their specialization, cannot be competed with; in such cases contracts can be awarded directly.

- *Urgent attention to judicial procedures.*

Permitted if there is an urgent need to deal with a judicial process, and there is no lawyer on the staff to handle the matter.

- *Unspecified repairs*.

Cases in which in order to determine the scope of repairs, the machinery, equipment or vehicles have to be dismantled. The Administration is also authorized to pre-qualify workshops to fill this need.

- *Clear interest in cooperating with the Administration*

In cases where there is a clearly disinterested desire to help the Administration, without expecting to profit from the operation in question. In such cases the price set by the individual must be at least 30% lower than the minimum real market value.

- *Lease or purchase of unique goods*
- *Unforeseen situations.*

In this case the continuity of essential public services must be seriously compromised.

- *Leasing of vehicles for officials.*
- *Arbitration and conciliation services*
- *Purchase of fuel at service stations*
- *Sponsorships*
- *Advice for internal audits*
- *Construction and maintenance of infrastructure*
- *Activities which, through a reasoned resolution, authorize the Office of the Comptroller General, when there are sufficient reasons of public interest*

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Alternative pre-qualification systems can also be authorized instead of ordinary procedures.

ii. Governing or administrating authorities of the systems and control mechanisms.

- *The Comptroller General's Office*

As seen from the explanations given in the previous points, the Office of the Comptroller General exercises a major role in the Administration's goods and services procurement processes, in the pre and post-procurement control phases.

According to the Law on the Office of the Comptroller General (Law No. 7428 of September 7, 1994) the Office is an entity of constitutional importance[56], under the Legislative Assembly (*Congreso*), and has absolute functional and administrative independence from any public power, entity or body. Its **general function is to oversee the Treasury and the activities of the inspection system regulated by the afore-mentioned Law,**[57] which of course includes its power to intervene in government procurement processes.

This body controls and inspects everything related to public contracting procedures in order to guarantee the proper use of public funds to satisfy the public interest, acting as an external oversight body authorized to remove inadmissible clauses from the bidding terms and conditions (following a remedy), annul an award announcement (in response to a remedy) or endorse a contract entered into by the Administration indicating to stop it from being executed. It also hears complaints concerning irregular acts committed during public contacting process by the Administration.

As far as its competencies are concerned, it is particularly important that in accordance with Articles 12, 24 and 37.6 of its organic Law (Law Nº 7428), the Office of the Comptroller General of the Republic has the power to issue provisions, rules, laws, policies, guidelines and instructions that are binding upon the whole of the Public Administration which are necessary in order for the Auditing Entity to exercise its control and inspection functions. Under the General Law on Internal Control, Nº 8292, the Office of the Comptroller General has the power to pass technical legislation rules on internal control.

There are some very important regulations on that attribution that must be observed by the Administration in its contracting procedures as listed above.

- *The National Concessions Council*

The Law on Concessions of Public Works with Public Services (Law N° 7762 of April 14, 1998) created the National Concessions Council as a decentralized body under the Ministry of Public Works and Transport. Its members are the Ministers of Public Works and Transport, Finance, Planning and Economic Policy; the Executive President of the Central Bank; a member chosen from the shortlists submitted by the business chambers; a member appointed from the shortlists presented by the trade union confederations, solidarity *(solidarista)* and cooperative organizations; and a member chosen from the shortlists submitted by the Federation of Professional Associations.

The attributes of this Council include guaranteeing the transparency, appropriateness and legality of administrative acts undertaken by the Technical Secretariat of the Council; approve, reject or amend the bidding terms and conditions for concessions; award a concession and, if in order, sign contracts on behalf of the granting Administration; ensure that the Technical Secretariat inspects and controls the concessions granted; and review the audit reports issued in relation to the way the Concessions Fund is managed and run.

As already mentioned, this body was especially created to promote efficiency in this field, and to direct and concession projects for public works carried out in the country.

Note that the that the Executive acts through that Council, and when the object of the concession falls under the competence of the decentralized sector or of public enterprises, those public entities, through an agreement with the National Concessions Council, can agree with this body on the process for selecting the concession holder and the execution of the concession contract.

- *The Directorate General for the Administration of Goods and Public Procurement*

Pursuant to the provisions of the Law on Financial Administration and Public Budgets (Law N° 8131), the "System on the Administration of Goods and Public Procurement" comprises the principles, methods and procedures used, as well as by the bodies taking part in the contracting process, management and use of goods and services by Central Administration.

Its objectives are to endeavor to ensure that the goods and services are administered according to the highest level of technical and economic criteria; promote the adequate maintenance of the goods belong to the Central Administration; foster the development of fast and efficient mechanisms to dispose of unused or obsolete goods, provide information on the state, location and personnel responsible for the movable and real property of the Central Administration; foster the integration of the registers of assets of the Government in the Accounting System and ensure that goods are purchased on a timely basis and satisfy the public interest, in keeping with the principles of openness and transparency.

The directorate was created by this law as an organ of the Ministry of Finance, designating it as the body responsible for governing the system of goods and public contracting[58], with the following functions:

a) Take the necessary action to establish policies on issues connected with the system it governs.

b) Evaluate contracting processes periodically and at the close of each period; this involves requesting relevant information from publicly financed public or private dependencies.

c) Propose the changes needed so that the standards and procedures used in the System's process guarantee that the public interest is safeguarded.

d) Direct the formulation of the Central Administration's procurement programs according to the guidelines issued.

e) Supervise the Central Administration's institutional supply agencies to ensure the proper implementation of the processes for contracting, storing, distributing and transporting goods.

f) Design a way to ascertain quality standards; and encourage the use of techniques to reduce costs, improve procedures and protect the environment.

g) Follow up orders outside the Central Administration and means of payment, and prepare essential information to process exonerations, when applicable under the legislation on the matter.

h) Design specific codes based on expense classifiers to be used to create product catalogues and registries of suppliers.

i) Temporarily accredit procurement agents at the Central Administration's institutional supply agencies so they can carry out their mission.

j) Propose its organization which will be determined through a regulation.

k) Request information from public sector institutions and dependencies in order to do its job properly.

l) Make sure that those responsible exercise due control over inventories of movable and real property and livestock.

m) Prepare an annual report on the current status and variations in the Central Administration's assets, and on the steps taken to improve the way they are managed, so the Minister of Finance can provide the Office of the Comptroller General with feedback on the matter.

n) Foster an improvement in the fulfillment of all the legal requirements for the registration of the deeds of property belonging to the Central Administration to ensure their validity, and urge the appropriate technical body to do whatever is necessary to conserve the Central Government's real estate assets.

ñ) The duties and functions assigned by other laws or regulations.

Article 100 of Law N° 8131 empowers it to decide on the guidelines for evaluating services contracted by the Administration.

At the same time, parallel with the responsibilities of the Comptroller General's Office, the role of this Directorate is to govern, orient and manage contracting processes, but only those involving the Central Administration, which means that all the institutions of the decentralized sector (functional and municipal) are outside its competence and subject to inspection by the Auditing Body.

iii. Register of pre-approved contractors.

Costa Rica has no specific legislation on the register of contractors. However, with the implementation of the "Integrated System for Contracting activity" (which will be explained further on), as the electronic method used to control all contracting processes for goods and services, it is possible, through the *consultation and reports module*, to generate data on this matter concerning the successful bidders, among others.

Hence the obligation to produce reports on the contracting activity of the entities or bodies of the Administration, pursuant to the provisions of Article 101 of the Law on Administrative Contracting.

A register of suppliers is kept to ensure openness, equity and efficiency in managing public procurement. Article 46 of the LCA provides as follows:

"Article 46.—**Registration**. Each institutional supply agency will keep a list of suppliers who are interested in entering into contracts with the Administration. At least once a year the Administration will publish an announcement in the official journal, *La Gaceta*[59], inviting interest suppliers to register, although interested suppliers can ask to be included on the register at any time.

The Regulations to this Law will define the conditions of registration, term of validity, and operational rules which will determine the rotational scheme enabling registered suppliers to participate and give the Administration access to the best bids. The procedure for excluding people from the register and its appeal system will also be regulated.

The Directorate General for the Administration of Goods and Public Procurement keeps a central register of suppliers to the entities and organs of the Executive Branch.

In the case of decentralized entities with a decentralized procurement system, a central register must be kept, unless the Board of Directors authorizes the creation of decentralized ones which would be subject to other guidelines established specifically for them.

If it is more convenient, or if their own registers are ineffective, the institutional supply agencies can use a register kept by another public entity, or even the central register kept by the Directorate General for the Administration of Goods and Public Procurement. If it chooses to adopt another register, it must use it permanently."

iv. Electronic methods and information systems for public procurement.

We should start by pointing out that the new regulations on contracts state that contracting procedures can be electronic, provided this is practicable and it is possible to establish the precise location of parts and other relevant information. The procedure must also comply with the provisions of the Law on Certificates, Digital Signatures and Electronic Documents (Law N° 8454)

The main systems in the country are:

- *Integrated Contracting activity System (SIAC)*

The Office of the Comptroller General of the Republic developed this information system taking into account the growing demand from different sectors of the national and international community for information on public sector purchases at present. It is therefore important for the Administration to organize, integrate and maintain reliable and appropriate information on public procurement processes to make the work involved in managing and taking decisions on this matter more efficient.

Another consideration was that the Information Technologies currently available enable the Contracting activity Reports required by the legislation and regulations on the matter to be drawn up in electronic format, to make it easier for the Office of the Comptroller General to manage, locate and process them in order to use them more effectively for control purposes. Hence the Integrated Contracting activity System was developed to promote the efficient and transparent use of resources earmarked for public contracting. It contains information on the contracting procedures initiated, as well as other relevant data on the Administration's contracting activity.

Once this system was developed, guideline N° D-4-2005-CO-DDI of December 14, 2005 was issued, establishing the guidelines for the registration, validation and use of information on contracts in the system, for use by the entities and agencies controlled and supervised by the

Office of the Comptroller General and making them binding upon the whole of the Public Administration.

This system is made up of the following modules:

• Contracting Procedures;
• Ways to Challenge Decisions;
• Internal Approval and Endorsement of Contracts;
• Requests for Authorization for Direct Contracting; and
• Consultation and Reports on Contracting Activity.

Information on contracts entered into in the course of the normal activities of an agency or entity, and contracts for purchases made from the limited fund *(caja chica)* in keeping with the regulations in force in each agency or entity are excluded from the system,.

Registration, validation and use of contractual information in the system. The Administration must register and validate the information required in the different stages of the procurement process in the modules of the SIAC.

Information must be registered on a daily basis for all the system's modules. In specific cases it can be include at the latest on the next working day. Data must be input in keeping with the provisions of that resolution and detailed in the user manual issued by the CGR. Anyone inputting incorrect or untimely entries may be rendered accountable.

Contracting Procedures Module. The purpose of this module is to register and compile information on contracting procedures, making this the fundamental basis of the system and determining how the rest of the modules will operate.

Information on each contracting procedure must be recorded, from the moment the invitation is published to the awarding of the contract.
All the forms of abnormal termination of the procedure and changes resulting from a decision on an appeal must also be included.

The Administration must record the following:
-Identification of the purchase or supply units of the contracting entity or agency by themselves.
-Information on the contracting procedures, from the time potential bidders are invited to participate.
- Information by line of the service or goods to be purchased, with strict respect for the line numbering established in the bidding terms and conditions and in keeping with the data requested by the system.
-Amendments after fulfillment of the formalities regarding notification to the parties.
-Award announcements after the parties have been notified.

Reconsideration, Reversal and Appeals Module: The purpose of this module is to compile and record information on objections to bidding terms and conditions and award decisions challenged in procurement processes. Information on each decision challenged must be recorded from the time it reaches the competent body in order to review it and include the resolution once the parties are notified.

Application for Reconsideration: Information on bidders, the official in charge of issuing a decision and any other data requested by the system must be recorded

Application for Reversal of a Decision: Information must be recorded on bidders, the lines objected to, the official in charge of reaching a decision, and any other data requested by the system. In both cases the Administration must update the Procurement Procedure Module, incorporating the changes arising from the Administration's decision.

Application for Reconsideration and Appeal to the Auditing Body: The CGR must record information on objections processed by it and include the decisions reached on each case. Objections In the case of remedies, these must be recorded and the decision reached included by the CGR. The Administration must update the Procurement Procedures module, including any changes arising from decisions issued by the CGR. The Administration may consult this information.

Application for Internal Approval and Contract Endorsement Module: The purpose of this module is to compile and record information on the contract documents which, due to their nature and amount, must be endorsed by the audit body to be legally effective, or else be given internal approval by the Administration. Information must be recorded about each contract document, from the moment the competent body is asked to review it for approval to the time the result is notified..

Endorsement by the Auditing Body: The Administration must record information on the contract documents that need to be endorsed by the Office of the Comptroller General, as required by the system. The approval or refusal to approve the contracting documents requiring endorsement must be recorded by the CGR.

Module of Requests for Authorization on Direct Contracting: The purpose of this module is to compile and record information on requests for authorization to make direct purchases presented by the Administration to the CGR and resolutions by the auditing body. The CGR must record information on the request and the decision reached, in line with the data required by the system.

Module of Queries and Reports on Contracting Activity: The purpose of this module is to consolidate the information recorded in the previous modules and make data available by type of procedure, by sub-item of the classifier, by object of the expenditure, by successful bidder, by exception to ordinary procedures, and any others that may be of use to the system's users. This module also serves to generate reports of the contracting activity of the entities and agencies that are subject to the provisions of Articles 101 of the Law on Administrative Contracting and 107 of its Regulations.

The above guidelines came into effect on **January 2, 2006**, when the old manual used by the Administration to produce quarterly reports on its contracting activity were abolished[60]

SA nine-month period was granted so that all the Administration's entities and agencies could implement the corresponding quality assurance program, so that **since July 1, 2006** the system has been working according to those guidelines, with information on all the invitations to participate contracting procedures announced after that date being input. In other words, Costa Rica currently has an electronic system that registers all the procurement activity of its Public Administration on a daily basis. This makes for an efficient, dynamic and reliable control, according to principles of openness and transparency.

The System can be accessed on the website of the Office of the Comptroller General: *www.cgr.go.cr,* specifically in the section on Government Procurement.

Government Procurement System (Compra RED)

The Directorate General for the Administration of Goods and Public Procurement implemented the electronic system for online procurement *CompraRED*, except for the legal procedures that must be reported in the official journal and instances where bidders prefer to submit their bids in the traditional manner.

As provided for in Article 1 of the regulations on the operation of this system (Executive Decree N° 32717 dated September 16, 2005, in force as of October 24, 2005), its objective is to "promote transparency, efficiency, effectiveness and integration on a regional and worldwide scale for purchases by the Costa Rican State, enabling requests for goods, works and services; and the stages, decisions and results of purchases, from start to finish, to be published electronically; so that potential suppliers can be informed of them online, thereby guaranteeing the basic principles of public procurement; notwithstanding any legal requirements that must be complied with regarding notification.

Central Administration must, and the other Public Sector institutions may, use CompraRED to make public procurement procedures more efficient and effective. They must also use the Register of Suppliers, product catalogue, purchasing plans, register of disqualified suppliers and reference prices issued by the Directorate General for the Administration of Goods and Public Procurement. Through CompraRED it is possible to send out invitations to bid, disseminate the bidding terms and conditions and amendments and clarifications thereto, receive offers and clarifications thereto, request, resolve and report on other procedures, including decisions.

All the institutions that use CompraRED must publicize the respective procurement program and changes o it in the system, and register and update information in CompraRED on individuals and bodies corporate covered by the System of Prohibitions in their dependency.

This system comprises the following modules:

-Module for recording information on annual procurement programs

-Register of Suppliers and Product Catalogue Module

-Clarifications and objections to bidding terms and conditions

-Publication of appeals on decisions and their solutions.

-Publication of data pertinent to the contract

-Dutch Auction and Sale by Auction Module

-Consultation and Statistics Module

-Modules for recording information on public procurement and awards by public sector entities without automated procurement processes

-Contracts and Agreements Module, with execution phases

-Security Module

-Two-way interface with the Administrative and Financial Management Information System (SIGAF) and the Procurement Activity Information System (SIAC), the latter to comply with the duty of informing the Office of the Comptroller General of all procurement processes.

The system can be accessed at www.hacienda.go.cr/comprared and its structure, operation and the different options available, according to the modules, can be examined.

- ***Integrated Financial Management Information System (SIGAF)***

SIGAF is an information system that provides the Central Government ministries with support in the field of administrative and financial management and functions for which the Ministry of Finance and the Office of the Comptroller General are responsible. This is one of the greatest achievements of the Costa Rican Public Sector in its effort to develop and strengthen digital government.

SIGAF operates in accordance with best international business practices, based on Internet technology. This will gives its users access from anywhere in the country or in the world, thereby facilitating and speeding up the registration, approval and data generation processes.

It is developed in accordance with the provisions of Article 125 of the Law on Financial Administration and Public Budgets, which provides as follows:

> *"The Ministry of Finance will promote and support the development and smooth operation of an Integrated Financial Management Information System to facilitate compliance with the purposes of this Law."*

SIGAF is the best tool the Ministries have for managing the procurement of goods and services that must comply with their goals and objectives, and provide Costa Rican society with quality public services for the country's economic and social development. The mechanism also guarantees transparent management and facilitates accountability by those responsible for the efficient management of public resources.

Information can be obtained on the procurement process and is broken down as follows:

Procurement Process

Purchases	**Order**
Bill of Materials	**Invitations to Tender**
Information on Treatment of Registers	**Acceptance of Goods**
Treatment of Suppliers	**Liberaciones Releases**
Management of Samples	**Procedures (Public Contracting)**
Evaluation of Suppliers	**Printing**
Requests for Orders	**Misc. Functions**
Manual of Profiles	**Contracts**

It is important to mention here that the Directorate General for the Administration of Goods and Public Procurement keeps a register of the historic behavior of sanctions imposed by the contractors of the Central Administration at SIGAF.

v. Public works contracts.

Works must be contracted by public tender, short tender or direct contracting, depending on the amount of the contract (Article 57 LCA).

When a company bidding for a contract has to subcontract works, machinery, equipment or materials, in order to qualify it must present a list of works to be subcontracted with its offer. The list must contain the names of all the companies it will subcontract to, in addition to a certification of the shareholders and legal representatives of the companies. This is designed to guarantee the transparent management of the works and prevent another company being used to conceal someone else who may manage or own the business and thereby avoid corruption arising from any incompatibility, conflict of interest, or a bias in favor of a particular bidder (Article 58 LCA).

In any event, a contractor may not subcontract more than fifty percent of the entire works contract without this first being expressly authorized by the administration when, in its opinion, there are circumstances that justify this and, furthermore, subcontractors are subject to the system of prohibitions, which is an important means of preventing controls over conflicts of interest being evaded or preventing a biased decision being made in favor of a particular bidder in State procurement processes (Article 62).

In addition to this, the General Law on Public Works Concessions for Public Services (Law N° 7762 of April 14, 1998), which regulates government contracts through which the Administration grants a concession to a third party to design, plan, finance, construct, conserve, expand or repair real public property, in exchange for charging the users of the work or the beneficiaries of the service or some form of compensation from the Administration granting the concession.

It also covers contracts for Works Concessions for Public Service through which the Administration grants a concession to a third party to design, plan, finance, construct, expand or repair real public property, and to use it, providing the services envisaged in the contracts in exchange for charging the users of the work or the beneficiaries of the service or some form of compensation from the Administration granting the concession.

Generally speaking, any work or use thereof could be contracted under concession, for reasons of public interest, and this must be indicated and justified in the file, with the exception of telecommunications and electricity (which are operated as a public monopoly in Costa Rica, under the Costa Rican Electricity Institute).

Concessions for new and existing international airports, ports, railways and railroads and the services provided by them can only be contracted through the provisions provided for under that law.

vi. Identification of the selection criteria for contractors (e.g. price, quality and expertise).

Article 42 (c) of the Law on Administrative Contracting, within the minimum structure that must be followed by the bidding procedure, states that the bidding terms and conditions must

develop a system for evaluating bids, to help the administration choose the offer that best suits the public interest.

It also obliges the administration to explain in the file the system used to assess other rating factors in addition to price, such as time and quality, among others, which in principle must be regulated in clauses stipulating binding requisites.

The new regulations (Article 55) state specifically that the bidding terms and conditions must establish an assessment system that considers factors that could be weighted, the degree of importance of each of them and the method used to appraise and compare the offers in relation to each factor.

The Administration can also include factors other than price when selecting a bid, if it is thought that they have offer comparative advantage. It also establishes that the minimum legal, technical or financial requirements essential to procurement cannot be pondered as evaluation factors.

It also envisages the possibility of using other means of choosing a contractor, such as a two-phase selection system in which once compliance with the technical, legal and financial aspects has been analyzed; the next stage would involve an appraisal of the economic aspect. In the case of objects where there might be a tie, clauses to break the tie must be established; if it persists, lots must be drawn.

The General Law on Public Works Concessions for Public Services also states that the bidding terms and conditions must contain the financial, technical and legal requisites that will be appraised when rating offers as well as the methodology to be used. (Article 24)

There is a vast amount of administrative jurisprudence on this aspect issuing from the Office of the Comptroller General, which has pointed out that the constitutional principles of legality and transparency, together with legal certainty and efficiency, contain broad and sufficient constitutional grounds to be able to use in each public contracting tender or procedure, in the respective bidding terms or conditions, an assessment system to facilitate the review or inspection of the decision and constitute its grounds.

Hence what is intended by the Auditing Body is that "the Administration should basically determine the evaluation parameters used during the preparation phase of the bidding terms and conditions, before studying the bids and selecting the successful bidder. That is when the Administration must choose the best evaluation parameters for the purpose at hand, giving them a specific weighting and percentage in the total rating, and lastly select the most objective evaluation method for pondering each factor."

Continuing with that reasoning, the Office of the Comptroller General has said "we can affirm that with the mechanism for appraising proposals introduced by the Law on Contracting in force, the system for selecting contractors is regulated since all potential participants must first know the aspects that determine the choice of the best offer, so there is no longer any question of the Administration making a *discretionary* decision."

In view of all this, any bidder that feels that the bidding terms and conditions are not subject to an evaluation system that meets the above-mentioned requisites, can challenge those terms and conditions through by challenging the decision.

Also, if the award announcement was made by the Administration without heeding or by manipulating the objective parameters established in the bidding terms and conditions for

assessing bids, it may challenge that decision so that the application of the evaluation system is revised.

vii. Ways to challenge a decision.

- *Objection to the bidding terms and conditions*

Under the LCA the terms and conditions of public tenders and short tenders can be challenged before the Office of the Comptroller General of the Republic. In all other cases, they can be challenged before the contracting administration (Article 81). Remedies must be decided on within ten working days from the date they are filed (Article 83).

- *Objection to an award announcement*

It is possible to challenge a decision to award a contract in the case of contracts for large amounts, according to the limits established in Article 84 of the LCA.

Well-founded appeals are filed at the Office of the Comptroller General ten working days following the notification of the award announcement, in the case of public tenders. In the case of short tenders or tenders promoted by private individuals or bodies corporate that manage public funds, pursuant to the provisions of paragraph 1 of the law, the appeal must be presented within five days following notification of the decision.

The amounts of the appeal established in the law are adjusted according to the criteria contained in Article 27, i.e. taking as a reference, among other things, the percentage variation of the Consumer Price Index.

The objection must be well reasoned (Article 88), and is screened before it is accepted (Article 86). With public tenders, remedies must be decided on within forty working days after they are filed, and thirty working days for short tenders or tenders promoted by private individuals who administer public funds (Article 89).

- *Reversal of a Decision*

If because of the amount an appeal cannot be brought before the Office of the Comptroller General, a reversal of the decision to award the contract may be requested before the institution that issued the act within five working days following the day it was notified.

However, when someone from the body or entity has not accepted the award announcement, the interested party can file a remedy with the respective superior (Article 91). The Administration must decide on it within fifteen working days and this is the last recourse to administrative action.

- *Filing a remedy at the judicial headquarters*

The final resolution or order putting an end to an application for reconsideration is the last recourse to administrative action, and within three days following notification, the interested party may file an objection to the final decision before the Administrative Appeals Tribunal, through a special proceeding, without a staying effect. If the contract whose award decision was challenged has already been executed or is in the process of being executed, the favorable decision for the party bringing the case can only recognize payment of the damages caused (Article 90).

b) In relation to question a), state the objective results obtained, including any available statistical data (e.g. percentage of contracts awarded through public tender; sanctions imposed on contractors).

As already explained, records of information on the following modules can be consulted through SIAC: Contracting Procedures; Objections to Bidding Conditions, Reversal of Decisions and Appeals; Internal Approval and Endorsement of Contracts; Requests for Authorization of Direct Contracting; and Consultation and Reports on Contracting Activity. In the RED Purchasing system, up-to-date information can be obtained on the movement of the Central Administration's entire procurement process.

The Directorate General for the Administration of Goods and Public Procurement keeps statistical information on the goods and services procurement processes of the whole of the Central Administration. It is available on the Ministry of Finance's website: (www.hacienda.go.cr)[61], where the following statistical data can be found:

Total purchases by Ministry (2003, 2004 and 2005)

Ten main suppliers (2003, 2004 and 2005)

Type of procedure by Ministry (2003, 2004 and 2005 and the first quarter of 2006)

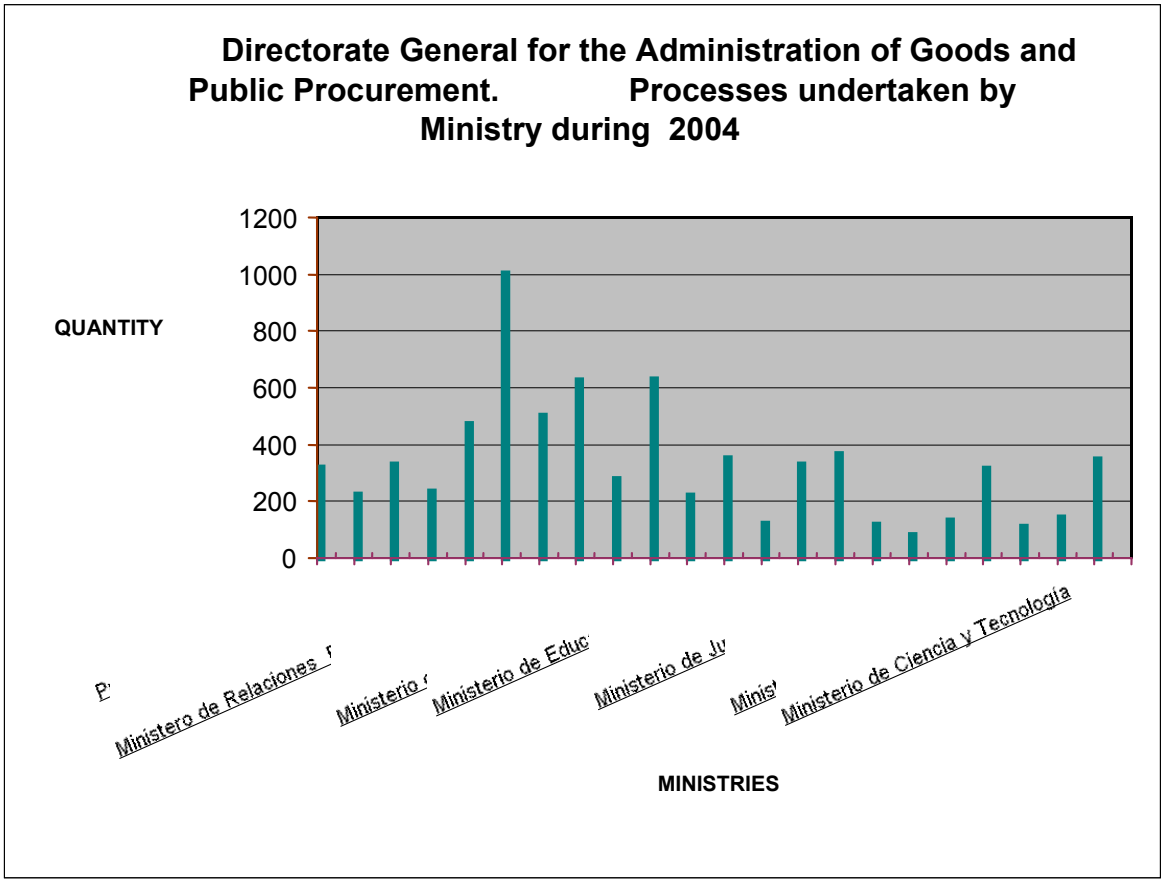
We can summarize this with the statistical data for 2004 and 2005 showing the end results:

Directorate General for the Administration of Goods and Public Procurement
Procurement by Ministry
January 2004 to December 2004

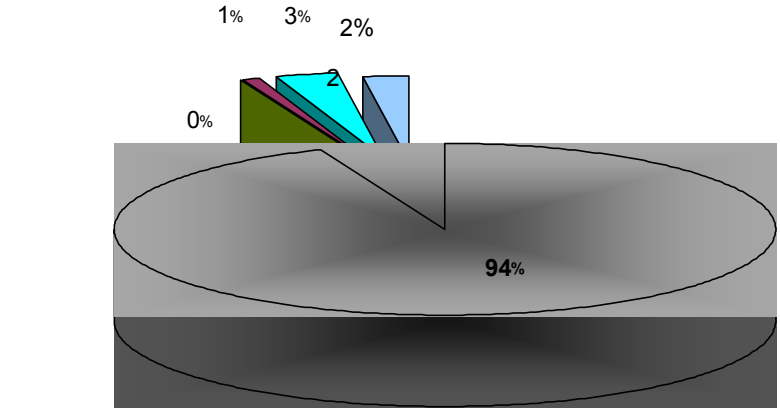
	MINISTRIES	CD	LI	LP	LR	LT	Total	%
4	Office of the President of the Republic	312	0	1	4	3	320	4.42
5	Ministry of the Presidency	218	0	0	2	3	223	3.08
6	Ministry of the Interior	324	0	0	2	3	329	4.54
6								
6	Directorate General of Migration	215	0	4	8	6	233	3.22
7	Ministry of Foreign Affairs	466	0	0	0	5	471	6.51
8	Ministry of Public Security	944	0	11	30	18	1003	13.86
9	Ministry of Finance	437	0	13	29	21	500	6.91
1								
0	Ministry of Agriculture	610	0	5	5	5	625	8.63
1								
1	Ministry of the Economy and Industry	268	0	0	7	2	277	3.83
1	Ministry of Public Works and							
2	Transportation	597	3	0	16	13	629	8.69
1								
3	Ministry of State Education	181	0	14	13	13	221	3.05

14	Ministry of Health	343	0	0	1	6	350	4.83
15	Ministry of Labor	103	0	0	17	2	122	1.69
17	Ministry of Culture Youth and Sport	276	0	3	30	20	329	4.54
19	Ministry of Justice	331	0	4	14	16	365	5.04
21	Office of the Attorney General	102	0	1	11	2	116	1.60
23	Ministry of Housing	73	0	0	7	1	81	1.12
25	Supreme Elections Tribunal	128	0	1	3	1	133	1.84
26	Ministry of Foreign Trade	307	0	0	5	4	316	4.37
27	Ministry of Planning	104	0	0	2	2	108	1.49
28	Ministry of Science and Technology	132	0	0	4	6	142	1.96
29	Ministry of the Environment and Energy	316	0	3	9	18	346	4.78
	TOTAL	6,787	3	60	219	170	7,239	100.00

CD: Direct Contracting
LI: International Tender
LP: Public tender
LR: *Licitación por Registro*
LT: Limited Tender


Directorate General for the Administration of Goods and Public Procurement. Processes undertaken by Ministry during 2004
QUANTITY
1200
1000
800
600
400
200
0
Ministero de Relaciones
Ministerio de Educ
Ministerio de Ciencia y Tecnología
MINISTRIES

Directorate General for the Administration of Goods and Public Procurement.
Contracts awarded during 2004



CD	LI	LP	LR	LT
67	3	6	219	170
87				

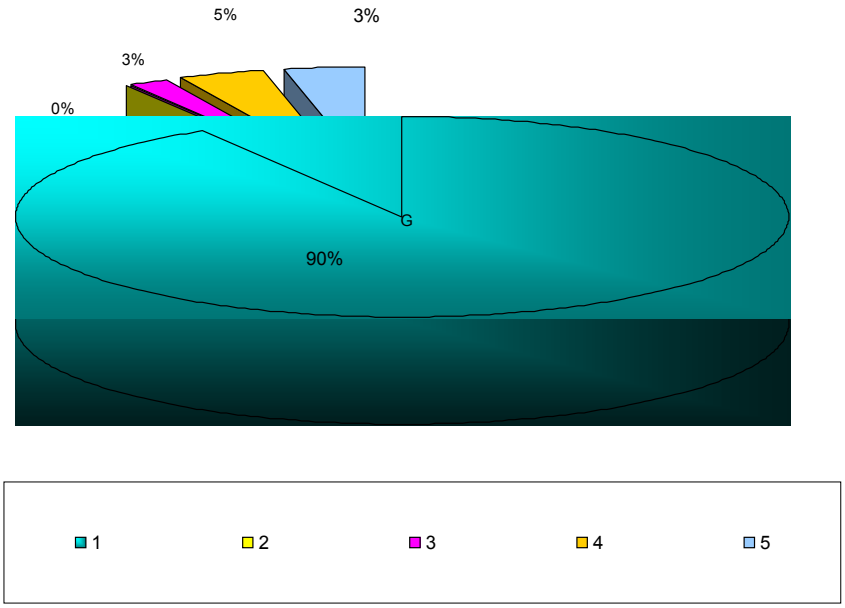
Directorate General for the Administration of Goods and Public Procurement
Contracts awarded by Ministry
January 2005 to December 2005

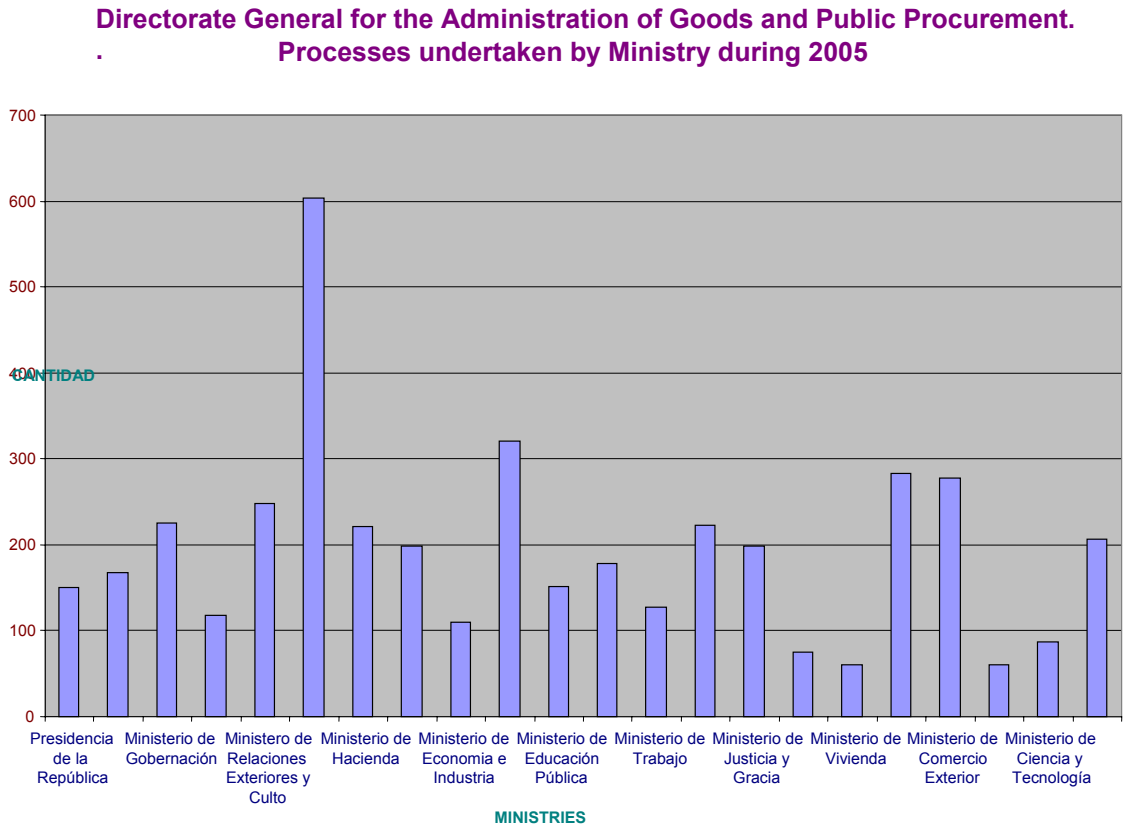
	MINISTRIES	CD	LI	LP	LR	LT	Total	%
4	Office of the President of the Republic	142	0	1	1	6	150	3.49
5	Ministry of the Presidency	162	0	0	3	2	167	3.89
6	Ministry of the Interior	224	0	0	1	0	225	5.24
66	Directorate General of Migration	106	0	6	4	2	118	2.75
7	Ministry of Foreign Affairs	246	0	0	1	1	248	5.78
8	Ministry of Public Security	561	0	8	21	14	604	14.07
9	Ministry of Finance	184	0	8	10	19	221	5.15
10	Ministry of Agriculture	190	0	3	3	2	198	4.61
11	Ministry of the Economy and Industry	104	0	0	4	2	110	2.56
12	Ministry of Public Works and Transportation	268	3	24	14	12	321	7.48
13	Ministry of State Education	129	0	2	11	10	152	3.54
14	Ministry of Health	157	0	8	8	6	179	4.17
15	Ministry of Labor	106	0	3	9	9	127	2.96
17	Ministry of Culture Youth and Sport	207	0	2	5	8	222	5.17
19	Ministry of Justice	175	0	1	12	10	198	4.61
21	Office of the Attorney General	69	0	0	3	3	75	1.75
23	Ministry of Housing	59	0	0	1	1	61	1.42
25	Supreme Elections Tribunal	263	0	4	10	6	283	6.59
26	Ministry of Foreign Trade	273	0	2	2	1	278	6.48
27	Ministry of Planning	47	0	1	12	1	61	1.42
28	Ministry of Science and Technology	73	0	0	14	0	87	2.03
29	Ministry of the Environment and Energy	177	0	0	5	25	207	4.82

	TOTAL	**3,922**	**3**	**73**	**154**	**140**	**4,292**	**100.00**

CD: Direct Contracting
LI: International Tender
LP: Public tender
LR: *Licitación por Registro*
LT: Limited Tender

Directorate General for the Administration of Goods and Public Procurement
Contracts awarded during 2005





Information on current and historic contracting processes through the CompraRED system can be consulted on this.

The register kept by the Directorate General for the Administration of Goods and Public Procurement on the historic behavior of sanctions imposed on contractors for the Central Administration in the Administrative and Financial Management Information System (SIGAF), can also be consulted – as already mentioned – on the Ministry of Finance's website. A total of **298 sanctions** imposed on different contractors were recorded for **2004 to 2006**.

Only a relatively small percentage of the institutions in the decentralized sector provide Internet access to their statistical data on contracting activity (quantity, type of procedure, amounts, suppliers, sanctions imposed on contractors, etc.). Many of the other institutions keep some control records, but not for statistical purposes, and some have no general records on procurement processes, although they do keep manual files on the information related to each contract.

The following are examples of institutions outside Central Administration that publish information on public contracting on their websites:

The Legislative Assembly (Congress): www.asamblea.go.cr

The Judiciary (Supreme Court of Justice, the Courts, the Prosecutor General's Office *[Fiscalía]* and the Office of the Public Ombudsman *[Defensa Pública]*: www.poder-judicial.go.cr/proveeduría

The Instituto Costarricense de Electricidad (Costa Rican Electricity Institute) publishes its special rules of procedure and statistics at: www.grupoice.com/PELweb/consultaDocumento.do

The Banco Popular y de Desarrollo Comunal (People's Community Development Bank) : www.bancopopularcr.com

The Instituto Nacional de Aprendizaje (National Learning Institute of Learning) : www.ina.ac.cr (the register of suppliers, procedures, instructions, processes under way, etc. can be consulted here)

An example is the Annual Report of the Office of the Comptroller General of the Republic for 2005 (the complete document, *Memoria Annual de la Contraloría General of the Republic para el año 2005*, is available at www.cgr.go.cr), is included in the following table:

Porcentaje que representa la Contratación Directa en el Monto total de presupuesto de compras
Por sectores institucionales
Millones de Colones
Año 2005

Sector	Monto de presupuesto de compras	Contratación Directa	
		Monto	%
Cultura	1.486,10	1.170,90	78,80%
Municipal	9.950,00	2.940,30	29,60%
Educación	25.736,40	7.363,60	28,60%
Gubernamental	22.269,40	4.953,40	22,20%
Obra Pública y Transporte	40.649,70	7.116,40	17,50%
Social	11.080,50	1.423,80	12,80%
Economía, Industria y Comercio	7.272,70	782,1	10,80%
Salud	93.258,50	6.099,60	6,50%
Financiero	112.466,60	3.599,50	3,20%
Agropecuario	16.831,80	243,8	1,40%
Medio Ambiente	2.673,90	23,9	0,90%
Servicios Públicos Remunerados	366.187,40	2.863,20	0,80%
Total general	709.863,00	38.580,40	5,40%

As can be seen, this is a macro statistic that includes the funds spent not just by the Central Administration, but by the whole of the public sector (which includes a large number of autonomous institutions, public enterprises, public non-State entities and a total of 81 municipalities or local governments). It shows that the majority of purchases are made through some kind of competitive process, while direct purchases account for a low percentage of the total.

c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government systems for procurement of goods and services, in accordance with Article III of the Convention.

R/ Given the foregoing explanation, this question does not need a reply.

CHAPTER TWO

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

a. Are there laws and/or measures in your country establishing systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities? If so, briefly describe them and list and attach a copy of the related provisions and documents.

In relation to the above, refer, among others, to the following aspects:

i. Mechanisms for reporting (e.g. anonymous reporting, protection of identity reporting)
ii. Mechanisms for reporting threats or reprisals
iii. Witness protection mechanisms.

i. Costa Rica has standards that require public officials to report such crimes. Article 281 of the Code of Criminal Procedure which reads as follows: "Obligation to report: The following persons must report prosecutable crimes: a) Public officials and employees who become aware of them in the course of their functions …".

Furthermore, under Article 278 provides that "…Anyone who is aware that a crime against public interest has been committed can report it to the Office of the Director of Public Prosecutions, to a court with authority to deal with criminal matters or the Judicial Police …"

Article 322 of the Criminal Code makes it a punishable offense to give Personal Preference to someone who failed to report an act when they are obliged to do so and states that "Anyone who, without receiving a promise prior to the crime, helps someone to avoid investigation by the authority or evade its scope of action, or fails to report an act he is required to report, shall be sentenced to six months to two years in prison."

Complaints brought before the Courts of Justice are treated differently from those presented at the administrative level. The former cases do not enjoy confidentiality and in order for the whistleblower's identity to be protected, in line with the principle of defense, the person to be prosecuted must be informed of the case against him. Access to the court file is restricted and can only be consulted by the parties involved or their defense counsels or attorneys. Anonymous reports to the Office of the Director of Public Prosecutions are not admitted unless there is sufficient proof to accredit a *noticia criminis*. This situation functions in a similar manner to anonymous complaints presented through the administrative channels, as indicated below.

The regulations on the Law on Corruption and Illicit Enrichment of Public Servants, N° 8422, contains a whole chapter on "the power of citizens to report a crime." Articles 8 and 9 provide, respectively, for the citizen's right to report what is believed to be an act of corruption and the duty of public servants to report to the competent authorities corrupt acts committed in the course of public service.

Article 8 and 12 of that law establish ways to file complaints. They can be presented "…to the Authorities in writing, verbally or by an other means …". The term "by any other means" refers to the practice and procedure for receiving complaints as provided for by the Office of the Comptroller General of the Republic in sections 7, 7.1, 7.2, 7.3,7.4 and 7.5, by mail, personally, in writing, verbally, by telephone or by e-mail. Also see the guidelines for filing complaints with that body in Resolution R- CO-96- 2005, published in the official journal, *La Gaceta* N° 238 of Friday, December 9, 2005 and the Internal Guide for Processing Complaints by the Office of the Attorney General of the Republic of July 2006.

In principle, anonymous complaints are not processed. However, under Article 13 of the Regulations to Law 8422, item 9 of the Guidelines on Filing Complaints with the Comptroller General's Office, Resolution R- CO-96- 2005 and the Guidelines on Filing Complaints with the Office of the Attorney General of the Republic, these complaints are handled if they are convincing enough and are supported by evidence that would enable an investigation to be initiated, otherwise the complaint will be filed.

Costa Rica's legislation contains a Guarantee of Confidentiality for complaints in a number of provisions. This is so in the case of Article 8 of Law 8422 and sections 10 and 18 of its Regulations, as well as Article 6 of the Law on Internal Control paragraph 4 of the Guidelines on Filing Complaints with the Comptroller General's Office, Resolution R- CO-96- 2005, and Article 3, paragraph two of the Guidelines on Filing Complaints with the Office of the Attorney General of the Republic; a principle that establishes the right of a person filing a the complaint to have his identity protected once the complaint has been filed and during and even after the process is concluded.

However, the judicial authorities may request the information if there is the possibility that a crime might be committed against the honor of the person reported.

ii. As far as mechanisms for reporting threats or retaliation are concerned, it must be pointed out that although there is no specific process for cases of corruption, our legislation generically criminalizes threats made to a public official or a private individual. Such crimes are defined in the Criminal Code and transcribed below.

"Article 195. **Aggravated threats.** Anyone who, using firearms, makes unfair and serious threats intended to alarm or threaten someone, or if this is done by two or more people together, or if the threats were anonymous or symbolic, shall be sentenced to fifteen to seventy "fine days"(*días de multa*, which refers to the number of days for which the accused is sentenced to pay a prescribed percentage of his income)."

"Article 309.—**Threat to a public official.** Anyone who threatens a public official as a consequence of his functions, addressing him personally or publicly or in writing, by telegram or by telephone or through a superior, shall be punished with between one month and two years imprisonment."

By virtue of this rule, anyone who feels they have been affected must file a complaint before the Public Prosecutions Service which will conduct an investigation and, if considered necessary, will ask the judge to impose cautionary measures against the aggressor in order to safeguard the victim's integrity.

As regards retaliation, and above all reprisals in the workplace, since there is no legislation on the matter, the Labor Code and the General Law on Public Administration will be applied. These establish a series of measures regarding the provision of services, to protect workers.

iii. Among Costa Rica's witness protection mechanisms are Cooperation Agreement N° 24- CG-04 dated March 4, 2005, signed by the Judiciary and the Ministry of Public Security, whose objective is to make the Ministry of Public Security provide protection for attorneys, judges, public defenders, judicial officials in general and witnesses or victims in important trials, who due to the nature of their testimonies, require special protection. The country also undertook to prepare a training plan to enable judicial officials, witnesses and victims at risk to protect themselves from threats against them.

The mechanism for requesting individual protection is established in Agreement N° 3. Under this convention a request for protection must be justified and presented to the President of the Supreme Court of Justice, the Prosecutor General of the Republic or the Public Ombudsman's Office and sent straight to the Minister of Security. The Ministry of Public Security reviews the request if it finds it to be in order, grants protection through a reasoned resolution which summarizes the reasons for such individual protection in order to activate the operation. This operation is undertaken jointly between the Unit of Immediate Intervention of the Ministry of Public Security and the Judicial Police and consists of determining the type of protection to be given, the pertinent studies, the time it will last, if the protection is personal, at home, for relatives of judges, prosecutors, public defenders, judicial officials, or else witness and victim protection.

The Program for the Protection of Victims, Witnesses, Judicial Officers and others involved in criminal proceedings was introduced in March 2006 at the office for the Protection of Victims of Crime of the Public Prosecutions Service. This Program is intended to achieve a mixed system combining welfare and protection. Welfare includes legal aid, psychological help and social work, the latter two extending to victims in the trial. Protection is coordinated with the Ministry of Public Security which decides on the type of help to be given.

A filter is applied before protection is requested in order to determine the veracity of the fear. This filter is undertaken by a professional in the field of psychology. Next a Social Worker sees whether the victim is able to move elsewhere. Once these two situations are known, they

coordinate with the Ministry of Public Security which will in turn provide three types of protection: police surveillance at close quarters (rounds through the community police), telephone or on-site monitoring (regular communication with the person under protection) and a bodyguard service. In the case of bodyguards, the person receiving protection has to cover the cost of meals for the police.

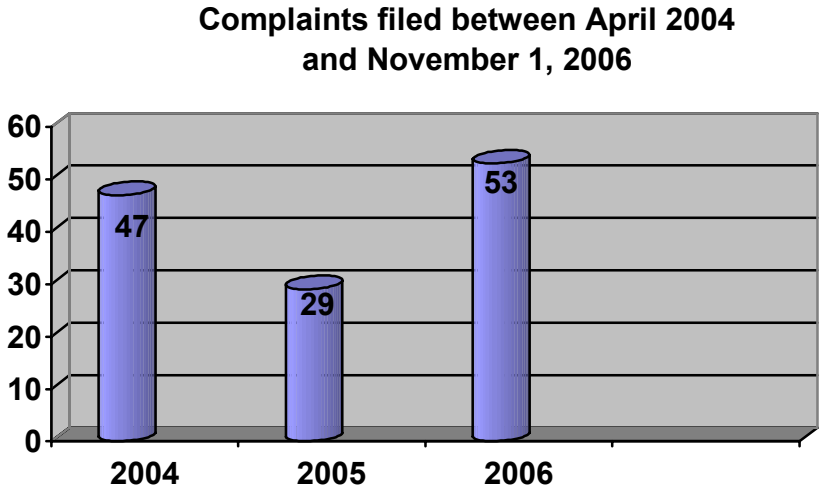
The objective results of the protection program are as follows:
1.- Cases have been handled in all the provinces and are coordinated from the office in the First Judicial Circuit of San José.
2.- From 2006 up to November 7, protection has been given to 78 people. This required a total of 544 appointments (legal, psychological, administrative or protection program).
3.- During 2005 only 2 cases of protection were handled.
4.- Between 2000 and 2004 not one case of protection was handled, because only a welfare model was applied because the protection program did not exist at the time.
5.- The greatest limitation has been the time it takes the Ministry of Public Security to respond (from 1 to 10 days)
6.-As of April 2006, the Victim Assistance Office initiated the process for receiving and recording the information. It is hoped in the short term to generate statistical data on this.
7.- The program needs more economic and human resources at the Public Prosecution Service and the Ministry of Public Security.
8.- The Office for the Attention of Victims of Crime has not received any requests for protection arising from crimes of corruption.

Lastly, it is important to mention that a bill is going through the Legislature called "Law to protect and encourage citizens to fight corruption in the public service," legislative file N° 15 745, which is being reviewed by the Commission of Legal Affairs.

b) In relation to question a), state the objective results obtained, including any available statistical data.

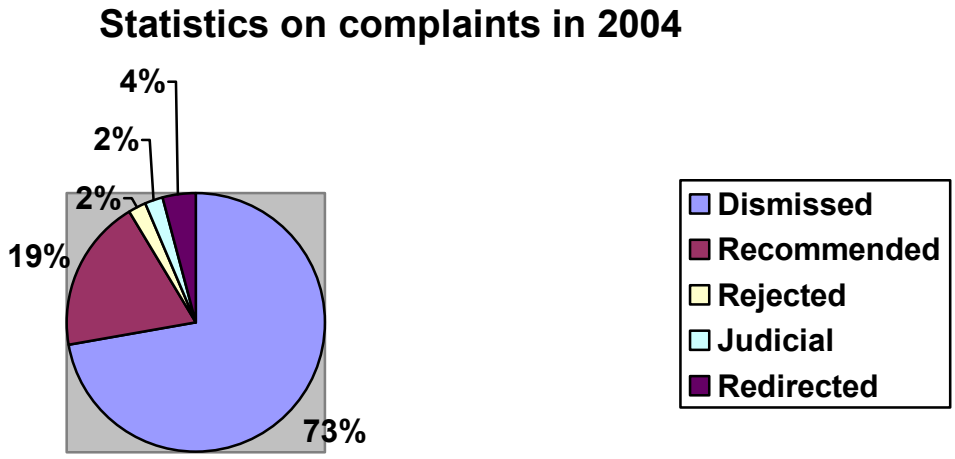
Between April 2004, when the Office of the Public Ethics Prosecutor began to function, and November 1, a total of 120 complaints against public officials for acts of corruption committed or lack of transparency in the exercise of their functions. In each and every case care has been taken to maintain the confidentiality of persons who in good faith report corrupt acts, and so far there have been no threats or reprisals against whistleblowers in any of the investigations. It is thus unnecessary to apply any witness protection mechanism.

During 2004, when the Office of the Public Ethics Prosecutor was created and began to operate, it investigated 47 complaints about acts of corruption. Although in 2005 the Office received 29 less reports, up to November 1 of this year it had handled 53 complaints.

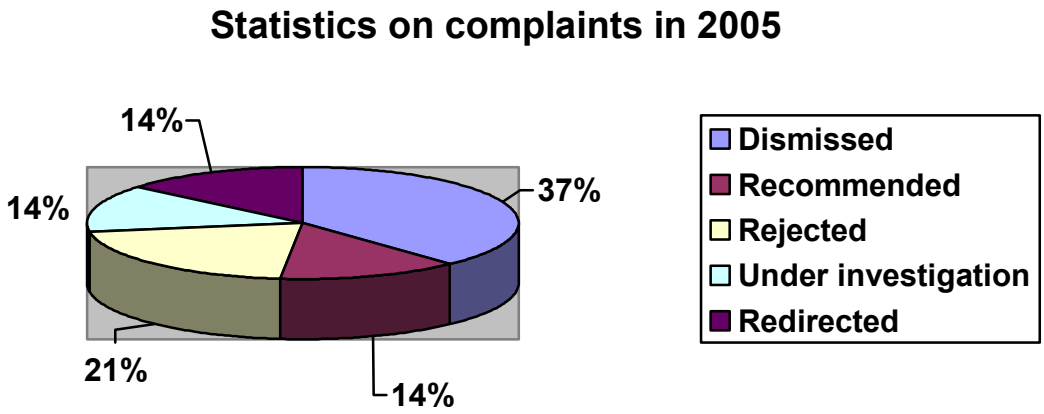


Out of the 47 acts of corruption reported from April to December 2004, 73% were dismissed for the reasons given in Article 17 of the Regulations to the Law on Corruption, in 4% of the cases recommendations were made to the bodies reported; although the investigations did not prove that crimes had been committed, it was considered that the institution should endeavor to make its functions more transparent. Two percent of the complaints were sent to the Public Prosecutions Service after a preliminary investigation had determined that there was sufficient evidence to bring a case against the person reported. The remaining 4% of all the reports were redirected to other bodies or institutions which, given the nature of the complaint, have the authority to process them.

As indicated above, in all the cases the identity of the persons who in good faith reported the acts of corruption was kept confidential and no security measures were taken to protect them.

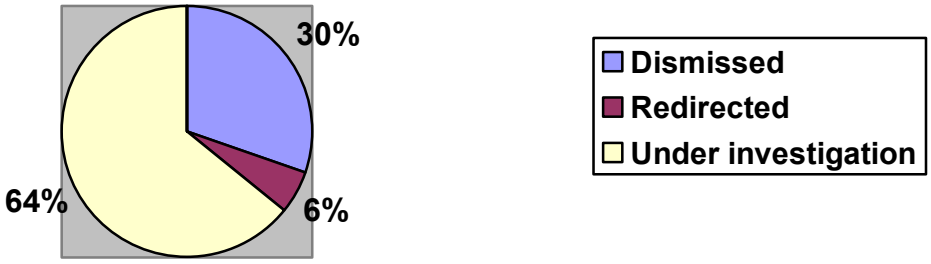


As can be seen in the figure, 29 complaints were received in 2005 and 37% of them were filed or dismissed. In 14% of the cases a recommendation was made and a further 14% were redirected to other institutions, 21%were rejected and the remaining 14% are still under investigation. The identity of informants was kept confidential and it was not necessary to apply any mechanism to protect either the witnesses or the whistleblowers.



Between the beginning of this year and November 1, the Office of the Public Ethics Prosecutor received 53 complaints. The majority of them (64%) are still under investigation in an effort to determine whether or not a public official was effectively involved in an act of corruption or lack of transparency. To date it has not been necessary to take any measures to protect witnesses or whistleblowers from threats or reprisals. Additionally their identity was kept confidential.

Statistics on complaints in 2006



The Office of the Comptroller General of the Republic developed the following statistics on complaints received from the year 2000 up to November 3, 2006, and the status of requests for review and complaints received during 2006.

ACCUMULATED TABLE

DIVISION OF OPERATIONAL AND EVALUATIONAL INSPECTION

COMPLAINTS AND SWORN STATEMENTS OF ASSETS AREA

COMPLAINTS ADMITTED - MAY 2000 TO NOVEMBER 3, 2006

Months / Years	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov (to Nov 3)	Dec	Total	%	
2000	0	0	0	0	53	32	21	21	37	45	55	38	302	7.86	
2001	23	19	20	29	26	21	33	22	20	36	33	23	305	7.94	**2000**
2002	45	37	49	44	42	41	39	40	59	54	51	34	535	13.93	**2001**
2003	37	42	50	37	41	73	52	59	52	62	39	28	572	14.89	**2002**
2004	35	49	58	36	73	83	82	65	76	78	99	51	785	20.43	**2003**
2005	67	77	50	49	73	52	57	80	63	65	110	23	766	19.94	2004
2006	61	64	60	47	43	63	51	52	65	65	6		577	15.02	
Totals	**268**	**288**	**287**	**242**	**351**	**365**	**335**	**339**	**372**	**405**	**393**	**197**	**3842**	**100.00**	**2005**
%	**6.98**	**7.50**	**7.47**	**6.30**	**9.14**	**9.50**	**8.72**	**8.82**	**9.68**	**10.54**	**10.23**	**5.13**	**100.00**		

STATUS OF COMPLAINTS ADMITTED DURING 2003

Status	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Grand total	Percentage
External transfer	6	11	6	14	16	25	12	13	10	13	11	2	139	24.30
Filed	12	8	9	8	8	10	8	18	13	15	9	14	132	23.08
Resolved	14	10	13	6	7	12	14	10	11	12	9	6	124	21.68
FOE Transfer	2	7	17	8	4	16	9	11	10	15	5	3	107	18.71
Internal transfer	3	6	5	1	6	10	9	7	8	7	5	3	70	12.24
Grand total	**37**	**42**	**50**	**37**	**41**	**73**	**52**	**59**	**52**	**62**	**39**	**28**	**572**	**100**

STATUS OF COMPLAINTS ADMITTED DURING 2004

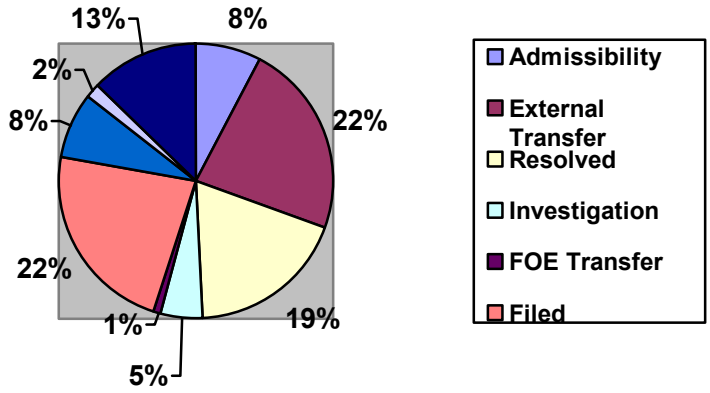
Status	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	%
External transfer	10	10	13	7	13	20	20	16	19	18	33	17	196	24.97
FOE Transfer	9	11	12	8	18	16	20	16	23	26	19	7	185	23.57
Resolved	4	10	10	12	18	18	13	11	10	16	19	11	152	19.36
Filed	5	10	10	5	9	13	21	13	15	8	20	13	142	18.09
Internal transfer	7	4	6	3	12	15	6	7	8	10	8	3	89	11.34
Direct entry		3	7	1	2		1	2					16	2.04
Follow-up without transfer		1			1	1	1		1				5	0.64
Grand total	**35**	**49**	**58**	**36**	**73**	**83**	**82**	**65**	**76**	**78**	**99**	**51**	**785**	**100**

STATUS OF COMPLAINTS ADMITTED DURING 2005

Status of the Case	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	%
External transfer	25	18	12	15	23	17	23	28	15	30	43	10	259	33.68
Resolved	15	22	14	14	20	13	13	20	16	13	27	1	188	24.45
Filed	10	15	6	8	17	6	12	13	17	9	18	5	136	17.69
FOE Transfer	12	17	16	7	11	14	8	12	9	10	15	5	136	17.69
Internal transfer	4	3		2	2	2		5	3	2	1		24	3.12
Direct entry	1	1		2	1		1	2	3		4		15	1.95
Investigation							1	1			1	1	4	0.52
Follow-up without transfer				1						1	1	1	4	0.52
Transfer Cancel Credentials		1	2										3	0.39
Grand total	**67**	**77**	**50**	**49**	**74**	**52**	**58**	**81**	**63**	**65**	**110**	**23**	**769**	**100**

Status of the request for review and complaints received during 2006.

The following figure indicates the results and the respective glossary



External transfer: Reports that reach the CGR and are transferred externally to other institutions: the Internal Auditors or the Active Administration.

Resolved: Reports that reach the CGR and are resolved directly by the Complaints and Sworn Declarations Area.

Filed: Copies or anonymous complaints that reach the CGR and are sent to the Archive and Communications Unit through a document headed “Reason for Filing” indicating the grounds for the decision to file them.

FOE Transfer: Complaints that reach the CGR and are transferred to the Operations and Evaluations Inspection Areas after appraisal by the Complaints Area.

Internal Transfer: Complaints that reach the CGR and are transferred to other Divisions or Units of the CGR (e.g,: Advice and Legal Management Division) after appraisal by the Complaints Area.

Direct entry: Complaints that reach the CGR, generally go straight to the Audit Office and are then sent on to the DFOE Area, Divisions or Internal Units, for attention as required. The function of the Complaints Area is to input them into the databases for statistical and follow-up purposes.

Investigation: Complaints that reach the CGR and are under review by the Complaints Area.

c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen systems for protecting public servants and private citizens who, in good faith, report acts of corruption, in accordance with Article III (8) of the Convention.

As indicated in point iii, to date Costa Rica has no Law that regulates the protection of witnesses or people who in good faith report acts of corruption. However, the "Bill to Protect and Encourage Citizens to Fight Corruption in the Public Service," legislative file N° 15 745 is pending review by the Standing Commission on Legal Affairs.

Its fundamental purpose is to create a mechanism of incentives to encourage private individuals and public officials to report corruption in the public service, while guaranteeing the necessary personal, family, labor, economic and social protection.

CHAPTER THREE
ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

1. Criminalization of acts of corruption provided for in Article VI (1) of the Convention

a. Does your country criminalize the acts of corruption provided for in Article VI (1) of the Convention transcribed in this chapter of the questionnaire? If so, describe briefly the laws and/or measures regarding them, indicating to which of the particular aforesaid acts of corruption they refer, including sanctions, and attach a copy of them.

In accordance with Chapter Three, section 1, the following are the types of crime, according to Costa Rican legislation, whose conducts are described in Article VI.1 of the Convention.

i. "The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions."

This conduct is related to various types of crime, as indicated below. However it is important to point out that even though the Article indicates the maximum and minimum penalty

for each crime, Costa Rica's legislation also provides for the possibility of banning the person from office. This sanction may be imposed concurrently with or separately from the sanctions applicable for each crime.

Article 50 of the Criminal Code establishes the categories of sanction applicable in our country: "**The sanctions** established by this Code are: 1) **Principal**: imprisonment, alienation, fine or disqualification.

2) **Accessory punishment**: limited disqualification.

3) Provision of public utility services."

Article 57 covers the effect of the accessory punishment of disqualification:

"ARTICLE 57.- **Complete disqualification** shall be for a period ranging from six months to twelve years and the person convicted will be:

1) Dismissed from employment, office or public commissions, even if elected by a popular vote;

2) Ineligible for the position, job or public commission mentioned;

3) Deprived of political, active and passive rights;

4) Disqualified from exercising his profession, trade or activity undertaken; and …"

"ARTICLE 58.- **Limited disqualification,** which lasts as long as complete disqualification, consists of being deprived of or restricted from one or more of the rights or functions referred to in the previous Article."

Law on Corruption and Illicit Enrichment of Public Servants regulates disqualification in Article 59 in the following terms "Disqualification. Anyone who commits the crimes covered by this Law, in addition to being punished with the principal penalty shall be disqualified from the job, office or public commission exercised, even if he was elected by a popular vote, for a period of one to ten years. This penalty shall also apply to any coprinciples or accomplices."

The crimes involving acts of corruption referred to in the questionnaire are :

Passive bribery. ARTICLE 340. of the Criminal Code " A public official who for himself or other persons receives a gift or an improper advantage or accepts the promise of these as compensation in exchange for acting outside the remit of his functions, shall be sentenced to six months to two years in prison."

Active bribery. ARTICLE 341 of the Criminal Code "A public official who for himself or other persons receives a gift or accepts the indirect or indirect promise of a gift or advantage, in exchange for an act or omission in the performance of his duties, shall be sentenced to two to six years in prison and disqualified from exercising public positions or taking public employment for a period ranging from ten to fifteen years.

Aggravated corruption. ARTICLE 342 del Criminal Code. "If the acts to which the last two articles refer were committed in order to grant public offices, retirements, pensions or to enter into contracts in which the administration to which the official belongs has an interest, the public official will be sentenced to prison for:

1) One to five years in the case of Article 338;

2) Three to ten years in the case of Article 339.

(This article has been renumbered 185 (a) of Law No.7732 dated December 17, which changes it from 340 to 342)[62]

Acceptance of gifts in return for favors. ARTICLE 343 of the Criminal Code. "Any public official who without having been promised a reward, accepts a gift or any other improper advantage for taking or failing to take action in his official capacity, shall, depending on the case, be sanctioned with the penalties established in Articles 338 and 339, reduced by one third.

(This article has been renumbered 185 (a), of Law No.7732 dated December 17, 1997, which changes it from 341 to 343)[63]

Corruption of Judges. ARTICLE 344 of the Criminal Code. "In the case of Article 339, the penalty will be from four to twelve years in prison, if the perpetrator is a Judge or arbitrator and the advantage or promise was intended to favor or harm one party in the procedure or resolve a proceeding, even if it is administrative.

If the unjust resolution was a sentence of more than eight years in prison, the penalty will be four to eight years. (This Article has been renumbered 185 (a), of Law No.7732 dated December 17, which changes it from 342 to 344)[64]

Illicit enrichment. ARTICLE 346 of the Criminal Code. "A public official will be sentenced to six months to two years in prison, even though a more serious crime was not committed, for:

1) Accepting any gift or the promise of a gift in order to use his official capacity to influence another official in exchange for any act or omission in the performance of his public functions;"

2) Using information for his own profit or that of a third party or data of a reserved nature that he learned of by reason of his position;

3) The offering or acceptance of a gift in consideration of a public official's good offices while in public service;" and

4) (**REPEALED** by Article 69 of Law N° 8422 the Law on Corruption and Illicit Enrichment of Public Servants of October 6, 2004).

Graft. ARTICLE 348. Criminal Code "Any public official who abuses his position or functions to oblige or induce someone to give or illicitly promise a capital asset or personal benefit for himself or for a third party, shall be sentenced to two to eight years in prison.

Extortion. ARTICLE 349. Criminal Code "Any public official who abuses his position to demand or force someone to pay or deliver an illicit contribution or duty or higher amounts than are actually due.

Although the **Law on Administrative Contracting** does not establish criminal sanctions for officials who commit this kind of offense, it does establish an administrative penalty, which is dismissal without employer liability, as indicated in Article 96 ter:

"**Dismissal without employer liability.** Any civil servant who commits the following offenses shall be dismissed without employer liability:…

c) The solicitation or acceptance of gifts, commissions or bonuses from regular or potential suppliers to the entity in which he works…".

ii. "The solicitation or acceptance, directly or indirectly , by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions."

The offering or granting of a gift or compensation Article 343 bis of the Criminal Code states: " Anyone who directly or indirectly offers or grants a gift, compensation or another unfair advantage to a public official of another State in exchange for any act or omission in the performance of his public functions shall be sentenced to two to six years in prison."

Penalty for the briber. Article 345 of the Criminal Code. The penalties established in the last five articles will be applicable to anyone who gives or promises a public official a gift or unfair advantage. (Reworded as per Article 64 of Law N° 8422 Law on Corruption and Illicit Enrichment of Public Servants, dated October 6, 2004).

Transnational bribery. Article 55 Law on Corruption and Illicit Enrichment of Public Servants. "Anyone who, directly or indirectly, offers or grants a public servant of another state or an international agency or entity any gift, compensation or other unfair advantage, in exchange for any act of omission by that official in the performance of his public functions, or for improperly exercising over another official the influence derived from his position. The penalty shall be three to ten years if the bribe was intended to make the official take action that would cause him to be in breach of his duties.

The same penalty will apply to anyone who accepts a gift, compensation or advantage as mentioned above."

The Law on Administrative Contracting establishes the punishment of disqualification for companies that provide public officials with gifts directly or through third parties:

Punishment by Disqualification. Art. 100 General Law on Administrative Contracting. The Administration or the Office of the Comptroller General of the Republic will disqualify any individual or body corporate who commits the following offenses from participating in public contracting procedures for a period ranging from two to ten years, depending on the seriousness of the offense: …

c) Supplying gifts, directly or through a third party, to officials involved in a public contracting procedure. In this case the public official will be disqualified for the maximum period established."

iii. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party.

Illicit enrichment. Article 45. Law on Corruption and Illicit Enrichment of Public Servants. "Anyone who, personally or through any third party, illicitly exercises public functions for the or has custody over, utilizes, users of administers public funds, services or assets, in any capacity or through any method in order to increase his assets, acquire goods, enjoy rights, pay off debts or extinguish obligations that affect his capital or the capital of companies in which he has a direct or indirect shareholding, shall be sentenced to three to six years in prison."

Costa Rican legislation contemplates two types of crime under the same name but different Codes: Section 346 of the Criminal Code and Article 45 (i) of the above-mentioned Law on Corruption and Illicit Enrichment of Public Servants; both of which are in force since they cover different circumstances or modalities.

Legislating or administrating for the public official's own benefit. Article 48 Law on Corruption, N° 8422: "Any public official who sanctions, passes, authorizes signs or votes in favor of laws, decrees, agreements, acts or administrative contracts that directly benefit himself, his/her spouse, partner or common-law partner, relatives by blood or marriage up to and including the third degree, or benefit companies in which the official, his spouse, partner or common-law partner or relatives by blood or marriage up to and including the third degree have a financial interest, either directly or through other bodies corporate that participate in them financially, as attorneys-in-fact or as members of social bodies, shall be sentenced to one to eight years in prison.

The same sentence will apply to a public official who favors his/her spouse, partner or common-law partner or relatives by blood or marriage up to and including the third degree, with capital assets contained in collective bargaining agreements in whose negotiation he/she has participated on the employer side."

Overpricing. Article 49 Law on Corruption, N° 8422 "Anyone who, for the purpose of obtaining some advantage or benefit for himself or a third party, significantly less or more – whichever is applicable – than the actual or real price of a service or product, or the price established on the basis of its quality or specialized use for the purchase, transfer, concession or

lien of goods, works or services in which the State, other public entities or enterprises, municipalities or private individuals who administer or have custody over public assets or funds, in any capacity or through any method, have an interest, shall be sentenced to three to ten years in prison."

Fraudulent acceptance of contracted goods and services. Art. 50 Law on Corruption , N° 8422. "any public official, consultant or servant thereof, contracted by the respective entity, who forges or manipulates information on the execution or contracting of public works, or on the existence, quantity, quality or nature of the goods and service contracted, or of the works delivered under concession, for the purpose of satisfactorily accepting the service or the work, shall be sentenced to two to eight years in prison. If this conduct hampers the service provided or prevents the public entity from using the work or using the service contracted adequately to meet the needs for which the services was contracted, the lowest and highest penalties shall be increased by one third."

Traffic of influence. ARTICLE 52. Law on Corruption , N° 8422 "Anyone who influences a civil servant directly or through someone by using his position or any other circumstance derived from his personal relationship or seniority over that or another civil servant, be it real or simulated, so that he makes, delays or omits to make an appointment, award, concession, contract, act or resolution in the performance of his public functions, in order to produce an illicit economic benefit or advantage, directly or indirectly, for himself or another person, shall be sentenced to two to five years in prison."

The same penalty shall be applied to anyone who uses or offers the influence described in the previous paragraph.

The lower and upper penalties indicated in paragraph one shall be increased by one third if the influence is exerted by the president or vice president of the Republic, members of the Supreme Branches of Power or of the Supreme Elections Tribunal, the Comptroller General or Deputy Comptroller General of the Republic; Attorney General, the Deputy Attorney General, the Director of Public Prosecutions, the Public Ombudsman or the Deputy Public Ombudsman, the senior decision-making authority or members of the political parties in management positions at the national level.

Fraudulent evasion of the law applicable to administrative functions. ARTICLE 58. Law on Corruption , N° 8422. "Public officials who fraudulently exercise an administrative function in accordance with the definition contained in Article 5 of this Law shall be sentenced to one to five years in prison. The same penalty shall apply to persons who, aware that the result is not in conformity with the law, are favored or use their tender for this offense.

Embezzlement. ARTICLE 354 Criminal Code. "Public officials who misappropriate or divert monies or goods that they were entrusted to administer, obtain or hold in custody by reason of their position, shall be sentenced to three to twelve years in prison; likewise, public officials who use for themselves or third parties, work or services which were paid by, or belong to the Public Administration, shall be sentenced to three months to two years in prison.

This provision shall also apply to private individuals and managers, administrators or attorneys-in-fact of private or charitable organizations run with subsidies or donations or as concessions, insofar as the use of the goods, services and public funds that they use, have custody over,

administer or own, in any capacity or through any method, is concerned."(Reworded as per the Law on Corruption and Illicit Enrichment of Public Servants, N° 8422)

Incompatible negotiations. **ARTICLE 347. Criminal Code** " Public officials who, directly or through a third party or simulated act, take an interest in any contract or operation in which they are involved by reason of their position, or a public official who participates in an international trade negotiation in order to obtain a financial benefit for himself or for a third party,, shall be sentenced to one to four years in prison. This provision also applies to arbitrators, friendly mediators, experts, accountants, guardians, executors and trustees, inasmuch as their functions in such capacities are concerned. It is also applicable to negotiators appointed by the Executive for a specific matter who, in the first year after leaving office, represent a client on a matter in which they intervened directly through an international trade negotiation. Negotiators who declare that at least one year before they took office they were habitually involved in the business or professional activity under negotiation, shall not be liable."

iv. "The fraudulent use or concealment of property derived from any of the acts referred to in this article."

Receipt, legalization or concealment of assets. ARTICLE 47 Law on Corruption , N° 8422 "Anyone who conceals, ensures, transforms, invests, transfers, has custody of, administers, acquires assets or rights, or feigns the legitimacy thereof, aware that they are the proceeds of illicit enrichment or criminal activities of a public official committed while in office and as a result of the means and opportunities provided thereby, shall be sentenced to one to eight years in prison."

Appropriation of assets given to the State. ARTICLE 54. Law on Corruption , N° 8422. "Public officials who appropriate or keep gifts or donations that they must deliver to the State, pursuant to Article 20 of this Law, shall be sentenced to one to two years in prison."

Culpable facilitation of misappropriation. ARTICLE 355. Criminal Code "Public officials who, through their negligence or fault, facilitated or enabled another person to misappropriate assets such as those referred to in the previous article, shall be liable to payment of thirty to one-hundred and fifty "fine days"(*días de multa).*

Receiving stolen goods. ARTICLE 323. Criminal Code "Anyone who acquires, receives or conceals money, items or goods which are the proceeds of a crime, even though he did not participate in the crime and was not involved in the acquisition, acceptance or concealment of said money, items or good, shall be sentenced to six months to three years in prison and liable to payment of thirty "fine days"(*días de multa)*.

The respective security measure shall be applied if the perpetrator makes a profession out of receiving stolen goods."

Accessories after the Fact. ARTICLE 325. Criminal Code " Anyone who attempted to help or who helped another get rid of, conceal or alter the traces, evidence or instruments of a crime or secure or reap advantage of the product thereof, without receiving a promise before the crime but in exchange for a promise after it crime was committed, shall be sentenced to three months to two years in prison

This provision shall not apply to someone who was in any way involved in the crime or if culpable evasion existed.

v. "Participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article."

The Criminal Code of the Republic of Costa Rica, defines the concept of principal and the different degrees of criminal participation as follows:

"ARTICLE 45.- **Principal:** Anyone who participates in a punishable act on his own behalf or uses another or others, and coprincipals who commit a punishable act with the principal.

ARTICLE 46.- **Instigators:** Anyone those who intentionally leads another to commit a punishable act.

ARTICLE 47.- **Accomplices:** Anyone who in any way helps or cooperates with the principal in the commission of the punishable act.

ARTICLE 48.-**Partners in Crime** will be liable from the moment the commission of the offense commences, as provided for in Article 19. If the offense proved to be more serious than they originally intended it to be, whoever accepted this as a probable consequence of the action carried out, shall be rendered accountable.

ARTICLE 49.- **Knowledge of the circumstances**.- The personal qualities associated with the offense are also attributable to the partners in crime who have do not have those qualities, if they were known to them. The relations, circumstances and personal qualities whose effect would be to reduce or exclude the penalty, will only apply to the partners in the crime with those qualities.

The material circumstances that aggravate or attenuate the offense will only be taken into account inasmuch as they relate to people who knowingly collaborated.

ARTICLE 24.- **Attempt to commit a crime**. This exists when a person or persons start to execute a crime through acts leading directly up to its commission but, for reasons unrelated to the agent, the crime is not committed. The penalty applicable for attempting to commit a crime shall not be applied if it was absolutely impossible to commit it."

Our country does not criminalize conspiracy, but it does criminalize **Criminal Association**, which is when someone "belongs to an association of two or more people to commit crimes, merely because they are a member of the association." (Article 274 Criminal Code)

b) Briefly state the objective results that have been obtained in enforcing the above provisions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years.

The first of the two statistical tables shown below illustrates the cases brought before the judicial system between 2000 and 2005 in relation to violations of the duties of public servants; the second table shows the number of people who were sentenced by the criminal courts and the type of resolution reached, during that same period.

The statistics show that after the Law on Corruption and Illicit Enrichment of Public Servants, N° 8422 of October 6, 2004, which came into effect on October 29 of that year, the number of corruption-related complaints increased significantly.

As a result of the efforts of the Jurisdiction Specializing in Crimes of Corruption during 2005, the number of cases resolved rose from 115 in 2004 to 189 in 2005.

CRIMINAL CASES BROUGHT BEFORE THE JUDICIAL SYSTEM BY HEADING UNDER THE CRIMINAL CODE AND TYPE OF COMPLAINT DURING THE PERIOD 2000-2005

HEADING AND TYPE OF COMPLAINT	2000	2001	2002	2003	2004	2005
AGAINST THE DUTIES OF PUBLIC OFFICIALS	**1644**	**1611**	**1613**	**1684**	**1774**	**1643**
Abandonment of office	3	2	2	1	2	1
Abuse of authority	1036	1067	1087	1163	1177	1043
Accceptance of gifts	0	4	1	3	1	0
Bribery	67	82	44	34	56	36
Graft	35	48	33	42	70	61
Aggravated corruption of officials	8	0	8	1	10	14
Corruption of judges	0	0	0	0	0	1
Denial of Help	0	0	0	0	0	0
Disclosure of secrets	2	1	11	5	7	4
Dual representation	2	0	0	0	0	2
Illicit enrichment	4	6	4	4	8	21

Extortion	11	2	3	14	6	4
Breach of duties	150	162	135	171	141	198
Misappropriation of funds	19	24	28	23	20	18
Incompatible negotiations	6	6	6	3	10	4
Illegal appointment	0	1	5	1	8	2
Disloyal sponsorship	5	11	9	10	5	3
Embezzlement	239	115	161	144	174	161
Penalty of the briber	27	39	28	24	21	19
Breach of trust	30	41	48	41	58	49
Traffic of influence	0	0	0	0	0	2

Prepared by: Statistics Section, Planning Department

PERSONS SENTENCED BY THE CRIMINAL COURTS
ACCORDING TO THE CRIME AND TYPE OF RESOLUTION 2000-2005

BREACH OF OFFICIAL DUTIES	TOTAL	TYPE OFO DE SENTENCE	
		CONVICTION	ABSOLU-TORIA
2005			
Total	**189**	**60**	**129**
Abuse of authority	28	7	21
Bribery	6	2	4
Graft	7	3	4
Aggravated corruption	13	5	8
Breach of official duties	2	1	1
Disloyal sponsorship	1	0	1
Embezzlement	30	5	25
Penalty for the briber	3	0	3
Breach of trust	18	6	12
2004			
Total	**115**	**40**	**75**
Abuse of authority	45	8	37
Bribery	9	3	6
Graft	13	7	6
Breach of public duties	1	0	1
Misappropriation of funds	1	0	1
Embezzlement	39	17	22
Penalty for the briber	1	0	1
Breach of Trust	6	5	1
2003			
Total	**107**	**40**	**67**
Abuse of authority	41	17	24
Bribery	5	2	3
Graft	6	1	5
Disclosure of secrets	3	0	3

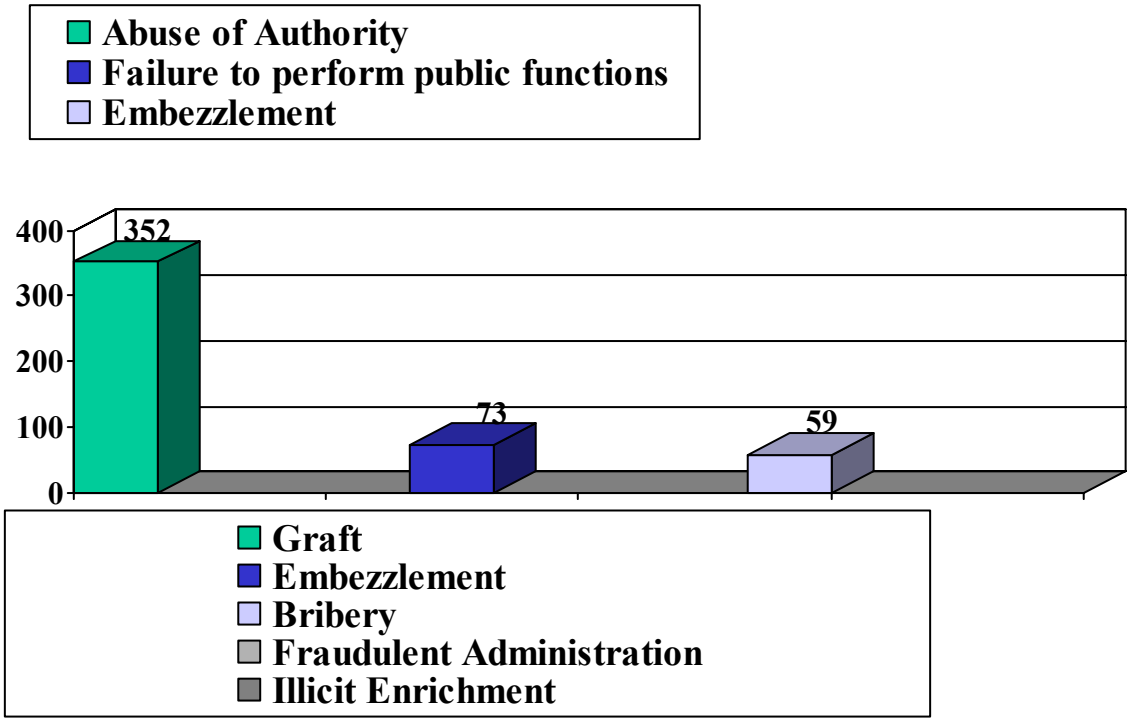
Breach of official duties	4	2	2
Misappropriation of funds	1	0	1
Incompatible negotiations	5	4	1
Disloyal sponsorship	1	0	1
Embezzlement	27	10	17
Penalty for the briber	5	1	4
Breach of trust	9	3	6
2002			
Total	**109**	**35**	**74**
Abuse of authority	41	9	32
Bribery	5	3	2
Graft	7	4	3
Aggravated corruption	3	0	3
Breach of official duties	2	0	2
Misappropriation of funds	3	1	2
Incompatible business	1	0	1
Embezzlement	41	16	25
Penalty for the briber	3	2	1
Breach of trust	3	0	3
2001			
Total	**75**	**40**	**35**
Abuse of authority	9	1	8
Bribery	4	2	2
Graft	9	7	2
Attempted bribery	1	0	1
Breach of official duties	3	0	3
Misappropriation of funds	1	0	1
Embezzlement	34	24	10
Penalty for the briber	5	1	4
Breach of trust	9	5	4
2000			
Total	**90**	**35**	**55**
Abuse of authority	25	8	17
Bribery	6	4	2
Graft	11	8	3
Extortion	1	0	1
Breach of official duties	2	1	1
Incompatible business	1	0	1
Illegal appointment	1	0	1
Embezzlement	27	14	13
Penalty for the briber	4	0	4
Breach of trust	12	0	12

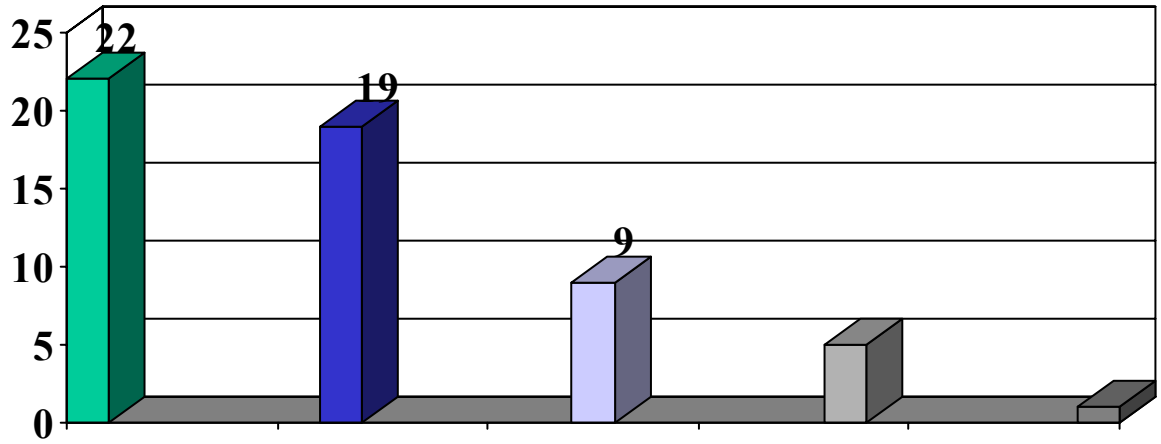
Prepared by: Statistics Section, Planning Department

The Public Prosecutions Service provides the following information covering January to November 1, 2006 on the cases filed before it for alleged acts of corruption which are reviewed in

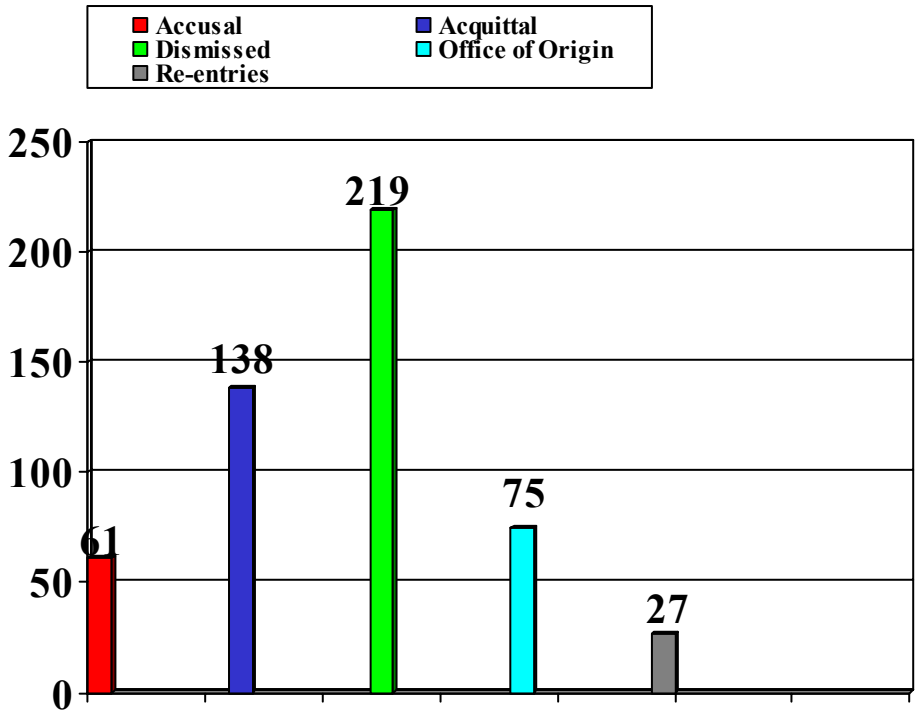
this paragraph and which total 540. These include both offenses under the Criminal Code and offenses under the Law on Corruption and Illicit Enrichment of Public Servants.

The figures show the most frequently committed offenses in the first box.





Result of complaints filed with the Attorney General's Office in 2006.



c) If the aforementioned acts of corruption are not criminalized, what steps is your country taking to criminalize these acts?

As stated above the Republic of Costa Rica does have legislation that criminalizes the acts of corruption under review. Therefore, as stated previously, the country is committed to defend the values and principles that are the basis for preventing, detecting, punishing and eradicating corruption and which have resulted in the signing and incorporation into domestic law of the Inter-American Convention against Corruption, through Law 7670 of April 17, 1997, and the undertaking to create, maintain and strengthen the mechanisms necessary for compliance with the purposes of the Convention. In keeping with the above it passed the Law on Corruption and Illicit Enrichment of Public Servants, N° 8422, and its Regulations.

It is too early at this time to refer to the true effectiveness of this Law since it has only recently been enforced. However, it is considered an important achievement since it is in line with the criminal and social policy our country needs.

2. Application of the Convention to other acts of corruption not described therein, pursuant to the terms of Article VI.2

a) Has your State entered into any agreements with other States Parties to apply the Convention to any act of corruption not described therein, pursuant to the terms of Article VI.2? If so, briefly describe the respective agreements or conventions and attach a copy of the related documents.

b) If the above answer was in the affirmative briefly state the results that have been obtained in the application of the respective agreements or conventions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years.

Since the Republic of Costa Rica has not mutually agreed between two or more States Parties to apply the Convention to any other act of corruption not covered thereby, no we have not answered questions a) and b) above.

SECTION II

FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORT IN THE FIRST REVIEW ROUND

PROGRESS REPORT OF THE REPUBLIC OF COSTA RICA ON THE FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE FIRST ROUND.

In accordance with Article 29 of the Rules, we shall report on the progress made in implementing the recommendations formulated in the report adopted by the Committee in the first review round, in the standard format, including the suggestion and then indicating the measures taken or the progress made in achieving that objective.

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

a) Consider the possibility of bringing all public servants under a general regime with a single set of rules, which would assist public servants as well as the general public to understand more accurately their rights and duties, and overcome the existing disparity. Such a move should be without detriment to regimes governing specific sectors that by their nature may require specialized treatment or the establishment of more restrictive rules.

Progress Made: a.1.1 A single text was included in the Law on Corruption and Illicit Enrichment of Public Servants N° 8422, dated October 6, 2004 to cover conflicts of interest. Chapter II of the Law establishes a regime for preventing conflicts of interest, incompatibilities and disqualifications. **a.1.2** The Regulations to this Law came into effect in 2005. The aspects they cover include conflicts of interest, incompatibilities and disqualifications, complaints by citizens and confidentiality of the identity of whistleblowers. **a.1.3** The Comptroller General published rules applicable to all Costa Rican public servants under the title "General Guideline N° D- 2- 2004 CO on ethical principles and statements to be observed by senior and lower ranking public officials and officials of the Comptroller General's Office, internal auditors and public servants in general. **a.1.4.** Executive Decree N° 33146 of May 24, 2006 also came into effect, establishing the guideline on the ethical principles that public servants must follow when exercising their functions. This complements the ethical regulations issued by the Office of the Comptroller General of the Republic in the guidelines indicated in sub-paragraph a.1.3.

b) Strengthen the system of recruitment into the public administration and the existing rules governing incompatibility and disqualification, taking into account the following aspects, in light of the scope of legislation and the positions identified by law:

i. Supplement the rules of entry into the public service by strengthening the preventive mechanisms that facilitate detection of possible conflicts of interest that might impede such entry, including senior public positions.

ii. Develop other mechanisms to identify or detect any unexpected cause that could occur in the performance of public duties which could give rise to a conflict of interest.

iii. Consider the possibility of implementing measures as appropriate to establish and put into effect systems and mechanisms of a preventive nature for detecting conflicts of interest in the public service. Among other alternatives, consideration could be given to the feasibility of creating instruments such as the declaration or registry of interests or activities for certain public posts, either as part of the system of declarations of income, assets and liabilities, or as an independent instrument, and of having that instrument periodically updated, as well as creating and maintaining databases for search and consultation by the competent organs.

Progress made: The Law on Corruption and Illicit Enrichment and its Regulations strengthens preventive mechanisms such as the system of sworn declarations of income, assets and liabilities described in Chapter III, Articles 21 to 36 and Chapter V, Articles 54 to 69 of the Regulations, spelling out which officials are under obligation to declare their financial position, indicating the form to be used for the declaration, its contents, its confidential nature and the creation by the Office of the Comptroller General of a registry of sworn declarations of income, assets and liabilities.

As stated in the previous paragraph, Executive Decree N° 33146 came into effect on May 24, 2006 and complements the regulations on ethics issued by the Office of the Comptroller General of the Republic in Guideline C 2- 2004 –CO. It also establishes such principles as efficiency, efficacy, transparency, probity and integrity, regulates conflicts of interest and state that all public servants in the Central Administration must perform their functions ethically.

c) Consider the possibility of incorporating into the legal system a rule that limits participation by former public servants, including those of senior rank, in the management of certain acts and in general in situations that could involve taking undue advantage of one's status as a former public servant, within a reasonable period of time and without resulting in an absolute restriction on their constitutional right to work. (See section 1.1.2 of this Report).

Progress Made: c.1.1 Article 53 of the Law on Corruption and Illicit Enrichment covers "Prohibitions after leaving the public service" to impede former public servants who, in the course of their functions, were involved in any phase of the design process, preparation of technical specifications or drawings, or in the process of selecting, inspecting, awarding or supervising a public tender process, from accepting employment or a participating in the capital stock of individuals or bodies corporate who have contracts with the Administration, for one year after the contract is entered into.

d) Maintain duly up-to-date, expand and improve the registry of persons disqualified for public service under the Civil Service Regime,, so that it may constitute, if it does not already, an effective instrument for preventing and detecting appointments to the public service that might be contrary to the provisions on prohibitions and disqualifications. Consider the possibility of requiring consultation of this register prior to the appointment of public servants of specified rank and category.

Progress Made: d.1.1 Although the Civil Service Regime has a register of officials or persons disqualified from public service, it must be strengthened as recommended by the Committee of Experts, even if the resources needed are lacking.

Notwithstanding the above, Executive Decree N° 33146 dated May 24, 2006, which stipulates the ethical principles that public servants must adhere to, states that incumbents in government positions or executive functions, incumbents must first any conflict of interest in writing and step down if a Criminal Court issues a ruling against them for allegedly committing any crime against duties in the public service under the Criminal Code and Chapter V of the Law on Corruption and Illicit Enrichment in the Public Service, N° 8422, notwithstanding any other sanctions agreed upon by the Administrative or Judicial Authorities. This Decree also establishes the creation of an Ethics Commission.

The Judicial Registry of Offenders is a dependency of the Judiciary. Its main function is to check the criminal records of citizens and cooperate with public agencies and offices, and record the sentences for citizens convicted of fraudulent or negligent crimes, and breaches and violations. In accordance with Article 50 of the Criminal Code and Article 59 of the Law on Corruption and Illicit Enrichment, in addition to the penalty envisaged for that offense, public officials who commit offenses in the course of their public duties could be disqualified from holding public office as an accessory punishment.

The registry will strike convicted persons off its records if ten years have elapsed without another conviction being recorded (Article 11. Law on Registration and Judicial Archives and Constitutional Court Resolution 1438- 92 of June 2, 1992).

In practice, before beginning a new job, all citizens – in the private as well as the public sector - are required to submit their criminal record *(hoja de delincuencia).* The Registry issues this record in keeping with the provisions of Article 13 of the above-mentioned law.

e) The Committee urges the Republic of Costa Rica to continue with the amendments that it believes pertinent in the justice administration system, in order to speed up judicial procedures pertaining to violations of the standards of conduct for public servants.

Progress Made: e.1.1: During the period 2004-2005, there was a significant increase in the budget of the Public Prosecutions Service. Four new Prosecutor's Offices specializing in the investigation of crimes involving corruption were created to speed up corruption proceedings. Additionally, a Ministry of Finance Criminal Jurisdiction was created. It specializes in crimes covered by the Law on Corruption and Illicit Enrichment of Public Servants. However, since this is a new law, there is no statistical data available yet to demonstrate the objective results achieved.

f) Continue designing and implementing mechanisms for making all public servants aware of the rules of conduct, including those relating to conflicts of interest, and continue to provide training and periodic refresher courses on those rules.

Progress Made: f.1.1 During 2005, the Office of the Comptroller General of the Republic and the Attorney General's Office held various seminars in different parts of the country on the Law on Corruption and Illicit Enrichment of Public Servants. They were attended by people from the public and private sectors and given by high-level speakers on aspects such as conflicts of interest, incompatibilities, complaints by citizens, confidentiality of the identity of whistleblowers and the system of sworn declarations of income, assets and liabilities applicable to civil servants.

In accordance with the Office of the Comptroller General's training program for 2006, on May 22, 24 and 26, 2006 a seminar was held on the "Regime of responsibilities of public officials." It was a full-day (8 hour) seminar, The participants were officials from that institution. The Ministry of Finance held three training activities: "Law on Corruption and Illicit Enrichment" which lasted 30 hours and was aimed at technical, professional and management staff.; the "Law on Internal Control" lasting 42 hours; and "Customer Service" lasting 16 hours.

g) Compile information on cases of conflicts of interest so as to establish mechanisms of evaluation for verifying results on this issue (see section 1.1.3 of this Report).

Progress Made: With the entry into effect of the Law on Corruption and Illicit Enrichment of Public Servants, the cases had to be profiled, particularly in the case of topics related to the disqualification of public servants from the freelance practice of their professions, concept of public servant, prohibitions on receiving labor benefits, simultaneous public positions, system of incompatibilities and officials under obligation to declare their financial situation, among others. In response to queries on these matters the Office of the Attorney General of the Republic issued 117 declarations, while the Office of the Comptroller General of the Republic issued 155 opinions.

h) Analyze the possibility of inserting the necessary clarifications in the relevant regulatory framework to ensure a clear differentiation between conflicts of interest and disqualifications and incompatibilities, where appropriate.

Progress Made: h.1.1 The Law on Corruption and Illicit Enrichment of Public Servants N° 8422 and its Regulations make a clear differentiation between conflicts of interests, incompatibilities and disqualifications. Article 14 of the Law and Article 27 of its Regulations prohibit senior officials from the freelance practice of their professions. This prohibition applies to the President of the Republic, Magistrates, Ministers, the Comptroller, Public Attorneys, Executive Presidents, Directors, Superintendents of financial entities, Mayors, Auditors, Suppliers, etc., while they hold

public office. Exceptions to the prohibition are teachers in higher education, outside the working day; pursuant to Article 30 of the Regulations, a public official has a duty to inform his/her respective superior of such a situation. Additionally, under the provisions of Article 16 of the Law and Article 32 of the Regulations, national or international bodies corporate and individuals are prohibited from receiving any other emolument, fee, stipend or salary for or during the fulfillment of their functions in or outside the country.

In accordance with the provisions of Articles 17 of the same Law and 33 of the Regulations, "nobody may simultaneously hold more than one remunerated position in the bodies and entities of the Public Administration"; with the exception of teachers at higher education institutions, musicians with the national symphony orchestra and bands of the Public Administration and the other officials referred to in the articles indicated.

Nor can consulting or advisory services be provided to national or foreign bodies, institutions or entities that are directly linked to the body or entity they serve, even if they provide such service while on leave and without receiving their salary (Article 35 of the Regulations).

The system of incompatibilities is governed by Article 18 of the Law and Article 37 of the Regulations, as follows: "The President of the Republic, vice presidents, deputies magistrates (*magistrados propietarios*) of the Judiciary and the Supreme Elections Tribunal, Ministers, the Comptroller and Deputy Controller Generals of the Republic, the Public Ombudsman and Deputy Public Ombudsman, the Attorney General and Deputy Attorney General of the Republic, the Regulator General of the Republic, Deputy Ministers, senior officials, members of Boards of Directors, executive presidents, managers and deputy managers, directors and executive deputy directors, heads of supply agencies, Internal Auditors and Deputy Internal Auditors of the Public Administration and state enterprises, and municipal mayors, may not simultaneously be officers of boards of directors; nor may they be registered as representatives or attorneys-in-fact of private companies, or have an interest in their capital stock, either personally or through a body corporate, if those companies provide services to public institutions or enterprises which, due to the nature of their commercial activity, compete therewith …"

Lastly, as stated above, the system of incompatibilities is provided for in paragraph 59 of the Law on Corruption and Illicit Enrichment of Public Servants and section 50 of the Criminal Code, as an accessory punishment for an offense committed while in the public service. (See paragraph 3 (d.1.1.).

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

The Republic of Costa Rica has considered and adopted measures designed to establish, maintain and strengthen standards of conduct to ensure the preservation and proper use of resources entrusted to public servants in the performance of their duties, as mentioned in Chapter 2, Section 1.2 of this Report.

In view of the comments made in the above-mentioned section, the Committee suggests that the Republic of Costa Rica consider the following recommendations:

1.2.1 The Committee recognizes with satisfaction that the Republic of Costa Rica has rules of conduct and mechanisms for ensuring the preservation and proper use of resources entrusted to public servants in the performance of their duties, and it welcomes the efforts that have

been made in recent years to improve its public legal system and the principles of efficiency, efficacy, transparency and accountability as essential elements of public management. It encourages the Republic of Costa Rica to continue improving those rules and mechanisms.

Progress Made: a 1.2.1 The following rules were implemented in an endeavor to continue to strengthen the norms and mechanisms on the proper use of resources allocated to public officials; a.2.2. Rules on the use of computer equipment, programs and accessories in the Legislative Assembly (Agreement N° 43 of the Board of Directors of the Assembly); a.2.3 Rules on the Administration of Alcoholic Beverages in the Legislative Assembly (Agreement N° 45 of the Board of Directors of the Assembly); a.2.4 Rules of Procedure on the Administrative Registry Tribunal's government procurement processes (Decree DE- 32384-J); a.2.5 Rules on the assignment, use, custody, conservation and control of telephone, radio paging devices and telephone tariff recognition for the use of lines and apparatus belonging to Officials of the Ministry of the Interior and Police (DE-32582-G); a.2.6 Rules on payment of per diems and travel expenses to officials of the Ministry of Public Works and Transport and the bodies under it (DE- 32441-MOPT); a.2.7 Rules on the use of the limited fund *(caja chica)* of the San José county sports and recreation committee; a.2.8, Resolution 71 dated September 4, 2006 of the Comptroller General's Office regulating the table of travel and transportation expenses for public officials.

1.2.2 Continue designing and implementing mechanisms for making all public servants aware of the rules of conduct, and for answering any questions with regard to the same, including those relating to conflicts of interest, and continue providing training and periodic refresher courses on those rules.

Progress Made: b.1.2.1 Both the Office of the Comptroller General of the Republic and the Office of the Attorney General of the Republic have furthered their efforts to train and inform public officials by holding nationwide seminars. The talks and courses given by both these entities on the subject are available to the general public on their websites: www.pgr.go.cr and www.cgr.go.cr

1.3 Standards of conduct and mechanisms concerning measures and systems requiring government officials to Report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

The Republic of Costa Rica has considered and adopted measures designed to establish, maintain and strengthen standards of conduct and mechanisms related to measures and systems that require public servants to report to the appropriate authorities acts of corruption in the public service of which they are aware, in accordance with the comments in Chapter 2, Section 1.3 of this Report.

In light of the comments made in the above section, the Committee suggests that the Republic of Costa Rica strengthen existing mechanisms that require public servants to report to the appropriate authorities acts of corruption in the public service of which they are aware. To comply with this recommendation, the Republic of Costa Rica could consider the following measures:

a) Regulate the presentation of these reports, facilitating even more their presentation and establishing requirements for presentation that do not inhibit potential informers. Implement mechanisms for protecting public servants who report acts of corruption, including the confidentiality of the identity of informers.

Progress Made: a 1.3. 1 The Law on Corruption and Illicit Enrichment of Public Servants and its Regulations governs the process for filing complaints and the mechanisms for protecting whistleblowers. These mechanisms include keeping their identity confidential, as provided for in Article 8, paragraphs 10 and 18 of the Regulations.

b) Assess the relevance of offering greater protection to civil servants who report acts of corruption, especially in cases where their hierarchical superiors are involved in the acts being reported.

Progress Made: b.1 Bill No. 15745 "To protect and encourage citizens to fight corruption in the public service" is pending legislative approval. It contemplates safeguards for civilians who report public officials, guaranteeing them and their families personal protection and protection in their work and formal and informal related activities, as a result of the complaint filed.

c. Facilitate the presentation of reports by using the most appropriate means of communication, including electronic means.

Progress Made: Article 12 of the Regulations to the Law on Corruption and Illicit Enrichment states that "Complaints may be filed in writing or presented by any other means …" Hence, in practice, complaints can be received in person, by telephone, fax, e-mail and may even be anonymous, in which case they are reviewed and dealt with depending on the evidence provided.

The Office of the Comptroller General of the Republic issued Resolution R- CO-96- 2005, which was published in the official journal, *La Gaceta*, of December 9 of that year, whereby the guidelines for handling complaints filed before that entity were established. It has also implemented specific procedures on: the receipt of complaints, procedures for channeling them, and has designed forms and an internal procedure for investigating those complaints.

The Office of the Public Ethics Prosecutor has also been working in this area and has created a Guide on the Handling of Complaints. All these efforts are intended to facilitate the filing of complaints.

Simplicity, economics, efficacy and efficiency are the general principles based on which complaints are admitted.

d. Advance, even further, in efforts intended to train civil servants as to the existence and purpose of their responsibility to report acts of corruption of which they are aware to the appropriate authorities, including the system for protecting witnesses in these cases and to urge the Republic of Costa Rica to consolidate progress already made in this direction by the Office of the Public Ethics Prosecutor.

Progress Made d) As mentioned in point f.1.1., the Office of the Attorney General of the Republic and the Office of the Comptroller General of the Republic have striven to continue to train public officials from the Central and Decentralized Administration and the Municipalities.

This year the Office of the Attorney General of the Republic ran two seminars: "The Challenges of Public Administration vis-à-vis the Code of Administrative Procedure" and "Essential Aspects of the Administrative Procedure." These were opportunities to develop the topic of protection for people who in good faith report acts of corruption and opportunity and were each attended by approximately three hundred people, many of them trial attorneys, legal agents and public officials.

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

The Republic of Costa Rica has considered and adopted measures designed to establish, maintain and strengthen systems for the disclosure of income, assets and liabilities of persons who perform public functions in certain posts as specified by law, in accordance with the comments in Chapter 2, Section 2.1 of this Report.

In view of the comments made in the above-mentioned section, the Committee suggests that the Republic of Costa Rica improve the systems for supervising and evaluating the contents of declarations of income, assets and liabilities, and regulate their publication. To comply with this recommendation, the Republic of Costa Rica could consider the following recommendations:

a) Define clearly the objective of this instrument, either as a means to promote greater transparency in the functions of public servants as a way of detecting illicit enrichment or other criminal behavior, and as an instrument for detecting, preventing and punishing conflicts of interest.

Progress Made: a.2. Through law N° 7670 of April 17, 1997, our country signed and incorporated in its domestic law the Inter-American Convention against Corruption, thereby undertaking to create, maintain and strengthen mechanisms to prevent, detect, punish and eradicate corruption. The Law against Corruption and Illicit Enrichment of Public Servants was passed through Law N° 8422 of October 6, 2004, establishing the following in Article 1: **Purposes**. "The purposes of this Law shall be to prevent, detect and punish corruption in the public service." This national and international commitment to create, maintain and strengthen those mechanisms is reflected specifically in Articles 8, 9 , 10, 11 and 21 of Law N° 8422, and its regulations provide for two work processes, both of them essential and the responsibility of the oversight body. These processes are instruments that can be used appropriately, effectively and efficiently in the fight against corruption. Article 22 of the Organic Law of the Office of the Comptroller General , Law N° 7428 of September 7, 1994, empowers that institution to carry out preliminary criminal proceedings or special official investigation of the Parliamentary Bodies of the Legislative Assembly, at the request of any interested party or at least five deputies.

The oversight body is responsible for receiving, recording and following up the system of sworn declarations of income, assets and liabilities to be submitted by public officials in conformity with the Law on Corruption and Illicit Enrichment of Public Servants, and it must do so in such a way as to produce the information needed to support the whole supervisory process, determine civil, administrative or criminal responsibilities and coordinate matters related to other internal or external areas. Any reports and documents that reveal the possible existence of abnormal, improper or illicit acts pointing to the criminal use of public funds, must be reported to the Public Prosecutions Service. Any acts for which the authors would be accountable before the law must also be reported to the Office of the Attorney General of the Republic or the Administration, whichever is applicable, so they make the necessary action and follow up any matters that the division has notified to the Office of the Public Ethics Prosecutor and assist the technical secretariat with the investigations to keep improving the inspection processes undertaken.

Chapter III, Articles 21 to 36 of Law 8422 and Chapter V, Articles 54 to 83 of its Regulations establish the system of sworn declarations of income, assets and liabilities. This legislation indicates which officials are under obligation to present a declaration, the contents, form, deadlines and other matters, establishing their confidential nature and states which bodies have access to them.

Law 8422 also establishes the duty to set up a sound, pertinent, complete, appropriate, efficient and effective system for attaining the following objectives of the sworn declarations, among others: foster the detection of unjustified enrichment that may stem from an act of corruption (i.e. that is contrary to the provisions of the constitution and ethics); identify and monitor the change in the financial circumstances of public officials (or others under obligation to submit such sworn declarations) in order to detect cases in people have accumulated wealth that is not consonant with the office held, so as to promote transparency and accountability.

It also establishes what is known as a One-off Declarations of Income, Assets and Liabilities, in which the Office of the Comptroller General of the Republic or the Director of Public Prosecutions can at any time require a civil servant who is not covered by this law and who administers or has custody over public funds, to submit a sworn declaration of income, assets and liabilities. (Article 69 of the Regulations).

b) Implement a system for the declaration of capital and other assets, liabilities and interests for use in detecting, avoiding, and punishing conflicts of interest, illicit enrichment, and other illicit acts.

Progress Made: b.2.: As mentioned in the previous point, Chapter II of Law 8422 on Corruption, contemplates the use of the Sworn declaration of income, assets and liabilities, gives a list of the officials under obligation to submit it, its content and the timeline for filing them. Chapter V of the regulations to this Law govern this particular subject.

Pursuant to the provisions of the Law on Corruption and Illicit Enrichment of Public Servants, the Comptroller General's Office is responsible for receiving sworn declarations of income, assets and liabilities from a segment of public officials (approximately 10,000 people). Thus, the primary responsibility of the Comptroller General's Office is see that civil servants comply with their legal obligation to declare their income, assets and liabilities according to the timeline provided for under this Law.

As of October 18 of this year, 894 warnings had been issued to officials who had failed to comply with this obligation, and 32 cases were brought before the Legal Advice and Management Division of the Office of the Comptroller General. To date administrative sanctions (consisting of an admonishment published in the official journal or suspension) have been issued in 10 of those cases.

As stated above, so far some 10,000 public officials have filed a declarations, 90% of them this year. Many of them filed an "*initial"* declaration in May of this year when there was a change in government; however, another segment of that total submitted a *"final"* or "*annual"* declaration, depending on whether they left or remained in office.

The Superintendency General of Financial Entities (SUGEF) requires the regulated entities to demand that a sworn declaration be presented by economic interest groups in the case of credit transactions submitted to them for approval, the objective being to identify, at the outset, if any member of the board or directors or senior management of the banks has a financial interest in the company applying for the loan in that financial institution. If so, pursuant to the provisions of Article 117 of the Organic Law of the National Banking System, that financial entity may not grant the loan. The second objective is to review the amount requested in terms of the limit set by the Regulator as the ceiling for loans to a single economic interest group. Under Law 8204, the SUGEF requires financial entities to review their staff at least once a year to see if there are any significant changes in their financial position.

Lastly Article 30 of the Law on Illicit Enrichment of Public Servants, N° 8422, establishes the "**Duty to inform**. Public officials are under obligation to inform their immediate superior in writing, if their spouse, partner or any relative up to and including the third degree by blood or marriage, is involved in any business to which they themselves are involved, within ten working days as of the starting date of their participation."[65] The Regulations to this Law state:

"Article 81.—**Authorization for access to information**. All officials under obligation to submit a sworn declaration are provided with an authorization that they are required to sign authorizing the Office of the Comptroller General of the Republic to obtain information on national or international financial organizations, banks and companies in which they have an economic interest or share if this is relevant for the purposes of the Law."

This Article is complemented Article 82 (2) of the Law, as follows:

"…When running the check referred to in this provision, the Office of the Comptroller General of the Republic shall take whatever steps are necessary to obtain from national or foreign financial organizations and companies with which, according to their declarations, they have a economic interest or link or shareholding deemed significant for the purposes of the Law, to provide the information required by the Office of the Comptroller General or the head of the unit in charge of the sworn declarations. The information must be provided in the electronic format required by the Comptroller General's Office."

c) Continue to take the decisions necessary to ensure that the obligation to file a declaration, and the mechanisms for enforcing this obligation, can be extended to other public servants who hold positions that may, by their nature, facilitate or generate illicit enrichment or other illegal acts against the public interest, for example some of the popularly elected positions that are not covered by the current rules.

Progress Made: c.2. With the entry into effect of the Law on Corruption and Illicit Enrichment, the obligation for officials to submit sworn declarations of income, assets and liabilities under Article 21 of the Law and Article 55 of the Regulations now covers: "deputies of the Legislative Assembly, the President of the Republic, the Deputy Ministers; Ministers with or without portfolio, or appointed officials with that rank; Deputy Ministers, Vice Presidents, magistrates and their alternates in the Judiciary and the Supreme Elections Tribunal, the Comptroller General and Deputy Comptroller General of the Republic, the Public Ombudsman and the Deputy Public Ombudsman, the Attorney General and the Deputy Attorney General of the Republic, the Director of Public Prosecutions of the Republic, rectors, comptrollers and deputy comptrollers of higher State education centers, the Regulator General of the Republic, superintendents of financial entities, securities and pensions, and the respective intendents; senior officials of ministries, members of boards of directors, except for attorneys without the right to vote, executive presidents, managers, deputy managers, Internal Auditors or Deputy Auditors, and directors of supply agencies throughout the Public Administration and public enterprises, councilors and their alternates, and municipal mayors. Also under obligation are employees of Customs employees who handle public tenders and other public officials who administer, inspect, collect or have custody over public funds, set State income or revenue, persons who approve and authorize disbursements of public funds, including employees of persons subject to private law, who administer, have custody over or are concession-holders of public funds, goods and services."

So, the new Law on Corruption and its Regulations increased the number of public officials required to declare their income, assets and liabilities by 150% compared to the former legislation.

The Comptroller General's Office reported that it received a total of 9500 declarations in 2005 versus 3806 in 2004, and this years figure is expected to be around 10,000.

The Comptroller General's Office, the body in charge of sworn declarations of income, assets and liabilities, merged the department in charge of complaints and the department in charge of sworn declarations, creating a new area whose responsibilities include "periodically checking the veracity of the information contained in the declarations of income, assets and liabilities…, as well as transferring cases where abnormal situations are detected to the appropriate authorities …. and periodically reviewing the information contained in the register and declarations of income, assets and liabilities, in order to produce statistics and trends on the financial position of public officials to support the authorities in charge of inspection and oversight in this area, using the information contained in the sworn statements and other sources of internal and external information."[66]

d) Regulate the conditions, procedures and other aspects relating to the public disclosure, as appropriate, of declarations of income, assets and liabilities, subject to the Constitution and the fundamental principles of law.

Progress Made: d.2 Under the Constitution citizens are entitled to protection of their privacy. The Law on Corruption and Illicit Enrichment and the Organic Law of the Office of the Comptroller General of the Republic provide for confidentiality in the handling of information obtained in this respect. However, Article 24 of Law 8422 establishes the following exception: "The content of sworn declarations is confidential, except for the person making the declaration, without affecting the rights of access to them by special investigating commissions of the Legislative Assembly, the Comptroller General's Office, the Public Prosecutions Service or the courts of the Republic in order to investigate and determine the existence of the offenses and crimes foreseen by the Law. This confidentiality does not restrict the right of citizens to know whether the declaration was submitted in accordance with the law." According to the Regulations to that Law:

"Article 76.—**Confidential nature of declarations**. Compulsory declarations by officials are confidential, except for the person making the declaration, without affecting the rights of the Special Investigation Commissions of the Legislative Assembly, through its President, the Comptroller General's Office, the Courts of the Republic through their judges and the Public Prosecutions Service through the Attorney General to obtain information. Such confidentiality does not restrict the right of citizens to know whether or not the declaration was submitted in accordance with the Law. Officials who breach this confidentiality shall be punished under the provisions of Article 42 of the Law."

"Article 77.—**Bodies with access to declarations**. The only bodies that may have access to the sworn declarations are the Special Investigating Commissions of the Legislative Assembly, the Comptroller General's Office, the Public Prosecutions Service and the Courts of the Republic, if they require access thereto in order to investigate and determine whether the offenses and crimes foreseen in the Law were committed. The information must be reviewed within the Office of the Comptroller General, in the presence of an official from the corresponding office. In no case may files relating to sworn declarations in their possession be removed from the Comptroller General's Office, with the exception of such certified copies as may be required by order of a criminal court judge."

"Article 83.—**Transfer of declarations**. After four years have elapsed from the date the public servant left the position that gave rise to the declaration of his income, assets and

liabilities, the declarations submitted and the attached documentation shall be sent to the National Archive. Such transfer is subject to a protocol provided for by this Institution governing the way this kind of information is handled. Declarations in that situation that were submitted according to the provisions of the former law, Law Nº 6872, shall be sent to the National Archive."

e) Establish systems for the effective and efficient verification of the contents of sworn declarations of income, assets and liabilities, establishing occasions and time limits for such verifications, strengthening the powers of the CGR for scheduling verifications, ensuring that the verification applies to a representative number of declarations, and establishing actions to overcome obstacles to required sources of information; and take the necessary decisions to ensure cooperation between the CGR and other sectors, such as the financial and taxation authorities, to facilitate the exchange of information for verifying the contents of these declarations.

Progress Made e.2: We reiterate the remarks made in item b.2, and rather than repeat them we shall merely point out that the Office of the Comptroller General of the Republic created and invested material and human resources in this new department Complaints and Sworn Statements. whose purpose is to verify the content of the records and declarations and pinpoint any abnormal situations that may occur. Point f.2. is quoted below.

f) Strengthen the CGR, as necessary, to ensure that it has the material and human resources needed to perform its work of managing the system of sworn declarations of income, assets and liabilities.

Progress Made: f.2 It was agreed through Resolution RC- 66- 2004 of July 4, 2004, issued by the Office of the Comptroller General of the Republic, to agree to merge the office in charge of complaints and the department in charge of sworn declarations, creating a new area with the material and human resources necessary for it to fulfill the purposes described above. Additionally, the Organic Regulations on the Comptroller General's Office published in the official journal, *La Gaceta*, N° 22 of January 31, 2006, - document attached hereto - establishes in Section IV Complaints and Sworn Declarations the department's competencies and develops its attributions. (Articles 35 and 36).

The team in charge of the Complaints and Sworn Declarations area is made up of one manager, 2 attorneys, 3 inspectors, 2 associated inspectors and 2 assistant inspectors.

g) Expand the current system of penalties and violations applied to former public officials who fail to fulfill the requirements in this respect upon leaving office.

Progress Made: g.2: With the entry into effect of Law 8422, the system of sanctions for public officials was expanded, specifically Article 53 Prohibitions after leaving office, which states: "Public officials who, within the year after they entered into a government contract whose value is higher than or equal to the limit established for public tenders in the entity he served, accept paid employment or participate in the capital stock of the individual or body corporate who was

awarded the tender, shall be fined one hundred to one hundred and fifty "fine days"(*días de multa)* if they participated in any of the phases of the design process or in the preparation of the technical specifications or building drawings, selection or awarding of the bid, study or resolution of the funds drawn against the tender, or else in the inspection process of the construction phase or the acceptance of the goods or services in question."

h) Strengthen existing programs, or implement new ones, to train public servants in the provisions governing application of the system for declarations of income, assets and liabilities; design and introduce mechanisms to disseminate the system among the public servants who are required to enforce it, to ensure their thorough familiarity with the applicable provisions.

Progress Made: h.2 Training was arranged by the Office of the Comptroller General of the Republic and the Office of the Attorney General of the Republic to provide training for public officials and private individuals on the Law on Corruption and Illicit Enrichment. This training was given by high level instructors who covered aspects such as conflicts of interest, incompatibilities, reporting by citizens, confidentiality of whistleblowers and the system of sworn declarations of income, assets and liabilities by public officials. These programs are available to the general public at: www.cgr.go.cr and www.pgr.go.cr, by clicking on *capacitaciones* (training).

i) Make best efforts to optimize and improve compliance with the income, asset and liabilities declaration requirement by the public servants concerned, taking into account regulatory or other adjustments that may be necessary for this.

Progress Made: i.2 As mentioned above, with the Law on Corruption and Illicit Enrichment and its Regulations, the gaps and shortcomings of sworn declarations have been resolved, and of the decisions and statements of the Comptroller General's Office which has exclusive competency in the matter. These have gradually been adapted and adjusted to fit the legal framework.

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

The Republic of Costa Rica has considered the applicability of and has adopted measures designed to create, maintain and strengthen oversight bodies to develop functions with respect to effective compliance with the provisions selected for review in the context of the first round (Article III, paragraphs 1, 2, 4 and 11 of the Convention), as stated in Chapter II, section 3 of this Report.

Taking into account the considerations expressed in that section, the Committee suggests that the Republic of Costa Rica consider the following recommendations:

3.1 Strengthen the Offices of the Comptroller General, the Public Ethics Prosecutor, the Ombudsman, and the Attorney General as oversight bodies, in their functions relating to enforcement of Articles 1, 2, 4 and 11 of the Convention, in order to ensure that such control is effective; give them greater support and the resources necessary to carry out their functions; and establish mechanisms for coordinating their activities, as appropriate, and for their continuous evaluation and monitoring.

Progress Made 3.1. A significant increase in the budget of the Public Prosecutions Service for 2004-2005 was approved, particularly for the specialized Office in charge of investigating crimes involving corruption, and the Office of the Attorney General of the Republic for the public ethics area, in order to provide them with more human resources to work in the field of prevention, to detect, eliminate and fight corruption, this in addition to the creation of the Department of complaints and declarations of the Comptroller General's Office.

The project Inter-institutional Agreement on Mutual Cooperation and Assistance between the CGR, PGR and MP is also progressing well. The Public Prosecutions Service, the Office of the Comptroller General of the Republic and the Office of the Attorney General of the Republic, as the oversight bodies whose objective is to unite and coordinate efforts to fight corruption, have designed an inter-institutional alliance to deal with crimes of corruption affecting the Public Administration.

3.2 Compile information on their functioning so that evaluation mechanisms can be implemented.

Progress Made: 3.2 The senior officials of the oversight bodies, the Comptroller General and the Director of Public Prosecutions of the Republic, meet periodically at one or other of their headquarters, to asses the work undertaken. This provides the opportunity to deal with cases of corruption that have special characteristics together. Please refer to item a.2 of this report.

The Comptroller General's Office is also responsible for investigating acts of corruption and illicit enrichment, based on the information rendered by the public officials. In other words, the information declared by the public officials must be reviewed to determine whether there are inconsistencies or "warning signs" of possible acts of corruption that might trigger illicit enrichment, which is precisely the purpose of the Law. The Comptroller General's Office has been working hard to "digitalize" sworn declarations in order to include the information in a database to allow auditing processes to be automated. This work is still ongoing though, precisely because of current – legal and technical - limitations preventing **digital signatures from being** incorporated.

Despite the foregoing, an initial study on the "quality of the information declared" was conducted this year on a sample of 95 declarations and 61 cases of inconsistencies were detected. A process is now being followed to analyze the information in these declarations and enhance the

investigation procedures in place to facilitate detection of cases of "illicit enrichment." To undertake these investigation processes, this year the Comptroller General's Office set up a team of 6 officials with experience of criminal matters, to add value to the products generated as a result of these processes, so they would have a greater impact at the criminal headquarters.

4. MECHANISMS TO ENCOURAGE CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS TO PARTICIPATE IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH II)

The Republic of Costa Rica has considered and adopted measures to establish, maintain and strengthen mechanisms to promote the participation of civil society and nongovernmental organizations in efforts to prevent corruption, as noted in section 4 of Chapter II of this report.

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

4.1 Participation mechanisms in general

Based on the methodology adopted by the Committee, no recommendations are considered in this section.

4.2 Mechanisms for access to information

4.2.1 Institute legal standards and measures to support access to public information. To comply with this recommendation, the Republic of Costa Rica could consider the following measures:

a) Institute training and refresher programs to ensure that public officials understand and can apply, in a proper and timely manner, the rules and provisions protecting access to public information and that they recognize the consequences, both for the Administration and for themselves, when they deny such access without justification.

Progress Made a.4.2.1: Article 11 of the Costa Rican Constitution states that public officials are merely depositaries of the Law which they must abide by, and the Public Administration, in the broadest sense, is subject to a procedure to evaluate results and ensure accountability. Article 30 states that: "Free access to administrative departments for the purpose of obtaining information on matters of public interest," except for State secrets. Article 48 of that law also provides for the possibility to file appeals for the protection of fundamental rights in order to maintain or restore the enjoyment of other rights under the Constitution.

This legislation reaffirms the principle of access to information and the obligation of officials to provide it. Public employees have also been trained through seminars held by the

Office of the Attorney General of the Republic called "The legal position of applicants vis-à-vis the Administration," aimed at more than 300 officials in the Public Administration, decentralized sector and municipalities. Talks focus on the subject of citizens' rights to access to public information, its object, limitations, guarantees and protection. Iin May 2005, sixty-one public servants employed at the Offices of the Departamental Comptrollers' Offices were trained at the "Redesign of processes and simplification of procedures" workshop, thereby strengthening the subjects mentioned.

The Public Ombudsman's Office has also provided training on the rights and duties of public officials, covering aspects of the General Law on Public Administration, the Law on Corruption and Illicit Enrichment, the Law on the Protection of Citizens against Excessive Administrative Procedures and the Law on Internal Oversight.

b) Consider the advisability of integrating and systematizing in a single regulatory text the provisions that guarantee access to public information.

Progress Made: b.4.2.1 The Legal Affairs Commission of the Legislative Assembly is currently studying the Bill on Transparency and Access to Public Information, legislative file No. N° 16198. The purpose of this project is to regulate the mechanism of access to public information, and related aspects, in order to guarantee the effective exercise of that fundamental right, fostering transparency in the handling of public affairs and accountability.

c) Continue to create and to strengthen the Departmental Comptrollers' Offices, giving them the necessary human, technical and financial resources and publicizing the system and the services it offers, consistent with the study that the country conducted.

Over the last eighteen months, the efforts made to strengthen the Departmental Comptrollers' Offices have enhanced communication with the Ministry of Planning (MIDEPLAN), and these efforts are already reaping results, which include:

Achievement of an ongoing dialogue with all the people responsible for these Departmental Comptrollers' Offices; implementation of training activities on quality of service and customer service, redesign of process and simplification of procedures, internal oversight, etc., which are directly linked to knowledge of institutional activities and experience accumulated on issues matters directly related to the type of service provided and fulfillment of their objectives. This was one of the priorities set.

Of all the Departamental Comptrollers' Offices evaluated, 57.5% of them reported that they had received training on topics designed to enhance institutional management, process redesign and simplification of procedures, institutional management, application of indicators, legal aspects, and topics designed to enhance quality and customer service, services for persons with disabilities, services for senior citizens, use of Costa Rican sign language (LESCO), etc.

Another of the achievements is the application of the methodology prepared by the Technical Secretariat of Oversight Services of MEDEPLAN for the presentation of Work Report, which has been used since the first half of 2004 and whose main objective is to make it into a instrument for

assessing and follow-up its work, enabling policies and guidelines to be designed to strengthen the Departmental Comptrollers' Offices.

The creation of a Database on Work Reports and the holding of the First National Fair of Departmental Comptrollers' Offices in June 2005, at the Plaza de la Cultura, which was attended by 32 institutions. The staff on the stands gave the public explanations about their services, access, the role of a Comptroller of Services, answered queries and handed out material on the Bill on the Creation of Departmental Comptrollers' Offices which is pending approval by the Legislative Assembly.

It is important to mention at this point the ability to interest high ranking officials on the presentation of this Bill as a means of strengthening and consolidating the National System of Departmental Comptrollers' Offices. Responses were forthcoming in almost 90% of the cases and a close relationship was established with the Association of Departmental Comptrollers' Offices which fostered the exchange of opinions and feedback on a number of topics.

It became clear that even though the initiative behind the project was an achievement, the ability to strengthen the Departmental Comptrollers' Offices, would not depend exclusively on this, but on a clear and decided political will to support, allocate resources, professionalization and specialization in decision-making, which would position those Offices and strengthen the Technical Secretariat in MIDEPLAN.

The following table illustrates how the Departmental Comptrollers' Offices have been strengthened. The number of offices increased by around 45%, from 53 in 1997 to 74 in 2006.

EVOLUTION OF THE NATIONAL SYSTEM OF DEPARTMENTAL COMPTROLLERS' OFFICES (1997 to August 2006)

SECTOR	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Intersectoral	5	7	8	8	6	10	8	9	10	11
Agriculture & Livestock	6	5	5	5	5	7	7	7	7	7
Economics and Trade	2	3	3	3	3	3	2	2	2	2
Public Finance and Credit (including Banks)	7	6	8	8	6	6	7	7	7	7
Natural Resources, Energy and Mines	7	8	10	10	10	10	8	8	8	8
Transport & Public Works	3	4	4	4	5	3	3	4	5	5
Culture	1	1	1	1	1	*	*	-	-	
Education	3	6	6	6	6	6	6	6	8	8
Health	13	4-19*	4-19*	4-93*	4-92*	4-94*	4-112*	4-98*	5-98*	5
Labor and Social Security	4	5	5	5	3	3	3	3	3	3
Housing and Human Settlements	2	2	3	3	3	3	2	3	3	3

Municipalities	-	-	4	5	8	9	9	10	11	11
The Judiciary	-	-	-	-	1	1	1	1	1	1
Supreme Elections Tribunal	-	-	-	-	-	1	1	1	1	1
ARESEP	-	-	-	-	-	-	1	1	1	1
Office of the Public Ombudsman	-	-	-	-	-	-	1	1	1	1
TOTAL	**53**	**51**	**61**	**62**	**61**	**66**	**63**	**67**	**73**	**74**

(Source: Diagnosis National System of Departmental Comptrollers' Offices. 2005, Technical Secretariat of Oversight Services of the Ministry of Planning. (MIDEPLAN)).

d) Strengthen the mechanisms that guarantee the right of access to public information, so that it cannot be denied for reasons other than those determined by law, or on the basis of rules other than those established for this purpose, envisaging among other aspects the following: i) procedures for accepting requests and responding to them on a timely basis; ii) requirements on admissibility and consequences when such requirements are not met; iii) reasons why a request may not be denied; iv) method for communicating with the applicant; v) prompt and specialized administrative remedies for appealing a decision made by a public servant who wrongfully denies access to the information requested; and vi) increase the number of sanctions, so as order to cover a broader spectrum of circumstances that could hamper, delay or prevent the exercise of this right and that involve the conduct of public servants.

Progress Made d.4.2.1. In the absence of specific legislation, the topic has gradually been given form by the country's highest Constitutional body. The Constitutional Court, through rulings on appeal for protection of fundamental rights, has determined the scopes of this principle. The resolutions of the Constitutional Court are binding *erga omnes*. Citizens have access to information through this remedy which can be exercised against any infringement of fundamental rights (except personal freedom which is protected by *habeas corpus* appeal).

e) Continue strengthening and expanding information systems in the form of institutional web pages, as an effective means of publicizing the management of government affairs. The Committee recognizes the wide spectrum of electronic resources that the Republic of Costa Rica is developing to permit broad public access to information.

Progress Made: e.4.2.1 New online sources of information, available on the websites of the oversight bodies, and the existing websites of the State institutions have improved considerably, particularly those of the civil service which provide information on open tenders for hiring people, and the results of those tenders and enables online queries to be made. The website of the Civil Service Directorate has a new presentation whose purpose is to offer users quick and accurate access to information on the institution. The idea is that users can find applications to

suit their needs. It is also the first step in Public Administration's effort to implement digital government policies. These instruments seek to strengthen democracy by making institutional procedures more transparent. The website is www.sercivil.go.cr.

The website of the Ombudsman's Office, www.dhr.go.cr provides information on the administration of public resources in different institutions such as income, expenditure, budgets and salaries of 11 State institutions.

The Second Court of the Supreme Court of Justice, the Constitutional Court, www.poder-judicial.go.cr and the Comptroller General's Office: www.cgr.go.cr. Furthermore, in an effort to play a more active role in the modernization of the Costa Rican State, the Office of the Attorney General of the Republic has strengthened the (SINALEVI) through its webpage: www.pgr.go.cr which can be accessed by any user, through legislation modules for consulting the legislation in force, reforms and amendments, and the rulings and jurisprudence generated by each law, as well as the Constitutional Affairs module, a service for the e-mail dispatch of jurisprudence and a summary of the official journal, *La Gaceta*.

4.2.2 The Committee welcomes the work of the Constitutional Chamber of the Supreme Court of Justice, in which the recourse of *amparo* offers an open, dynamic and effective remedy for protecting the right of free access to public information.

4.3 Mechanisms for consultation

Supplement existing consultation mechanisms, establishing, as appropriate, procedures that will offer greater opportunities to hold public consultations before designing public policies and approving legal provisions.

To comply with this recommendation, the Republic of Costa Rica could consider the following measures:

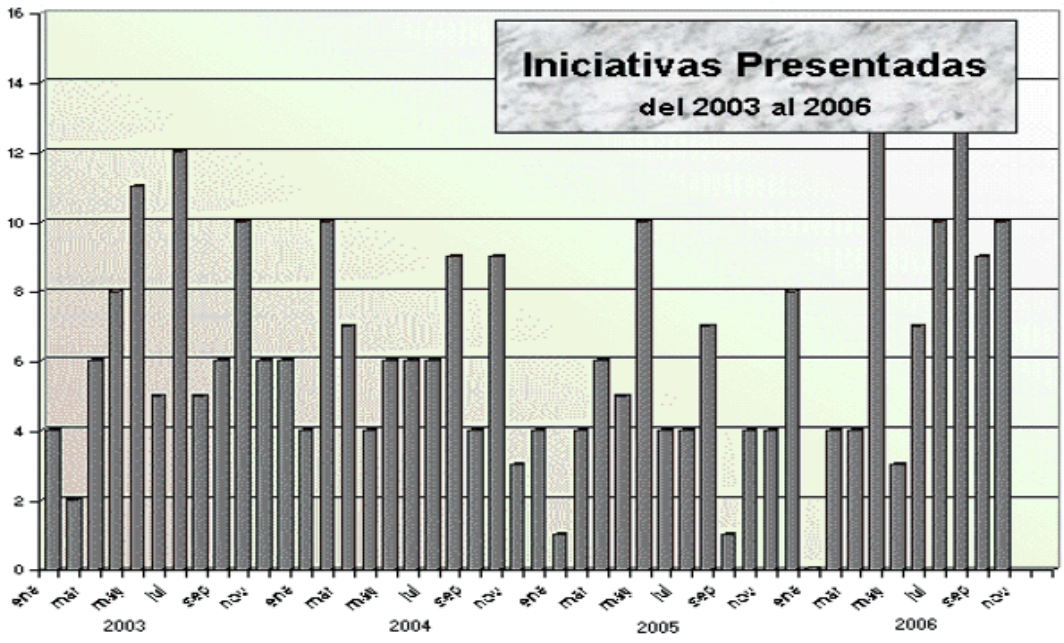
a. Create greater opportunities within the Legislative Assembly for civil society to express an opinion during debate and approval of legislation, and make such hearings mandatory when the matters discussed are sufficiently important or sensitive, with due regard to maintaining a proper balance between the need to encourage such participation and the need to maintain the efficient functioning of the Legislature.

Progress Made: a.4.3 The people's initiative office was created by the Legislative Assembly in order to provide more opportunities for participation by citizens, in an attempt to familiarize them with the country's most important Branch of Power. Anyone, even minors, can send suggestions, proposals and preliminary bills to this office. These are channeled to the deputies, reviewed and processed if they are found to be of interest.

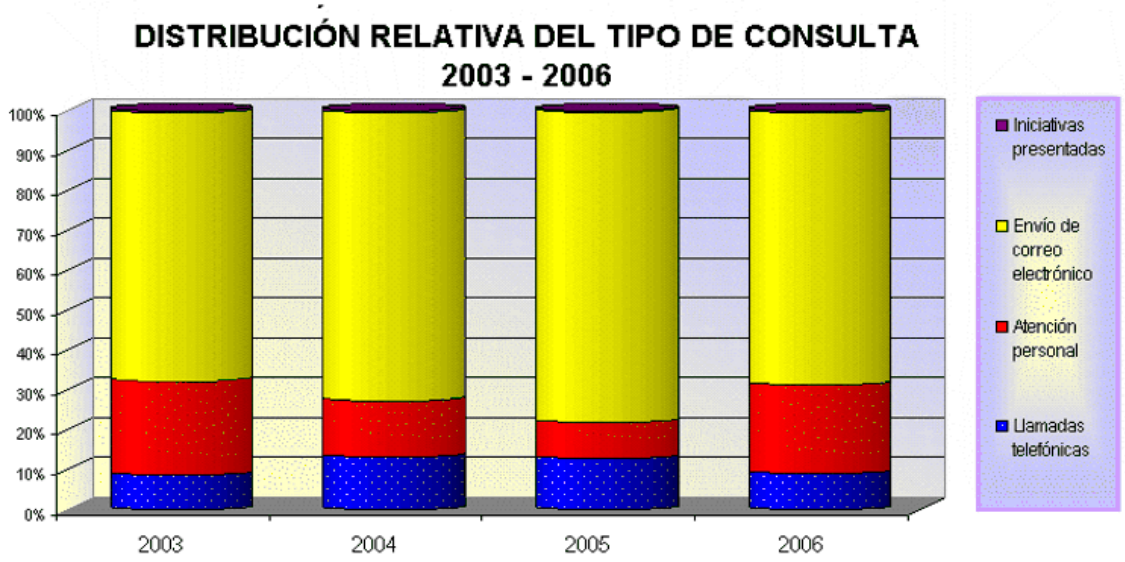
A freephone has been put into service to encourage the general public to use this office. The number is 800- 674-6466 and can be dialed to submit initiatives or obtain information. The address of the website is: www.asamblea.go.cr/iniciativa/iniciativatv.htm

Use of this tool increases each year by people wishing to play an active part in decision-making.

The following figure shows the structure of this office.



This figure shows the different ways in which citizens can present their initiatives. Electronic presentations are the most frequently used method.



It is also important to stress that, in order to make the lawmaking process more transparent, there are two areas that function in the plenary of the Legislative Assembly, one to which the general public has access and where they can freely express their opinion, and another specifically for the media.

b) Consider applying at the national level, consultation instruments similar to those of the Municipal Regime, and allowing those instruments to be convened, locally and nationally, by popular initiative, for issues where this is considered useful.

Progress Made: b.4.3. Through Law N° 8281 the following Articles were reformed: Articles 105, 123, 124 (1), last paragraph of Article 129, first paragraph of Article 195. Articles 102 and 195 of the Political Constitution were added, providing as follows: "The power to legislate resides in the people which delegates that power to the Legislative Assembly through suffrage. This power cannot be given up, nor is it subject to limitations through any agreement or direct or indirect contract, except treaties, in accordance with the principles of International Law.

The people can also exercise this power through a referendum in order to appeal or repeal laws and partial reforms of the Constitution. Referenda can be called by at least five percent (5%) of the citizens on the electoral roll.

Referenda may not be used for bills on budgetary, taxation, fiscal, monetary, credit, pension or security matters, approval of loans and contracts or acts of an administrative nature."

The Law on Popular Initiative N° 8491 of March 9, 2006, governs constitutional reform, stating that any citizen or group of citizens, organized *de facto* or *de jure*, interested in presenting a bill or a partial constitutional reform to the Legislative Assembly, shall deposit the corresponding bill with the Assembly, along with the appropriate sheets containing the required percentage of

signatures. The Assembly shall order the State to publish it in *La Gaceta*,; The Office of Popular Initiative of the Legislative Assembly shall provide technical advice free of charge for the drafting of the bills, and the procedures to be followed, to citizens interested in exercising the right to popular initiative in accordance with this Law. The Ombudsman's Office will offer these services to citizens through its offices nationwide.

c) Using instruments similar to those already in place in specific areas, such as the environment and urban planning, for consultation in other matters, or develop other suitable mechanisms for consultations in further areas.

Progress Made: c.4.3. The Municipal Code, Law N° 7794 dated April 30, 1998, states: "Article 18.—The following shall be automatic grounds for the withdrawal of the municipal mayor's credential: a) Losing a requisite or having an impediment as provided for in Articles 15 and 16 of this Code ….c) being declared, by a final judicial ruling, disqualified from exercising public office. d) Any of the grounds provided for in Article 73 of the Organic Law of the Comptroller General's Office. *(Previous paragraph reworded as per Article 66 of Law N° 8422 of October 6, 2004).* e) Committing any action punishable by law and loss of office in the case of officials elected by the people ….

Article 19.—Through a motion presented to the Council, which must be signed by at least one third of all the councilors and approved by at least three quarters of the council members, the electors of the respective *cantón* shall vote on whether or not they wish to dismiss the municipal mayor. The decision may not be vetoed.

The votes needed to dismiss the municipal mayor must add up to at least two thirds of those issued in the plebiscite, which must not be less than ten percent (10%) of the total number of electors registered in the *cantón*….

If the consultation results in the dismissal of the official, the Supreme Elections Tribunal shall replace the mayor in accordance with the provisions of Article 14 of this Code, for the remainder of the term. …"

As can be seen from the wording, both the voters and the council are given the opportunity to call a plebiscite to remove the municipal mayor. This makes it a useful means of controlling Municipal management and it is particularly important if one bears in mind that at least 23 municipal entities have territorial competence in the administration of the Maritime Zone *(Zona Marítimo Terrestre)* which has become an environmental component. Furthermore, the issue of urban planning is undoubtedly one of the municipalities' recognized areas of competence.

d) Consider the possibility of formulating specific provisions within the current constitutional and legal framework to promote the creation and recognition of bodies representing civil society organizations and institutions at the municipal level, authorized to review and to propose public policies in specified areas, establishing at the same time the right to obtain information as appropriate.

Progress Made: d.4.3 Within the constitutional and legal framework in force, the aspects mentioned in point b.4.3. are reiterated and, in conformity with Articles 35 and 41 of the Municipal Code, Council Sessions must be announced in advance in the official journal, *La Gaceta*. Council sessions are public and the Council must regulate the participation of individuals.

e) Consider the possibility of formulating specific provisions within the current constitutional and legal framework to incorporate, organize, and recognize urban community institutions (neighborhood councils or committees) with the authority and right to present initiatives and requests for municipal works and services for their neighborhoods.

Progress Made: e.4.3 We reiterate points b.4.3 and d.4.3.

4.4 Mechanisms to encourage participation in public administration

Strengthen and continue implementing mechanisms to encourage civil society and nongovernmental organizations to participate in public administration. To comply with this recommendation, the Republic of Costa Rica could consider the following measures:

a) Establish additional mechanisms that strengthen the participation of civil society organizations in public management and especially in efforts to prevent corruption, and promote awareness of those mechanisms and their use.

Progress Made: a.4.4.1 Additionally, the ability for citizens to file complaints was strengthened through the Law on Corruption and Illicit Enrichment of Public Servants, as mentioned earlier.

b) Determine that the result derived from the exercise of these mechanisms be considered a vital contribution to the decision-making process.

Progress Made: b.4.4.1 Costa Rica, being a democratic country that represents the will of the people, has made efforts to expand the degrees of citizen participation in decision-making, and the citizens have responded to those concern, as shown from the progress described in a.4.3. The first Branch of Power of the Republic is elected by the people and the deputies. The opinion of the people is unquestionably vital in strengthening transparency in the work of the Legislature.

c) Continue to promote and strengthen programs with objectives similar to those of the Office of Popular Initiative created by the Legislature.

d) Design and implement programs to disseminate mechanisms for encouraging participation in public management and, as appropriate, provide training and the necessary tools to civil society, and nongovernmental organizations, and public officials and employees for using those mechanisms.

Progress Made: d.4.3 The Public Ethics Prosecutor designed the Strategic Operating Plan (PAO) for 2007- 2010 which will include training programs for public officials and civil society, in order to encourage participation in public administration.

These training programs include preparing and distributing guides in electronic format in which the ethical principles that govern the exercise of the public service are developed so they can be used by the Public Administration's Human Resources departments as guidelines for personnel induction. Also under consideration is the creation of audiovisual instruments to facilitate and encourage the adoption of those provisions.

Another training project planned for the beginning of 2007 is the dissemination of information on the procedures or services available to individuals from the Public Administration. The idea behind this initiative is that by making citizens aware of the government services available to them, they can be made more efficient, relevant and useful and hence faster and more functional, all of which shows that good relations and good communication between the Administration and citizens/users improves the quality and provision of government services.

There is a joint project underway with the Universidad de Costa Rica, with support from the Office of the Vice President of the Republic, to create the Observatory of Corruption, which is being coordinated under the Office of the Public Ethics Prosecutor and should encourage the public and private sectors to become involved in activities aimed at preventing, detecting and eradicating corruption. This should go hand in hand with activities to promote the ethical performance and transparency needed in the civil service.

The goal sought is for the Observatory to offer concrete information compiled through studies and research not previously undertaken in Costa Rica.

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

Strengthen and continue implementing mechanisms that encourage civil society and nongovernmental organizations to participate in the follow-up of public administration. To comply with this recommendation, the Republic of Costa Rica could consider the following measures:

a) Promoting additional methods, when appropriate, that will allow, facilitate and assist civil society organizations in the development of activities for the follow-up of public administration.

Progress Made: a.4.5. Efforts have been made to encourage other sectors of the State to promote and help civil society to develop activities to follow up public management. For instance, the State universities have undertaken a series of activities involving the study and analysis of legislation on corruption in the country and the major challenges faced in this area. In May 2005, the Universidad Nacional held the international seminar "Ethics, power and enterprise." In August 2005 the Universidad de Costa Rica held a seminar for analysis and reflection called "Elites, policies and corruption," and introduced a course at the Faculty of Law called "Corruption and impunity: The problem with the administration of justice."

The State of the Nation program in its report No. 11 of October 2005, developed a special chapter on the topic of political corruption in Costa Rica, the evolution of the legal framework for fighting corruption and thoughts derived from the corruption scandals of 2004.

The professional associations in our country have shown a special interest in the topic of fighting corruption and have organized out a number of activities for their members and for the general public. For instance, the Bar Association held a legal congress called "Ethics with Social Responsibility" in August 2005. It also organized a round table on the "Law on Corruption and Illicit Enrichment: framework of action or staightjacket" in May 2005.

The Association of Public Accountants of Costa Rica organized the forum "Government Accountability: curbing corruption"

The Chamber of Industries held a seminar on the Law on Corruption and Illicit Enrichment.

b) Implementing awareness and training programs, in addition to those that already exist, directed at civil society and nongovernmental organizations on the aspects dealt with in sections 4.1 to 4.5 of this Report.

c) The possibility of including specific provisions within the existing legal framework authorizing civil society institutions created and organized at the municipal level to oversee and monitor the allocation and use of public resources.

Progress Made. c.4.5. As indicated in b.4.3, the Law on Popular Initiative was passed, thereby increasing the possibility of citizen participation. Furthermore, with the Law on Transparency and Access to Public Information referred to in b.4.2.1, the intention is to create specific legislation applicable to the whole of the Public Administration and information on it will be accessible to the general public.

Oversight of public resources by citizens at all levels is possible through the principle of access to information, implemented under the Constitution and safeguarded through appeals for the protection of fundamental rights, in accordance with the Municipal Code, the sessions and minutes of the Municipal Council are public and citizens can attend them and demand accountability (Article 41 Municipal Code).

d) The convenience of establishing mechanisms within the existing legal framework, which grant civil and urban communities that are created and organized at the provincial

level, functions and powers to monitor municipal works and services for the neighborhood, and the use of resources budgeted and allocated for that purpose.

Progress Made: d.4.5. As mentioned in point d.4.3, Municipal Council sessions are public and any neighbor can attend them and exercise his constitutional guarantee of access to public information, as indicated above, by demanding accountability for the public funds managed by them.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

The Republic of Costa Rica has adopted measures in relation to mutual technical cooperation and mutual assistance, in accordance with the provisions of Article XIV of the Convention, as described and reviewed in Chapter II, Section 5 of this Report.

In view of the comments made in the above-mentioned section, the Committee suggests that the Republic of Costa Rica consider the following recommendations:

5.1 Determine those specific areas in which the Republic of Costa Rica sees the need for technical cooperation with other States parties in order to strengthen its capacities to prevent, detect, investigate and punish acts of corruption. As well, the Republic of Costa Rica needs to determine and prioritize requests for mutual assistance in investigating or prosecuting cases of corruption.

Progress Made: 5.1. With the preparation of the Annual Operating Plan of the Office of the Public Ethics Prosecutor, the ability to fight corruption in terms of the budget, technology and human resources was diagnosed.

Through this objective analysis the weaknesses or shortcomings of the system or mechanisms used were determined. These include, for instance:

The lack of interdisciplinary human resources for the long and medium term activities planned to prevent and detect weaknesses and shortcomings in this field.

Insufficient budget for the long and medium term activities required for prevention and detection. Technical cooperation from other States is necessary in order to train officials, above all bearing in mind that the fight against corruption is becoming increasingly complex and its ramifications stretch beyond the country's borders, necessitating true and effective international cooperation. The intention is to make the Office of the Public Ethics Prosecutor Costa Rica's official anti-corruption agency.

5.2 Continue efforts to exchange technical cooperation with other States parties on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption.

Progress Made 5.2. In the field of international cooperation, the Ibero-American Network of Judicial Cooperation (Iber-red), which began operating in November 2005, must be strengthened.

Its objective is to optimize judicial cooperation in criminal and civil matters and gradually establish an information system on the different legal systems in Latin America, and keep it up to date.

5.3 Design and implement a comprehensive information and training program for responsible authorities and officials, with the objective of ensuring that they are aware of and can apply mutual assistance provisions for the investigation or prosecution of acts of corruption provided for in the Convention and in other treaties subscribed by Costa Rica.

Progress Made: 5.3. The Public Prosecutions Service, the body responsible for criminal investigation and prosecution, has implemented training courses for its officials in order to specialize the offices that prosecute corruption, economic and tax crimes.

5.4 Design and implement an information program with which the Costa Rican authorities can ensure follow-up to requests for legal assistance relating to acts of corruption and, in particular, those covered by the Inter-American Convention against Corruption.

Progress Made. 5.4. Since the Office of the Public Ethics Prosecutor was designed as the Central Authority provided for in Article XVIII of the Inter-American Convention against Corruption, it is through this office that requests for assistance are channeled.

As of January 10, 2006, the Office of the Public Ethics Prosecutor implemented a system for recording requests for legal assistance or letters rogatory, creating a file of the requests submitted and a database containing pertinent information to enable the authorities to follow up those requirements on an ongoing basis.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

The Committee notes that, according to the information provided by the Republic of Costa Rica in its response, a central authority has been designated for the purposes of international assistance and cooperation outlined in the Convention. However, as this designation was made by an executive order that has not yet met the formal requirement of publication in the Official Gazette of the state reviewed and, in consequence, has not yet been reported to the OAS General Secretariat, the Committee suggests that the Republic of Costa Rica consider the following recommendations:

6.1 Conclude the formalities necessary to finalize the appointment of the Office of the Public Ethics Prosecutor as the Central Authority described in Article XVIII of the Convention for the purposes of the international technical assistance and cooperation set forth therein.

Progress Made: 6.1 Through Executive Decree N° 32090 of April 21, 2004, the Office of the Public Ethics Prosecutor was appointed as the Central Authority for channeling the mutual assistance and technical cooperation provided for within the framework of the Inter-American Convention against Corruption. This Decree was published in the official journal, *La Gaceta*, N° 219 of November 9, 2004.

6.2 Inform the General Secretariat of the OAS of the appointment of the Office of the Public Ethics Prosecutor as the central authority.

Progress Made: 6.2 On June 21, 2006, Costa Rica appointed the Office of the Public Ethics Prosecutor as the central authority provided for under Article XVIII of the Inter-American Convention against Corruption Inter-American Convention against Corruption to provide the international assistance and cooperation envisaged in the treaty (details at: www.oas.org/juridico/spanish/firmas/b-58.htm1).

6.3 Ensure that, once the authority is designated, it has the resources necessary to fulfill its functions.

The Office of the Public Ethics Prosecutor has, to date, five prosecuting attorneys, six lawyers, one auditor and administrative support staff to help it to fulfill the purposes for which it was created.

7. GENERAL RECOMMENDATIONS

Taking into account the comments made throughout this Report, the Committee suggests that the Republic of Costa Rica consider the following recommendations:

7.1 Design and implement, when appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this Report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.

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

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

8. FOLLOW UP

The Committee will consider the periodic update Reports submitted by the Republic of Costa Rica concerning progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance of the provisions of Article 30 of the Rules of Procedure.

Similarly, the Committee will review the progress in implementing the recommendations made in this Report, in accordance with the provisions of Article 31 and, when and if appropriate, with the provisions of Article 32 of the Rules of Procedure.

The Committee wishes to place on record the Republic of Costa Rica's request that the Secretariat publish this Report on the Mechanism's website, or by any other means of communication, pursuant to Article 25 (g) of the Rules of Procedure.

OTHER MEASURES TAKEN BY THE COSTA RICAN STATE TO ERADICATE, PREVENT, DETECT AND PUNISH ACTS OF CORRUPTION:

In its endeavor to eradicate corruption, the Public Property Registry is implementing a project to abolish the practice of personal favors in bureaucratic procedures, by taking the following measures:

- Measuring the work of registrars (quality and quantity): "Under the principle that measuring is controlling and controlling is improving, the project "Measuring the work of National Registry registrars" was implemented. Its objective is to define each of the registry indicators that provide information on the quality, quantity and efficiency of the work undertaken at registries.

- Rating guides: (quality): In order to have clear-cut rules on the internal and external rating of the quality of registries, the project "Creation and application of Registry Rating Guides" is being developed.

- Oversight and Inspection Office: The project was developed to in order to set up an office in charge of undertaking official investigations, in response to requests or orders, of complaints regarding acts of corruption and abnormal activities within the National Registry, and also to carry out random inspections of the work of registrars and registry officials.

- Priority in the Registries: In response to malpractice by some Registrars who do not handle cases the order in which they are presented, the projects "Priority in the Registries," was developed and implemented as of November 2005.

Under this project the information systems at each of the Registries will be modified in order to prevent a document from being registered out of turn. In other words, the registrar must finish the work allocated for that day before beginning on another day's work, and is prevented by the system from doing otherwise.

Control of access and permanence: Only authorized staff are authorized to enter and remain in each area. The system prevents an official assigned to one area from visiting or having access to another area outside his area of work.

Name of the registrar: The computer systems were modified to prevent the name of the registrar responsible for a document from being obtained. This information can only be obtained by Directors, thereby preventing the public or user to locate the registrar in charge to obtain a personal favor in relation to a document in which they have an interest.

Regulating the service provided by registrars' coordinators: Having reviewed the services provided by the coordinators, it was concluded that they deal mainly with people who act as intermediaries and do not understand the mistakes contained in the documents. Therefore a guideline was issued ordering coordinators to deal only with properly identified Notaries.

Although it has not yet come into effect, the Legislative Assembly approved "The Code of Contentious-Administrative Procedure" which is intended to regulate aspects pertaining to the legal process of the Contentious-Administrative Jurisdiction established in Article 49 of the Constitution which governs the legal situations of all persons in order to guarantee or restore the legality of any conduct by the Public Administration under Administrative Law.

It is important to highlight the efforts of the Office of the Attorney General of the Republic to produce the Administrative Procedure Manual on CD-ROM for distribution to all the institution's officials so as to guarantee that the systems, standards, measures and mechanisms of the process are applied and handled responsibly.

SECTION III

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

Please provide the following information:

(a) State Party: **Republic of Costa Rica**

b) The official to be consulted regarding the responses to this questionnaire is:

Mr.: Ronald Viquez Solís

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ANNEXES IN ALPHABETICAL ORDER

1. Cooperation Agreement between the Judiciary and the Ministry of Public Security N° 24-CG-04
2. Municipal Code
3. Criminal Code
4. Political Constitution
5. Decree N°32090, appointing Office of the Attorney of Ethics Central Authority
6. Decree 33146. Ethics in the public service
7. General guidelines on ethical principles
8. Public Sector Scheme
9. Autonomous Services Statute
10. Civil Service Statute
11. Judicial Service Statute
12. Internal Rules on filing PGR complaints
13. Law on Financial Administration
14. Law on Corruption and Illicit Enrichment
15. Law on Administrative Contracting
16. Law on the Public Ombudsman's Office
17. Law on Legislative Assembly Staff
18. Law on Registries and Judicial Archives
19. General Law on Concession of Public Works
20. General Law on Internal Oversight
21. Limits for deciding on public procurement procedures
22. Guidelines on handling CGR complaints
23. Procedure Manual Administration Teaching Staff
24. Organization Chart CCSS

25. Organization Chart Racsa
26. Average Budget for Procurement of Goods
27. Amended Law on Public Procurement
28. Amended Organic Regulations on the Office of the Comptroller General
29. Regulations on the Law on Corruption and Illicit Enrichment
30. Regulations on the Teaching Career
31. Regulations on the Civil Statute
32. Regulations on the Endorsement of Government Contracts.
33. Resolution N° 4680. Comptroller General's Office.

Footnotes

[1] Article 194 of the Constitution stipulates the oath that public officials must swear:
"ARTICLE 194.- The oath that public officials must swear, stipulated in Article 11 of this Constitution is as follows:
"Do you swear before God and your Country that you will observe and defend the Constitution and the laws of the Republic, and faithfully fulfill the duties entrusted to you? – I so swear.- If you so do, then may God help you, and if you do not so swear, may He and your Country demand satisfaction."

[2]Article 130 of the Constitution states: "The Executive Branch of Power shall be exercised by the President of the Republic, on behalf of the people, with the help of the Government Ministers."
[3] The Constitutional Court, through vote N° 5129-94 at 17:30 hours on September 7, 1994, ruled as follows: "(…) job stability guaranteed under Articles 191 and 192 of the Constitution according to rules that guarantee stable but not permanent employment. Therefore if in order to improve efficiency, the Administration must transfer officials, change their functions or carry out an administrative reorganization, the existence of a prohibition on removing employees from their jobs cannot be alleged, because those reasons justify the movement of officials (…)".
[4] Regulations on the Teaching Career, Executive Decree N° DE-2235 of February 14, 1972.
[5] Regulations on the Teaching Career, Article 2.
[6] Regulations on the Teaching Career, Article 5.
[7] Article 55 of the Civil Service Statute states: "Persons wishing to enter the teaching career must:
a) Submit the following personal documents:
1) Written application by the interested party;
2) *Annulled by Constitutional Court resolution No. 5569-00 passed at 9:04 hours on July 7, 2000.*
3) Degrees, diplomas or certificates of studies completed or experience;
4) Certificate of health issued by the dependencies authorized by the Ministry of Public Health, which must be renewed every two years; and
5) Judicial criminal record certificate.
b) Meet the requisites indicate in Article 20 of this Statute; and
c) Declare that they are free of obligations or circumstances that prevent them from performing the duties inherent to the position adequately."
[8] Regulations on the Teaching Career, Article 31.
[9] Regulations on the Teaching Career, Article
[10] Article 14.- The following are attributions of the Civil Service Tribunal: To try
a) In the first instance, cases of dismissal, as a result of information generated by the Directorate General.

b) In a single instance without right of appeal, complaints filed by complainants over provisions or resolutions of the Directorate General, if they allegedly caused harm.
c) In a single instance without right of appeal, complaints over provisions or resolutions generated by the Bosses, if they allegedly caused harm, as a result of information generated by the Directorate General. (emphasis added).

[11] See Decision of the Attorney General of the Republic N° C-287-2005 dated August 8, 2005 on the subject of teaching staff appointed on an interim basis.

[12] Law on Legislative Assembly Staff N° 4556 of April 29, 1970, Article 9.

[13] Law on Legislative Assembly Staff, Article 10.

[14] Law on Legislative Assembly Staff, Article 11.

[15] Board shall mean the Board of the Legislative Assembly

[16] Law on Legislative Assembly Staff, Article 12.

[17] See Office of the Attorney General of the Republic, Decision N° C-256-2006 dated June 19, 2006.

[18] Judicial Service Statute, Law N° 5155 dated January 10, 1973, Article 1.

[19] We shall refer to the appointment of Magistrates further on.

[20] The Judiciary Job Description Manual *(Manual Descriptivo de Clases)* refers to the series of specifications establishing the duties and attributions of the different positions in the Judiciary and the requisites to be complied with by the people who hold them. This Manual will be prepared by the appropriate technical body of the Supreme Court of Justice, approved by agreement of the Full Court *(Corte Plena),* taking into account, where applicable, the provisions of the Organic Law of the Judiciary and the Judicial Service Statute. Any changes to the Manual must be approved by the Full Court. (Articles 1 and 2 of the Law on Salaries in the Judiciary, Law N° 2422.)

[21] Judicial Service Statute, Article 18 and 18 bis.

[22] Judicial Service Statute, Article 19 and 19 bis.

[23] Judicial Service Statute Judicial, Article 20 and 20 bis.

[24] Judicial Service Statute, Articles 23 to 32.

[25] Judicial Service Statute, Articles 83 to 78.

[26] The Constitutional Court issued its opinion on this matter in 2002-07832 at 9:45 hours on August 12, 2002, and N° 20036-01111 at 14:41 hours on February 12, 2003.

[27] Law on Salaries and the Merit System of the Supreme Elections Tribunal and the Civil Register, Law N° 4519 of December 24, 1969, Articles 2 and 3.

[28] Constitution, Law N° of November 7, 1949, Articles 100 and 101.

[29] According to a temporary provision in Law N° 1353 dated June 24, 1965 "The election of the three new alternate Magistrates shall take place within two months after this constitutional reform is passed, when the Supreme Court of Justice will draw lots to establish the expiry date of the terms of the each of the alternates elected prior to this reform; thereafter two of the alternates may be elected every two years."

[30] Law on Salaries and Merit System of the Office of the Comptroller General of the Republic, Law N° 3724 dated August 8, 1966, Article 2.

[31] Autonomous Services Statute, Resolution N° 4DRH-96 of May 3, 1996, Article 11.
Article 11. —On the rules applicable to Senior Management.

1) Covers the positions of Comptroller General of the Republic and Deputy Comptroller General of the Republic who are responsible for ensuring that the Institution functions smoothly.
2) They shall be appointed and removed in accordance with the terms of Article 183 of the Constitution and the system established under Article 38 and subsequent articles of the Organic Law on the Office of the Comptroller General of the Republic.
(Added as per resolution issued by the Office of the Comptroller General of the Republic dated December 19, 2002)
(Amended as per resolution R-SC-04 dated July 7, 2006)

[32] Article 12. —On the rules applicable to Trusted Officials.

1) Covers officials who report directly to the Office of the Comptroller General and the Office of the Deputy Comptroller General who provide technical and advisory services. They are: Assistant A, Assistant B, Advisor A and Advisor B, and their functions, requisites and other relevant aspects must be stipulated in the respective classification manual.
2) Officials in the above positions shall be trusted servants and shall be appointed to and removed from office at the discretion of the Comptroller General, to whom they report directly. People appointed to these positions must comply with the requisites established in the respective manuals. Compliance therewith shall be verified by the Human Resources Unit.
3) Appointments to positions of trust may cease unilaterally without employer liability, by decision of the Comptroller General. If the appointment of the Comptroller General ceases for any reason, the appointments to positions of trust shall automatically cease. All other matters are subject to the same provisions that apply to the Institution's regular officials.
In the cases mentioned above, all public officials must honor their financial and other commitments to the Institution prior to leaving its service. Notwithstanding the foregoing, the Comptroller may accept their assurance that they will honor any such pending commitments.
(Reworded as per resolution R-SC-04 dated July 7, 2006)

[33] Article 13. —On the rules applicable to Management staff.
1) Covers the staff who define the direction and organization of the Institution's Strategy. Includes the following positions: Division Manager, Area Manager and Associate Manager, each of them being responsible for the results of the dependency under them.
2) Division Managers are appointed for an eight-year fixed term, commencing January 1 of the year following the date the Legislative Assembly must normally appoint the Comptroller General pursuant to Article 183 of the Constitution. If for any reason the manager appointed does not complete his term, his replacement will only be appointed for the remainder of that term.
3) Area Managers and Associate Managers are appointed for an eight-year fixed term, commencing January 1 of the year following the date the Legislative Assembly must normally appoint the Comptroller General pursuant to Article 183 of the Constitution. If for any reason the manager appointed does not complete his term, his replacement will only be appointed for the remainder thereof.
Temporary provision I: Officials who, prior to this reform and as a result of the appropriate competitive processes, were appointed for a fixed term as Division Managers, Area Managers, Associate Managers, Heads of Unit and Technical Assistants of the FOE, shall keep their original appointments and the rights that were effective at the time of their fixed term appointment.
Temporary provision II: As of the entry into effect of this amendment, officials appointed for the first time as Division Managers shall be appointed for a fixed term up to December 31, 2012, while Associate Managers and Area Managers will be appointed for a fixed term up to December 31, 2013.
Temporary provision III: Officials appointed for a fixed term as Heads of Unit or Technical Assistants of the FOE prior to this amendment, shall return to the permanent position held prior to their appointment and may participate in the corresponding selection processes for appointment of officials who will occupy those positions for an indefinite term.
4) Division Managers, Area Managers and Associate Managers will be appointed by the Comptroller General following the established selection procedure. Appointees must comply with the requisites stipulated or the position and appointments will be subject to a one-year trial period
5) Officials appointed to management positions shall enjoy job stability only for the period or their appointment. However, they may be removed before the expiry thereof if they commit any serious act of misconduct or in the event of a reorganization to improve the quality and efficiency of the public service.
6) Civil servants employed by the Office of the Comptroller General who were appointed to any of these positions shall enjoy full rights and during their appointment shall be granted special unpaid leave from their current permanent position. They may return to their former position at the end of this appointment.
7) Officials entering or reentering the Office of the Comptroller General to occupy one of the positions mentioned in this point shall, subject to the respective selection procedure and satisfactorily completion of the one-year trial period, be assigned to a permanent position as Inspector, in accordance with the institution's circumstances, and granted special unpaid leave until the end of their fixed-term appointment. Civil servants may remain in this position at the end of their management appointment.

8) The service relationship of officials in management appointments can be terminated for any of the following reasons:
a) If the civil servant does not perform efficiently during the trial period.
b) If the civil servant decides to resign from the position and return to the permanent position previously held, in which case notice need not be given.
c) If the civil servant resigns from Office of the Comptroller General, in which case the notice provided for under the terms of the law must be given and the labor benefits applicable must be paid to him.
d) If the civil servant's employment ceases because he takes retirement, or if a competent authority declares that he is unable to remain in office due to a permanent disability.
e) If the civil servant is dismissed without employer liability, in cases where this is applicable under the legislation in force on the matter.
In this case dismissal will also include dismissal from the permanent position normally held.
f) If the civil servant is dismissed without employer liability, where this is strictly necessary and in the opinion of the Comptroller General, if according to the Costa Rican Social Security Fund the servant's disability persists for an uninterrupted period of more than three months, in which case he may be removed from office subject to payment of the sum of money corresponding to the notice period, vacation due and any other labor benefits applicable.
In the cases indicated above, all civil servants must honor their financial and other commitments with the Institution prior to leaving office. Notwithstanding the foregoing, the Comptroller may accept their assurance that they will honor any such pending commitments.
(Reworded as per resolution R-SC-04 dated July 7, 2006)
[34] Article 14. —On the rules applicable to Regular staff.
1) Covers all positions negotiated with essential officials to satisfy the Institution's own permanent needs, once they have complied with all the regular competitive requirements for entry into the service of the Oversight Body whose occupants are in turn entitled to be promoted, transferred or changed to other budget codes .
2) Regular positions are any positions in the Institution not included in Articles 11), 12), 13) and 15) of this Chapter and the service relationship is governed by the legislation and this Statute, including the Internal Auditor, except as regards the appointment and dismissal procedure, which is governed by the provisions of the General Law on Internal Control and other specific provisions applicable.
3) Appointments to these positions are for an undetermined period, subject to a trial period of six months during which time either of the parties may terminate the service relationship without incurring any liability.
4) To enter the Office of the Comptroller General in such positions, applicants must demonstrate their suitability through the competitive application process established by the Human Resources Unit. Interim appointments can be made pending compliance with the competitive application procedure or until the official returns to his position. Such appointments are subject to the candidate satisfying the requisites for the position and a review of his background and lifestyle by the Human Resources Unit.
5) Officials are promoted subject to the following terms and conditions:
1.When there is a permanent or temporary vacancy in a Division or in the Internal Audit Office, the Division Manager or Internal Auditor can recommend direct promotion of any of the collaborators who provide their services to those dependencies, provided the proposed promotion fulfills the following requisites:
a) The candidate proposed must hold a permanent position or a reserved position on an interim basis, to which he was appointed through a competitive entry process.
b) The candidate's salary level must be the one immediately above his current level.
c) The proposed candidate must satisfy the requirements stipulated for the category to which he is to be promoted.
d) Promotion may not be directly to the category of assistant inspector, as that is the point of entrance to technical categories that are immediately below the professional level, because the line of activity is different and therefore the corresponding competitive entry procedures must be followed.

2. The Human Resources Unit shall provide the respective Division Manager or Internal Auditor with the information required, and shall ascertain compliance with the terms of the previous point and process the corresponding appointment.
3. If a Division Manager or the Internal Auditor decides not to proceed in accordance with the powers established in point 1 above, he must justify his decision, giving specific reasons for it so that the Human Resources Unit can proceed as follows:
a) Invite candidates from the institution to apply through an internal competition, unless there are registers of eligible internal candidates from which three could be shortlisted for the vacancy. If the Division Manager or the Internal Auditor fail to select any of the candidates from this shortlist they must justify this in writing. Depending on the justification, a decision may be reached to shortlist three external candidates, according to the procedure as indicated in the next point.
b) Invitation to apply through an external competition, unless there are registers of eligible external candidates from which three could be shortlisted for the vacancy.
c) If the public service so requires and the respective Division Manager or the Internal Auditor justifies this, an external competition could be held immediately, without having to hold an internal competition.
6. Appointments to these offices shall be made as follows: the Comptroller General will make the appointments to fill vacancies for Internal Auditor, Head of Unit and Technical Assistant to the FOE; in all other cases appointments will be made by the respective Division Manager or Internal Auditor, and formalized by the Human Resources Unit, being the dependency delegated by the Comptroller General for this purpose.
7. In the case of interim appointments to reserved vacancies, the Division Managers and the Internal Auditor may transfer personnel to other reserved vacancies under the same category and at the same salary level as the candidate's, provided the transfer is made within the same dependency.
8. The service relationship of officials in regular positions may be terminated for any of the following reasons:
a. If civil servants fail to perform efficiently during their trial period, or if they servant voluntarily decides to leave their position during that period.
b) If they wish to leave the Office of the Comptroller, in which case they must give notice in accordance with the legislation in force and shall be entitled to the labor benefits applicable.
c) Because their functions cease as a result of retirement or because, according to a decision by the appropriate authority, they have a permanent disability preventing them from continuing in their functions.
d) Due to dismissal without employer liability, in cases where this is applicable under the legislation in force on the matter. In cases of officials who have been promoted on an interim basis, the dismissal will also apply to the position he would have held on a permanent basis.
e) Due to dismissal with employer liability in cases where it is strictly necessary and in the opinion of the Comptroller General, when according to the Costa Rican Social Security Fund, a public official is unable to work for a continuous period of more than three months, in which case he may be dismissed subject to payment of the sum corresponding the notice due and the worker's redundancy, vacation and any other labor benefits the worker is entitled to.
In the cases indicated above, all servants must honor their financial and any other commitments towards the Institution before leaving its employment. Notwithstanding the foregoing, the Comptroller may accept their assurance that they will honor any such pending commitments.
(Amended as per resolution R-SC-04 dated July 7, 2006)
[35] Article 15. —On the rules applicable to Special Services Staff and Student Internships.
1) Special Services cover fixed term employment at professional, technical or administrative level which as such come under the budget item Salaries for Special Services or Free Lance Employment in the Budget Law and involve a working relationship in order to hold jobs of a special temporary nature to carry out a work or service when the starting and finishing dates are known in advance. The staff will be answerable to a superior and must comply with the terms of this Statute.
2) In order to designate people to Special Service appointments. the Human Resources Unit must check that the candidate complies with the requisites on suitability. The Division Manager or Internal Auditor, as appropriate, shall make the appointment.

3) The service relationship of officials in Special Service positions may be terminated for any of the following reasons:
a) At the end of their term.
b) If a periodic assessment of the services reveals that the servant's performance is not efficient enough.
c) Due to the resignation of public official in the service of the Office of the Comptroller, in which case notice must be given according to the terms of the law, and the corresponding labor benefits paid.
d) Due to dismissal without employer liability, as appropriate, in accordance with the legislation in force on the matter.
e) Due to dismissal with employer liability in cases where this is strictly necessary and in the opinion of the Comptroller General, when according to the Costa Rican Social Security Fund, a public official is unable to work for a continuous period of more than three months, in which case he may be dismissed subject to payment of the sum corresponding to the notice due and the redundancy, vacation and any other labor benefits the worker is entitled to.
In the cases indicated above, all servants must honor their financial and any other commitments towards the Institution before leaving its employment. Notwithstanding the foregoing, the Comptroller may accept their assurance that they will honor any such pending commitments.
4) The Office of the Comptroller may help to arrange internships for students from vocational colleges, as well as university community work and other types of academic work, without employer liability since the work is undertaken for a merely educational purpose and is not remunerated.
According to the budgetary availability of the Office of the Comptroller, aid consisting only of the payment of food or meals can be arranged in the case of students from vocational colleges since although the service they provide is temporary, it is continuous.
In the case of internships by students from vocational colleges, applications must be made to the Human Resources Unit which will authorize the employment subject to approval by the manager of the respective division or by the Internal Auditor.
In all other cases, the Division Managers or Internal Auditor will be responsible for allowing university community work and other types of academic work to be undertaken and they only need to inform the Human Resources Unit.
(Amended as per Resolution R-SC-04 dated July 7, 2006)

[36] Selection, Promotions and Appointments Statute of the Office of the Public Ombudsman, Regulation N° 596 of November 20, 2001, Article 1.
[37] Selection, Promotions and Appointments Statute of the Office of the Public Ombudsman, Article 6.
[38] Selection, Promotions and Appointments Statute of the Office of the Public Ombudsman, Articles 21 to 24.
[39] Law on the Public Ombudsman's Office, Law N° 7319 dated November 17, 1992, Articles 3 to 10.
[40] Constitution, Articles 188 to 190.
[41] Constitution, Articles 168 to 169
[42] Municipal Code, Law N° 7794 dated April 30, 1998, Articles 115 to 133.
[43] Constitution, Articles 84 to 87.
[44] The Constitutional Court through vote N° 01313 at 13:54 hours on March 26, 1993, referred to the independence of functions in the following terms:
"In view of the foregoing, some clarifications are necessary. According to the terms of Article 84 of the Constitution, the functions of State Universities are independent and they are fully empowered under Costa Rican law to acquire rights and enter into obligations and to organize and govern themselves. That autonomy has been classified as special. It is full and therefore unlike the rest of the country's decentralized entities (regulated principally in other matters by Articles 188 and 190 of the Constitution. It also means – and this is one of the most important aspects - that these are outside the remit of the Executive and its hierarchy; that they have all the administrative authority and power to achieve the special purpose that they were lawfully entrusted with; that they have the ability to establish their own plans, programs and budgets, and to organize and govern themselves. They have regulatory power (in terms of autonomy and execution); they can structure themselves, distribute their competencies within the entity, be as deconcentrated as is legally possible and lawful, regulate the service they provide and freely decide on their personnel (as

already ruled by this Court in Resolution No.495-92). These are administrative, political, organizational and financial methods of the autonomy corresponding to public universities. The ultimate objective of university autonomy is to strive to ensure that these institutions have all the legal conditions necessary for them to fulfill their cultural and higher education mission. Hence Universities are not merely teaching institutions (teaching has already been defined as a fundamental freedom in our vote No. 3559-92), since they are responsible for the complex function inherent to them, for carrying out and intensifying scientific research, cultivating the arts and the humanities to their fullest extent, for analyzing and criticizing with objectivity, advanced knowledge and rationality, the social, cultural, political and economic reality of their country and the world, for proposing solutions to major problems and thus, in the case of underdeveloped and less developed countries such as ours, for promoting ideas and ways of achieving development at all levels (spiritual, scientific and material), thereby helping to effectively realize the fundamental values of Costa Rican identity, which can be summarized as recorded in the vote mentioned above, democratic values, the rule of law according to principles of social justice, the essential dignity of the human being and the "system of freedom," peace (Article 12 de la Political Constitution), and Justice (41 *idem*); which is, in short, why they were created, notwithstanding the specialties or subjects assigned to them, and no more than that is expected and demanded of themt. The foregoing is in no way intended to cover all the elements but it is clearly what the Constituent Assembly intended in the fundamental law– that universities, as centers of free thinking, must be exempt of pressures of measures of any nature liable to prevent them from fulfilling their raison d'être.-

VII.- THE LIMITS OF LEGISLATIVE POWER IN RELATION TO UNIVERSITY AUTONOMY.- University autonomy, defined in terms of its substantial aspects, summarizes the fundamental rules that determine their relationship with the principle of legality. Although it is true – as already demonstrated – that the Legislative Assembly can regulate matters concerning the universities, it is not allowed to prevent, reduce or diminish the powers necessary for those institutions to fulfill their purpose and which constitute their autonomy. In other words, in terms of the relevant doctrine, they are the independent and unrestricted owners and initiators of all the administrative and teaching powered they require in order to fulfill their purpose, and they cannot be impaired from so doing by the Law. However, within the teaching system explained, freedom of instruction *(libertad de cátedra)* (Article 87 of the Constitution) also serves to safeguard that autonomy and can be understood as the power of universities to decide on the content of the teaching imparted, without obliging the to follow the dictates of powers outside the institution which curb the ability of the teaching staff at the universities to express their ideas within the institution, allowing different currents of thought to coexist (see the above-mentioned vote with regard to the legitimate limitations of freedom). Of course, pursuant to the provisions of the Article 85 of the Constitution, those entities are subject to coordination by the "body in charge" mentioned therein, and must take into account the guidelines established in the National Development Plan currently in force."

[45] Decision N° C-269-2003 of September 12, 2003 of the Office of the Attorney General of the Republic stated the following with regard to university autonomy:

"(…)Autonomy guarantees universities independence to perform their functions and full legal capacity to acquire rights and enter into obligations, as is normal in the case of an autonomous entity. But also, and unlike those autonomous entities, autonomy enables Universities "to organize and govern themselves/" Given its scope, university autonomy is special in that it is not subsumed to the provisions of Title XIV of the Constitution regarding autonomous institutions. What is peculiar to university autonomy lies precisely in the recognition of autonomy with respect to organization and governance. Universities have three types of autonomy: governance, organization and administration. Moreover, the mere fact that they are not in the category of entities referred to in Articles 188 and 189 of the Constitution means that they have full political autonomy: that cannot be subject to the law. Therefore the affirmation that, according to the terms of the Constitution, the independence of universities is broader than the guarantee covering autonomous institutions, is accurate; and the special and broad nature of the autonomy also exempts them from regulation not just by the Executive but by the Legislative Assembly. Autonomy gives universities the power of self-determination and the ability to establish their own plans, programs and budgets, and to organize and govern themselves, and also to decide how to distribute their competencies within the universities themselves. This would not be possible if autonomy did not cover the power to regulate

academic issues and to take steps to meet their objectives. Autonomy which, according to the Constitutional Court, is aimed at obtaining for the entity "all the legal conditions necessary for it to carry out its higher education and cultural mission with independence." In its Resolution N° 1313-93 at 13:54 hours dated March 26, 1993, the Constitutional Court referred extensively to university autonomy:

(Universities have) "all the administrative faculties and powers necessary to carry out the special purpose legitimately entrusted to them; through self-determination, in that they are allowed to establish their plans, programs and budgets and organize and govern themselves. They have regulatory power (in terms of autonomy and execution); they can structure themselves, distribute out their competencies inside the entity, be deconcentrated as far as is legally possible and lawful, regulate the service they provide and freely decide on their personnel (as already ruled by this Court in Resolution No. 495-92). These are administrative, political, organizational and financial methods of the autonomy corresponding to public universities. The ultimate objective of university autonomy is to strive to ensure that these institutions have all the legal conditions necessary for them to fulfill their cultural and higher education mission. Hence Universities are not merely teaching institutions (teaching has already been defined as a fundamental freedom in our vote No. 3559-92), since they are responsible for the complex function inherent to them, for carrying out and intensifying scientific research, cultivating the arts and the humanities to their fullest extent, analyzing, critizing with objectivity and advanced knowledge and rationality, the social, cultural, political and economic reality of their country and the world, proposing solutions to major problems and thus, in the case of underdeveloped and less developed countries such as ours, promoting ideas and ways of achieving development at all levels (spiritual, scientific and material), thereby helping to effectively realize the fundamental values of Costa Rican identity, which can be summarized as recorded in the vote mentioned above, democratic values, the rule of law according to principles of social justice, the essential dignity of the human being and the "system of freedom," and of peace (Article 12 of the Constitution), and Justice (41 *idem*); in short, that is why it was created, notwithstanding the specialties or subjects assigned to it, and no more than that is expected and demanded of it. The foregoing in no way is intended to cover all the elements but it is clear from its contents that this is what the Constituent Assembly intended, and therefore included, in the fundamental law – that universities, as centers of free thinking, must and have to be exempt of pressures or measures of any nature liable to prevent them from fulfilling their raison d'être.- The bold type is not in the original.

Autonomy fulfills a specific purpose: it is granted so that universities perform their functions independently. These functions that consist of academic activity, research, social and cultural action. Universities are autonomous in fields related to these aspects. Autonomy is simply a constitutional guarantee in terms of the purpose of universities. They are entities that prepare students and transmit culture and knowledge, fostering the highest scientific and artistic values and are research entities *par excellence*, capable of creating and intensifying knowledge. This is why the Constitution considered it essential to guarantee them the autonomy to issue policies to pursue those ends, and organize themselves in such a way as to ensure their materialization and self-management.

Universities also have administrative autonomy that guarantees the exercise of the administrative function necessary to develop their material competencies. This includes issuing the administrative and material documents required. It must be clear, nevertheless, that their administrative autonomy must be in accordance with the law. The Legislative shall determine the rules governing their administrative activity, providing for the principle of legality governing universities pursuant to Article 11 of the Constitution. The fact that they have self-management power does not mean they can freely decide on their form of administration, the government procurement system they must apply, or how the resources assigned to them are to be administered. What this means is that they can exercise certain powers (procure or undertake legal acts such as appoint staff) and manage their funds - but according to the regulations on the matter. Managing funds means that they have their own capital and the power to use it pursuant to provisions of the Law. It could even be said that if there the one area in which the Legislator has the power to legislate (Article 88 of the Constitution) is in the area of administrative activity, which although instrumental is sometimes considered substantial."

[46] One of the most representative Decrees and Agreements is: on the contracting of public works dated December 21, 1889, on the procurement of supplies (May 14, 1910), the need for public tenders for contracts in excess of five hundred colones (May 19, 1924), amended in 1931 to private bids for contracts not exceeding two hundred colones and public tenders for higher sums (May 22, 1931). Subsequently, in 1951 the old Law on Financial Administration was passed, following which the General Regulations on Public Contracting were issued in 1973 to regulate bidding processes.

[47] The Constituent Assembly's discussions on the final wording approved for Article 182 of the Constitution are relevant here, and we quote:

"The following article was then discussed by its proponents: "The execution or repair of public works, purchases made with funds belonging to the State, the Municipalities or autonomous institutions, and the sale or lease of assets belonging to them, shall be subject to public tender, in the case of works or operations whose cost is regulated by the law. The law shall establish measures to ensure that the procurement is beneficial for the State and that justice is guaranteed."
Mr. ORTIZ noted that the article was not sufficiently clear. For example, should the repair of a government office which could be the Public Works Workshop be put out to public tender? Which repairs does the article refer to? Often they State can build local or school works, repair buildings, using its own agencies. If the motion is left as it is, all these works would have to be undertaken through a public tender. Neither is the reference to Municipalities and autonomous institutions clear.
Deputy CHACON JINESTA said that based on his experience he acknowledges that the public tender system is not always the most beneficial. Even though they are healthy in principle, in practice tenders do not have the results expected. It would be best not to mention anything with respect to the Constitution.
Mr. CASTRO SIBAJA said that if Mr. Chacón acknowledges the benefit in principle, why not include it in the Constitution. Mention should be made so as to put an end to the "untendered contracts" of the past government that the Opposition are so critical of.
Mr. ARIAS said that the tendering system was not a good idea.
Deputy CHACON JINESTA intervened in the debate again to say that in many cases private tenders were more beneficial than public ones and that the formula under debate closes the door on that possibility.
Deputy CASTRO SIBAJA agreed with what Mr. Chacón said and suggested the following formula, wording the article as follows: "In contracts with the State, the Municipalities and autonomous institutions for public works, procurement using the funds of those entities and the sale or lease of goods belonging to them, will be undertaken by tender, depending on the amount involved, in accordance with the law."
The above motion was put to a vote, accepted by the proponents and approved."(Minutes of the Constituent Assembly, Nº 164, Article 2, volume III, p. 447.)

[48] The ruling by that Court Nº 2001-2660 at 15:24 hours on April 4, 2001, illustrates this point:
IV. On the substance. The regime of Article 182 of the Constitution. The fundamental reasoning behind the action sustains that the inclusion of the tender procedure in the text of the Constitution was intended to ensure that all purchases of goods and services by the State are made in accordance with a competitive bidding procedure. Therefore – although admittedly there must be other possibilities – direct contracting is not authorized under the Constitution. An appreciation of that nature is based on a formal and literal understanding of the text of Article 182, which is not admissible in light of the principles of the constitutional regime on this matter, and the satisfaction of the public interest in the provision of services by the State, a position that has already been developed by this Court in numerous jurisprudential records.
(...)
V.- Direct contracting as an exception to formal competitive bidding procedures. Bearing in mind the foregoing paragraph, to the effect that the principles derived from Article 182 of the Constitution apply to all administrative contracting activity, reference should be made to direct contracting as one of the exceptions to tender processes. Thus, according to ruling N° 5947-98 at 14:32 hours on August 19, 1998:

> "**III.- EXCEPTIONS TO BIDDING PROCEDURES.** As indicated above, the general principle governing public contracting is that it must be undertaken through public tender, and **only as an exception to this rule** is the use of private contracting procedures be justified - procurement

through *licitación por registro*, limited tender and direct contracting – which are regulated by the Law on Public Contracting. These situations are expressly regulated and in keeping with the framework of the Constitution (principles and control of public contracting) commented on in the previous paragraph, and which have repeatedly been acknowledged by constitutional jurisprudence, while private tenders are limited to contracts for smaller amounts; **and directing contracting is an exception to bidding because it is justified by the need for the Public Administration to satisfy the general and public interest, only being allowed in certain specific cases where the risk exists that the public interest could be severely jeopardized if contractors were invited to submit bids.** These are special situations in which the use of ordinary bidding processes, and more specifically public tenders, might seriously hamper the ability of Public Administration to satisfy its purpose to act in the public interest, where compliance *per se* with legal requirements could seriously upset the institutional order established in the Constitution. Such situations could be the purchase of goods to deal with an emergency or extreme urgency, if there is only one supplier in the market, in the case of services which are known as the "ordinary activity" of the contracting institution, or negotiations where special security measures must be adhered to and which are provided for in Article 2 of the Law on Public Contracting, without this affirmation representing a constitutional appraisal of each of the circumstances covered by this provision, which must be analyzed. **Given the foregoing, the conclusion is that it is effectively possible to establish exceptions to the regular procedures established in the Law on Public Contracting derived from Article 182 of the Constitution, provided that the constitutional framework (principles and control) are respected and that it is reasonable and in keeping with the purpose of the procurement."** (emphasis added)

Resolution N° 6754-98 of 15:36 hours of September 22, 1998 is important in that it states the criteria guiding the limits to the use of such exceptions:

"Direct contracting in no way implies the possibility of the Administration contracting any way and even arbitrarily – as it wishes or at a whim – but that the procedure for doing it must be comply with and respect the general criteria limiting the validity of its acts, as provided for in Article 75.2 of the General Regulations on Public Contracting (...)

The jurisprudential records cited so far make it sufficiently clear that the constitutional system establishes formal competitive bidding as a rule of principle. In other words, tenders are the most appropriate mechanism for guaranteeing the broadest possible participation by suppliers under conditions that enable the Administration to select the best offer in the market to guarantee the healthiest management of public funds and the principle of efficiency. Secondly, it is constitutionally valid to establish in the legislation specific exceptions to this system which, due to their special conditions, determine that holding this type of competition would be openly incompatible with the need to satisfy the public interest. Consequently, and as this Court has already ruled on this matter stating that the exceptions include directly contracting, the discussion calls for the determination of the validity of the terms in which this matter has been regulated in the legislation, specifically as regards the possibility of the Office of the Comptroller authorizing the Administration to resort to this course for specific reasons of public interest.

VI. Exclusive competence *(reserva de ley)* on exceptions to tender processes and the powers of the Office of the Comptroller General of the Republic. According to prosecutors, all exceptions where the Administration is authorized to use direct contracting must be expressly included in the law, so it is inadmissible from the constitutional point of view to allow the Office of the Comptroller General the possibility of authorizing this type of contract in cases not provided for in the legislation. The Office of the Attorney General supports this idea, considering that when Article 182 of the Constitution provided that State contracts "shall be subject to tender depending on the amount stipulated by the law, " it establishes a ***reserva de ley*** which implies that all exceptions which, to satisfy the public interest, are incompatible with the bidding procedure whereby it is possible to resort to direct contracting, must be spelled out expressly in the legislation on the matter. To that effect it states that it is a particularly serious flaw in that there is no parameter whatsoever to determine how that authority is going to establish exceptional cases and also that the power to authorize must not be confused with the power to regulate. It indicates that the fact that the law does not specifically determine this is absolute and the prosecutor sustains that it is an *ad infinitum*, open power that enables the oversight body to act at will, which violates the constitutional regime on public

contracting, whose principles are harmed by the existence of such a loophole. In the opinion of this Court, there are a series of factors that cannot be ignored when analyzing the constitutional validity of the norms questioned. First of all, a simplistic or formal analysis should not be employed, since public contracting is an extremely complex matter that evolves in a constantly changing environment and often very fast. In effect, the goods and services procurement process is complicated and often depends on market rules and conditions, and it is hard for the rigidity of a law to take such variables into account. Therefore, considering the opinion of the Office of the Attorney General on the matter, contracting procedures are instrumental in nature compared with the satisfaction of public interests and they can never become an end in themselves, but must conserve their nature of being simple means to achieve a loftier purpose. According to this reasoning, one might well ask then if it is feasible to envisage in a body of laws all the possible grounds for exception that might require a procedure such as direct contracting. The function of the constitutional court, which is entrusted with the task of discovering, clarifying and declaring the meaning of the State's primary legislation, cannot be seen in isolation from the environment and, in this case, from the realities and problems the State might face in its contractual activity. That perspective, of course, must strike a fair balance between preserving and defending Constitutional supremacy. There lies this difficult task of extracting the logical meaning and the spirit of the constitutional norms. These must be situated in their context, otherwise they may become very limited and impractical provisions. They are soon outdated and may even prevent the public interest sought by the State from being satisfied. Returning to this specific case, this Court considers that it is practically impossible to envisage each and every exception that might be incompatible with formal bidding processes, as intended. However, it is also true that under such circumstances, in no way must anyone be encouraged to violate the regime stipulated in Article 182, allowing the Administration, at whim , to make an exception to this, alleging any justification. As already seen, this Tribunal's jurisprudence referred to directing contracting as a constitutionally valid form of contracting, pointing out that this system of exceptions must be regulated in the ordinary legislation on the matter, the Law on Public Procurement and its Regulations. Thus it is clear that it is the law that must establish the conditions under which the Administration can except procedures from competitive bidding processes, as in effect is the case done in Article 2° of the Law on Public Procurement currently in force. That law contemplates hypotheses on the ordinary activity of the Administration – this case was referred to in various rulings by this Court – and the Agreements entered into with other States between persons subject to public law, sole suppliers, contracts for small amounts, reasons of security, extreme urgency, purchases for reasons of security, extreme urgency, purchases made with funds from the limited fund *(caja chica)*, contracts for construction or provision of offices abroad, activities excluded according to the law or international instruments in force in Costa Rica.(...)"

[49] In effect, the Office of the Comptroller General of the Republic has been sustaining that even though in direct contracting for small amounts, all the formalities of the bidding procedures are not applicable, the essence of the competitive bidding process must be preserved, respecting the principles on the matter and the need to satisfy the public interest. That is why the procuring Administration must obtain at least three quotes in order to compare them and ensure that the best contractor is chosen, and this must be evidenced in the file. This criterion states:

V.-Selection of the contractor, in direct contracts, due to the amount of the business: As regards the mechanism for selecting the contractor, in the case of direct contracting referred to in Article 79.4.8. of the General Regulations and the obligation to consult the register, as expressed previously, the Administration is under obligation to use a mechanism to ensure transparency in the application of the principle of equality for everyone who expressed an interest in the contract. In direct contracting, even though because contracts are for smaller amounts, compliance with less formalities is justified. It is essential that in the file prepared on the contract, the Administration *certifies that it negotiated to obtain the most beneficial contract* and, in that case, we understand that the administrative practice of obtaining ***at least*** three quotes in this type of business, is not only justified but necessary as a duty arising from the obligation to ensure the proper administration of public funds. The Administration must select the best offer, out of the ones obtained, according to the parameters defined for that purpose and, in the absence of these, the agreement shall be

reasoned according to the most important factor, which is the **price** of the goods or service to be purchased. (communiqué Nº 14803 dated November 21, 1996, DGCA-1555-96)

In this last point the following way in which the Office of the Comptroller developed the subject of direct contracting in communiqué Nº 107 of January 7, 1998 (Nº DGCA-21-98) is particularly important:

"In direct contracting *for small amounts,* the provisions of Article 28.4. of the General Regulations on Public Contracting are not applicable, so it is not legal to exceed the amounts specifically stated as ***limits.*** Through our communiqué **Nº7895** (DGCA-828-97) dated June 30, 1997, this Office gave its opinion on the matter:

> "Despite the exceptional nature of the direct contracting procedure, it can be used if justified by the estimated amount of the business involved, the principles applicable to this type of contracting must be adhered to, as must the prior requisites, controls and system of prohibitions provided for by law. However, in other aspects such as the application of Article 28.4., the interpretation of its possible application to this exceptional procedure must be restrictive and therefore, in the opinion of this Office, this norm cannot be applied to direct contracting."

Communiqué Nº 7895/97 issued by this Office covered the issue of grouping together items in direct contracts for amounts purported to be small. It states that that all products that are interdependent or are accessories of the others must be grouped together ([49]).

To conclude, the exceptional use of direct contracting due to the fact that the business is for a small amount, requires that:

a) contracts must not be fractioned or illicitly broken down;
b) the register of suppliers must be referred to in the procedure to select a contractor (this is compulsory) and all registered contractors should be invited to participate;
c) if there are no suppliers registered, the Administration must ask for quotes from at least three ***suitable*** suppliers in order to certify that the negotiation satisfied the public interest;
d) a file must be prepared for each contracting process, documenting the application of the exception.

(...)

[50] These regulations and the statistics the institution has available can be referred to on the following website: www.grupoice.com/PELWeb/consultaDocumento.do

[51] These regulations and the register of competitive bidding processes can be seen at: www.bancopopularcr.com

[52] Article 19.

[53] "Article 27.—**Determination of the procedure**. When the law does not stipulate any specific contracting procedure, it can be determined according to the following guidelines:

> a) Administrations whose authorized budget for the period, specifically the amount considered necessary to meet their needs to contract non-personnel goods and services, is over thirty-seven thousand three hundred million colones (¢37,300,000,000.00), shall use public tenders for contracts over two hundred and four million colones (¢204,000,000.00); short tenders, for contracts between two hundred and four million colones (¢204,000,000.00) and twenty-eight million three hundred colones (¢28,300,000.00), and direct contracting for contracts under twenty-eight million three hundred thousand (¢28,300,000.00).

b) Administrations whose authorized budget for the period, specifically the amount considered necessary to meet their needs to contract non-personnel goods and services, is under thirty seven million thirty and seven thousand threehundred million colones (¢37,300,000,000.00), but over twenty-four thousand nine hundred million colones (¢24,900,000,000.00), shall use public tenders for contracts over hundred ninety and three million colones (¢193,000,000.00); short tenders for contracts between one hundred ninety-three million colones (¢193,000,000.00) and nine million six hundred and sixty thousand colones (¢9,660,000.00), and direct contracting for contracts under nine million six hundred and sixty thousand colones (¢9,660,000.00).

c) Administrations whose authorized budget for the period, specifically the amount considered necessary to meet their needs to contract non-personnel goods and services, is under twenty-four thousand nine hundred million colones (¢24,900,000,000.00), but over twelve thousand four hundred million colones (¢12,400,000,000.00), shall use public tenders for contracts over one hundred and thirty-five million colones (¢135,000,000.00); short tenders for contracts between one hundred and thirty-five million colones (¢135,000,000.00) and eight million six hundred and ninety thousand colones (¢8,690,000.00), and direct contracting for contracts under eight million six hundred and ninety thousand colones (¢8,690,000.00).

d) Administrations whose authorized budget for the period, specifically the amount considered necessary to meet their needs to contract non-personnel goods and services, is under twelve thousand four hundred million colones (¢12,400,000,000.00), but over six thousand two hundred and twenty million colones (¢6,220,000,000.00), shall use public tenders for contracts over ninety-six million six hundred thousand colones (¢96,600,000.00); short tenders for contracts between ninety-sis million six hundred thousand colones (¢96,600,000.00) and million seven hundred and thirty thousand colones (¢7,730,000.00), and direct contracting for contracts under seven million seven hundred and thirty thousand colones (¢7,730,000.00).

e) Administrations whose authorized budget for the period, specifically the amount considered necessary to meet their needs to contract non-personnel goods and services, is under six thousand two hundred and twenty million colones (¢6,220,000,000.00), but over one thousand two hundred and forty million colones (¢1,240,000,000.00), shall use public tenders for contracts over sixty-seven million six hundred thousand colones (¢67,600,000.00); short tenders for contracts between sixty-seven million six hundred thousand colones (¢67,600,000.00) and six million seven hundred and sixty thousand colones (¢6,760,000.00), and direct contracting for contracts under six million seven hundred and sixty thousand colones (¢6,760,000.00),

f) Administrations whose authorized budget for the period, specifically the amount considered necessary to meet their needs to contract non-personnel goods and services, is under one thousand two hundred and forty million colones (¢1,240,000,000.00), but over six hundred and twenty-two million colones (¢622,000,000.00), shall use public tenders for contracts over fifty-eight million colones (¢58,000,000.00); short tenders for contracts between fifty-eight million colones (¢58,000,000.00) and five million eight hundred thousand colones (¢5,800,000.00), and direct contracting for contracts under five million eight hundred thousand colones (¢5,800,000.00),

g) Administrations whose authorized budget for the period, specifically the amount considered necessary to meet their needs to contract non-personnel goods and services, is under six hundred and twenty-two million colones (¢622,000,000.00), but over three hundred and seventy-three million colones (¢373,000,000.00), shall use public tenders for contracts over thirty-eight million six hundred thousand colones (¢38,600,000.00); short tenders for contracts between thirty-eight million six hundred thousand colones (¢38,600,000.00) and four million eight hundred and thirty thousand colones (¢4,830,000.00), and direct contracting for contracts under four million eight hundred and thirty thousand colones (¢4,830,000.00).

h) Administrations whose authorized budget for the period, specifically the amount considered necessary to meet their needs to contract non-personnel goods and services, is under three hundred and seventy- three million colones (¢373,000,000.00), but over one hundred and twenty-four million colones (¢124,000,000.00), shall use public tenders for contracts over twenty-nine million colones (¢29,000,000.00); short tenders for contracts between twenty-nine million colones (¢29,000,000.00), and two million nine hundred thousand colones (¢2,900,000.00) and direct contracting for contracts under two million nine hundred thousand colones (¢2,900,000.00).

i) Administrations whose authorized budget for the period, specifically the amount considered necessary to meet their needs to contract non-personnel goods and services, is under one hundred and twenty-four million colones (¢124,000,000.00), but over thirty-seven million three hundred thousand colones (¢37,300,000.00), shall use public tenders for contracts over nineteen million three hundred thousand colones (¢19,300,000.00); short tenders for contracts between nineteen million three hundred thousand colones (¢19,300,000.00) and one million nine hundred and thirty thousand colones (¢1,930,000.00), and direct contracting for contracts under one million nine hundred and thirty thousand colones (¢1,930,000.00).

j) Administrations whose authorized budget for the period, specifically the amount considered necessary to meet their needs to contract non-personnel goods and services, is under thirty-seven million three hundred thousand colones (¢37,300,000.00), shall use public tenders for contracts over nine million six hundred and sixty thousand colones (¢9,660,000.00);); short tenders for contracts between nine million six hundred and sixty thousand colones (¢9,660,000.00) and one million colones (¢1,000,000.00), and direct contracting for contracts under one million colones (¢1,000,000.00).

[54] This criterion is the one followed by the oversight institution, i.e. the Office of the Comptroller General of the Republic, on this matter, through its statements. The following ones were particularly important: communiqué #38 of January 7, 1997, 431 of January 15, 2001, 9909 of September 7, 2001, 7433 of June 25, 1996, and 107 of January 7, 1998. These criteria are continuously and consistently cited to date.

[55] Article 131.

[56] Articles 183 and 184 of the Political Constitution.

[57] Constitutional Court Ruling No. 5119-95, at 20:30:09 hours on September 13, 1995.

[58] Article 99.

[59] Official Journal.

[60] We refer to the Circular on the Quarterly Report on Contractual Activity of the Public Sector bodies and entities, Nº 10396 (FOE-ST-276) dated October 13, 2000, and the Circular on Veracity and Responsibility for the information contained in the Quarterly Reports on Contractual Activity, Nº 11655 (DFOE-152) dated October 12, 2001, both binding and issued by Office of the Comptroller General of the Republic.

[61] On this website the topic *Oficina Virtual* (Virtual Office) was selected after accessing the subcategory *Sistemas and Consultas* (Systems and Queries) and then the topic *Compras del Estado* (Government Procurement) was selected.

[62] Because this article was renumbered 185 (a) of Law No.7732 dated December 17, 1997, which changes it from 340 to 342, the articles indicated as 338 and 339 actually correspond to articles 340 and 341 indicated.

[63] Same as the previous point.
[64] Same as the previous points.
[65] A remedy has been filed against this article which has not yet been resolved by the Constitutional Court, under file No. 04-12348-007-CO, published in the *La Gaceta* No. 106 of June 2, 2005.
[66] Resolution RC- 66- 2004 of July 4, 2004, Office of the Comptroller General of the Republic.