

**RESPONSE BY THE REPUBLIC OF HONDURAS TO THE QUESTIONNAIRE ON
THE PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION SELECTED IN THE SECOND ROUND AND FOR FOLLOW-UP ON
THE RECOMMENDATIONS FORMULATED IN 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?

A: Yes there are.

If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.

The main systems are:

- The Civil Service Law and its Regulation
- The Judicial Career System for the Judicial officers
- The Labor Law for Legislative Branch employees
- The System Governing the Career of Officers and Employees of the Court of Accounts.
- The System Governing Career Prosecutors
- The Regulations Governing Teaching Staff
- The Regulations Governing State-Employed Doctors

Chapter VIII of Heading V of the Constitution of the Republic pertaining to the civil service, states the following:

“ARTICLE 256. The Civil Service System regulates relations between the State and its civil servants with regard to employment and public functions, based on principles of suitability, efficiency and honesty. Personnel management shall be conducted based on the merit system.

The State shall protect career civil servants.”

“**ARTICLE 257.** The law will regulate the Civil Service and in particular it’s the conditions for entry; aptitude and merit-based promotions; guarantee of permanence, transfers, suspensions and guarantees; the duties of civil servants and appeals against decisions liable to affect them.”

“**ARTICLE 259.** The provisions of this Chapter shall apply to officials and employees of decentralized and municipal institutions.”

The Civil Service Law in force since September 6, 1968, put an end to the discretionary powers whereby presidents of the Republic could appoint, promote and dismiss government officials. This law introduced provisions to make government functions more efficient by establishing a rational staff management system for the civil service and involved creating a rational career civil service system based on merit which guaranteed equal access by all citizens without any discrimination, in addition to training, protection and dignification. (Article 1 of the Social Service Law).

This Civil Service system and the other hiring systems operate according to advertising, equity and efficacy principles.

Advertising: Of entrance tests and through media advertising, as provided for in Article 24 of the Civil Service Law. Refer to point iii on Advertising. **Equity:** Equal and impartial access to the system by citizens, free of distinction or discrimination (Article 1). **Efficacy:** Guaranteed by the introduction, organization and implementation of the Career Civil Service, preparation of the Job Classification Manual, with its requirements, employee categories, application of a recruitment and technical selection process technique and a evaluation of services and staff training.

Regarding the foregoing, refer to the following aspects:

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

A: In the Civil Service System, the Directorate of the Service is in charge of enforcing the Law and its Regulation through a Director General appointed by the Executive Branch. The Civil Service Council was created as part of this system, its main function being to assist the President of the Republic in the orientation of staff management policies and the (administrative) settlement of disputes, at the different levels of jurisdiction, arising from the enforcement of the Law and its Regulation.

The heads of the different entities are in charge of the other systems and the personnel or human resource departments are generally the executive body in charge of staff management.

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

A: The main objective of this system was to create a career civil service based on the merit system and to offer all Hondurans an equal opportunity to work in the civil

service, in accordance with their suitability and capabilities, regardless of sex, race, religion, political affiliation or social class.

In order to have access to the civil service, all positions in the Job Classification Manual must be filled through a competitive examination. The entry of a citizen into the civil service is a process and entrance tests depend on the work to be carried out by each employee, which will determine the type of test for each category and the level the candidates must be tested for (Article 12, 24 to 32 of the Civil Service Law).

- iii. Advertisement for the selection of civil servants, indicating the qualifications for selection.

A: Before conducting suitability tests for Civil Service candidates, the General Directorate advertises the vacancy in the newspaper with the widest circulation and on the radio station with the largest audience and can use any other media it considers appropriate to inform the public of the personal and professional profile required of potential candidates. The other systems also advertise in the same way.

- iv. Ways to challenge a decision made in the selection system.

A: Civil servants can report any conflicts in the application of the Law and its Regulation to the Civil Service Council and can also file complaints regarding the provisions of the Director General; conflicts arising between the nominating authorities concerning the enforcement of the Law or between those authorities and the General Directorate and complaints related to dismissals, transfers and other resolutions by the authorities (Articles 8, 10, sub-paragraphs a), b), c) of the Law; and 275 of its Regulation.

Resolutions issued by the Civil Service Council can be appealed against and cases brought before the Administrative Disputes Court (Article 50 of the Law).

In the event of sanctions involving dismissal and other measures, Dismissal Hearings are held, and prescription is noted as a means of avoiding responsibility. (Article 50 of the Law, 262, 266, 291 and 293).

- v. Relevant exceptions to the above.

A: - The provisions of the Civil System do not apply to certain civil servants of the Executive Branch in positions of trust or excluded service (See Articles 21 and 56 of the Rules of the Regulation).

- In special cases interim emergency staff can be appointed for specific periods (Article 32 of the Law; 150 and 156 of its Regulation).

- b) In relation to question a), state the objective results obtained, including any available statistical data.¹

A: There are no statistics in the country showing the results.

In compliance with Article 4 of the Organic Budget Law requiring that the financial administration system of the Public Sector functions in a coordinated manner with other subsystems, including the Human Resource Management subsystem, the Integrated System for Human Resource Management of the Honduras Public Sector (SIARH) is being developed in order to guarantee a seamless process covering human resource requirements.

The Civil Service Law has been in force for nearly 38 years and – despite some shortcomings in terms of its application – the country’s evolution in terms of its institutional aspects during this time; the legal and political significance of a Constitution that has been in force since 1982, international treaties such as the Inter-American Convention Against Corruption and the International Agreement on Civil and Political Rights; new legal texts such as the Civil Service Law, the Administrative Procedures Law; the Law on the Reorganization of the Redistributive System of Central Government; the Organic Budget Law and the Law of the Court of Accounts, have made it imperative that the Honduran Government present to Congress the “Civil Servant System” Bill, applicable to central government and the decentralized entities.

This project is currently being studied by Congress.

2. Government systems for procurement of goods and services

- a) Are there laws and/or measures in your country establishing government systems 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.

Yes there are.

The main systems come under the following legal framework:

- Law on State Contracting (Decree No. 74-2001 of June 29, 2001) and its Regulation. (Executive Agreement No. 055-2002 of May 15, 2002).
- Agreement between the Government of the Republic and the United Nations Development Programme (UNDP) of January 17, 1995, published in the Official Gazette (*Diario Oficial La Gaceta*) on April 27, 1995 (Decree 33-95).

¹ In accordance with the methodology adopted by the Committee, we shall endeavor to provide data for the last two years regarding this and the other provisions of the Convention under review during the second round, with the exception of data on acts of corruption provided for in Article VI of the Convention for which we shall provide data on the last five years.

In relation to the above-mentioned legal framework, contracts can be awarded through any of the following methods:

Public Tender
Private Tender
Public Competition
Private Competition
Direct Award

The following are the main contracting procedures used:

Public Tender: Characterized by considering an unlimited number of participants. Invitations to tender must be published in commercial and official newspapers.

Article 46 of the Law on State Contracting states that “invitations to tender shall be published in the Official Gazette and at least one major national newspaper, with a frequency of”

International Public Tender: According to Article 42 of the Law: When special techniques are required or when there are other reasons that justify the participation of foreign contractors.

Private Tender: This type of tender is characterized by the fact that the number of participants is limited, small or restricted, i.e. only those expressly invited by the government body interested in the work or supply can bid. Articles 59 and 60 of the Law on State Contracting establish the general and specific premises under which a private tender must be conducted. Nevertheless, public tenders are the general rule and private tenders the exception, since they are only admissible in cases specifically stipulated in the Law.

Competition for Contracts: The purpose of a competition is to establish which of the participants has the best technical, scientific, cultural or artistic capacity to fulfill the contract; in other words, personal capacity is a determining factor. The invitation to compete can be public or private (Article 61, 62 of the Law on Contracting).

Direct Award: The general rule in our legal framework is to use bidding, competition and auction procedures when selecting State contractors; however, such procedures can be waived - but only exceptionally - when the purpose of the contracts is to meet needs that arise as a result of an emergency and needs which, due to their nature, can only be met by certain persons (Article 360 of the Constitution of the Republic.)

Their Coverage:

Law on State Contracting and its Regulation: This Law regulates procedures for contracting public works, the supply of goods and services and consulting services entered into with centralized and decentralized government bodies. It also applies to similar contracts entered into with the Legislative and the Judiciary, financed with public funds in line with their structure and budgetary execution. The Law is based on the principles of: Legality, freedom of agreement, freedom of contract, advertising, transparency, efficiency, equality and free competition, fostering smooth procedures to improve the reliability of State contracting processes.

Pursuant to Article 30 of this law, the Public Procurement Policy Office (Oficina Normativa de Contratación and Adquisiciones - ONCAE), as a technical and consultative State agency, attached to the Secretariat of State in the Office of the President. This office has a Consultative Committee which is a collegiate body made up of ad hoc representatives from the public and private sectors. ONCAE can appoint representatives from other public and private bodies to the Consultative Committee, as deemed appropriate in special cases.

ONCAE has recently prepared a series of documents and procedures which it has submitted to the Consultative Committee for approval. These include, among other things: general public tenders conditions for the supply of goods and services; special public bid conditions for the supply of services; process for publicly advertising its requirements for minor purchases; model of processes for the provision of minor medical and surgical supplies, with or without a simultaneous pre-qualification process; general contracting conditions for consulting services.

➤ Agreement with the United Nations Development Programme (UNDP).

Based on this Agreement, State institutions can sign a document or agreement with the UNDP so that national or international bidding processes or private bids can be conducted within the framework of the UNDP.

Between 2002 and 2006, the following companies conducted their contracting processes in this manner: the Honduran Telecommunications Company (Empresa Hondureña de Telecomunicaciones - HONDUTEL), the Honduran Social Security Institute (Instituto Hondureño de Seguridad Social – IHSS) and the Ministry of Health (Secretaría de Estado en el Despacho de Salud).

- A “fiduciary fence” applied to purchases financed by international cooperation agencies. Standards, procedures and specific procurement systems are applied by each cooperation agency for such purchases. Under this scheme, procurement for major contracts was more efficient and transparent during the 2002-2006 administration. However, these schemes may have held back the development of a strong national system.

Regarding the foregoing, please refer to the following aspects, among others:

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

A public tender procurement system is one in which, because of its size, the law stipulates that contracts can only be awarded through a public bidding process; given the amount involved, invitations to bid are published and in the case of public works a pre-qualification is necessary; and no pre-qualification is required for supplies or services, except in special cases.

The direct procurement system or the procurement system without a public tender, is used particularly in cases of emergency caused by natural disasters, epidemics, public calamity, need for defense related to the state of exception or by other exceptional circumstances liable to substantially effect the timely and efficient continuity of public services, the supply of goods or consulting circumstances that are strictly necessary; all without affecting the inspection functions.- See Direct Award system in Articles 9, 38 and 63 of the Law on State Contracting; 169 and 170 of its Regulation.

It is important to note that in the general budgetary provisions for each fiscal year, the contract amounts that make a public or private tender is necessary are stipulated, as are the amounts envisaged for investment or supply contracts that are not subject to tender and for which a direct award can be made (Article 39 of the budgetary provisions for 2006).

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

In public administration, i.e. the Executive and its dependencies including the decentralized bodies attached thereto, autonomous institutions, decentralized institutions (municipalities) and the other bodies of centralized administration and the Legislative, represented by officials who may be Presidents, Secretaries of State, Directors, General Managers, and the Boards of Directors or Steering Councils or their legal representatives.

The Law on State Contracting determines that the preparation, awarding, execution and termination of contracts must be conducted through the body responsible for the contracting. However this does not exclude other State bodies from taking part in them (Articles 32 and 33 of the Law on State Contracting). ONCAE's participation is derived from this precept. The control mechanisms would be implemented through Internal Audits of each institution and inspection bodies, such as the Attorney General's Office, the Court of Accounts (Court of Accounts) and the Office of Public Prosecutions on certain occasions.

iii. Register of pre-approved contractors.

ONCAE keeps a Centralized Register and any party wishing to enter into a contract with the State of Honduras can register its interest on the register of the respective state agency in question. However it is essential for anyone wishing to enter into a contract with the State to be on the Centralized Register. The registration procedure is free of

charge and is designed to be simple and to guarantee updated, reliable information. It is broken down by specialty or area of activity, according to the information submitted by the interested parties (public works, supply or consulting services).

The registration procedure can be facilitated by obtaining a copy of the instruction form from ONCAE or download it from the website (HonduCompras). The form describes the requisites and steps to be followed, depending on the activity in question, and how to submit a formal application to register. The requisites include proof of existence, legal representation, economic and financial solvency, technical or professional suitability, including registration with the appropriate Professional Associations, if applicable, etc.

It is important to point out that not all interested parties are obliged to register with ONCAE since the Law now stipulates that this is not necessary in the case of contracts that are not large enough to warrant a bidding or competition.

In view of the foregoing, and in those cases where the inscription process must be complied with, it is important to point out that this register is structured in such a way that failure to register cannot prevent an interested party taking part in a State contracting or procurement process (tender or competition), provided that the party is able to demonstrate its possibility, suitability and capacity to perform that particular contract.

When the State awards an administrative process, the interested party must submit proof of its registration on ONCAE's Register of Suppliers and Contractors.

iv. Electronic methods and information systems for government procurement.

The Honduran System of Information on State Contracting and Procurement "HONDUCOMPRAS"; www.honducompras.gob.hn, which is publicly available on the Internet, the contracting procedures entered into by the bodies that are subject compliance with the provisions of the Law on State Contracting

Currently not all the entities are included in the above system which explains why some public administration agencies still use their own information and advertisement systems. The following ministries are examples: the Finance Ministry: www.sefin.gob.hn; Public Works, Transport and Housing Ministry: www.soptravi.gob.hn; the National Water Supply and Sewer Service (Servicio Nacional de Acueducto and Alcantarillado): www.sanaa.gob.hn; the Public Procurement Policy Office (Oficina Normativa de Contratación and Adquisiciones – ONCAE): www.oncae.gob.hn; the Court of Accounts: www.tsc.gob.hn

v. Public works contracts.

In accordance with the provisions of Article 39 of the General Budgetary Provisions, any government body intending to enter into a Public Works contracts for or in excess

of one million Lempiras (L.1,000,000.00) is required to submit a Public Tender, and if the contract is for less than one million Lempiras (L.1,000,000.00), it must follow the Private Tender procedure established.

The Law on State Contracting contains a special Chapter that regulates this kind of contract and defines Public Works, other types of public works contract, government obligations, payment, deadlines, use indicators and other procedures for taking into account cost increases, acceptance of the work, supervision, etc. (Article 64 to 82), as well as others related to public works and characteristic of bidding procedures, such as: Article 43 of the Law in question which provides that in order to ensure that works are carried out by competent contractors, interested companies must comply with the appropriate bidding process to prequalify.

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

The following factors will be taken into account for prequalification: Experience of the company, availability of staff, equipment and facilities, fulfillment of previous contracts and legal capacity for entering into contracts.

When evaluating the criteria, the following factors shall be taken into account: Price, delivery time, technical specifications on bids and the technical and economic evaluation of the competition. In bids and competitions alike, the legal and technical requisites must be complied with a reasonable and advantageous price quoted in the interest of the State.

Price continues to be a determining factor in the awarding of a contract in a selection process among State contractors and suppliers. However, this new Contracting Law introduces new and important concepts for awarding processes based on price or the application of objective criteria when comparing the offers described in the terms and conditions.

These new concepts upon which awards are based reflect one of the principal commitments of the procurement system: To procure quality products on a timely basis and under conditions that satisfy specific public needs.

These criteria include: 1.- Delivery time; 2.- Maintenance; 3.- Quality; 4.- Product guarantees; 5.- Financing conditions; 6.- Lower operating cost; 7.- Availability of spare parts; 8.- Environmental benefits; as well as others conducive to a better use of State funds, with the only proviso that they must be contained in the terms and conditions, as stated above.

It is important to point out that as regards Consulting, the technical proposal has become the preponderant concept to consider when assessing offers. It must therefore not include any information on the economic offer. In other words the technical and economic proposal must be submitted in separate envelopes or packages and each of them must be sealed. The weighting system established in the conditions states that economic aspects cannot exceed twenty percent (20%) of the global evaluation.

vii. Ways to challenge a selection.

Pursuant to the provisions of the State Contracting Law, the Law on Administrative Procedures and the Administrative Disputes Law, potential bidders may contest: i) a call or invitation to participate in a tender for goods and services; ii) the conditions under which a bidder may participate in a bid; iii) the refusal to receive the application to participate in a bid; iv) the cancellation of a request or invitation to tender; v) the awarding of the contracts; or, vi) the termination of those contractors if the contesting party alleges that the contract was terminated because the decision to award it was based on error. Article 142² of the State Contracting Law, regulates the mechanism for contesting decisions.

In the Administrative Disputes Law, issues pertaining to Bidding or Competition are treated as a special action; as a result of which they are dealt with much faster, with the result that the court's decision cannot be appealed against (Article 114 and 119 of the Law in question).

b) In answer question a), state the objective results obtained, including any available statistical data (for example: percentage of contracts awarded by public tender; and sanctions imposed by contractors).

1. Taking into consideration that **HonduCompras** was created only recently (October 2005) and that it coincides with a recent changeover in Government authorities, and that at the same time this dissemination system is in the process of being developed and implemented, we do not have very much statistical data at present. Once we have achieved the objectives we will be able to obtain all the statistical information required which will enable **ONCAE**, through **HonduCompras**, to identify and orient public procurement policies.

We are, however, attaching hereto the statistics we have at present, based only on the information available at **HonduCompras**.

I.- STATISTICS OBTAINED AT HONDU COMPRAS:

A) By type of process:

Type	Number of Processes	Percentage
Public Tenders	102 processes	55 %
Private Tenders	16 processes	9 %
Public Competitions	43 processes	23 %
Private Competition	1 processes	0.5 %
Prequalification	11 processes	6 %
Quotes	13 processes	6.5 %
Total	186 processes	100%

² As amended in Decree No 16-2006, dated March 15, 2006, published in the Official Gazette of March 24, 2006

B) General:

State Processes	Number of Processes	Percentage
Total	314 processes	100%
Published by HonduCompras	173 processes	55%
Not published by HonduCompras	141 processes	45%

C) By branches of power:

Judiciary	Number of Processes	Percentage
Total	67 processes	100 %
Published by HonduCompras	64 processes	96 %
Not published by	3 processes	4 %

Executive Branch	Number of Processes	Percentage
Total	247 processes	100 %
Published by HonduCompras	109 processes	44 %
Not published by HonduCompras	138 processes	56 %

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 identity? If so, briefly describe them and list and attach a copy of the related provisions and documents.

A: They do exist. First of all civil servants in Honduras are under obligation to report acts of corruptions committed under circumstances that are regulated by the law.

There are various provisions whose purpose is to make civil servants aware of infringements of rules and regulations that must be reported immediately to the authorities. The types of reports that must be filed and the manner in which they should be submitted is also regulated and stipulated in the following Articles: 50, 70, 100 (11) of the Organic Law of the Court of Accounts;; 108, 109 and 110 of its Regulation; 5, 237, 248, 269 and 270 of the Code of Criminal Procedure; 23 to 28 and 31 to 44 of the Law of the Human Rights Commissioner, 77 and 172 of the Judicial Career Law, 11 and 14 of the Regulation of the Rules of the Courts Inspectorate; and Article 388 (5) of the Criminal Code.

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

i. Mechanisms for reporting (e.g. anonymous reporting, protection of identity reporting).

Some improved methods for handling complaints made by citizens have recently been implemented. For example, the Public Prosecutions Services has a rapid action module that channels rapidly to the prosecutors' offices. All the regional and local prosecutors' offices have facilities for filing complaints and the Judiciary has an office called the "General Inspectorate of Courts and Courts" that receives complaints and can take official action. There are other public institutions that receive and handle complaints from citizens, such as the Executive Directorate of Revenue (Dirección Ejecutiva de Ingresos - DEI), the General Directorate of Investigation (Dirección General de Investigación - DGI), the National Electricity Company (Empresa Nacional de Energía Eléctrica - ENEE), the National Water Supply and Sewer Service (Servicio Nacional de Acueducto and Alcantarillado - SANAA) and the Consumer Protection Office (Fiscalía del Consumidor).

The Court of Accounts has a Citizen Participation Directorate under which a Department of Control and Follow-up of Complaints operates. The Directorate's functions include: a) Receiving and evaluating complaints, channeling investigations and following up and informing the results of citizens' complaints; b) Managing the citizen consultation and complaint system; c) Organizing and developing promotion, training, education, awareness and dissemination programs on citizen participation in the field of inspection and control of State resources. The Directorate also receives support from the Special Investigations Unit whose functions include the design and implementation of investigation procedures to deal with complaints by citizens.

The above illustrate the mechanisms through which citizens can report acts of corruption. Some have been funded through advertising campaigns, some others by countries that have cooperated with Honduras in this area, and others by nongovernmental organizations. Training programs have also been designed and implemented.

Nevertheless, some weaknesses can be observed regarding protection for complainants. It is therefore extremely important to ensure that the bill that is currently before Congress awaiting enactment into law, will Protect Witnesses, Experts and others involved in Criminal Procedures to guarantee that in special cases complainants will be afforded protection under this Program. This bill was initially intended to apply to organized crime, but the Prosecutor General has the power to include other offences in special cases which is why a crime involving corruption might require protection.

Citizens may make verbal or written complaints to the different offices created for reporting acts of corruption. They may also report them through the media (newspapers, radio and TV), by electronic means and some cases by telephone.

ii. Mechanisms for reporting threats or reprisals.

The same mechanisms used to report acts of corruption apply for reporting acts or actions involving threats of retaliation for reporting acts of corruption. However, no specific procedure has been determined for this in the case of threats or retaliation and some isolated or temporary measures that could be applied by the authorities might be considered in such cases. Hence it can be concluded that generally speaking there is a lack of legal rules and regulations and mechanisms to guarantee protection, other than reserving the person's identity which might avoid retaliation, and some legal provisions on how to guarantee protection, e.g. Article 270 and 275 of the Code of Criminal Procedure; Article 72, last paragraph, of the Organic Law of the Court of Accounts and 110 of its Regulation; Articles 215 and 385 of the Criminal Code.

iii. Witness protection mechanisms

Protection of identity is applied in certain cases. For example, the last paragraph of Article 72 of the Organic Law of the Court of Accounts provides that complainants shall receive the highest level of protection from the State, the last paragraph of Article 270 of the Code of Criminal Procedure provides that the name and identity of complainants shall be withheld. Finally Articles 266 and 266-A of the Criminal Code; and another form of protection is the ability to make complaints anonymously, by telephone and by electronic means.

In short, provisions exist to guarantee some form of protection of the complainant's identity. However, the pertinent legal provisions must be implemented and developed, as must other protection mechanisms to ensure the effectiveness of this guarantee.

As indicated above, in practice the mechanisms designed to guarantee such protection are applied by the authorities entrusted with affording protection but it is also necessary to consider the isolated or temporary policies implemented by the following authorities: Public Prosecutions Service, Court of Accounts and the Judiciary. In view of the above, it can be concluded that there is no general program and the best way to improve the situation would be to approve the protection program contained in the Witness Protection Bill which would protect complainants in special cases where they could cooperate as witnesses to acts of corruption.

The liabilities and sanctions applied due to non-compliance are contained in the regulations issued on the matter. These can be criminal if an official failed to fulfill his duties. In other cases civil and administrative liabilities may be applied. For instance, Article 349 (1) provides that government officials who fail to comply with a resolution, court order or agreement issued by the judicial or administrative authorities shall be sentenced to prison for 3 to 6 years and disqualified for twice the duration of the prison sentence; el Article 388 (5) on the subject of accessories after the fact provides that failure to inform the authority of information obtained regarding the commission of an offense when the person is obliged to report it by virtue of his profession or employment; shall be sentenced to prison for 3 to 5 years; Article 269 of the Code of Criminal Procedure requires that civil servants report offenses committed by civil

servants when performing public actions that they are aware of; additionally the Organic Law of the Human Rights Commissioner Rights also determines responsibilities.

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

There are no indicators available to reflect this mechanism's effectiveness or objectivity. However, the number of complaints filed has increased quite notably, as have, the responses to them, the facilities for filing them, the methods for doing so, etc. This, in combined with the administrative sanctions and penalties applied under the criminal legislation in force, reflects a positive view of this method of preventing acts of corruption and is considered an effective means of protecting identity, determining liabilities and applicable sanctions, and facilitating the reporting process.

The following are examples of the results obtained:

- In the last four years the Office of the Special Anti-Corruption Prosecutor brought 104 lawsuits, leading to 13 guilty verdicts, 12 temporary dismissals and 12 definitive dismissals.
- The following movement was registered for the General Inspectorate of Courts and Courts, which comes under the Supreme Court of Justice during 2005:

Reports Received	Dealt with	Pending	Admitted	Remitted to the Public Prosecutions Service
707	511	199	152	59

- Between January 2005 and June 30, 2006, the Citizen Participation Directorate, which comes under the Court of Accounts received 160 complaints, of which 72 were dealt with, 50 were transferred to other dependences of the Court, 22 were pending investigation and 16 were rejected.
- According to the Report of the National Anti-Corruption Council (created in 2005), four complaints were received and transferred to the Court of Accounts. The court follows up the cases reported involving corruption or lack of transparency in the written press on a monthly basis. Between January and April 2006, eighty-six cases of corruption were reported by the media.

CHAPTER THREE

ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

1. Criminalization of acts of corruption provided for in Article VI (I) 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?

Yes it does typify them.

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.

- Acts of corruption provided for 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.
 - ii. The offering or granting, directly or indirectly, to 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.
 - 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.
 - iv. The fraudulent use or concealment of property derived from any of the acts referred to in this article.
 - 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.

A: Our legislation does criminalize the acts of corruption referred to in the above-mentioned article of the Convention.

The way in which participation and concealment are regulated in the Code referred to is fairly general. The first act of corruption appears in Articles 32 and 33; the second in Article 388 and the last paragraph of that article actually states that the act is aggravated if it is committed for profit and if its is habitual. Any attempt to destroy evidence of a crime or to keep, hide, buy, sell, receive as security, or exchange the proceeds or benefits of the crime, is also deemed to constitute concealment if the conditions or elements contained in Article 388 apply. The

Code also regulates other forms of participation in a criminal act; for instance as an instigator, accomplice or coprincipal.

The acts of corruption referred to in Article VI (1) of the Convention and covered by our legislation are described in the following articles of the Criminal Code and the Organic Law of the Court of Accounts:

- Article 361: (Bribery) If a civil servant requests, receives or accepts a gift, present, offer or promise, or derives undue advantage for himself or a third party, in exchange for carrying out an act that is contrary to his duties which constitutes a criminal offense.
- Article 362: (Graft) If an official solicits, receives or accepts, directly or indirectly, a gift, presents, favor, promises or derives undue advantage for carrying out an unjust act that does not constitute an offense when performing his functions.
- Article 363: If the gift or present requested, received or promised is intended to ensure that the civil servant abstain from doing something that his is under a legal obligation to undertake as part of his functions.
- Article 365: Any civil servant who accepts any kind of gift or benefit from in exchange for knowledge to which he is privy.
- Article 364:³ (Domestic Bribery) Any individual who, directly or indirectly, intentionally grants someone who performs government functions, any object of monetary value or any other benefit, such as favors, promises or advantages for himself or for another person, in exchange for any act or omission in the performance of his public functions.

Additionally, any individual who aids, abets or conspires to commit the acts described in the previous paragraph, and corporations that participate in any of the above-mentioned acts may be punished.

Anyone who reports acts of corruption such as those described above will be protected by the appropriate authorities.

- Article 364-A: (Transnational bribery) Any individual subject to Honduran jurisdiction who, directly or indirectly, offers, grants or promises any monetary or other advantage to a public official or other person from another State or international organization, in exchange for any act or omission in the performance of that official's public functions, in order obtain or retain business or derive another undue economic or commercial advantage.

³ This Article and Article 366-A were reformed by Legislative Decree No 14-2006 dated March 15, 2006, published in the Official Gazette of March 24, 2006.

Any individual who aids, abets or conspires to commit any of the acts described in the previous paragraph, and any body corporate that participates in any of the acts described above.

Anyone who in good faith reports the acts of corruption described will be protected by the appropriate authorities.

- Article 369-A: Any civil servant who influences another civil servant by availing himself of the powers invested by his position or any other situation derived from his personal or hierarchical relationship with that civil servant or with another civil servant or employee to obtain a decision intended to directly or indirectly produce an economic benefit or any other type of benefit for himself or a third party.
- Article 369-B: Any individual who influences a civil servant by availing himself of any situation derived from his personal relationship with that civil servant or with another civil servant or employee to obtain a decision intended to directly or indirectly produce an economic benefit or any other type of benefit for himself or for a third party.
- Article 369-C: Anyone who offers to behave in the manner described in the two previous articles and asks a third party for gifts, presents or any other remuneration or gratuity or accepts offers or promises in exchange.
- Article 370: (Misappropriation of public funds) Any civil servant who appropriates funds, goods or effects that he has been entrusted to administer, collect or care for by reason of his position or who commits such acts for any reason whatsoever without being entrusted with them.
- Article 372: (Misappropriation of public funds) Any civil servant who uses the funds, goods or effects he administers for a purpose other than the intended one.
- Article 374: (negotiations that are incompatible with the performance of public functions) Any civil servant who directly or through another person, or through simulated actions, becomes involved for personal gain in any contract or operation in which he is participating by reason of his position.
- Article 376: (Fraud and extortion) Any civil servant who by reason of his position participates in any legal act in which the State has an interest, and reaches an agreement with the interested parties to cheat the State or does so by taking advantage of his condition to benefit a third party or facilitate that party's personal participation, directly or indirectly, in the potential benefits derived therefrom or by using any other artifice for that same purpose.

- Article 394-H (Disclosure of confidential information) Civil servants who, use confidential information to which they are privy about an institution belonging to the domestic financial system by reason of their position, reveal or disclose such information.
- Article 233 Constitution of the Republic and 62 of the Organic Law of the Court of Accounts.(Illicit enrichment) Illicit enrichment is presumed when a government official or employee's equity growth from the beginning to the end of his period in public office notably exceeds the amount he could legally have earned from his salaries and emoluments, or from the growth of his capital or income by any lawful means.

Illicit enrichment shall also be presumed to exist if a civil servant refuses to authorize investigation of his domestic or overseas bank deposits or business.

The combined capital and income of the official or employee, his or her spouse and their children shall be taken into account to determine the growth referred to in the first paragraph of this article.

It is also important to note that the Tax Code (Código Tributario) contains provisions on such acts, as does the special legislation regulating this type of offense, e.g.:

- Article 172 (ch) of the Judicial Career Law regarding the following acts which undermine the dignity of the administration of justice: Solicitation or acceptance of gifts, honors, entertainment, loans, presents and receipt of any kind of advantage directly or indirectly from the parties or their proxies in exchange for knowledge to which they are privy, or offering to give information to other officials or employees or soliciting and receiving such information .
- Article 250 [(1), 2) and 3)] of the Regulation to the above law bans civil servants from soliciting or accepting rewards for carrying out acts which they are employed to carry out, and directly or indirectly soliciting contributions and using outside influences to obtain privileges.

- 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 effect on the investigation and punishment of the acts of corruption covered by our legislation and the acts related to the forms of corruption listed in Article VI 1. of the Convention has been quite positive.

- The cases currently under way and those already brought by the Office of the Special Anti-Corruption Prosecutor, a dependency of the Public Prosecutions Service, total 104 in the last four years, 13 of which have resulted in guilty verdicts, 12 (129 temporary in temporary stays and 12 in definitive stays.
- According to the information provided by the Supreme Court of Justice, during the 2002-2006 period a total of 2,486 corruption-related cases were tried in the courts of first instance. These are broken down as follows:

Breach of Trust	21
Illicit Enrichment	134
Misappropriation of Public Funds	212
Bribery	480
Abuse of Authority	608
Infringements of duties by Officials	<u>1,031</u>
TOTAL CASES	2,486

Tables covering the same period 2002-2006 on the cases tried in the courts of first instance are attached, as are statistics on corruption-related cases (See annexes)

- 2. Application of the Convention to other acts of corruption not covered by the Convention, by virtue of the provisions 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, in accordance with Article VI (2)? If so, briefly describe the respective agreements or conventions and attach a copy of the related documents.

A: THERE IS NO INFORMATION TO INDICATE THAT THIS HAS OCCURRED.

SECTION II

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

STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III [1 AND 2] OF THE CONVENTION)

1.1. Standards of conduct to prevent conflicts of interest and enforcement mechanisms

The Committee suggests that the Republic of Honduras consider the following recommendation:

RECOMMENDATION: To strengthen law enforcement and the systems designed to regulate conflicts of interest. The Republic of Honduras could consider applying the following measures in order to comply with this recommendation:

- a. *Regulate certain cases that might involve civil servants in general in conflicts of interest and which, given their importance, should be dealt with specifically and in detail, as well as mechanisms that guarantee compliance with the regulations issued in relation thereto (See Chapter II [1.1.2] of the Report).*

Progress: In keeping with the previous recommendation, on January 27, 2006, a Draft Civil Service Code of Conduct was put before Congress. The aspects dealt with therein included conflicts of interest in areas concerning civil servants in general. This Draft Code was based on a document prepared by the Court of Accounts.

- b. *Establish suitable restrictions for persons leaving public office, such as a ban on handling cases in which they were involved in the course of their work or through entities to which they were recently linked.*

Progress: The Draft Civil Service Code of Conduct specifically regulates such situations. It is important to mention that although to date the country has no general rules and regulations on the matter, it does have some specific provisions related to recommendations. For instance: 1) A government employee who has been dismissed may not obtain employment in the civil service through a competitive examination for three years (Article 262 of the Regulation to the Civil Service Law). 2) A former employee of any public sector dependency who has received employee benefits may not be appointed or hired under any terms by another public institution before one year has elapsed as of the date of the agreement to terminate or leave the employment. (Article 83 of the General Budgetary Provisions for 2005.). 3) For one year after officials or employees of the National Banking and Insurance Commission cease to work for the Commission, they may not trade directly or indirectly, for themselves or for third parties, in any area in which they were involved in the course of their working relationship with the Commission.

- c. *Issue the rules on the integration and operation of the Probity and Public Ethics Committees through the appropriate authority and encourage each public institution to create such committees in line with the standards in force in that area (see Chapter I [1.1.2] of this report).*

Progress: Recommendation followed. On February 28, 2006 the Court of Accounts approved in Agreement No. 005/2006 on the Rules of Procedure on the Integration and Functioning of the Probity and Public Ethics Committee which was published in the Official Gazette on April 8, 2006 and came into force the following day. Those Rules of Procedure regulate the integration and functioning of the those

Committees, their structure, field of application, requisites, functions, intervention strategies and the complaints filed.

As of June 30, 2006 thirty-seven Committees in centralized and decentralized institutions and in the municipalities have been organized. A copy of the Rules and details of the composition of the Probity and Ethics Committees are attached.

- d. *Increase the number of training programs for civil servants on standards of conduct and mechanisms for preventing conflicts of interest.*

Progress: Seminars were held in 2005 on: Principles and Ethical Values; Rules of the Probity and Public Ethics Committees; and Institutional Transparency. Six hundred and sixty-seven (667) civil servants have been trained, eight (8) educational and information bulletins called “El Ético” have been published, and by June 2006, fifteen (15) seminars had been held, attended by a total of one thousand two hundred and thirty-five (1,235) civil servants. Supporting documents are attached hereto.

Links have been established with local education authorities, municipalities, universities and further education institutes in an endeavor to create a new civic attitude to guarantee the proper and secure use and management of State funds, assets and resources.

Through the 2006 Municipal Management Training Project, representatives from the country’s 298 municipalities received training in a variety of subjects including probity and ethics.

Training and teamwork have been coordinated in conjunction with nongovernmental organizations such as: FOPRIDE, FOSDEH, CIPRODEN and the Salvadoran organization *Probidad*.

Supporting documents and statistical data on training are attached hereto.

- 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 Committee suggests that the Republic of Honduras consider the following recommendation:

RECOMMENDATION: Strengthen the implementation of laws and regulatory systems on the preservation and proper use of public resources. The Republic of Honduras could take the following measures into account in order to comply with this recommendation:

- a. *Consider the advisability of establishing mechanisms for electing the heads of the internal audit units and their staff, such as merit-based or competitive examinations*

subject to pre-established norms and requisites; indicating, if applicable, the duration of the position, the grounds for terminating the relationship and consultation with the Court of Accounts prior to such termination, so they are free to perform their functions objectively, in keeping with the law (See Chapter II [Section 1.2.2] of this report).

Progress: Recommendation followed. Through Executive Branch Agreement No 0419⁴, the Rules on the General Execution of the Organic Budget Law, Article 41 of which provides that “the internal audits of Public Sector institutions shall be subject to the provisions of the Organic Law of the Court of Accounts, the Manual on Internal Control Standards and General Internal Auditing Standards, and any standards the Court of Accounts may issue in fulfillment of its attributions.”

The Court of Accounts, through Article 3 of Administrative Agreement No 027/2003, approves the General Standards on Internal Audits which it ratified through Administrative Agreement No 082/2004 of September 3, 2004 and in which it reiterates the appointment of the internal auditors for an indefinite period. It further states that they can only be dismissed if they commit a serious misdemeanor or fail to perform their appointed duties. The regulations referred to are attached hereto.

- b. Adopt measures to ensure compliance with the Internal Control Standards and Internal Auditing Standards issued by the Court of Accounts (See Chapter II [1.2.2] of this report).*

Progress: In addition to the Administrative Agreements mentioned above, the Court of Accounts, aware that external and internal controls lack the necessary linkage to guarantee the liaison, relationship, complementarity, coherence, effective compliance and coordination necessary to be able to conduct integral and systematic audits of public entities on the most significant, important and priority institutional aspects of management, and to be able to apply institutional, effective and efficient internal controls, which together would enable them to attain the common goal of reasonably ensuring the efficacy, economy, legality, responsibility, transparency, probity and public ethics in the use, handling and investment of public resources, including the technical independence of the internal audits, has designed a National System for the Control of Public Resources (SINACORP). Under this System a project has been developed: the Project to Support the Integral Strengthening of the Control of Public Resources (PAFICORP). Its implementation will be financed by the Inter-American Development Bank in cooperation with the World Bank, Sweden, Spain and others. The process is now under way, beginning with an integral review of the internal control regulations and instructions on how the internal audits are to be conducted.

- c. Implement measures for optimizing the use of technology in government contracting processes and for publishing and disseminating invitations to tender and encouraging more goods and services suppliers to submit offers.*

⁴ Published in the Official Gazette of the Republic of Honduras dated June 3, 2005.

Progress: The measure referred to has been implemented through the creation of the System of Information on Contracting and Acquisitions of State of Honduras”⁵(www.honducompras.gob.hn).

HonduCompras has the following disclosure deadlines:

Centralized Institutions:	17/07/2006
Decentralized Institutions:	14/08/2006
Municipalities:	18/09/2006

Other state institutions also use this technologies for their contracting procedures:: The Finance Ministry (www.sefin.gob.hn), the Department of Public Works (www.soptravi.gob.hn), the National Water Supply and Sewer Service (SANAA) (www.sanaa.gob.hn), the Court of Accounts (www.tsc.gob.hn).

- d. *Increase the number of civil service programs providing training on standards of conduct and mechanisms that guarantee the adequate use and conservation of public resources.*

Progress: The Court of Accounts trained the country’s 298 municipalities in several areas, including internal control standards, accountability and government procurement and hiring.

The country has a National Procurement and Hiring System whose purpose is to develop and enhance the prestigious self-sustainable training system and increase efficiency and transparency in the management of government procurement and hiring.

STATISTICS OBTAINED FROM THE HONDUCOMPRAS TRAINING SEMINAR:

Total training seminars: 55 training seminars

Total purchasing units: 111 entities

Total purchasing units registered with **HonduCompras**: 31

Total purchasing units trained that have complied with the process but are not registered with **HonduCompras**: 13

A. DIPLOMA IN PROCUREMENT AND HIRING.

FEATURES

The Diploma course in Procurement and Hiring lasts 161 hours and is the focal point of the National System on Procurement and Hiring, which is managed by **ONCAE**. It is program and the courses are held each year to reach a broad spectrum of

⁵ Executive Decree 010-2005 dated October 2005.

officials who are involved in government procurement in the public sector, in addition to members of the private sector and oversight entities.

Two Diploma courses have been held so far, the first in 2004 and the second in 2005. They have produced 168 and 177 graduates, respectively, making a total of 345. To make the System technically sustainable, 67 trainers were trained, and in 2005 three refresher courses were held to keep the graduates from the first year up to date on the subject. The third Diploma course will begin in September 2006 and will be attended by 60 civil servants.

B. INTENSIVE COURSE ON GOVERNMENT PROCUREMENT.

Given the recent change in Government, an intensive course lasting 60 hours was held. This was the “Intensive Course in Public Procurement” designed to have an immediate impact and provide new employees and officials with the knowledge and tools necessary to develop their functions properly. So far this year, Intensive Courses on Public Procurement have been held for 123 government employees and officials from 25 central government and decentralized agencies, 9 municipalities and the Public Prosecutions Service.

- 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 Committee suggests that the Republic of Honduras should consider the following recommendation:

RECOMMENDATION: Strengthen the mechanisms in effect in the Republic of Honduras requiring public officials to report to the competent authorities, acts of corruption in public functions of which they are aware. The Republic of Honduras could take the following measures into account to comply with this recommendation:

- a. *Adopt and implement protection measures for civil servants who report acts of corruption to safeguard them against potential threats or retaliation as a result of compliance with this obligation.*

Progress: The different units that receive complaints have been strengthened, as have the ways of protecting complainants. The Court of Accounts has set up a timely and effective system through which citizens can file complaints on the following website: (www.tsc.gob.hn/complaints). The site shows the stage the complaint has reached. Complainants can be anonymous or complainants' can ask his name to be reserved and explains how citizens can learn the results of the investigation. It also includes an online complaint form. Advertising campaigns have been implemented and leaflets printed to encourage citizens to take part in the fight against fraud and corruption .

As mentioned above, the reform, Articles 366 and 366 of the reform to the Criminal Code establishes the State's obligation to protect individuals who in good faith report acts of corruption. Article 72 of the Organic Law of the Court of Accounts contains the following provision to the same effect: "Public officials who are aware of infringements or violations to the legal regulations governing public functions must immediately report these to their immediate superior or to the Court" and affords them full protection from the State.

- b. Increase training programs for public officials regarding the responsibility to report to the authorities acts of corruption of which they are aware.

Progress: Recommendation complemented over a short period (during 2005 and up to June 30, 2006) by 2,559 training processes for organizations and members of civil society and 984 civil servants. See attached report by the Directorate of Citizen Participation of the Court of Accounts.

Article 2 (5) of the Rules of the Integration and Functioning of the Probity and Public Ethics Committees⁶ state that the Court must instruct "civil servants on their obligation to inform the Probity and Public Ethics Committee of their institution or the Court of Accounts of any other authority with competence to deal with acts of corruption of which they are aware that are committed in the performance of public functions. Complainants may request that their names should not be revealed." Chapter IV of the same legislative body sets forth the procedure for reporting acts of corruption. These must be filed through the Department of Probity and Ethics. See previous response.

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

The Committee suggests that the Republic of Honduras consider the following recommendation:

RECOMMENDATION: Strengthen the systems for registering income, assets and liabilities. The Republic of Honduras could consider the following mechanisms in order to facilitate compliance with this recommendation.

- a. *Regulate the conditions, procedures and other aspects that require that sworn statements of income, assets and liabilities be disclosed, in keeping with the fundamental principles of the laws of the Republic of Honduras.*

Progress: There are no legal provisions that require that statements of income, assets and liabilities be published. However, a list of all the officials who must submit a statement and have not yet done so has been delivered to the National Anti-Corruption Council.

⁶ Approved through Administrative Agreement No 005/2006 by the Court of Accounts, published in the Official Gazette on April 8, 2008

Information on regulations on sworn statements of income can be obtained from the Court of Accounts' website: www.tsc.gob.hn/declaracionesjuradas.ht.

- b. *Optimize systems for analyzing the content of statements and adopt appropriate measures, so that they can also be used as a tool for detecting and preventing conflicts of interest. They are also an excellent means of detecting possible cases of illicit enrichment.*

Progress: The form for the Sworn Statement of Income, Assets and Liabilities contains requests for information that would be helpful in detecting conflicts of interest.

A workshop is being prepared on conflicts of interest which will help to determine ethics-related situations and dilemmas connected with public functions. This workshop will have nationwide coverage.

- c. Develop the provision contained in Article 56 of the Organic Law of the Court of Accounts, incorporating the use of information technology to present statements, in order to help people submit statements in electronic format. At the same time this will enable the Court to benefit from this technology and optimize its own compliance in this area
- d. *Strengthen the provisions that require the Court of Accounts to verify the information given on the statements, pursuant to the Regulation of the Organic Law of that Court, to provide it with systems that will enable it to expedite the verification process (See Chapter II [2.3] of the Report).*

Progress: The Court of Accounts' website: www.tsc.gob.hn/declaracionesjuradas.ht. contains information on the rules on sworn statements of income, assets and liabilities. Interested parties can download the form, print it out and fill it in. All statements submitted are kept on electronic file.

The Secretary General of the Court has initiated the "DECLARANET" system through which the institution's human resources unit must submit a statement in electronic format. This will make it quick and easy to check who has complied with their obligation and who has failed to do so.

The Court of Accounts of the Republic of Honduras and the Anti-Corruption Office of Argentina are in the process of obtaining technical assistance to set up an Automated System for Sworn Statements of Income, Assets and Liabilities.

The areas agreed on as priorities for the first stage of the work are:

- a. Identification of a permanent universe of people who must submit statements of income, assets and liabilities.
- b. Mechanisms for publishing the names of persons who comply and those who fail to comply with this obligation.

- c. Optimize control and analysis procedures.
- d. Strengthen the methods for verifying the information provided in the statements.
- e. Diagnose the existing rules and regulations and identification of new regulations for implementing the Automated System for Sworn Statements.
- f. Diagnose the IT aspects and additional work needed in order to automate the system.
- g. Identify the optimum professional profile and specific training needs.

Financial cooperation for the process to automate Sworn Statements has been obtained from the World Bank Institute and we are hoping that this will materialize in the last semester of 2006.

From 2004 to date, over two thousand (2,000) civil servants have been trained at the workshops on “Functional Awareness”, “Statements of Income” and others which have been held by the Probity and Ethics Directorate.

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

The Committee suggests that the Republic of Honduras consider strengthening the oversight bodies to assist them in carrying out their functions to comply with the provisions of Article III (1, 2, 4, and 11) of the Convention in order to ensure that the oversight is effective. Moreover, they must be given the resources they require to perform their functions, along with more political and social support. Mechanisms should be established to enable their actions to be coordinated at an institutional level and provide for ongoing evaluation and follow-up.

Progress: The current economic difficulties in Honduras has meant that the budget of the oversight bodies could not be increased. However, at the end of last year the National Congress approved the creation of the Fund for Municipal Transparency with 1% of the 5% transferred to the country’s municipalities to finance audits and municipal training.

In order to optimize the funds earmarked for oversight, the Court of Accounts has set up mechanisms to enable information to be coordinated and exchanged with other oversight bodies, thereby avoiding duplicated efforts. It therefore entered into cooperation agreements with the Public Prosecutions Service, the Attorney General’s Office, the National Banking and Insurance Commission and the National Anti-Corruption Council. Copies of those documents are attached.

These efforts are also coordinated and complemented by the fact that the Court of Accounts, in compliance with the law, is a member of the Inter-Institutional Criminal Justice Committee. Other members of the Committee include the President of the Supreme Court of Justice, the Prosecutor General of the Republic, the Attorney General

of the Republic, the Minister of National Security and a representative of National Congress. The Committee will continue to be means of facilitating decision-making on the course of criminal procedures, as well as on relevant agreements, regulations and requirements such as training which has had a beneficial effect from the operational point of view on the oversight bodies that belong to it.

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

The Committee suggests that the Republic of Honduras consider the following recommendations:

4.1 General participation mechanisms

There are no recommendations by the Committee for this section.

4.2 Mechanisms for access to information

RECOMMENDATION: Introduce legal rules to support access to public information.

The Republic of Honduras could take the following measures into account to comply with this recommendation:

- a. *Develop and regulate the processes for receiving and channeling requests to ensure timely response to them; for appealing if requests are denied, and for sanctions if information is not forthcoming.*

Progress: On March 18, 2006 the Special Commission of National Congress presented its opinion on the Transparency and Access to Information Law. The draft opinion was adopted following a series of meetings and consultations with government entities, representatives of the G-16 member states, the National Anti-Corruption Council (CNA); representatives of civil society, such as Alianza 72, C-Libre, FOSDEH, the Center for Women's Rights (CDM); COFADEH; the Honduran Association of Journalists (CPH), private sector representatives, such as COHEP and the Chamber of Commerce and International Advisor on Access to Information on behalf of the Organization of the American States (OEA), Mr. Ernesto Villanueva. After presenting its opinion, the National Congress sent a commission of deputies to Mexico to see how the Federal Institute of Access to Public Information (IFAI) operated. A document is attached hereto.

- b. *Implement training and dissemination programs on the mechanisms for access to information, in order to facilitate its understanding by public servants and private citizens and optimize the use of available technology for that purpose.*

- c. *Formulate rules establishing the public nature of public to information and documentation on the management of public sector bodies and entities, subject to the exceptions and limitations provided for in domestic legislation on access to the files of government bodies and entities and the right to obtain copies thereof.*

Progress: Although the Transparency and Access to Information Law is not yet in effect, various civil society organizations have implemented training programs to help public servants and private citizens understand it and use the technology available in that area. Citizens are kept informed by e-mail of the progress in approving the law.

4.3 Mechanisms for consultation

RECOMMENDATION: Complement the existing consultation mechanisms, establishing procedures, as appropriate, that allow for public consultation prior to designing public policies and approving legal provisions. The Republic of Honduras could the following measures into account to comply with this recommendation:

- a. *Continue to set up procedures, as appropriate, so stakeholders in civil society and nongovernmental organizations can be consulted on the design of public policies and the formulation of the Executive's bills, decrees and resolutions.*

Progress: Article 329 of the Constitution of the Republic was amended through Decree No 175-2004 dated October 28, 2004, was published in the Official Gazette of January 3, 2005 and is pending ratification by this legislature. The amendment states that “In order to promote economic and social development and complement the actions of the other agents of development, the State will **work together with Honduran society** to design a medium and long term strategy to attain specific goals and the methods and mechanisms for achieving them.”

Other rules are contained in the provisions of Article 5 of the Constitution of the Republic; Article 15 (5); Article 19 (4); Article 25 (10, 33-B and 62) of the Law on Municipalities; the websites of the State Branches of Power and their institutions; citizens' forums and open councils which allow stakeholders from civil society and nongovernmental organizations to be consulted on public policies and bills. The existing mechanisms are constantly being enhanced thanks to the interest the National Congress has taken in involving these sectors.

- b. *Hold public hearings and, where appropriate, develop other mechanisms to facilitate public consultation in areas other than the existing ones.*

Progress: There is ample experience at the municipal level in the area of public consultation. Civil society is also represented at bodies such as the National Anti-Corruption Council (CNA), the National Forum for Convergence; the Citizens' Council envisaged in the Public Prosecutions Service Law; and correspondence and can be sent to the various civil service websites. Efforts continue to be made to

develop new mechanisms to facilitate public consultation. Existing ones include the Law on Transparency and Access to Public Service and the approval of the Citizen Participation Law which, as we have said, are instruments that facilitate or permit public consultation in other areas in accordance with the above recommendation.

- c. *Adopt the appropriate measures through the competent authority, pursuant to the legislation on the matter, to enable citizens to implement the plebiscite and referendum mechanisms provided for in the reform of Article 5 of the Constitution of the Republic when it is ratified. In order to strengthen the legal and institutional system of the country under review, we advise that the amendment include the possibility of regulating the treatment to be given to the participation mechanisms mentioned and the matters or issues on which the use of those mechanisms will be compulsory.*

Progress: The constitutional amendment to Article 5, which introduces plebiscite and referendum mechanisms was ratified through Legislative Decree No.177-2004 dated November 25, 2004 and published in the Official Gazette of February 11, 2005. The law is still pending approval.

4.4 Mechanisms to encourage participation in public administration

RECOMMENDATION: Strengthen and continue to implement mechanisms to encourage civil society and nongovernmental organizations to take part in public management and endeavor to repeal those mechanisms that are likely to discourage their participation. To comply with this recommendation, the Republic of Honduras could consider the following measures:

- a. *Establish additional mechanisms to the existing ones to strengthen the participation of civil society and nongovernmental organizations in efforts to prevent corruption.*

The Court of Accounts has signed the following agreements:

On January 31, 2006 a Strategic Alliance was set up with the National Anti-Corruption Council.

An Inter-Institutional Framework Agreement with the Permanent Forum of Civil Society Organizations. Its objectives are: to strengthen and prepare social audits, as a means of involving private citizens in the work of the Court; to foster the legal, correct, ethical, honest, efficient and effective management of State resources and assets; to encourage the public and private sector to meet their financial obligations and responsibilities vis-à-vis the State.

- b. Take steps to repeal the “contempt laws”(see Chapter II [4.4.2] of this report).

Through Decree No. 3-2006 the National Congress approved the Citizen Participation Law which is intended to promote, regulate and establishes the process and mechanisms through which citizens can organize themselves and participate in State entities, in accordance with the Constitution of the Republic and Honduran legislation. The decision is attached hereto.

- c. *Through the Court of Accounts, and when appropriate, promote the establishment of processes and mechanisms so that citizens can participate in accordance with Article 70 of the Organic Law of the Court of Accounts.*

Progress: In addition to the significant effort by the Court of Accounts to foster involvement by civil society and encourage citizens to file complaints, it recognizes the need to teach public servants and private citizens to use this mechanism. The Court is also entering into agreements to make public administration more transparent. (See Report by the Directorate of Citizen Participation of the Court of Accounts).

- d. *Design and implement programs to disseminate mechanisms to encourage involvement by private citizens in public management and, when appropriate, provide training and tools to civil society and nongovernmental organizations and also to government officials and employees, so they can make good use of those mechanisms.*

Progress: The methods used to disseminate the mechanisms for stimulating the Directorate of Citizen Participation and the Directorate of Probity and Ethics, which reports to the Court, to disseminate mechanisms to encourage involvement by civil society include workshops and courses on institutional transparency, complaint procedures, citizen assistance services, participation in public management; advertising campaigns.

4.5 Mechanisms for participation in the follow-up of public administration

RECOMMENDATION: Strengthen and continue to implement mechanisms to encourage civil society and nongovernmental organizations to take part in public management. To fulfill this recommendation the Republic of Honduras could consider taking the following measures:

- a. *When appropriate, promote ways in which civil servants can enable, facilitate or help civil society and nongovernmental organizations to undertake activities to complement their public functions.*

Progress: The Court of Accounts, through the Directorate for Citizen Participation, is helping those organizations to comply with this recommendation. See attached report on the Directorate's activities.

- b. Design and implement programs to disseminate mechanisms for helping to complement public management activities and facilitate the tools civil society and nongovernmental organizations need to use those mechanisms properly.*

Progress: The number of channels and websites available for citizens to file complaints on public administration is being increased. The most important laws are made known to society. The National Anti-Corruption Council has been strengthened, as have training and dissemination by the media; programs are constantly being implemented and citizens are kept informed of the development of public management activities.

There are a number of legal provisions designed to foster participation mechanisms and program implementation; for instance, Article 69 of the Organic Law of the Court of Accounts providing for Citizen Oversight; the National Anti-Corruption Council, with a majority representation from civil society; Article 24 (7) of the Municipalities Law which entitles neighbors to render the Municipal Corporation accountable for its performance, and likewise the functions of the Municipal Commissioners (Articles 31-A, 31-B and 31-C of that Law). These instruments, together with the Law on Transparency and the Law on Citizen Participation soon to be passed, will help civil society organizations to evaluate their management.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)
The Republic of Honduras has adopted measures on mutual assistance and mutual technical cooperation in accordance with the provisions of Article XIV of the Convention, as described and analyzed in Chapter II (5) of this report.

In view of the comments made in that sub-paragraph, The Committee suggests that the Republic of Honduras consider the following recommendations:

RECOMMENDATIONS:

- 5.1. Determine and prioritize specific areas where the Republic of Honduras considers that technical cooperation from other States Parties is required to strengthen their ability to prevent, detect, investigate and punish acts of corruption. The Republic of Honduras must also determine and prioritize requests received for mutual assistance on investigating or trying cases of corruption.
- 5.2. Continue with the efforts to exchange technical cooperation with other States Parties on the most effective ways and means of preventing, detecting, investigating and sanctioning acts of corruption.

Efforts will continue in order to obtain technical cooperation, particularly from international agencies such as the World Bank, the Inter-American Development Bank, the Central American and Caribbean Bureau of Financial Inspectors (OCCEFS). Some examples of the cooperation received from the Court of Accounts are: a) Agreement on Mutual Cooperation with the Anti-Corruption Office of the Ministry of Justice of the Republic of Argentina to develop a program to systematize sworn statements of income. b) Agreement with the Central American Bank for Economic Integration (BCIE) on support for the Court of Accounts, formulation of regulatory provisions and implementation of a Human Resources System; c) Agreement with the World Bank and the OCCEFS on (i) a diagnosis to strengthen internal oversight; (ii) an accountability diagnosis in Central America and the Caribbean; and (iii) a diagnosis of citizen participation in Central America and the Caribbean; d) Agreement with the World Bank on funding to strengthen the activities of the Court of Accounts in general; e) Agreement with the United States Agency for International Development (USAID) to expand financial cooperation and strengthen the Directorates of Municipalities and Citizen Participation; f) Agreement with the Spanish Agency for International Cooperation (AECI) on the diagnosis of internal oversight activities; g) Agreement with the Dutch Agency for International Business and Cooperation to design the operating plans for the Directorates of Municipalities and Citizen Participation; h) Agreement with the Inter-American Development Bank to formulate a Project of Support the Strengthening of Internal Oversight Systems. These and other agreements are listed in detail on the Court of Accounts website. (www.tsc.gob.hn).

On July 14, the heads of the Organization of Latin American and Caribbean State Audit Institutions (OLACEFS) within the framework of the International Seminar “Transparency Against Corruption”, signed the Declaration of Cartagena de Indias, whereby the region undertakes to fight corruption and use appropriate measures and policies to prevent and punish it as well as mutual assistance and cooperation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION) The Republic of Honduras has complied with the provisions of Article XVIII of the Convention by appointing the Court of Accounts as a central authority for the international cooperation and assistance envisaged in the Convention.

RECOMMENDATION: In view of the comments made in Chapter II (6) of this report, the Committee suggests that the Republic of Honduras consider providing the Court of Accounts with the funding it needs to carry out its functions in the appropriate manner, as a central authority of the Convention, and in particular to design and implement an integral dissemination and training program for the appropriate authorities and officials, in order for them to be aware of, and in a position to apply, the provisions for mutual assistance for investigating and trying the acts of corruption provided for in the Convention and in other agreements entered into by the Republic of Honduras.

Progress: On April 8, 2005, the Court of Accounts signed an inter-institutional cooperation agreement with the nongovernmental organization ACI-PARTICIPA,

through which that organization will support the Court in disseminating and publishing the Inter-American Convention Against Corruption in the different sectors of society.

In the agreement entered into with the Permanent Forum of Civil Society Organizations, the Forum undertook to work with the Court to reproduce, disseminate and impart the anti-corruption instruments of the United Nations System and the Organization of American States and the instruments that are related to oversight by civil society. It also agreed to cooperate with the Court on the work undertaken to implement in the country the recommendations of the Committee of Experts on Implementation of the Inter-American Convention Against Corruption.

The World Bank is providing us with funding for a publication of the Organic Law of the Court, its Regulation and those of the two international anti-corruption conventions.

7. GENERAL RECOMMENDATIONS

Based on the analysis and contributions made throughout this report, The Committee suggests that the Republic of Honduras consider the following recommendations:

- 7.1 When appropriate, design and implement training programs for the civil servants responsible for the applying systems, standards, ensures and mechanisms considered in this report to ensure they are properly understood, handled and applied.

Progress: The Republic of Honduras has afforded that recommendation the importance it warrants, as a result of which the systems, standards, measures and mechanisms considered in this Report have been applied by the different institutions and systems responsible for hiring civil servants. This is just one of example of the results of these training programs.

The Court of Accounts, through the Department of Probity and at different workshops, has trained over one thousand five hundred (1,500) civil servants; the Department of Public Ethics, more than thousand nine hundred (1,900) civil servants; and the Directorate of Citizen Participation, which between 2005 and June 30, 2006, trained over three thousand (3, 000) people on matters related to control by civil society and reports filed by citizens on cases of corruption or fraud.

Through an agreement between the Universidad Nacional Autónoma de Honduras (UNAH), and funding from the World Bank, more than one hundred Court of Accounts' auditors were awarded diplomas having completed an intensive course at higher education level leading to a technical college diploma in auditing. (See supporting reports)

- 7.2 Select and develop procedures and indicators, when appropriate, to ascertain that the recommendations made in this report have been followed up and to report to the Committee, through the Technical Secretariat on the progress made. The list of indicators generally applied in the Inter-American system and available for the selection indicated by the State under review, which has been published by the Secretariat of the Committee on the OAS' website, could be used for that purpose, as well as information obtained from analyzing the mechanisms developed following recommendation 7.3 below.
- 7.3 Develop procedures, when appropriate and if they do not yet exist, analyze the mechanisms mentioned in this report, as well as the recommendations contained in it.
1. Please determine the measure or measures suggested by the Committee or the alternative measure or measures taken in order to implement the foregoing recommendation and briefly describe the specific actions taken on the measures adopted. If deemed relevant, please indicate the website where more detailed information can be obtained on the measures adopted and the action taken to implement this recommendation, and state exactly where on the website the information was obtained from.
 2. Please indicate briefly any difficulties observed in the processes for implementing the foregoing recommendation. If deemed relevant, please indicate the website where more detailed information can be obtained on the measures adopted and the action taken to implement this recommendation and state exactly where on the website the information was obtained from.
 3. If deemed appropriate, please indicate which internal bodies were involved in implementing the recommendations, and identify specific needs for technical or other assistance in order to implement the foregoing recommendation. If deemed relevant, please indicate the website and give where more information on the aspects referred to can be found, and state exactly where on the website the information was obtained from.

SECTION III

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

Please complete the following information:

(a) State Party: HONDURAS

(b) The official who can be consulted on the replies to this questionnaire is:

(A) Mr.: RENÁN SAGASTUME FERNÁNDEZ.

Title/Position: President.

(B) Mr. RIGOBERTO CÓRDOVA LAITANO

Title/Position: Deputy Director of Legal Affairs.

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