

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

FINAL REPORT

(Approved in the plenary session held on March 12, 2005)

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

**FINAL REPORT ON THE IMPLEMENTATION IN THE
REPUBLIC OF HONDURAS
OF THE PROVISIONS OF THE CONVENTION SELECTED FOR REVIEW WITHIN
THE FRAMEWORK OF THE FIRST ROUND¹**

INTRODUCTION

1. Legal-institutional system²

Pursuant to Article I of its Constitution, Honduras is a state organized under the rule of law, sovereign, constituted as a free, democratic, and independent republic to safeguard for its inhabitants the enjoyment of justice, liberty, culture, and economic and social well-being.

Sovereignty vests in the people and from the people emanate all the powers that are exercised by representation. By Decree No. 242-2003 dated January 20, 2004, Article 5 of the Constitution was amended to institute the referendum and the plebiscite as means of consulting the citizens. This constitutional amendment is pending ratification.

Article 4 of the Constitution establishes that the form of government is republican, democratic, and representative. There are three branches of government – Legislative, Executive, and Judicial – which are complementary and independent, with none being subordinate to either of the others.

The Legislative branch is exercised by a Congress of Deputies, elected by direct vote.

The Executive branch is exercised by the President on behalf of and for the benefit of the people, and in his or her absence, by the Vice-President of the Republic.

In the case of the Honduran presidential system, the President of the Republic, according to the Constitution, is both head of state and head of government, chief of the Executive branch, and chief of the public administration.

Article 303 of the Constitution, as amended, establishes that the power to impart justice emanates from the people and is imparted free of charge in the name of the State by independent magistrates and judges, subject only to the Constitution and the laws. The Judicial branch is made up of a Supreme Court of Justice, the Courts of Appeal, the Courts of First Instance, and other entities as indicated by law.

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on March 12, 2005, at its seventh meeting, held at OAS Headquarters in Washington D.C., United States, March 7 to 12, 2005.

² Updated response of the Republic of Honduras to the questionnaire. Introduction; and Constitution of the Republic of Honduras. At the request of Honduras, its response to the Questionnaire, as well as the corresponding attachments thereto, as provided for by the *Rules of Procedure and Other Provisions*, have been published at the following internet address: www.oas.org/juridico/spanish/corresp_hnd.htm

According to the checks and balances among the branches of government, legislative acts (statutes), for example, may be reviewed by the Judicial branch, through an action of unconstitutionality; administrative acts may also be reviewed by the Judicial branch, by bringing a contentious-administrative action; the Executive may veto a law (suspensive veto); the Congress approves or disapproves certain contracts and the international treaties entered into by the Executive, approves and modifies the General Budget, and approves the budgets of the autonomous institutions.

We can point out the following summary of the checks and balances of the branches of government provided for in the Constitution:

- Legislative Checks: according to Article 205 of the Constitution, its powers include the following:

(1) To participate in the election of the high-level authorities indicated in sections (9) and (11) of that article.

(2) To approve or disapprove contracts that contain exemptions, incentives, and fiscal concessions, or any other contract that will produce or prolong its effects to the next administration of the Republic (power 19).

(3) To approve or disapprove the administrative conduct of the Executive, the Judiciary, the Supreme Electoral Council, the Superior Court of Accounts, , the Public Prosecutor's Office (*Procuraduría General de la República*) the Environmental Prosecutor's Office, the Public Ministry, the National Human Rights Commissioner, the National Registry of Persons, decentralized institutions, and other auxiliary organs of the State (power 20).

(4) To question the secretaries of state and other officials in the central government, decentralized agencies, state enterprises, and any other entity in which the State has an interest, on matters relating to the public administration (power 22).

(5) Control over the Armed Forces, which fall under the President of the Republic, in setting the number of permanent members of those forces (power 25).

(6) Control over the treaties entered into by the Executive (power 30).

(7) Control over the revenues and outlays of the central government and the decentralized institutions, when approving the Budget of Revenues and Outlays for both entities (powers 32 and 33).

(8) Control over agreements related to public credit (power 36).

(9) A posteriori control over public expenditure through approval or disapproval of the execution of the General Budget of Revenue and Expenditures of the Republic and the budgets of the decentralized and deconcentrated institutions. The Superior Court of Accounts should rule on such liquidations and summarize its views of the efficiency and effectiveness of the management of the public sector, including an evaluation of expenditure, organization, management performance, and reliability of the control of internal audits, the accounting plan, and their application (power 38).

(10) Control of public revenues (power 40).

(11) Control to preserve the integrity of government or state assets (power 41).

- Checks of the Executive branch:

(1) Co-legislation: (a) Introducing legislation (Articles 213 and 245, power 9 in the Constitution); (b) approval and promulgation of legislation (Article 215 of the Constitution); (c) publication (Article 221 of the Constitution); (d) suspensive veto (Article 216 of the Constitution).

(2) May appeal to the Congress to hold special sessions or propose that it extend the regular sessions (Article 245, power 6 in the Constitution).

- Checks of the judicial branch:

(1) Constitutional review of the laws (Articles 184, 185, and 316 of the Constitution).

(2) Control of the legality of the acts of the Executive, decentralized institutions, and Superior Court of Accounts, through the Law on Contentious-Administrative Jurisdiction.

On legislative matters, the issuance of a new Code of Criminal Procedure (in 2002) resulted in a profound criminal law reform. The Code replaced the written and inquisitorial system, to give way to oral and expeditious proceedings. As a result of this, the Public Ministry (prosecutors) actively participates in judicial proceedings, with respect to the legal principle of the presumption of innocence, witness protection, new laws for a speedier trial, etc.

The Supreme Court of Justice created a legal mechanism to achieve coordination of the different institutions in the justice sector, stemming from the implementation of the new criminal procedure. Based on the foregoing, the "Inter-institutional Commission on Criminal Justice" is operating effectively, made up, among others, of the Supreme Court, the Public Ministry, the Public Prosecutor's Office, the Public Defender's Office, the Superior Court of Accounts, the Ministry of Security, the Ministry of Interior, and the National Congress.

The National Penitentiary System is being reorganized through a proposal arrived at by consensus in the Inter-institutional Commission on Criminal Justice that was discussed with civil society.

2. Ratification of the Convention and Adherence to the Mechanism

According to the official registry of the OAS General Secretariat, Honduras ratified the Inter-American Convention against Corruption on May 25, 1998, and deposited the respective instrument of ratification on June 2, 1998.

In addition, Honduras signed the Declaration on the Mechanism of Follow-up on Implementation of the Inter-American Convention against Corruption on December 18, 2001.

I. SUMMARY OF THE INFORMATION RECEIVED

Response from Honduras

The Committee wishes to acknowledge the collaboration of the Republic of Honduras throughout the process of analysis, and especially the Superior Court of Accounts, which was evident, among other aspects, by its response to the questionnaire and in the availability it displayed at all times to clarify or complete the contents of the response. Along with its response, the Republic of Honduras sent the provisions and documents it considered pertinent, a list of which is included as an attachment to this report.

For its analysis, the Committee took into account the information provided by the Republic of Honduras as of August 30, 2004, which was requested by the Secretariat and by the members of the subgroup for analysis, in order to fulfill its functions in keeping with the Rules of Procedure and Other Provisions.

No document or information was received from civil society within the allotted time period provided for in Article 33(b) of the Committee's Rules of Procedure and Other Provisions.

II. REVIEW OF THE IMPLEMENTATION BY THE REPUBLIC OF HONDURAS OF THE PROVISIONS SELECTED

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

1.1. CONFLICTS OF INTEREST

1.1.1 Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

The Republic of Honduras has a set of provisions regarding the above-referenced standards of conduct, of which the following should be noted:

- Constitutional provisions applicable to public servants generally³, such as those contained in Articles 256 and 258 of the Constitution, the first of which states that the Civil Service Regime regulates the relationships of employment and public function between the State and its servants, grounded in the principles of suitability, efficiency, and honesty; and the second provides that both in the central government and in the decentralized organs of the State, no person may hold, at the same time, two or more remunerated public positions, except those who provide health care and teachers, and that no public official, employee, or worker who received a regular salary shall receive any additional remuneration or bonus for providing a service in the performance of his or her functions.

³ According to Article 2 of the Organic Law of the Superior Court of Accounts, a "public servant" ("*servidor público*") is any employee of the State or of its entities, including those who have been selected, appointed, hired, or elected to perform activities or functions in the name of the State or at its service, at all hierarchical levels.

- Constitutional provisions that provide for disqualifications and incompatibilities applicable to certain public servants, such as those contained in the following articles of the Constitution: 52, for magistrates of the Supreme Electoral Tribunal; 54, for the director and assistant director of the National Registry of Persons; 199, 203, and 204 for deputies; 229 for the public and deputy public prosecutors; 240 for the President and Vice-President of the Republic; 250 for cabinet ministers or vice-ministers; and 310, for the justices of the Supreme Court.

- Statutory provisions applicable to public servants, aimed at preventing conflicts of interest, such as those contained in the Civil Service Law, which at Article 42 establishes prohibitions on those public servants of the Executive branch and the municipal governments, to whom that law applies, according to its Articles 2 and 3;⁴ in the Administrative Procedures Law, which at Article 15 provides for the circumstances in which public officials and employees who intervene in the administrative procedure can be recused; and in the Law on State Contracting, which sets forth at Article 15, prohibitions and disqualifications for entering into contracts with the Administration.

- Statutory provisions applicable to specific public servants, aimed at preventing conflicts of interest, such as those contained in the Law on Organization and Powers of the Courts, which at Article 188 sets forth the grounds for recusal of judges and magistrates; in the General Law on the Public Administration, which at Article 115 provides for criminal and civil liability for the members of collegial organs who participate in the deliberations or vote on matters in which they or their spouse, or their relatives within the fourth degree of consanguinity or second of affinity, has an interest; in the Law of the Public Ministry, which at Article 20 indicates those who cannot be elected Public Prosecutor of the Republic or Deputy Public Prosecutor; and in the Law on Municipal Governments, whose Article 31 establishes which persons or citizens cannot seek positions in the Municipal Corporation.

- There are also provisions aimed at preventing conflicts of interest at Article 20 of the Law on the Public Ministry; at Articles 1 to 10 of the Code of Ethics for Judicial Officers and Employees; at Articles 11, 12, and 17 of the Law on the Labor Status of Public Employees of the Legislative branch; at Article 28 of the Law on Promotion and Development; at Article 14 of the Law on the Honduras Institute of Children and the Family; at Articles 102 and 103 of the General Provisions of the Budget; in the provisions of the Law of the Central Bank of Honduras (9 and 72); in the provisions of the National Commission on Banks and Insurance (Articles 4 and 5 of its Law); at Articles 9(c),(ch), and (d), and 177(d) and (ch), of the Customs Law; at Articles 48, 65, and 103 of the General Law on Mining; and at Article 15 of the Law on the Honduran Corporation for Forestry Development.

The Republic of Honduras also has mechanisms for enforcing those standards of conduct, among which the following should be noted:

⁴ Article 2 of the Civil Service Law provides that its regime includes the servants of the Executive branch, whose entry to the service has taken place under its conditions and requirements, as well as those officials and employees of the municipal governments, but it excludes from its scope of application the public servants in the Legislative and Judicial branches, as well as those in the decentralized agencies, who will be governed by their own Regulations and Statutes. Article 3, in turn, considers numerous exceptions to the application of the regime contained in that same law.

- The Constitution, which at Title V, Chapter XIII, Articles 321 to 327, establishes the responsibility of the State and its servants, providing for administrative, civil, joint and several, and criminal liability for their breaches of the Law; at its Article 298 it provides that municipal corporations shall respond before the courts of justice for the abuses they commit individually or collectively, without prejudice to administrative liability; and at Article 222 it notes that the Superior Court of Accounts is the lead entity of the system for the control of public resources, and requires it to establish a system of transparency in the work of the public servants.

- The Organic Law of the Superior Court of Accounts, which at Articles 53 to 55 establishes control of probity and public ethics;⁵ at Article 68 it provides that the Court will implement the Inter-American Convention against Corruption in accordance with that law and its regulations; at Articles 79 to 81, it refers to the responsibilities of public servants; at Articles 82 to 89 it provides procedures for its investigations; and at Articles 98 to 101 it establishes sanctions.

- The Regulation of the Organic Law of the Superior Court of Accounts, which at Articles 118 to 121 regulates and spells out the cases giving rise to administrative, civil, joint-and-several, and criminal liability.

- The Civil Service Law, which at Articles 43 to 55 establishes the disciplinary measures and regime for dismissal for the public servants of the Executive branch and the municipal governments to whom, according to Articles 2 and 3, that law applies.

- The Law on Government Contracts, which establishes several measures in the event of a violation of its provisions, including Article 19, which voids the contracts signed by persons who lack legal capacity or are included within the prohibitions or disqualifications provided for by Articles 15 and 16 of that law; and it provides for the adoption of the measures necessary for compensating the damages caused.

- The Law on Municipal Governments, which at Article 30 lists prohibitions for the members of the Municipal Corporations, and determines that its violation will void the acts, without prejudice to the legal actions that may be brought under law.

- The Criminal Code, which contains specific provisions to criminally sanction improper conduct related to conflicts of interest, such as Abuse of Authority and Violation of the Duties of Officials (Article 349); the Refusal to Disqualify Oneself in Jurisdictional Conflict (Article 355); Illegal Appointments (Article 357); Subornation (*cohecho*) (Articles 361 to 369); and those Negotiations Incompatible with the Performance of Public Functions (Articles 374 and 375).

⁵ According to Article 53 of the Organic Law of the Superior Court of Accounts, the control of probity and public ethics is aimed at establishing the conditions to ensure the proper exercise of the actions of public servants, and of those persons linked to financial and economic-property activities related to the State, so that such actions are set forth within principles of legality and ethical values of integrity, impartiality, probity, transparency, accountability, and efficiency that ensure adequate service for the community; as well as safeguard government property, preventing, investigating, and punishing public servants who use their positions, employment, or influences to enrich themselves illicitly or to commit other acts of corruption. This article also provides for the Court to promote the creation of probity and public ethics committees, whose composition and operation will be determined by regulations.

1.1.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms

With regard to the constitutional and statutory provisions on the standards of conduct aimed at preventing conflicts of interest and mechanisms for enforcing them, which the Committee has examined based on the information at its disposal, they constitute, as a whole, a harmonious body of measures relevant to promoting the purposes of the Convention.

Notwithstanding, the Committee considers it appropriate to formulate certain observations on the advisability of developing and complementing certain legal provisions that refer to those standards and mechanisms.

One of the legal regulations that addresses the creation, maintenance, and strengthening of the standards of conduct for preventing conflicts of interest, as provided for in Article III of the Inter-American Convention against Corruption, is the Civil Service Law, since its Article 42 contains provisions related to this issue. Although this law is relevant for achieving those purposes, the following comments are in order:

- Its scope of application is restricted, taking into account that pursuant to Articles 2 and 3, numerous and diverse classes, categories, or ranks of public servants are excluded from its regime.
- Although Article 42 of that law contains prohibitions aimed at preventing conflicts of interest, no specific provisions are set forth for those cases in which the particular interests of public servants clash with those of the entity to which they provide services, which could stem from their economic, political, or union interests, or the interests of persons who have special ties to them by reason of business, family, or friendship; or from circumstances such as their belonging to a company, a professional association, or a nongovernmental organization. Accordingly, it would be advisable for Honduras to consider the possibility of supplementing the existing provisions, specifically regulating the eventualities considered most important in such situations and establishing mechanisms designed to promote the fulfillment of those provisions, in addition to existing provisions.
- Neither this law nor others set forth provisions to prevent conflicts of interest subsequent to the performance of public functions, such as the prohibition on those who performed them from working in official matters in cases in which they were involved by reason of their position or before entities with which they were recently associated.

Although the Committee observes that in addition to the Civil Service Law noted above, there are other laws which contain more detailed provisions for preventing conflicts of interest, one should bear in mind that those laws do not cover all public servants, nor do they constitute an integrated regime of provisions in this respect. Accordingly, they are specific for certain public officials, or are applied to certain of their actions, such as their involvement in public contracting or in administrative procedures.

In view of the foregoing, the Committee considers it advisable for the Republic of Honduras to consider strengthening the implementation of laws and regulatory systems related to those provisions and mechanisms.

The Committee sets forth the foregoing considerations insofar as it considers it useful, for the strengthening of the provisions and mechanisms for preventing conflicts of interest, for the relevant regulations to cover the different classes, categories, and ranks of public servants; that they be adequately detailed, to the extent that appears advisable; and that they broadly embrace conflict-of-interest situations that could arise before, during, or after the performance of a public function.

The Committee wishes to acknowledge the existence of a willingness in Honduras to move in the direction indicated above, which has been made clear by its response, in which it notes that “at present the Superior Court of Accounts is working on a draft Code of Ethics which includes conflict-of-interest provisions of a scope that covers public servants generally, and that also tends to strengthen those provisions, and to adapt and implement the contents of the Inter-American Convention against Corruption.”⁶ It should also be noted, in this respect, that the Republic of Honduras made that draft available to the Committee.

Another statutory regulation that should be noted is the Organic Law of the Superior Court of Accounts, which among its provisions on the control of probity and public ethics, notes at Article 53 that the Court will promote the creation of Probity and Public Ethics Committees, whose establishment and operation will be determined by regulation. This provision is reiterated at Article 85 of the regulation of that statute, to foster the establishment of such committees in each public institution.

Mindful of the importance for public institutions to have the Probity and Public Ethics Committees alluded to in those provisions, in order to develop the provisions on the control of probity and public ethics contained in that Law and its Regulation, the Committee is of the view that it would be advisable for the Republic of Honduras, through the competent authority, to issue the regulation on the establishment and operation of those committees, and foster their creation in each of the public institutions, in accordance with those provisions.

The Committee wishes to acknowledge the existence of a willingness in Honduras to move forward in the direction indicated, which has been made clear by one of the attachments sent with its response,⁷ in which it is mentioned that one of the drafts being processed at the Superior Court of Accounts, concerning probity and ethics, is the “Regulation for the functioning and operation of the Public Ethics Committees.” It should also be noted that the Republic of Honduras provided that draft to the Committee.

The Committee, taking into account the recent entry into force of important provisions on the mechanisms to prevent conflicts of interest, such as the Organic Law of the Superior Court of Accounts and its Regulation, published in the official gazette (*Diario Oficial*) of the Republic of Honduras, on January 23, 2003, and November 26, 2003, respectively, wishes to reiterate the importance of giving adequate training to public servants for the implementation of those provisions.

The Committee wishes to recognize the existence of a willingness in Honduras to move in the direction indicated above, which has been made clear in one of the attachments sent with its response,⁸ in which it states that “the Court is a knowledge-based organization, and therefore there cannot be a process of organizational change and implementation of a control system that ignores or

⁶ Updated response from the Republic of Honduras to the questionnaire, p. 24.

⁷ 2003 Proceedings of the Superior Court of Accounts (Annex 1), p. 36.

⁸ 2003 Proceedings of the Superior Court of Accounts (Annex 1), pp. 19-21.

sets aside the development of skills and a change in attitudes. The Court is aware that it is necessary to dedicate considerable resources and hours to the education, updating, and training of its personnel. Even though in this year 2003 the Court has invested heavily in training, both internal and external, it continues to be weak in relation to its institutional needs.” Taking into account that there is a report on the training courses carried out, the Committee considers that all that needs be recommended to Honduras is that it increase its efforts to provide such training.

Taking the foregoing considerations into account, the Committee will formulate recommendations in this regard.

1.1.3. Results of the legal framework and/or of other measures and enforcement mechanisms

The response from the Republic of Honduras in this respect⁹ notes as follows, in relation to the results in this field:

“Although we don’t have a breakdown, there is no doubt but that in any number of cases the parties have filed actions in the contentious-administrative jurisdiction over conflict-of-interest situations, especially in the area of biddings for public works. The same can be said in civil and criminal cases in which the parties recuse the presence of certain judges and magistrates, alleging conflicts of interest.”

Due to the fact that the Committee has no information other than that referred to above, which allows a comprehensive assessment of the results of the provisions and mechanisms in this area, it shall formulate a recommendation in this regard.

1.2. STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PROPER CONSERVATION AND USE OF RESOURCES ENTRUSTED TO PUBLIC SERVANTS

1.2.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

The Republic of Honduras has a set of provisions relating to the standards of conduct in question, of which the following should be noted:

- Constitutional provisions, such as those contained in the following articles of the Constitution: 354, which provides that government property (*bienes fiscales*) or public property not open to public use (*bienes patrimoniales*) may only be adjudicated or sold to persons in the forms and conditions established by the laws; 360, which provides that the contracts the State enters into for the execution of public works, procurement of supplies and services, purchase or lease of assets, must be executed after a bidding, competition, or auction in conformity with the law; 362, which provides that all government income and spending shall appear in the General Budget of the Republic; and 364, which orders that no commitment or payment may be made outside of the allocations voted in the budget, or against the budget laws.

⁹ Updated response of the Republic of Honduras to the questionnaire, p. 24.

- Statutory provisions, such as those contained in the Organic Law of the Superior Court of Accounts, which at Article 100 describes conduct considered as breaches related to the handling of State resources and provides for sanctions in this respect; the Law on State Contracting, which at Articles 132 to 141 establishes sanctions for public servants and private persons who commit the irregularities indicated in relation to that matter; the Organic Law on the Budget, issued on May 28, 2004 and according to Article 133 of which enters into force on January 1, 2005. Article 1 of this law has as its purpose to regulate and harmonize the financial management of the public sector; and the Law on Municipalities, which at Article 7 provides that the assets and funds from grants and transfers for specific purposes may not be used for any other purpose, and at Article 8 it prohibits taking on economic commitments when that assignment ends or is insufficient, without prejudice to annulling the action and determining the corresponding liabilities.

- There are also provisions related to the conservation and proper use of public resources in the Law on the Executive Bureau of Revenue (Article 2); the Law on Promotion and Development of Public Works (Articles 1; 3(3); 4; 12; and 13); the Law on the Public Ministry (Articles 1(5) and (6); and 16(10) and (11)); in the Law on the Unlawful Use of and Trafficking in Drugs and Psychotropic Substances (Articles 30 and 36); in the Law on Customs (Article 183); in the General Provisions of the 2004 Budget (Articles 11, 12, 14, 23, 68, 87, and 97); and in the Regulation for the Control and Accounting of National Assets.

The Republic of Honduras also has mechanisms to enforce those standards of conduct, including:

- The Constitution, which at Title V, Chapter XIII, articles 321 to 327, establishes the responsibility of the State and its servants, providing for their administrative, civil, joint-and-several, and criminal liability for their violations of the law; and Article 222 notes that the Superior Court of Accounts is the leading entity of the system for the control of public resources.

- The Organic Law of the Superior Court of Accounts, which at Article 3 provides that the Court's function is to inspect *a posteriori* the funds, assets, and resources administered by the branches of government, decentralized and deconcentrated institutions, including the state or mixed banks, the National Commission on Banks and Insurance, the municipal governments, and any other specific organ or public or private entity that receives or administers public resources from internal or external sources; at Article 62 it defines the crime of illicit enrichment; at Articles 79 to 81, it refers to the responsibilities of public servants, including those that derive from the unlawful use of public resources; at Articles 82 to 89 it sets forth procedures for furthering its investigations; at Articles 98 to 101 it establishes sanctions.

This law also refers to the internal audits, providing at Article 48 that employees of the Internal Audit shall have total functional and issue independence in relation to the respective entity or agency of the public administration; Article 106 establishes that the appointment of unit heads and support personnel of the Internal Audit shall be the responsibility of the Executive Branch at the national level, and the responsibility of the management boards or the Municipal Corporation at the decentralized, deconcentrated and municipal level, and that the Legislative and Judicial branches shall have the same powers along with the state bodies or organs created by special laws; and the Superior Court of Accounts is empowered to issue general standards on the internal audits, with respect to the nature of the activities that are within the competence of the respective institution.

- The Regulation of the Organic Law of the Superior Court of Accounts, which at Articles 118 to 121 regulates and details the cases of administrative, civil, joint-and-several, and criminal liability.

- Administrative Agreement No. TSC-0832/2004, issued by the Superior Court of Accounts, in developing the powers granted by the Organic Law of the Superior Court of Accounts to issue general standards on the appointment of the audit personnel, the requirements that the entities or bodies subject to that law should define in their respective post manuals in relation to the qualifications of that personnel, at the conclusion of their service, and to the disqualifications or prohibitions, among other aspects.

- The Organic Budget Law,¹⁰ which at Article 4 establishes that the Public Sector Financial Administration, led by the Finance Secretariat, encompasses the budget, public credit, cash and accounting subsystems, as well as the built-in mechanisms and components of the internal control system. The Public Sector Financial Management System will be coordinated with the public investment, administrative procurement, and human resource administration systems and subsystems, as well as any other horizontal management system involved in the financial management of public institutions, to provide an integrated system of public management.

This law also refers to the internal audits, providing at Article 115 that the requirements for audit unit heads and support personnel shall be established in the corresponding post manuals of the respective human resources administration system.

- The Law on State Contracting, which at Article 31 creates the Regulatory Office on Contracting and Procurement as a technical and advisory body of the State responsible for issuing general provisions and instructions to develop or improve the systems for administrative contracting in their operational, technical, and economic aspects, as well as providing advisory services and coordinating activities to guide and systematize public-sector contracting procedures. There is also the Regulation on the Law on State Contracting.

- The Criminal Code, which contains specific provisions for which criminally sanction unlawful conduct related to public resources, such as embezzlement (*peculado*) (Articles 370 and 371); misappropriation (*malversación*) (Article 372); fraud (Article 376); and extortion (*exacciones ilegales*) (Article 377).

- There are also provisions related to the mechanisms for ensuring the conservation and proper use of public resources in the Manual of Procedures of the System for Recommendations of Audits, and in the Manual of General Standards for Internal Control, issued by the Superior Court of Accounts pursuant to Articles 31, 39, and 45 of the Organic Law of that Court; in addition to the budgetary provisions issued each year or financial year by the Ministry of Finance.

1.2.2. Adequacy of the legal framework and/or of other measures and enforcement mechanisms

The provisions and mechanisms regarding the conservation and proper use of public resources that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

¹⁰ According to Article 133 of this Law, it was issued on May 28, 2004 and enters into force on January 1, 2005.

Nevertheless, the Committee considers it appropriate for the Republic of Honduras to consider strengthening the laws and regulatory systems related to those standards and mechanisms.

Bearing in mind the existence of provisions related to internal audits in two different laws (Article 106 of the Organic Law of the Superior Court of Accounts; and Article 115 of the Organic Budget Law), which grant powers related to the regimen of internal audit personnel, the Committee believes that it is appropriate for the Republic of Honduras to consider harmonizing these provisions, in such a way that ensures transparency in the selection of that personnel, as well as their suitability and qualifications for such positions, while considering the convenience of establishing mechanisms for the selection of heads and personnel of internal auditing units such as by public competitions based on merit and skill, and when appropriate, governed by pre-established rules and requirements, establishing the causes for their removal from those positions, as well as requiring consultation with the Superior Court of Accounts before proceeding removal. This should be done in such a way that personnel do not feel inhibited in the objective performance of their responsibilities. At the same time, full effect should be given to Article 48 of the Organic Law of the Superior Court of Accounts, which states that that personnel shall have total functional and issue independence in relation to the respective entities or bodies of the public administration.

In addition, the Committee, taking into account that Administrative Agreement No. TSC-0832/2004, issued by the superior Court of Accounts, notes that notwithstanding that the Internal Control Standards and the Standards on Internal Audits have been obligatory in nature beginning on the date of their publication in the Official Gazette, they are not being fully implemented. Therefore, the Committee believes that it would be useful for the Republic of Honduras to consider adopting the measures that it considers necessary to achieve their full observance.

The Committee recognizes Honduras's effort to modernize the provisions on public contracting, which were issued recently (the Law on State Contracting was issued in June 2001, and its Regulation in May 2002), as well as the importance for its application of the creation of the Regulatory Office on Contracting and Procurement, and at the same time it deems it useful to consider implementing measures aimed at optimizing the use of technology in that area, and of having broad publication and dissemination of such calls for bids, and with greater participation of the offerors of goods and services; such measures will be easier to undertake considering the authority assigned, in this respect, to the Office mentioned.

Finally, special mention should also be made of the recent issuance of the Organic Law on the Budget, issued May 28, 2004, and which enters into force on January 1, 2005. This law, together with the novelty of other important provisions in the area of conserving and ensuring the proper use of public resources to which we have already alluded, and the training of public servants in section 1.1.2 of chapter II of this report, makes it advisable for Honduras to consider increasing the training programs for them in this area.

Taking these considerations into account, the Committee will formulate the relevant recommendations.

1.2.3. Results of the legal framework and/or of other measures and enforcement mechanisms

The response from the Republic of Honduras¹¹ notes in this respect that “there are a series of reports containing Schedules of Liabilities issued by the Superior Court of Accounts, in which civil liability has been imposed for causing damage or loss of government property. Although there are no detailed statistics, we forward it as attachment no. 1.”

Reviewing the section of Annex No. 1 titled “Summary chart of the Superior Court of Accounts, Office of the Comptroller General and Administrative Probity, on the number of reports of civil liability,” reveals that, in fact, the Office of the Comptroller General of the Republic issued 334 reports, broken down as follows: 12 from 1997, 59 from 1998, 103 from 1999, 71 from 2000, and 89 from 2001. The Directorate of Administrative Probity issued 44 reports, of which 7 were issued in 1997, 12 in 1998, 12 in 1999, 10 in 2000, and 3 in 2001; The Superior Court of Accounts issued 736 reports during 2002, including reports undergoing drafting, under review, pending signature by the Comptroller, with the General Secretariat, and already served; the numbers corresponding to each category were not indicated. In 2003 the Court issued 67 reports, there is, however, no additional information to indicate the results of those reports (it should be noted that the Office of the Comptroller General and the Directorate of Administrative Probity ceased to exist under the constitutional amendment of January 17, 2002, that created the Superior Court of Accounts).

Reviewing the section of Annex No. 1 titled “Summary chart of the Superior Court of Accounts, Office of the Comptroller General and Administrative Probity, on participation in contract negotiations,” reveals that the Office of the Comptroller General of the Republic participated in 1229 contract negotiations, broken down as follows: 123 from 1998, 196 from 1999, 320 from 2000, and 590 from 2001; similarly, the Directorate of Administrative Probity participated in 4409 contract proceedings, of which 544 were in 1997, 473 in 1998, 471 in 1999, 1046 in 2000, 1152 in 2001, and 723 in year 2002. The annex also shows that the Superior Court of Accounts participated in 701 contract negotiations in 2003, without there being any additional information to indicate the result of those reports.

In addition, considering that apart from the information referred to above, the Committee does not have information that is sufficiently broken down to enable it to make a comprehensive assessment of the results of the provisions and mechanisms in this area, it will formulate a recommendation in this regard.

1.3. MEASURES AND SYSTEMS REQUIRING PUBLIC SERVANTS TO REPORT TO APPROPRIATE AUTHORITIES ACTS OF CORRUPTION OF WHICH THEY ARE AWARE IN THE PERFORMANCE OF PUBLIC FUNCTIONS

1.3.1. Existence of provisions in the legal framework and/or of other measures and enforcement

The Republic of Honduras has a set of provisions regarding the standards of conduct and mechanisms referred to, among which the following should be noted:

¹¹ Updated response of the Republic of Honduras to the questionnaire, p. 30.

- The Organic Law of the Superior Court of Accounts, which at Article 72 provides that all public servants who have knowledge of breaches or violations of legal provisions in the performance of public functions, must communicate it immediately to their superior or to the Court of Accounts, and that they will enjoy the broadest possible protection of the State in keeping with the law; at Article 50 it sets forth the obligation for the internal audit units to report the facts they may discover that could give rise to liabilities; and at Article 100, section 11, it provides for sanctions for failing to report in a timely fashion the deviations from the plans and programs in executing contracts, or their illegal, incorrect, or improper execution.

- The Regulation of the Organic Law of the Superior Court of Accounts, which at Article 108 reiterates the duty of public servants to report irregularities; at Article 109 it provides that the reports may be submitted orally, in writing, or by any electronic means, and it notes the requirements for their content; and at Article 110 it provides that the whistleblower shall have a right to keep his or her name and identity confidential, and to receive a copy of his or her report, if he or she so requests.

- The Criminal Code, which at Article 388(5) defines as a crime failing to communicate to the authority the news he or she may have regarding the commission of a crime, when he or she is under a requirement to do so based on his or her profession or employment, and provides that in such cases, in addition to the penalty provided for, such person shall be subject to a special disqualification for twice the time as the period of imprisonment.

- The Code of Criminal Procedure, which at Article 269 provides that public officials or employees who have knowledge of crimes in the performance of public functions, which they learn of through their functions, are obligated to report them to the National Police or Public Ministry; and at Article 270 it establishes that complaints may be submitted orally or in writing, notes the requirements of their content, and provides that the whistleblower shall have a right to keep his or her name and identity under seal, and to receive a copy of the document in which the report appears.

- The Organic Law of the National Human Rights Commission (*Comisionado Nacional de los Derechos Humanos*), which at Articles 23 to 28, and 31 to 44, provides that reports or complaints may be submitted to the National Human Rights Ombudsperson by individuals who feel negatively affected by arbitrary administrative acts, within one year of having learned of the facts and without any formality being required to do so; in addition, it establishes the obligation on such persons to inform the Attorney General of the Republic of the presumably criminal conduct or acts he or she knows of, and it regulates matters such as the procedure to be followed and the responsibility and collaboration of the authorities in these cases.

1.3.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms

The provisions and mechanisms in relation to the measures and systems for requiring public officials to inform the competent authorities of acts of corruption in the performance of public functions which have been examined by the Committee, based on the information available to it, are relevant for promoting the purposes of the Convention.

Nonetheless, the Committee considers it advisable for the Republic of Honduras to consider strengthening the existing mechanisms in this area.

To achieve this, the Committee considers that adopting and implementing measures of protection for whistleblowers from threats or reprisals to which they may be subjected as a result of complying with this obligation, would also be useful for promoting compliance by public servants with the duty to report; for while there are provisions such as that contained in Article 72 of the Organic Law of the Superior Court of Accounts that state that whistleblowers shall enjoy the broadest protection of the State in keeping with the law, such provisions have not been developed.

The Committee wishes to acknowledge the existence of a willingness in the country under review to move forward in this regard. This willingness has been made clear in its response, which notes that “it is important to indicate that the Superior Court of Accounts, with the participation of the Public Ministry and the Public Defender’s Office, Secretariat for Public Security, and the Supreme Court, have drawn up a draft Law for the Protection of Witnesses and Expert Witnesses and all others Intervening in the Criminal Process. The foregoing regulation guarantees the implementation of the standards of conduct that we address, and avoids impunity.”

Finally, given the recent issuance of important provisions related to the duty of public servants to report acts of corruption, and mindful of the positions set forth in relation to the training of public servants in section 1.1.2, chapter II, of this report, the Committee considers it advisable for Honduras to consider increasing the training programs for them, in this area.

The Committee will make recommendations mindful of the foregoing considerations.

1.3.3. Results of the legal framework and/or of other measures and enforcement mechanisms

In the response from the Republic of Honduras on this point,¹² it is noted that “there is no statistical data on the positive results in applying the provisions cited; nonetheless, and for purposes of illustration, the information attached to this Response is provided.”

The Committee will make a recommendation, taking into account that the information to which Honduras refers in the above-cited part of its response has not been processed so as to allow—a comprehensive assessment of the provisions and mechanisms in this area.

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

2.1 EXISTENCE OF PROVISIONS IN THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES

The Republic of Honduras has set of provisions regarding systems for the disclosure of income, assets, and liabilities, among which the following should be noted:

- The Organic Law of the Superior Court of Accounts, which at Article 56 establishes the obligation to submit a sworn statement on income, assets and liabilities for all public servants, and for those who, being public servants or not, perform certain functions,¹³ even though their salary may be less

¹² Updated response from the Republic of Honduras, p. 34

¹³ This article sets forth the obligation for all persons vested with permanent or transitory remunerated public functions, who serve or have served in elective office and in office by means of a second-degree election, by

than the baseline set by the Tribunal; it notes that such a Statement shall be submitted to the Court of Accounts or before whoever that Court designates, in the forms issued for this purpose, including an accounting of the assets and liabilities of the spouse or common-law spouse, and minor children; and it provides that the Court of Accounts shall incorporate the use of information technology to submit the statements.

Articles 57, 59, and 61 of the law noted above provide, respectively, the times at which the Statement is to be submitted and updated¹⁴; those who are exempt from submitting it¹⁵; and the authorization that the declarant and his or her spouse or common-law spouse must authorize the Court to investigate their accounts, bank deposits, assets, and participation in associations or businesses located in Honduras or abroad.

Article 54 of this same law provides that to carry out the function of probity and public ethics incumbent on the Court, it has among its powers those of receiving and examining the statements; and investigating, verifying, and determining whether there are indicia of illicit enrichment, said conduct being regulated by Articles 62 to 67 of that law, which gives the Court powers to undertake the respective investigations and which provide that persons summonsed within an investigation must make the statement and, that, if they do not, they shall be committing the crime of disobedience, without prejudice to which they can be required to make the statement through a summary proceeding.

- The Regulation of the Organic Law on the Superior Court of Accounts, which at Article 86 sets the sum of seventeen thousand *lempiras* (L. 17,000)¹⁶ as the monthly baseline salary to be required to submit the Statement, and it empowers the Court to review this amount; at Article 88 it determines its content; at Article 92 it notes the procedure for its submission and for its review and verification by the Court; at Article 93 it establishes sanctions for those who fail to submit it in timely fashion or omit information; and at Article 95 it provides that the officials and employees of the Court shall keep strict confidentiality as to the content of the statements, documents, and investigations they may undertake, which can serve no purpose other than those provided for in the law.

appointment or contract, in any of the branches of government, or in entities of any nature that receive financial resources from the State; and for those who perform functions ad honorem that include participation in decision-making that affects government property, and for all individuals who in any way administer or manage government funds or property, or decide on payments or investments of public funds, even though their salary may be less than the baseline set by the Tribunal.

¹⁴ Article 57 of the Organic Law of the Superior Court of Accounts provides that the disclosure statement should be made when entering, re-entering, or terminating in the public post or service; on changing office or post; and when there is a promotion or change in salary. In addition, it provides for the obligation to update the statement annually.

¹⁵ Article 59 of the Organic Law of the Superior Court of Accounts provides that the following shall be exempt from filing the statement: (1) Those persons who draw a salary less than the baseline established by the Court; (2) those who performed occasional, interim, or transitory functions for no more than three months; (3) those who, not being public servants are appointed to serve ad honorem on special commissions and who do not administer government property. It also provides for the Court's power to order those who are exempt to submit a statement when it deems it advisable, by reason of any investigation it may undertake.

¹⁶ This amount is equivalent to approximately one thousand U.S. dollars (USD\$1,000), as indicated at p. 36 of the Updated response from the Republic of Honduras to the questionnaire.

- The forms for submitting the Statement issued by the Superior Court of Accounts, pursuant to Article 56 of its Organic Law, which indicates the information to be provided by the declarant, and the instructions for filling it out.

2.2. ADEQUACY OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES

The provisions related to the systems for declaring income, assets, and liabilities that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

Even so, the Committee considers it advisable for the Republic of Honduras to consider strengthening its systems in this area.

First, the Committee finds that Article 95 of the Regulation of the Organic Law on the Superior Court of Accounts provides that the Court's officials and employees should keep strictly confidential the content of the statements, documents, and investigations they perform, which may not be used for any purpose other than as provided by law, without any possibility of publicizing the statements being considered or regulated. Mindful that the Convention refers expressly to systems for publicizing the statements "when appropriate," the Committee considers it necessary for the Republic of Honduras to consider regulating the conditions, procedures, and other aspects as appropriate when those statements should be publicized.

In addition, the Committee observes that based on the provision contained in Article 5 of the Organic Law of the Superior Court of Accounts, one may clearly deduce the purpose of using the statements to detect possible cases of illicit enrichment, but it considers that it would be advisable for the statements to also be designed for use by Honduras as an instrument suitable for preventing conflicts of interest; accordingly, it will make a recommendation in this regard. The Committee considers that one must bear in mind, in this respect, what was stated by Honduras in its response, where it notes that "in addition, certain reforms to these provisions are in the works, including a provision that regulates: That the information contained in the statements of income that are used to determine cases of illicit enrichment can also be used to detect conflicts of interest and other acts of corruption."¹⁷

Finally, the Committee considers it useful to develop the provision contained in Article 56 of the Organic Law of the Superior Court of Accounts, which provides that said Court will incorporate the use of information technology for submitting the statements, so as to make it easier for the declarants to comply with this obligation, by being able to fill out and submit the form of the Statement electronically. At the same time, the Court could make use of the advantages offered by information technology for optimizing performance of the work that the law imposes in this area.

Taking the foregoing considerations into account, the Committee will formulate recommendations.

¹⁷ Updated response from the Republic of Honduras to the questionnaire, p. 37.

2.3. RESULTS OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES

The response of the Republic of Honduras in this respect¹⁸ notes as follows:

“Since 1976, and based on the Law against the Illicit Enrichment of Public Servants, the officials and employees of the public administration have submitted their sworn statements of assets before the Administrative Bureau (*Dirección Administrativa*), as a unit of the Office of the Comptroller General of the Republic. In 1982, this oversight Bureau was accorded constitutional rank, as an auxiliary organ of the Legislature with functional and administrative independence; later, together with the Office of the Comptroller General, it was merged with the creation of the Superior Court of Accounts, by Decree No. 10-2002-E of December 5, 2002; accordingly, as of January 20, 2003, this agency has been in charge of receiving and verifying those statements of assets.

“The investigations into the statements were performed formally until 1997, when the first reports were issued on presumption of illicit enrichment; in addition, as of 1997 a computer system was implemented to expedite submission of the statements, better control of supporting documents, obtaining prompt and accurate information, etc. At present, the computer systems continue to be implemented, auditors and investigators are trained and being paid enhanced salaries, the times for submission have been extended, and since 2003 it has been a legal obligation of public servants subject to the law to update the statements annually (Article 57 of the Law of the Superior Court of Accounts). In addition, several amendments to these provisions are being drafted, including a provision that provides: That the information contained in the statements of income that are used to determine cases of illicit enrichment may also be used to detect conflict-of-interest situations and other acts of corruption.

“In terms of the objective results, attached is a list of the statements of income submitted, the provisional and final reports issued, and the amounts of illicit enrichment determined, covering the period from 1997 to July 31, 2004.”

Having reviewed the information contained in attachment III of the response, in the section entitled “Summary Table of Administrative Probity and Sworn Statements,” it is observed that it reflects compliance with the obligation to submit a Statement by those under an obligation to do so, starting in 1997. A total of 396,600 such statements were received in the seven years from 1997 to 2003.

In addition, attachment 14 to the response titled “Statistical Table Files Investigated (1997-2003),” indicates that the total number of cases investigated in the seven years covered by the information was 300, with a finding of liability in 64 cases, and no liability in 236 cases. The Committee considers that if one compares the number of cases investigated with the number of statements received in the seven years to which the information refers, one finds a relatively small proportion of statements submitted giving rise to investigations; and it would be desirable for the number of cases investigated to be considerably higher.

Taking the above into account, the Committee considers that it would be useful for the Republic of Honduras to consider strengthening the provisions regarding verification of the contents of these statements by the Superior Court of Accounts, established in Article 92 of the Regulation of the Organic Law of the Court of Accounts, so as to be able to have systems that allow one to motivate

¹⁸ Updated response from the Republic of Honduras to the questionnaire, pp. 37-38.

and carry out such verification in a timely fashion, first in relation to the initial information provided by the declarant, and later to verify the evolution of his or her net worth, drawing on methods such as sampling, and setting goals and deadlines for that purpose. The Committee will formulate a recommendation in this regard.

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

3.1. EXISTENCE OF PROVISIONS IN THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES

The Republic of Honduras has a set of provisions with respect to the oversight bodies in charge of performing the functions related to implementing the measures at Article III, paragraphs 1, 2, 4, and 11 of the Convention, among which the following should be noted:

- The Superior Court of Accounts, which pursuant to Article 222 of the Constitution is the lead agency of the public resources oversight system, with functional and administrative autonomy from the branches of government, and whose function is to inspect *a posteriori* the funds, assets, and resources administered by the different branches of government, the decentralized and deconcentrated institutions, the municipal governments, and any other special organ or public or private entity that administers public resources, from internal and external sources. Pursuant to that function, its powers include implementing the Inter-American Convention against Corruption (Article 68 of its Organic Law), and evaluating the internal control system, analyzing the mechanisms and procedures for such controls in the institutions subject to oversight, in order to determine their quality, the level of confidence that can be vested in them, and whether they are effective and efficient in attaining their objectives (Article 54 of the Regulation of its Organic Law).

It should be noted that this Court has an Office of Citizen Participation, which has important functions related to the participation of civil society and nongovernmental organizations in efforts aimed at preventing corruption, such as those contemplated in Article 31, section 12, Article 69, and Article 71 of its Organic Law, and other related provisions. These functions will be specifically referred to in Section 4.1.1 of Chapter II of this report.

- The Public Defender's Office, which according to Articles 228 and 230 of the Constitution, and its Organic Law, is the legal representative of the State and is responsible for carrying out any civil actions that result from the inspections by the Superior Court of Accounts, and to criminal actions in those cases of tax evasion and contraband, among other actions that fall on it as advocate of the State's interests.

- The Public Ministry, which pursuant to Article 1 of the Law on the Public Ministry, is an agency whose objectives include representing, defending, and protecting the interests of society; fighting drug-trafficking and corruption in any of their forms; to investigating, verifying, and determining the ownership and title and integrity of national assets of public use, such as the legal, rational, and appropriate use of patrimonial assets (*bienes patrimoniales*) of the State that have been assigned to private persons, and as appropriate, bringing the respective legal actions. Since 1994 it has had an Office of the Special Anti-Corruption Prosecutor.

- The Executive Bureau of Revenues (*DEI: Dirección Ejecutiva de Ingresos*), which as provided for in Articles 1 and 2 of the Law on the Executive Bureau of Revenues and Article 2 of Agreement No. 000737, is a deconcentrated organ of the Secretariat of State in the Finance Office, with administrative, technical, and financial autonomy, which within the limits of its Law is in charge of administering and overseeing internal taxes, and which has among its functions preventing, investigating, and repressing contraband and tax evasion.

- The National Anti-Corruption Council, created by Executive Decree No. 015 of 2000, for the general purpose of promoting the implementation of public and private policies that lay the institutional bases needed to fight corruption at all levels and activities in Honduran society, and constituted pursuant to Decision No. 064 of 2002, by representatives of the public sector and civil society.

- The National Human Rights Commission, which in keeping with Article 59 of the Constitution and its Organic Law, acts as ombudsman for the people in protecting their constitutional rights and freedoms, and in developing its powers it collaborates with the oversight bodies, on presenting, to their authorities, observations, recommendations and suggestions, as he sees fit, to ensure that the law is upheld.

- The National Commission on Banks and Insurance, which according to Article 6 of its Law, exercises, through the Superintendent of Banks, Insurance, and Financial Institutions, oversight and control of the banking, insurance, and financial institutions, both public and private.

3.2. ADEQUACY OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES

The set of provisions that the Republic of Honduras has in the area of oversight bodies in charge of performing functions relating to the implementation of the provisions of Article III, paragraphs 1, 2, 4, and 11 of the Convention, covers those provisions if one considers that there are organs of such a nature, with general or specific authorities to oversee such implementation, which is a step forward in implementation of the Convention.

Based on the information available to it, the Committee observes that in this field, the Republic of Honduras has provisions relevant for promoting the purposes of the Convention.

External control is exercised by the Superior Court of Accounts, which covers all the branches organs, and entities of the State, as well as controls within the public institutions, carried out by the internal auditors.

With respect to the internal control system, and specifically the internal auditors of the public institutions, section 1.2.2. of chapter II of this report, on the adequacy of the provisions and mechanisms for conserving public resources should be recalled, in that the Committee considers it necessary for Honduras to consider adopting measures to strengthen these, based on the comments made in that section. In this regard, the Committee will formulate recommendations in section 1.2 of the Conclusions and Recommendations in chapter III below.

The Committee is of the view that it would also be advisable for the country under review to consider strengthening the National Anti-Corruption Council, to give it a stronger legal basis and greater autonomy for performing its function. The Committee believes that in this regard, one should bear in mind what was stated by Honduras in its response, indicating that "... its creation is by way of executive decree. A statute is in the process of being adopted, to give it greater independence."¹⁹

3.3. RESULTS OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES

In the response from the Republic of Honduras on this point,²⁰ it is noted: "Attachment No. 1 includes a list of the work of the Superior Court of Accounts."

Having reviewed the information contained in attachment I of the response, on the 2003 Proceedings of the Superior Court of Accounts (*Memoria 2003 del Tribunal Superior de Cuentas*), it is noted that it indicates that in 2003 the Superior Court of Accounts participated in several calls for bids (701 total), and has performed a considerable number of audits (25 regarding liability, 1 regarding criminal liability and 5 on projects financed by international donors), and has also undertaken investigations into illicit enrichment (60 total), issued resolutions on the presumption of such conduct (6 total) and the corresponding liabilities (26 total), and forwarded to other authorities the cases that correspond to them, for them to initiate the appropriate legal actions (26 files on civil liability to the *Procuraduría General de la República*; 4 regarding the presumption of illicit enrichment; 6 regarding indications of criminal liability or the presumption of illicit enrichment to the *Ministerio Público*; and 5 to the *Poder Judicial*)²¹.

The Committee is of the view that the foregoing information indicates that the Court of Accounts has performed its functions actively during the time frame mentioned, which merits recognition. Nonetheless, the Committee is also of the view that it would be advisable for the country under review to consider strengthening the Court of Accounts based on what is noted in sections 2.2 and 2.3 of chapter II of this report, with respect to incorporating information technology in the filing of the statements of income, assets, and liabilities, and their verification.

Another section of the response from the country under review²² indicates the activity undertaken by the Office of the Special Anti-Corruption Prosecutor of the Public Ministry, for the period from 1994 to March 2004, during which time there were 2,733 reports related to crimes of public corruption (fraud, misappropriation of funds, unlawful appropriation, and subornation) and private corruption (financial crimes, fraud, and special fraud). It is noted that as regards reports of crimes of public corruption, many were dismissed (979); a considerable number are being investigated (965); 85 are in passive files; 40 were discontinued; five resulted in judgments of acquittal; and 10 resulted in convictions. Given the considerable number of reports investigated, the Committee is of the view that it would be useful for the Republic of Honduras to consider strengthening this oversight body.

¹⁹ Updated response from the Republic of Honduras, p. 40. Honduras informed the Plenary Session of the Committee of Experts at its Seventh Meeting, that the law on the National Anti-Corruption Council, the approval process of which is referred to in this section of the report, has already been issued.

²⁰ Updated response from the Republic of Honduras, p. 41.

²¹ 2003 Proceedings of the Superior Court of Accounts (attachment No. 1). Pages 45 to 47; 51; and 83 to 89.

²² Updated response from the Republic of Honduras, pp. 39-40.

The Committee considers that it does not have any information other than that noted above, broken down so as to allow a comprehensive assessment of the results obtained by each of the oversight bodies, in relation to each of the provisions in Article III, paragraphs 1, 2, 4, and 11 of the Convention, considered individually. It will formulate a recommendation regarding this circumstance.

Nonetheless, the Committee considers, based on what is noted above and on the analyses in this report related to the above-cited provisions of the Convention, that it would be advisable for the Republic of Honduras to consider strengthening those oversight bodies and their mechanisms of institutional coordination, mindful moreover of their common objectives in the fight against corruption. The Committee will formulate a recommendation based on this consideration.

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

4.1 MECHANISMS OF PARTICIPATION IN GENERAL

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

The Republic of Honduras has a set of provisions and measures regarding the mechanisms referred to, among which the following should be noted:

- The Constitution, which at Article 5 states that the government should be based on the principle of participatory democracy and establishes, pursuant to a Constitutional amendment pending ratification, as mechanisms of consultation with citizens the plebiscite and referendum²³; at Article 45 punishes all acts prohibiting or limiting citizen participation in the country's political life; Article 59 creates the institution of the National Human Rights Commission to guarantee constitutional rights and freedoms; Article 79 provides that every person has the right to assemble with others, in a public demonstration or a transitory assembly related to their common interests or any other interests; Article 80 establishes that every person or association of persons has the right to submit petitions to the authorities for reasons of private or general interest; and at Article 311(6), it provides that the members of the Board to Nominate Candidates for Justice of the Supreme Court will include one representative elected by the civil society organizations.

- The Organic Law of the Superior Court of Accounts, at Article 31(12), provides that the Court shall coordinate the actions of the State institutions and civil society organizations in the fight against corruption; Article 69 creates the *Contraloría Social* as a process of citizen participation geared to collaborating with the Court as it carries out its functions, and to support the legal, correct, ethical, honest, effective, and efficient administration of State resources and assets; and Article 71 provides that said Court will have as an organ of collaboration and support the National Anti-Corruption Council (CNA).

- The Regulation of the Organic Law of the Superior Court of Accounts, which at Article 82 provides that to lay the bases for a participatory and transparent strategy for the fight against corruption, the Court of Accounts should request the participation and cooperation of the public sector, civil society, and the media.

²³ By Decree No. 242-2003 dated January 20, 2004, this article was amended to institute the referendum and the plebiscite as mechanisms of citizen consultation. This constitutional amendment is pending ratification.

- The Law on Municipalities, Article 24, paragraphs 5, 6, and 7 of which grant the residents of the municipality the rights to participate in the investment programs and projects and in the management and development of local matters, and to ask that the Municipal Corporation be accountable for its efforts; Articles 31-A, 31-B, and 31-C provide for the Municipal Commissioners, who are elected by the Municipal Corporation at the proposal of civil society, and who perform social control functions; Article 33-B establishes the mechanism called *cabildo abierto*, or town meeting, as a mechanism for the participation of local residents in municipal affairs; Articles 60 and 61 provide for the appointment of Auxiliary Mayors with the right to attend the sessions of the Municipal Corporation, with voice to speak on matters of direct interest to the area they represent; and Article 62 provides that in each municipality or neighborhood, district, or village, the residents have the right to organize democratically in associations to seek the improvement of their respective communities.

- The General Law on the Environment, which at Article 10 creates the State Secretariat in the Office of the Environment; at Article 11(b), it notes as one of its functions the coordination of the activities of the various agencies with competence in environmental matters, and to foster the participation of the population in those activities; and at Article 13 it establishes the composition of that Council, providing that its members shall include representatives of civil society organizations.

- The Law for Modernization of the State, which at Articles 1, 2, and 3 creates the Presidential Commission for Modernization of the State, directed by the President of the Republic and composed of other state authorities and by various sectors of civil society, and grants it functions related to the process of modernizing the State.

- The different mechanisms in which civil society is represented, such as the National Anti-Corruption Council, created pursuant to Executive Decision No. 015-2001, its general objective being to foster the implementation of public and private policies that lay the bases needed to fight corruption; the National Forum for Convergence (*FONAC*), created by Legislative Decree No. 155-94 as a mechanism for dialogue in which, by way of analysis and discussion of the national problems, points of consensus can be reached and courses of action defined for the medium and short term, its objectives including strengthening citizen participation; the Citizen Council, provided for at Article 79 of the Law on the Public Ministry, with advisory and support functions; the Association of Municipalities of Honduras (*AMHON*), a civil entity whose objective is to promote the improvement of the municipal governments and to contribute to municipal development; and the National Commission to Supervise Public Services, created by Decree 85-91.

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

Based on the information available to it, the Committee observes that the Republic of Honduras has provisions and measures such as those noted in the previous section, related to the participation of civil society and nongovernmental organizations in public activities, which, in principle, seek to encourage or have as a direct or indirect effect facilitating the prevention of corruption.

Notwithstanding the foregoing, and taking into account the classification referred to by the methodology for analyzing the implementation of Article III, paragraph 11,²⁴ of the Convention, in each of the corresponding sections, the Committee will express some considerations, and will formulate some specific recommendations in this area in the final chapter of this report.

²⁴ Methodology for review of the implementation of the provisions of the Convention selected in the framework of the first round of analysis, Chapter V, D (Document SG/MESICIC/doc.21/02).

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

In the response of the Republic of Honduras in this respect,²⁵ it is noted first that “in relation to the objective results, there is no complete information,” and it then adds that the Superior Court of Accounts has a Bureau for Citizen Participation, which is charged with oversight (*macroprocesos*) and its functions related to this area are described.

That section of the response also notes that “among the results of the Bureau for Citizen Participation of the Superior Court of Accounts, in 2003, 70 citizen complaints were submitted, of which 17 have been finalized and 32 are being investigated. (Of those complaints, some were forwarded to other parts of the public sector, while the rest did not present the characteristics of a complaint).”

The Committee, considering that it does not have information additional to that already referred to that would enable it to make a comprehensive assessment of the results of the provisions and measure in this area, will formulate a recommendation in this respect.

4.2. MECHANISMS FOR ACCESS TO INFORMATION

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

The Republic of Honduras has a set of provisions and measures related to mechanisms for access to information, among which the following should be noted:

- The Constitution, which at Article 80 provides that every person or association of persons has the right to submit petitions to the authorities for reasons of private or general interest, and to obtain a prompt response within the time stipulated by law.

- The Law on Administrative Simplification, which at Article 29 defines the concept of “constructive affirmative” (“*Afirmativa Ficta*”), as the normative administrative decision by which all petitions in writing submitted by citizens to the public authority, if not answered within the term defined by the Law or the administrative provisions, are considered accepted, and in consideration of this, the state agencies must issue the resolutions putting an end to the administrative procedure in the terms provided for in the legal instruments, and only if these do not provide for a specific term, they must be resolved within 40 working days.

- The Law on Municipalities, which at Article 34, paragraphs 3 and 5, enshrines the rights of local residents to file petitions for private or general reasons, and to obtain a prompt response, and to be informed of municipal finances; and at Article 35, paragraph 4, it orders that the minutes of the sessions of the municipal government are in the nature of public documents, and accordingly any citizen may request certifications of the resolutions and decisions, once they are firm.

- The Organic Law of the Superior Court of Accounts, which at Articles 32, 33, and 35 establishes the obligation of that Court to report to the National Congress on the liquidation of the General Budget; to submit to it a report of the activities and results for the year or fiscal year; and to publish the reports sent to the National Congress and an annual compilation of the reports issued; at Article 80 it provides that the Court of Accounts and all other public sector authorities will ensure access for the

²⁵ Updated response of the Republic of Honduras to the questionnaire, p. 45.

interested persons to the information and documentation they may need to exercise the right of defense in administrative and judicial proceedings to which they are a party; and at Article 100, paragraph 11, it provides for sanctions for public servants who fail to timely report deviations from plans and programs in the execution of contracts, or where these are executed illegally, incorrectly, or improperly.

- The websites of the branches of government and state entities, such as the Superior Court of Accounts, the Legislative branch, the Judicial branch, and the Public Ministry, by which reports, complaints, legislative initiatives or bills, judgments, and other actions are made public. Some of these websites are: www.tsc.gov.hn; www.congreso.gob.hn; www.poderjudicial.gob.hn; and www.ministeriopublico.gob.hn.

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

The provisions and measures related to access to information that the Committee has examined, based on the information that has been available to it, are relevant for promoting the purposes of the Convention.

Nonetheless, the Committee considers it advisable for the Republic of Honduras to consider strengthening the mechanisms to guarantee access to public information, so that civil society can have procedures that ensure the timely processing of requests for information in the possession of or under the control of public institutions, and that facilitate appealing the decisions that deny such requests by easy-to-access mechanisms that resolve appeals in an equally timely manner, and providing for sanctions in the event of failure to comply with the obligation to provide information; and make the information and documentation related to the management of public sector organs and entities available to the public, not including those exceptions established by the legal system, establishing the right of access to the records of those organs and entities, and to obtain copies of the administrative documents and files, pursuant to the limitations established in the national legislation.

The Committee wishes to acknowledge the existence of a willingness in the country under review to move forward along the lines indicated above, which has been made clear in its response, which notes as follows:²⁶

“At present, there is no particular set of rules providing for or regulating this type of mechanism; nonetheless, and in consideration of recognizing that the right of access to information arose with the Universal Declaration of Human Rights, and that publicizing information enables citizens to keep tabs on the conduct of public affairs exercising the right of petition (Article 80 of the Constitution), and obtaining a transparent accountability, and that the lack of the participation of society in learning of the information limits fundamental liberties. All of that has led to a proposed ‘Law on Access to Public Information,’ which is at a stage of discussion, for subsequent approval.”

The Committee also wishes to highlight the efforts made by the Republic of Honduras to disseminate information of public interest by using new communication technologies. This reflects the modernization that the country under review has wanted to introduce in this area, and makes it

²⁶ Updated response of the Republic of Honduras to the questionnaire, p. 46. Honduras informed the Plenary Session of the Committee of Experts at its Seventh Meeting, that the Superior Court of Justice had issued a favorable opinion regarding the draft Law on Access to Information, currently before the National congress for discussion, consideration and/or approval.

advisable for it to consider implementing training and dissemination programs, in order to facilitate their understanding by public servants and citizens, and to optimize the use of available technology. Taking the foregoing considerations into account, the Committee will formulate recommendations in this regard.

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

In the response from the Republic of Honduras in this respect,²⁷ it is noted that “no information is available on this issue.” Taking this circumstance into account, the Committee will formulate a recommendation.

4.3. MECHANISMS OF CONSULTATION

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

The Republic of Honduras has a set of provisions and measures related to mechanisms of consultation, among which the following should be noted:

- The Constitution, which at Article 5 states that the government should be based on the principle of participatory democracy, and establishes, pursuant to a Constitutional amendment pending ratification, the plebiscite and referendum as mechanisms of citizen consultation.²⁸
- The Law on Municipalities, which at Articles 15(5); 19(4); and 25(10) establishes the mechanism of the plebiscite to consult citizens in relation to the creation or merger of municipalities, or for when the Municipal Corporation must make decisions on matters of great importance; at Article 33-B it provides for the mechanism known as *cabildo abierto* as a mechanism of participation of residents in municipal affairs; at Articles 60 and 61 it provides for the appointment of Auxiliary Mayors with the right to attend the sessions of the Municipal Corporation, with voice to refer to matters of direct interest to the area they represent; and in Article 62 it provides that in each municipality or neighborhood, district or village, the residents have the right to organize democratically in associations, to seek the improvement of the respective communities.
- The General Law on the Environment, which at Article 10 creates the State Secretariat in the Office of the Environment, which has the support of the National Advisory Council of the Environment; and at Article 13 it establishes the composition of that Council, providing that its members shall include representatives of civil society organizations.
- The websites of the branches of government and state entities, such as the Legislative branch (www.congreso.gob.hn - Center for National Legislative Attention, CANAL), enable citizens to make comments, suggestions, or criticisms related to the matters within the scope of their authority.

²⁷ Updated response of the Republic of Honduras to the questionnaire, p. 50.

²⁸ By Decree No. 242-2003 dated January 20, 2004, this article was modified to institute the plebiscite and referendum as mechanisms of citizen consultation. This constitutional amendment has yet to be ratified.

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

The provisions and measures in relation to the mechanisms of consultation that the Committee has examined, based on the information that has been available to it, are relevant for promoting the purposes of the Convention.

The Committee recognizes the efforts made by the Republic of Honduras in this area in relation to the recent amendment to Article 5 of the Constitution which is pending ratification²⁹, and which introduced the mechanisms of plebiscite and referendum, yet at the same time considers it advisable for Honduras to consider supplementing the existing mechanisms of consultation, establishing, when appropriate, those procedures to that allow for an opportunity to make public consultations prior to designing public policies and prior to the final approval of legal provisions.

The foregoing refers to the Committee's observation that the mechanisms of consultation provided for in the first of the laws described in section 4.3.1. of this report (Law on Municipalities) have to do with matters within the municipal sphere; and those provided for in the second such law (General Law on the Environment) are limited to the specific matters addressed by that law.

The Committee considers that in relation to the proposal set forth above, one should bear in mind what the country under review noted in some sections of its response³⁰:

“Our legislation does not include provisions for a legal framework in relation to the obligation to consult organized civil society; nonetheless, it is very significant that in the last ten (10) years certain modalities have been used, such as citizen forums, roundtables or day-long working sessions, public hearings, *cabildos abiertos*, etc., on issues of considerable importance or social impact.”

“In summary, and as already noted, there is no special law or general framework that determines the cases and specific procedures for consultation with organized civil society and the citizens in general, prior to the approval or decision of the case; nonetheless, and as reiterated, there are important achievements in this area.”

Notwithstanding, the Committee considers that while there have been consultations with the citizens, it would be advisable to institutionalize and regulate those mechanism of consultation, and to utilize for their development, methods suitable for consulting the opinion of the community, such as public hearings.

The Committee also wishes to highlight the importance for the mechanisms of plebiscite and referendum introduced in the constitutional amendment that is underway in relation to Article 5 of the Constitution, and which is pending ratification, to be made available to citizens for their use, and in this regard, it recommends to the Republic of Honduras that, in keeping with its legal order, it consider adopting the measures required to this end. At the same time, the Committee believes that in connection with this, it would be useful, in the interests of strengthening the institutional and legal regime of the country under review, for the proposed amendment, or the appropriate legal provisions, to consider the possibility of regulating the treatment given to these participation mechanisms, the areas or subjects in which they are to be obligatory, and the situations in which their results are

²⁹ By Decree No. 242-2003 dated January 20, 2004, this article was modified to institute the plebiscite and referendum as mechanisms of citizen consultation. This constitutional amendment has yet to be ratified.

³⁰ Updated response of the Republic of Honduras to the questionnaire, pp. 48 to 50.

binding. As such, the Committee considers it appropriate to bear in mind, as an example to further reinforce the importance of this, what was noted by the country under review in its response, where it states:

“In addition to the mechanism of consultation, efforts have been made to include in our constitutional order the mechanisms of ‘Referendum’ and ‘Plebiscite’ as forms of consultation and citizen participation in the formulation of the general will. As an example of the foregoing, in due course, and by Decree No. 295/93, a constitutional amendment was adopted that unfortunately was frustrated because it was not ratified in the following legislature; and a constitutional amendment to Article 2, which added the following to one of the paragraphs: ‘The sovereignty of the people may also be exercised directly through the plebiscite and referendum.’ At present, this provision is before the National Congress for analysis and consultation, for subsequent approval.”³¹

Taking the foregoing considerations into account, the Committee will formulate recommendations in this regard.

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

In the response of the Republic of Honduras in this respect,³² it is noted that “there is no information on the results in this area.” Taking this circumstance into account, the Committee will formulate a recommendation.

4.4. MECHANISMS TO ENCOURAGE PARTICIPATION IN PUBLIC ADMINISTRATION

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

The Republic of Honduras has a set of provisions and measures relating to the mechanisms referred to, among which the following should be noted:

- The Organic Law of the Superior Court of Accounts, which at Article 31, paragraph 12, provides that that Court should coordinate the actions of the State institutions and civil society organizations to combat corruption; at Article 70 it provides the Court is responsible for establishing processes and mechanisms for citizen participation in order to encourage transparent management by civil servants and to assist the investigation of complaints filed regarding irregularities in the execution of contracts; and at Article 71 it provides that the National Anti-Corruption Council (*CNA*) shall be an organ of cooperation and support for the Court.

- The Regulation of the Organic Law on the Superior Court of Accounts, which at Article 82 provides that to lay the bases for a participatory and transparent strategy for the fight against corruption, the Court should request the participation and collaboration of the public sector, civil society, and the media.

- The Law on Municipalities, which at Article 24, paragraphs 5 and 6, grants residents of the municipality the rights to participate in the investment programs and projects and in the management and development of local affairs; at Article 33-B it establishes the mechanism called *cabildo abierto*

³¹ Updated response of the Republic of Honduras to the questionnaire, p. 48.

³² Updated response of the Republic of Honduras to the questionnaire, p. 50.

as a mechanism of participation of the local residents in municipal affairs; at Articles 60 and 61 it provides for the appointment of Auxiliary Mayors with the right to attend the sessions of the Municipal Corporation, with voice to refer to matters that directly affect the area they represent; and at Article 62 it provides that in each municipality or neighborhood, district or village, the residents shall have the right to organize democratically in associations, to seek improvements in their respective communities.

- The different mechanisms in which civil society has representation, such as the National Anti-Corruption Council (*CNA*); the Presidential Commission on Modernization of the State; the National Forum for Convergence (*FONAC*); the Citizen Council provided for in the Law on the Public Ministry; and the National Commission to Supervise Public Services, which have been described at section 4.1.1. of chapter II of this report.

- The websites of the branches of government and state entities, which as mentioned in sections 4.2.1. and 4.3.1. of chapter II of this report, make it possible for citizens to maintain contact with their authorities.

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

The provisions and measures in relation to the above-mentioned mechanisms that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

Nonetheless, the Committee considers it advisable for the Republic of Honduras to consider strengthening and continuing to implement mechanisms that encourage civil society and nongovernmental organizations to participate in the public administration.

Firstly, the Committee considers it useful to provide expressly for mechanisms to foster such participation, so as to supplement existing mechanisms with other instruments that encourage citizens to participate more broadly in spheres and issues additional to those already considered. The Committee considers it relevant to bear in mind in this connection what the country under review stated in its response regarding these mechanisms:

“It is constituted by the proposed ‘Law on Citizen Participation’ and ‘Law on Access to Public Information,’ as well as the various opportunities allowed for in the legal provisions issued to this end, the publications and websites of the public administration, as well as citizen collaboration through the National Anti-Corruption Council (Article 71 of the Organic Law of the Superior Court of Accounts); and the important creation of the Public Ministry as the representative of the interests of society. All the foregoing, no doubt, strengthens the mechanisms for encouraging citizen participation, and of course it will be necessary to continue implementing them, so as to train and motivate the civil society and nongovernmental organizations to collaborate in the public administration.”³³

³³ Updated response of the Republic of Honduras to the questionnaire, pp. 50 and 51.

Secondly, based on the information gathered by its Secretariat pursuant to the methodology for analyzing implementation of the selected provisions,³⁴ the Committee observes the existence in the legal order of the country under review, some provisions which in a report³⁵ by the Office of the Special Rapporteur for Freedom of Expression of the OAS are called, generically, “*desacato* laws,” which could inhibit the participation of civil society and nongovernmental organizations in efforts aimed at preventing corruption.

The Committee considers that it should refer to the relevant sections of that report³⁶, which, it should be noted, refers not only to the Republic of Honduras in particular, but to the countries of the Americas in general. In the case of the country under review, the report considers the following provisions of the Criminal Code to be “*desacato* laws”:

“Article 323. Anyone who offends the President of the Republic in his physical integrity or in his liberty shall be sanctioned with incarceration of eight to twelve years.”

“Article 325. The crimes address in the three prior articles committed against the Secretaries of State, Delegates of the National Congress and Magistrates of the Supreme Court of Justice, shall be sanctioned respectively with the penalties stated in those articles, reduced by one fifth.”

“Article 345.³⁷ The penalty of two (2) to four (4) years of incarceration shall be applied to anyone who threatens, defames, slanders, insults or in any way offends the dignity of a public authority as a result of his functions, whether it is done verbally or in writing.”

“If the offended person is the President of the Republic or a senior official referred to in Article 325 above, the period of incarceration shall be three (3) to six (6) years.”

“Article 158. The person accused of slander may not present evidence of the truth of the imputation, unless the offended party is a public official or employee and it relates to facts about the offended party’s duties. In this case the accused person shall be exonerated if he proves the truth of the imputation.”

The Committee considers it appropriate to recommend to the Republic of Honduras that, along the lines indicated in the pertinent section of the report by the Rapporteur³⁸, it should move to repeal the provisions transcribed above, considering that they could discourage civil society participation, out of fear that it could lead to accusations that one has committed the “crime of *desacato*.”

³⁴ Methodology for review of the implementation of the provisions of the Convention selected in the framework of the first round of analysis, Chapter VI (Document SG/MESICIC/doc.21/02).

³⁵ Report of the Special Rapporteur for Freedom of Expression 2000, Chapter III. This report can be consulted at the OAS’s website.

³⁶ Report of the Special Rapporteur for Freedom of Expression 2000, Chapter III, pp. 13 and 14. This report can be consulted at the OAS’s website.

³⁷ Honduras informed the Plenary Session of the Committee of Experts at its Seventh Meeting, that the Supreme Court of Justice has issued a favorable opinion with respect to the derogation of the criminal aspect of *desacato* laws. This is now before the National Congress for discussion, consideration and/or approval.

³⁸ Report of the Special Rapporteur for Freedom of Expression 2000, Chapter III, p. 8. This report can be consulted at the OAS’s website.

In addition, taking into consideration that Article 70 of the Organic Law of the Superior Court of Accounts stipulates that: “The Court is responsible for establishing processes and mechanisms for citizen participation in order to encourage transparent management by civil servants and to assist the investigation of complaints filed regarding irregularities in the execution of contracts;” the Committee believes it would be appropriate to encourage the establishment, through the Superior Court of Accounts when appropriate, of such processes and mechanisms of citizen participation as established in that Article.

Finally, considering the recent issuance of major provisions related to this area, and the use of new communication technologies for purposes related to these mechanisms, the Committee believes that it would be useful for the Republic of Honduras to consider designing and implementing programs to disseminate the mechanisms in order to encourage participation in the follow-up of public administration, and, when appropriate, train and provide the tools needed to civil society and nongovernmental organizations to make adequate use of those mechanisms.

The Committee will formulate recommendations taking the foregoing considerations into account.

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

The response of the Republic of Honduras³⁹ notes that “there is no information on this mechanism.” The Committee will formulate a recommendation taking this circumstance into account.

4.5 MECHANISMS OF PARTICIPATION IN THE FOLLOW-UP OF PUBLIC ADMINISTRATION

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

The Republic of Honduras has a set of provisions and measures regarding such mechanisms, among which the following should be noted:

- The Organic Law of the Superior Court of Accounts, which at Article 69 creates the *Contraloría Social* as a process of citizen participation aimed at collaborating with the Court in the functions that correspond to it, and to assist in the legal, correct, ethical, honest, effective, and efficient administration of resources and assets of the State; and at Article 71 it provides that the National Anti-Corruption Council (CNA), which is made up of representatives of the public sector and civil society, shall be an organ for collaboration and support for the court (Decision No. 064 of 2002).
- The Law on Municipalities, which at Article 24, paragraph 7, grants the residents of the municipality the right to ask for a rendering of accounts by the Municipal Corporation on the conduct of municipal affairs, both in *cabildos abiertos* through their representatives and directly; and at Articles 31-A, 31-B, and 31-C, it provides for the Municipal Commissioners, which are elected by the Municipal Corporation based on proposals by civil society, and which exercise social oversight functions.

³⁹ Updated response from the Republic of Honduras to the questionnaire, p. 51.

- The Organic Law of the Budget⁴⁰, whose objectives established at Article 3 include developing systems that provide timely and reliable information on the financial performance of the public sector that are useful for the direction of the corresponding organs or agencies, and to evaluate the management of the officials in charge.

- The websites of the branches of government and state entities, which as mentioned in sections 4.2.1. and 4.3.1. of chapter II of this report make it possible for citizens to learn of the development of activities of the public administration, monitor their evolution, and express opinions in this respect.

4.5.2 Adequacy of the legal framework and/or of other measures

The provisions and measures related to the above-noted mechanisms that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

Notwithstanding, the Committee considers it useful to continue implementing mechanisms that encourage civil society and nongovernmental organizations to participate in monitoring the conduct of public affairs.

It should be noted that in the response from the country under review,⁴¹ reference is made to the existence of a proposed Law on Citizen Participation, which reflects its interest in moving forward along the lines indicated above.

Considering the recent issuance of major provisions related to this area, and the use of new communication technologies for purposes related to these mechanisms, the Committee also considers it useful for the Republic of Honduras to consider designing and implementing programs to disseminate the mechanisms of participation in monitoring the public administration, and to train with respect to and facilitate access to the tools needed by civil society and nongovernmental organizations to made adequate use of those mechanisms. At the same time, the Superior Court of Accounts should ensure that appropriate opportunities exist for participation by civil society and nongovernmental organizations.

Taking the foregoing considerations into account, the Committee will formulate recommendations in this regard.

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

The response from the Republic of Honduras in this area⁴² notes that “no information is available in this respect.” The Committee will formulate a recommendation taking this circumstance into account.

⁴⁰ According to Article 133 of this Law, it was issued May 28, 2004; it enters into force January 1, 2005.

⁴¹ Updated response of the Republic of Honduras to the questionnaire, pp. 50 and 51.

⁴² Updated response of the Republic of Honduras to the questionnaire, p. 52.

5. ASSISTANCE AND COOPERATION (ART. XIV)

5.1. MUTUAL ASSISTANCE

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

The Republic of Honduras has a set of provisions in this area, made up of bilateral agreements signed with other states, and the international instruments to which it refers in its response and in attachment No. VII thereto,⁴³ such as the United Nations Convention against Transnational Organized Crime; the United Nations Convention against Corruption⁴⁴; and the Inter-American Convention against Corruption, as well as by constitutional provisions on the incorporation of international treaties to its domestic law (Articles 16, 17, 18, and 21 of the Constitution).

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

The provisions referred to by the Republic of Honduras in its response can contribute to attaining the purposes of the Convention of promoting and facilitating mutual assistance between the States Party, and may serve its specific purposes regarding investigating and prosecuting acts of corruption, to the extent they are used to this end.

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

In the response from the Republic of Honduras in this respect,⁴⁵ it is noted that its central authority has not yet received any requests for legal assistance, nor has it made any such request.

5.2. MUTUAL TECHNICAL COOPERATION

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

In the response from the Republic of Honduras in this respect⁴⁶, it is noted that “there is no particular or special mechanism that allows for mutual technical cooperation with other States Parties as to the ways announced in this section for sanctioning acts of corruption, including the exchange of experience and knowledge, and also on forms and methods of citizen participation in the fight against corruption. The foregoing is carried out in isolation or at the initiative of each branch of government, institution, or agency, and whose cooperation comes from friendly countries and financial institutions. There are programs in regard to this cooperation being promoted by USAID, ILANUD, AID, UNDP,

⁴³ Updated response of the Republic of Honduras to the questionnaire (p. 53), and Attachment No. VII. In addition, there are other treaties, including the extradition Treaty between the Kingdom of Spain and the Republic of Honduras, made ad referendum in Tegucigalpa on November 13, 1999; the Agreement between the Kingdom of Spain and the Republic of Honduras on cooperation with regard to the prevention and control of the illicit trafficking of stupefying and psychotropic substances, made ad referendum in Tegucigalpa on November 13, 1999; the Instrument of Ratification of the Treaty on the transfer of convicted individuals between the Kingdom of Spain and the Republic of Honduras, celebrated in Tegucigalpa on November 13, 1999; and the Inter-American Treaty of Reciprocal Assistance (TIAR), adopted in San Jose, Costa Rica on July 25, 1975.

⁴⁴ This Convention is pending ratification.

⁴⁵ Updated response of the Republic of Honduras to the questionnaire, p. 53.

⁴⁶ Updated response of the Republic of Honduras to the questionnaire, p. 53.

IDB, WB, Central American and Caribbean Organization of Supreme Audit Institutions (OCCEFS), etc., and which are directed, among other things, at training and strengthening of the oversight bodies, and judicial reform.”

The response also notes⁴⁷ that “in general, as regards mutual technical cooperation with other States, there are agencies or institutions with specific functions in terms of the management of cooperation, for example: (1) The Technical and International Cooperation Secretariat (*SETCO*), which is a technical organ under the Presidency of the Republic, pursuant to Legislative Decree No. 128-96, Article 124-A, in force as of January 1, 1997. It is the institution that designs policy and strategies for requesting international cooperation, identifying its sources, and establishing mechanisms of international coordination and cooperation. It is a liaison of cooperation agencies and the executing units, and is also responsible for agreements for non-reimbursable cooperation. The bilateral sources of cooperation are: the Argentine Cooperation Fund; the Canadian International Development Agency; the Mexican Institute for International Cooperation; and the United States Agency for International Development (USAID), among others. Multilateral sources include: European Union, Organization of American States, United Nations Development Program, etc. International NGOs: Catholic Relief Services; World Vision; CARE, etc. (2) the State Secretariat in the Office of Finance, which, through international cooperation supports, strengthens, and confers legitimacy on processes of this nature in areas of institutional strengthening, municipal government, environmental management, mining, and modernization of the State; it is in charge of financial cooperation (loans), economic cooperation (balance of payments support), etc. (3) the State Secretariat in the Office of External Relations.”

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

The Committee considers it positive that the Republic of Honduras, as noted in its response, has entered into technical cooperation agreements related to the fight against corruption, and that it has become associated, for those purposes, with international organizations and cooperation agencies, and other States Parties to the Inter-American Convention against Corruption, which is considered relevant for the purposes provided for by the Convention in this area. Yet mindful of what is stated in the response – to the effect that this is done in isolation or at the initiative of each branch of government, institution, or agency – the Committee will formulate a recommendation in this regard.

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

Taking into account that in the Republic of Honduras, as noted in its response and with the information referred to therein, technical cooperation programs have been developed related to the fight against corruption, the Committee considers that Honduras should be encouraged to continue its efforts to exchange cooperation in this field, and it will formulate a recommendation in this regard.

⁴⁷ Updated response of the Republic of Honduras to the questionnaire, p. 54.

6. CENTRAL AUTHORITIES (ART. XVIII)

6.1. EXISTENCE OF PROVISIONS IN THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES

The response from the Republic of Honduras in this respect⁴⁸ notes that the Superior Court of Accounts was designated as the central authority for the purposes of the Inter-American Convention against Corruption, and reference is made to Article 104 of its Organic Law and Article 186 of its Regulation which expressly consider that designation. This was also duly communicated to the General Secretariat of the OAS.

6.2. ADEQUACY OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES

The Committee considers that, as noted by the country under review in its response, and in keeping with the above-cited legal provisions, the Superior Court of Accounts has been designated as central authority to channel both the mutual assistance and the mutual technical cooperation provided for in the framework of the Convention. This designation is considered adequate for attaining those purposes.

Nonetheless, the Committee will formulate a recommendation, taking into account that the country under review indicated in its response⁴⁹ that the Court of Accounts, as the central authority under the Convention, does not have the resources to be able to make and receive the requests for assistance and cooperation referred to in the Convention.

6.3. RESULTS OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES

In the response from the Republic of Honduras in this respect,⁵⁰ it reports that its central authority has not received nor made any requests for assistance or cooperation. The Committee will formulate a recommendation taking this circumstance into account.

III. CONCLUSIONS AND RECOMMENDATIONS

Based on the analysis conducted in chapter II of this report, the Committee makes the following conclusions and recommendations with respect to the implementation, in Honduras, of the provisions contained in Articles III, (1) and (2) (standards of conduct and mechanisms for their enforcement); III, 4 (systems for the disclosure of income, assets and liabilities); III, (9) (oversight bodies, only insofar as it concerns the exercise by these bodies of functions related to compliance with the provisions contained in Paragraphs 1, 2, 4 and 11 of Article III of the Convention); III, (11) (mechanisms to stimulate the participation of civil society and nongovernmental organizations in efforts to prevent corruption); XIV (assistance and cooperation); and XVIII (central authorities) of the Convention, which were selected for review within the framework of the first round.

⁴⁸ Updated response of the Republic of Honduras to the questionnaire, p. 55.

⁴⁹ Updated response of the Republic of Honduras to the questionnaire, p. 56.

⁵⁰ Updated response of the Republic of Honduras to the questionnaire, p. 53.

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

1.1. Standards of conduct designed to prevent conflicts of interest and mechanisms to enforce these standards

The Republic of Honduras has considered and adopted measures to establish, maintain and strengthen standards of conduct with respect to the prevention of conflicts of interest and enforcement mechanisms, as described in Chapter II, Section 1.1 of this report.

In view of the comments made in the above section, the Committee suggests that the Republic of Honduras consider the following recommendation:

Strengthen the implementation of laws and regulatory systems related to conflicts of interest. To comply with this recommendation, the Republic of Honduras could take into account the following measures:

- a. Regulate for all public servants, certain eventualities that could constitute conflicts of interest and which, in view of their importance, should be addressed in a detailed and specific manner, as well as mechanisms that promote compliance with any regulation that is issued (see section 1.1.2. of chapter II of this report)
- b. Establish appropriate restrictions for those who cease to hold a public office, such as the prohibition on working on cases in which they were involved by reason of their position or before entities with which they were recently associated.
- c. Issue, through the competent authority, the regulation related to the establishment and operation of the Committees of Probity and Public Ethics, as provided for by the pertinent provisions (see section 1.1.2 of chapter II of this report).
- d. Increase the training programs for public servants in relation to the standards of conduct and mechanisms for preventing conflicts of interest.

1.2. Standards of conduct designed to ensure the conservation and proper use of resources entrusted to public servants in the performance of their duties, and mechanisms to enforce these standards

The Republic of Honduras has considered and adopted measures designed to establish, maintain and strengthen standards of conduct to ensure the conservation and proper use of resources entrusted to public servants in the performance of their duties, as mentioned in Chapter II, Section 1.2 of this report.

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

Strengthen the implementation of laws and regulatory systems with respect to the conservation and proper use of public resources. To carry out this recommendation, the Republic of Honduras could take the following measures into account:

- a. Consider the advisability of establishing mechanisms for the selection of the heads and personnel of the internal audit, such as through a merit-based competitive examination process open to the public, governed by pre-established rules and requirements; noting, when appropriate, the duration of the post and establishing the grounds for termination of employment, and requiring consultation with the Superior Court of Accounts before proceeding with terminations, so as to prevent employees from being afraid to perform their duties objectively, as required by law. (see section 1.2.2. of chapter II of this report)
- b. Adopt those measures that are considered necessary in order to achieve the effective observance of the Internal Control Standards and the Standards on Internal Audits issued by the Superior Court of Accounts (see section 1.2.2. of chapter II of this report).
- c. Implement measures aimed at optimizing the use of technology in the area of public contracting, and at ensuring broad publication and dissemination of calls for bids, and greater participation of bidders offering goods and services.
- d. Increase training programs for public servants, in relation to the standards of conduct and mechanisms for conserving and ensuring the proper use of public resources.

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

The Republic of Honduras 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 II, Section 1.3 of this report.

In light of the comments made in the above section, the Committee suggests that the Republic of Honduras consider the following recommendation:

Strengthen the mechanisms the Republic of Honduras has to require public officials to report to the competent authorities any acts of corruption in the performance of public functions of which they come to learn. To carry out this recommendation, the Republic of Honduras might take following measures into account:

- a. Adopt and implement measures of protection for public servants who report acts of corruption, are protected against threats or reprisals to which they may be subjected as a result of complying with this obligation.
- b. Increase the training programs for public servants, in relation to the responsibility to report to the competent authorities the acts of corruption of which they have knowledge.

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

The Republic of Honduras 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, and for the publication of such disclosure statements as appropriate, in accordance with the comments at Chapter II, Section 2 of this report.

In view of the comments made in that section, the Committee suggests that the Republic of Honduras consider the following recommendation:

Strengthen the systems for the disclosure of income, assets, and liabilities. To carry out this recommendation, the Republic of Honduras could consider the following measures:

- a. Regulate the conditions, procedures and other aspects relating to the public disclosure, as appropriate, of statements of income, assets and liabilities, subject to the fundamental principles of the legal order of the Republic of Honduras.
- b. Maximize the use of the systems for analyzing the content of the statements, and adopt the appropriate measures, so that they can also be a useful tool for detecting and preventing conflicts of interest, in addition to using them as a suitable instrument for detecting possible cases of illicit enrichment.
- c. Develop the provision contained in Article 56 of the Organic Law of the Superior Court of Accounts, incorporating the use of information technology for submitting the statements, so as to make it easier for declarants to comply with this obligation electronically, and at the same time the Court could tap the advantages offered by such technology for optimizing performance of its functions in this area.
- d. Strengthen the provisions regarding verification of the content of the statements by the Superior Court of Accounts, established in the Regulation of the Organic Law of that Court, such that one can have a system that makes it possible to give impetus to and timely perform such verification (see section 2.3. of chapter II of this Report).

3. OVERSIGHT BODIES IN RELATION TO THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 and 11 OF THE CONVENTION)

The Republic of Honduras 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 and 4 and 11 of the Convention), as stated in Chapter II, section 3 of this report.

In view of the comments made in that section, the Committee suggests that the Republic of Honduras consider strengthening the oversight bodies in terms of their functions in relation to the provisions of Article III, paragraphs 1, 2, 4, and 11 of the Convention in order to ensure the effectiveness of such control, endowing them with the resources needed for the thorough performance of their functions; ensuring that they have greater political and social support; and establishing mechanisms that allow for the institutional coordination of their actions, and their continuous evaluation and monitoring.

4. MECHANISMS FOR ENCOURAGING THE PARTICIPATION OF CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11)

The Republic of Honduras 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 Honduras consider the following recommendations:

4.1. Mechanisms of participation in general

No recommendations were considered by the Committee in this section.

4.2. Mechanisms for access to information

Implement laws which support access to public information. To carry out this recommendation, the Republic of Honduras might take into account the following measures:

- a. Develop and regulate processes for receiving requests, for answering them in timely fashion, for appeal in case such requests are denied, and that establish sanctions in those cases in which there is a failure to provide information.
- b. Implement training and dissemination programs on the mechanisms for access to information, so as to facilitate their understanding by public servants and citizens, and to optimize the use of the technology available to that end.
- c. Develop legal provisions that make the information and documentation related to the management of public sector organs and entities available to the public, not including those exceptions established by the legal system, establishing the right of access to the records of those organs and entities, and to obtain copies of the administrative documents and files, pursuant to the limitations established in the national legislation.

4.3. Mechanisms of consultation

Complement existing mechanisms of consultation, establishing procedures, as appropriate, that make it possible to engage in public consultations prior to designing public policies and final approval of legal provisions. To carry out this recommendation, the Republic of Honduras may take into account the following measures:

- a. Continue establishing procedures, when appropriate, for allowing the consultation of interested sectors of civil society and nongovernmental organizations in relation to the design of public policies and the preparation of proposed laws, decrees, or resolutions within the scope of the Executive branch.
- b. Hold public hearings or develop other suitable mechanisms that permit public consultations in other areas in addition to those already considered, when appropriate.

- c. Adopt, in accordance with its legal order and through the competent authority, the measures required so that the plebiscite and referendum mechanisms, introduced in the amendment to Article 5 of the Constitution, may be made available to citizens for their use, in the event that the amendment is ratified. At the same time, the Committee considers that in order to strengthen the legal institutional system of the country under review, it is advisable that during the amendment, consideration be given to the possibility of regulating the treatment given to these participation mechanisms, the areas or subjects in which they are to be obligatory.

4.4. Mechanisms for encouraging participation in the public administration

Strengthen and continue implementing mechanisms that encourage the civil society and nongovernmental organizations to participate in the public administration, and move to repeal provisions that may discourage that participation. To carry out this recommendation, the Republic of Honduras could take into account the following measures:

- a. Establish mechanisms in addition to those that exist, to strengthen the participation of civil society and nongovernmental organizations in the efforts to prevent corruption.
- b. Move to repeal the “*desacato* laws” (see section 4.4.2. of chapter II of this report).
- c. Support, through the Superior Court of Accounts and when appropriate, the establishment of opportunities and mechanisms for citizen participation, in conformity with Article 70 of the Organic Law of the Superior Court of Accounts.
- d. Design and implement, when appropriate, programs to disseminate the mechanisms of participation in the follow-up of public administration, and train and provide the tools needed to civil society and nongovernmental organizations to make adequate use of those mechanisms.

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

Strengthen and continue implementing mechanisms that encourage civil society and nongovernmental organizations to participate in monitoring the public administration. To carry out this recommendation, the Republic of Honduras could take into account the following measures:

- a. Promote ways whereby those who perform public functions may, as appropriate, allow, facilitate, or help civil society and nongovernmental organizations develop activities to monitor their public activities.
- b. Design and implement programs to disseminate the mechanisms of participation in the follow-up of public administration, and train and provide the tools needed to civil society and nongovernmental organizations to make adequate use of those mechanisms.

5. ASSISTANCE AND COOPERATION (ART. XIV)

The Republic of Honduras has adopted measures in relation to mutual assistance and mutual technical cooperation, 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 Honduras consider the following recommendations:

- 5.1. Determine and prioritize specific areas in which the Republic of Honduras considers it needs technical cooperation from other states party to bolster its capacities to prevent, detect, investigate, and sanction acts of corruption.

In addition, the Republic of Honduras should determine and prioritize the requests for mutual assistance that are received for investigating and prosecuting cases of corruption.

- 5.2. Continue efforts to exchange technical cooperation with other States Party, on the most effective ways and means to prevent, detect, investigate, and sanction acts of corruption.

6. CENTRAL AUTHORITIES (ART. XVIII)

The Republic of Honduras has complied with Article XVIII of the Convention on designating the Superior Court of Accounts as the central authority for the purposes of the international assistance and cooperation provided for in the Convention .

In view of the comments made in section 6 of chapter II of this report, the Committee suggests that the Republic of Honduras consider endowing the Superior Court of Accounts with the resources needed to carry out fully the functions that correspond to it as central authority for the Convention, and in particular, design and implement a comprehensive program for dissemination and training for competent authorities and officials, for them to become familiar with and learn to apply the mutual assistance provisions for investigating or prosecuting acts of corruption provided for in the Convention and in other treaties signed by the Republic of Honduras.

7. GENERAL RECOMMENDATIONS

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

- 7.1. Design and implement, as 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 Honduras concerning progress in implementing the above recommendations, within the framework of the plenary meetings of the Committee, and in accordance with the provisions of Article 30 of its Rules of Procedure.

The Committee will also analyze progress in implementing the recommendations formulated in this report, in accordance with Article 31 and, as appropriate, Article 32 of its Rules of Procedure.

The Committee wishes to place on record the request made by the Republic of Honduras to the Secretariat to publish this report on the Mechanism's webpage and by any other means of communication, in accordance with the provisions of Article 25(g) of the Rules of Procedure and Other Provisions.

ATTACHMENTS TO THE REPORT ON IMPLEMENTATION IN THE REPUBLIC OF HONDURAS OF THE PROVISIONS OF THE CONVENTION SELECTED FOR REVIEW IN THE FRAMEWORK OF THE FIRST ROUND

The Republic of Honduras sent, along with its response, attachments corresponding to the following provisions and documents:

1. Constitution of the Republic
2. Organic Law of the Superior Court of Accounts
3. General Regulation of the Organic Law of the Superior Court of Accounts
4. Organic Law of the Public Defender's Office
5. Law of the Public Ministry
6. Code of Ethics for Judicial Officers and Employees
7. Law on Promotion and Development of Public Works and National Infrastructure
8. Law of the Central Bank
9. Law of the National Commission on Banks and Insurance
10. Law on Customs
11. Law on Municipalities and its Regulation
12. General Law on Mining
13. Administrative Procedure Law
14. Law on State Contracting
15. Regulation of the Law on State Contracting
16. Law against the Crime of Money- and Asset-Laundering
17. Criminal Code
18. Code of Criminal Procedure
19. Law on the Income Tax
20. Amparo Law
21. Law on Administrative Simplification
22. General Law on the Environment and its Regulation
23. Law on the Judicial Career Service
24. Tax Code
25. Civil Service Law
26. Law of the Honduran Institute of Children and Family (INHFA)
27. Law of the Honduran Corporation for Forestry Development (COHDEFOR)
28. Organic Law of the Contaduría General de la República
29. Decree No. 85-91 Creation of the National Commission to Supervise Public Services
30. Law on Public Credit
31. Organic Budget Law
32. Regulation of the Executive Bureau of Revenue
33. Decision 064-2002 Composition of the National Anti-Corruption Council
34. Law on State Modernization
35. Decree No. 97 on official publication in the Gazette
36. Regulation of the National Commission to Supervise Public Services
37. Draft Code of Ethics
38. Preliminary Draft Law to Prevent Conflicts of Interest
39. Preliminary Draft Law to Protect Witnesses, Expert Witnesses, and all others Intervening in the Criminal Trials
40. Preliminary Draft Law on Access to Public Information

41. Information on the Integrated Financial Management System (SIAFI)
42. Statute on the Honduran Association of Municipalities of Honduras (AMHON)
43. Statute on the Career Service in the Public Ministry

The Republic of Honduras also sent, with its response, the following list of attachments, with the documents referred to in it:

I. MEASURES AND MECHANISMS ON STANDARDS OF CONDUCT

Section (c) Results.

- Attachment 1 2003 Proceedings of the Superior Court of Accounts and the 1997-2002 Proceedings of the Office of Administrative Probity.

II. CONFLICT OF INTEREST

- Attachment 1
Attachment 2 Preliminary Draft Law to Prevent Conflicts of Interest
Attachment 3 Decree that derogates immunity

III. CONSERVATION AND PROPER USE OF PUBLIC RESOURCES

- Attachment 1 Related to the Results of the Bureau for Citizen Participation of the Superior Court
Attachment 4 Manual of Procedures of the System for Follow-up on Audit Recommendations and the Manual of General Standards for Internal Control
Attachment 5 Organic Budget Law 2005.

IV. MEASURES FOR REQUIRING OFFICIALS TO FILE REPORT

- Attachment 1 Related to the Reports in the Court
Attachment 6 Draft Law on Witness Protection
Attachment 7 Draft Law on Access to Information
Attachment 8 Yearbook of the Office of the Public Defender 1999, 2000, 2002, and 2003.
Attachment 9 Proceedings Office of Special Anti-Corruption Prosecutor (1994-2004)
Attachment 10 Activities of the Special Prosecutor for Consumer Protection, 1st half 2004.
Attachment 11 Report of Complaints submitted to the Office of the Special Prosecutor for Consumer Protection, from January 2003 to November 24, 2003.
Attachment 12 Annual Reports on Work of the Public Ministry 2002 and 2003.
Attachment 13 Reports of the Office of the Inspector General of Courts, January to June 2004.

V. SYSTEM OF STATEMENTS OF NET WORTH

- Attachment 1 Related to the Sworn Statements
Attachment 14 Statistical Table and File Investigated, 1997- 2003.

VI. OVERSIGHT BODIES

Section (c) Attachments 1, 8, and 12

VII. PARTICIPATION OF CIVIL SOCIETY

Section (b): Attachment 1 Related to the Results of the Bureau for Citizen Participation of the Superior Court of Accounts

VIII. MECHANISMS FOR ACCESS TO INFORMATION

No information available.

IX. MECHANISMS OF CONSULTATION

No information available.

X. MECHANISMS FOR ENCOURAGING PARTICIPATION

No information available.

XI. MECHANISMS OF PARTICIPATION TO MONITOR THE PUBLIC ADMINISTRATION

Attachment 15 Magazine on "*Gran Diálogo Nacional*".

XII. ASSISTANCE AND COOPERATION

Attachment 16 Mutual Cooperation Agreement the Court and the Anti-Corruption Office of the Ministry of Justice, Security, and Human Rights of Argentina

Attachment 17 Reports from Spanish Cooperation on Training and Legal Advisory Services 2000-2003; Executive Report on Cooperation by the Judiciary from the Kingdom of Spain.

XIII. TECHNICAL COOPERATION

Attachment 18 *Boletín* of the *Secretaría Técnica y de Cooperación (SETCO)*

- In view of what was requested by the Technical Secretariat of the Committee, the Republic of Honduras also sent the following attachments:

1. Draft Model Municipal Code of Ethics
2. Draft Rules of Ethics and Service of the Municipal Governments
3. Draft Regulation for the Functioning and Operations of the Public Ethics Committees
4. Draft Code of Ethics
5. General Law of the Public Administration
6. Law on the Labor Status of the Public Employees of the Legislative Branch
7. Decree Establishing the National Anti-Corruption Commission
8. Organic Law of the National Human Rights Ombudsperson
9. Law of the Executive Bureau of Revenue and Decision No. 000737 on it
10. Form for Declaring Income, Assets and Liabilities; and instructions for filling it out.

The Republic of Honduras submitted, along with its response to the comments of the subgroup and to the draft preliminary report prepared by the Secretariat, the following attachments:

1. Agreement No. 064-2002 on the composition of the National Anti-Corruption Council.
2. Decree No. 015-2001 on the National Anti-Corruption Council.
3. Decree No. 005-2001 which repeals Decree No. 025-2001.
4. Administrative Agreement No. TSC-082/2004, which provides that the Internal Auditors shall be governed by the Manual of General Standards for Internal Control and General Standards for Internal Audits until the entry into force of the Organic Budget Law.
5. Decree No. 242-2003 of the Legislative branch regarding amendment of Article 5 of Legislative Decree No. 131 of January 11, 1982, which contains the Constitution of the Republic.
6. Decree No. 70-2002 of the Legislative branch on the Framework Law on Poverty Reduction.
7. Document titled, "Current Situation and Prospects for Social Auditing in Honduras".