

MECHANISM FOR FOLLOW-UP ON
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION (MESICIC)

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REPUBLIC OF ECUADOR

FINAL REPORT

(Adopted in the plenary session held on February 6, 2004)

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

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

INTRODUCTION

1. Legal-Institutional Framework²

In accordance with Article 1 of the Constitution of the Republic, in effect since 1998, “Ecuador is a social state of law, sovereign, unitary, independent, democratic, pluricultural and multi-ethnic. Its government is republican, presidential, elected, representative, responsible, alternating, participatory and decentralized.”

Article 3 of the Constitution stipulates that it is the fundamental duty of the State, among other things: “to guarantee the operation of the democratic system and the public administration free of corruption.”

The civil, political, economic, social and cultural rights enshrined in the Constitution support the operation of the democratic system and the state of law.

Among the rights and duties of the citizens established as a corollary by the Constitution in Article 97, without prejudice to others provided for in the Constitution and under the law of the land, are included the following obligations: to promote the common good and to place the public interest before private interests; to administer honorably the national wealth; to treat public functions as a service to the collectivity, and to render accounts to society and to the respective authority in accordance with the law; to report and combat acts of corruption; to participate in the political, civic and community life of the country in an honest and transparent fashion; and to conserve the cultural and natural heritage of the country, to care for and maintain public property, both that used by the citizens in general as well as property that has been expressly entrusted to them.

Political participation is guaranteed through the electoral system, enshrined in Article 98 of the Constitution, under which legally recognized political parties can present or support candidates for popular election. As well, citizens that are not affiliated with or supported by political parties can present themselves as candidates.

Similarly, the Constitution establishes other forms of democratic participation such as public referenda; these can be conducted by decision of the President of the Republic, at the request of the citizenry, and by decision of the agencies of the departmental system.

¹ This report was adopted by the Committee in accordance with the provisions of Articles 3 (g) and 26 of its Rules of Procedure, at the plenary session held on February 6, 2004 in the framework of its fifth meeting, held at OAS headquarters in Washington, DC, February 2 to 6, 2004.

² Response of the Republic of Ecuador to the questionnaire and update document. Introduction. Pursuant to the request of the Republic of Ecuador, its response to the questionnaire, along with respective annexes and supplementary information, as well as the documents submitted by Civil Society, in accordance with the Rules of Procedure and Other Provisions, are published on the Mechanism’s website at the following internet address: http://www.oas.org/juridico/english/corresp_ecuador.htm

Article 118 of the Constitution establishes the following State institutions, which make up the public sector as a whole:

- Agencies and bodies of the legislative, executive and judicial branches;
- Electoral agencies;
- Oversight and regulatory agencies;
- Entities that make up the autonomous departmental system;
- Agencies and entities created by the Constitution and the law to exercise state authority, to provide public services or to carry out economic activities taken on by the State; and,
- Legal entities created by departmental legislative act to provide public services.

The following paragraphs contain a brief description of the above-mentioned institutional-juridical structure; mention is made of those aspects considered to be most relevant for the purposes of this report.

- Legislative Branch: the main functions of the National Congress are to reform the Constitution and to interpret it; to issue, reform and repeal laws and to interpret them; to review the acts of the Executive Branch and those of the Electoral Supreme Court and to request information considered necessary from public servants. The National Congress appoints the following authorities: Attorney General, State Prosecutor, Ombudsman, Superintendents (Banks and Insurance; Corporations and Telecommunications), members of the Constitutional Courts and Supreme Electoral Court, and members of the Board of Directors of the Central Bank. The National Congress also establishes the short-list from which the President of the Republic designates the Auditor General.
- Executive Branch: the head of the Executive Branch is the President of the Republic, who is both chief of State and head of the government and is responsible for public administration. The President is elected by popular vote for a four-year period; the President may be re-elected after having spent a period of time out of office following the term for which he or she was elected. Provision is made for a Vice-President who, in the event of the temporary or definitive absence of the President, will replace the President for the remaining period of his or her term. The functions of the Vice-President are those assigned by the President.
- Judicial Branch: the bodies of the Judicial Branch are the Republic of Ecuador; the Superior Courts, Tribunals and Courts; and the National Council of the Judiciary. The bodies of the Judicial Branch carry out their duties and assignments in an independent fashion. The judicial system provides for the principle of jurisdictional unity and alternative means (justices of the peace, arbitration, mediation and functions for authorities of the indigenous people). Judicial careers are provided for under the system.
- Electoral Agencies: the Electoral Supreme Court is an autonomous and independent agency with jurisdiction throughout the national territory. It is responsible for organizing, directing, monitoring and guaranteeing electoral processes, and for auditing the accounts of the resources used in electoral campaigns. A Provincial Electoral Court operates in each respective province.
- Oversight agencies: Chapter X of the Constitution establishes the following oversight agencies: Auditor General's Office; Attorney General's Office; State Prosecutor's Office; Commission for Civic Control of Corruption (CCCC), and the Superintendencies (Banks and Insurance; Corporations; and Telecommunications).

These are public law agencies with administrative and economic autonomy, and whose structure and operations are regulated by the respective institutional laws.

- The Constitutional Court is the chief constitutional oversight agency; its functions include receiving and ruling on petitions of unconstitutionality submitted in relation to any type of regulation issued by bodies of State institutions or administrative act on the part of public authorities.
- The Ombudsman's Office is a public agency, with administrative, economic and functional autonomy, and national jurisdiction; it is headed by the Ombudsman. The Ombudsman's Office defends and promotes, ex officio or upon petition of an interested party, as appropriate, the observance of all basic individual and collective rights; it also sponsors actions for habeas corpus, habeas data and legal protection for individuals who require such assistance.
- Autonomous Departmental Governments; these are made up of Provincial Councils, with provincial jurisdiction; Municipal Councils, with cantonal jurisdiction within the respective provinces; Parish Councils, with jurisdiction in parishes within the cantons; and such agencies as determined by law for the administration of the Afro-Ecuadoran and indigenous territorial areas.

As entities of the public administration, their activities are based on the principles of autonomy, administrative decentralization and citizen participation. Their members are elected in general elections held in each territorial riding. Their functions include, among others, to legislate in areas within their jurisdiction through issuing ordinances to create, amend and repeal taxes and special improvement levies, and to define and carry out local and provincial development plans.

2. Ratification of the Convention and adherence to the Mechanism

According to the official registry of the General Secretariat of the OAS, the Republic of Ecuador ratified the Inter-American Convention against Corruption on the 26th of May 1997 and deposited the respective instrument of ratification on the 2nd of June 1997.

Similarly, the Republic of Ecuador subscribed to the Declaration on the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption on the 4th of June 2001 at the 31st regular meeting of the General Assembly of the OAS, in San José, Costa Rica.

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the Republic of Ecuador

The committee wishes to underline the cooperation received from the Republic of Ecuador during the entire review process and, particularly, from the National Anti-corruption Directorate of the State Prosecutor's Office; this cooperation was made evident, among other things, by its timely response to the questionnaire and its ongoing availability to clarify or complete the contents of said questionnaire. In its response, Republic of Ecuador appended a list of pertinent provisions and documents, which have been included in the appendix to this report.

In carrying out its review, the Committee took into account information provided by the Republic of Ecuador up to the 18th of August 2003, as well as the information requested by the Secretariat and the

members of the review sub-group, in order to comply with their duties as stipulated in the Regulation and the Rules of Procedure³.

2. Document submitted by the Latin-American Development Corporation (CLD) - Ecuador Chapter of Transparency International, a civil society organization.

The Committee also received, within the time frame set for consideration at its Third Regular Meeting⁴, the report sent by the Latin-American Development Corporation (CLD) - Ecuador Chapter of Transparency International⁵.

II. REVIEW OF THE IMPLEMENTATION BY ECUADOR OF THE PROVISIONS SELECTED

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

1.1 CONFLICTS OF INTEREST

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

The Republic of Ecuador has a set of provisions related to the above-mentioned standards of conduct, of which the following should be highlighted:

- Constitutional provisions applicable to all public servants, such as those contained in Article 123 of the Constitution, which stipulates the obligation of public servants to abstain from becoming involved in cases where their interests conflict with those of the agency or entity for which they are providing services; and Article 125, which stipulates that no individual may hold more than one public position (with the exception of university professors if their schedule permits), and which prohibits nepotism.
- Constitutional provisions applicable to certain public servants and related to disqualifications and incompatibilities for senior positions; for example, the provisions contained in Article 135, paragraph 3, of the Constitution for deputies and Article 205 for magistrates and judges.
- Legal provisions applicable to all public servants, such as those contained in the Law on Administrative Careers and the Civil Service, which establishes disqualifications for carrying out

³ During the review sub-group meeting, held on January 29, 2004, the Republic of Ecuador informed the review sub-group of the adoption of a new “Basic Law on Administrative Careers and the Civil Service” (Law No.17, published in RO/SUP. 184, October 6, 2003). The members of the sub-group asked for information with respect to its scope, since this report mentioned a “Law on Administrative Careers and the Civil Service”, which the sub-group now understood to have been replaced by the new law mentioned above and have stated this in this footnote.

⁴ Decision entitled “Update of Responses to Questionnaire”. This decision was adopted by the Committee of Experts at its meeting on February 13th, 2003 as part of its Third Regular Meeting held from February 10 to 13, 2003 at OAS headquarters in Washington D.C., United States of America.

⁵ This report was received by electronic means on August 18, 2003. Additionally, during an informal encounter with member of the Committee and Latin-American Development Corporation (CLD) - Ecuador Chapter of Transparency International made a presentation regarding its report.

public functions in Articles 14, 115 and 116; similarly, this law covers important prohibitions designed to prevent conflicts of interest in Articles 5, 6, 18, 32, 33 and 60.

- As well, provisions applicable to all public servants can be found in: the Regulations of the Law on Administrative Careers and the Civil Service; Articles 17 to 23 contain important provisions designed to control nepotism; and in the Law on Public Tenders, which details disqualifications in this area in Articles 55 and 56.
- Legal provisions applicable to certain public servants such as those contained in the Basic Law on the Legislative Branch; the Code of Ethics of the Legislature; the Basic Law on the Judicial Branch; the Basic Law on the National Council of the Judiciary; the Basic Law on the Auditor General's Office, the Code of Ethics of the Employees of the Auditor General's Office; the Law on Financial Administration and Oversight; the Law on the Commission for Civic Control of Corruption; the General Law on Financial System Institutions; the Law on Modernizing the State; and the regulations for the Elections Act.

The Republic of Ecuador also has mechanisms designed to enforce the above-mentioned standards of conduct, of which the following should be highlighted:

- The Constitution, which in Article 3, paragraph 6, establishes that the State is obliged to guarantee an administration free of corruption; and in Article 120, which provides that no public servants or dignitaries are free of responsibility for acts or omissions in the performance of their functions.
- The Law on Administrative Careers and the Civil Service. Article 61 stipulates that public servants who fail to comply with their obligations or contravene the provisions of this law or its regulations, or related laws, shall incur administrative liability that shall be the object of disciplinary sanctions without prejudice to criminal or civil liability. Article 62 establishes the disciplinary sanctions.
- The Basic Law on the Auditor General's Office. Chapter 5 of this law contains provisions for determining cases of civil and administrative liability, and indicators of criminal liability, based on the audits performed.
- The Criminal Code. Section III provides for sanctions of this type for those involved in offences, and stipulates which types of conduct constitute conflicts of interest; for example, the prohibition of magistrates or judges to act as debtors to or trustees of or to contract any obligation with parties involved in a lawsuit of which they are aware (Article 267); and breach of official duty (Article 277).
- The Law on the Commission for Civic Control of Corruption. Article 7, paragraph d) of this law stipulates that it is the responsibility of the Commission for Civic Control of Corruption (CCCC) to investigate and pass judgment on situations that involve conflicts of interest.

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

With respect to the provisions of the Constitution concerning standards of conduct designed to prevent conflicts of interest, and of mechanisms to enforce these standards, it is clear that these provisions refer to public servants in general, and also cover special cases such as those of senior civil servants. All this is considered to be pertinent for the promotion of the objectives of the Convention.

Notwithstanding the above, the Committee believes it would be timely to make a number of comments concerning the appropriateness of complementing the legal provisions related to the above standards and mechanisms.

The legal regulation with the broadest scope in terms of standards of conduct designed to prevent conflicts of interest is the Law on Administrative Careers and the Civil Service and its Regulation: its scope of application covers all public servants. This law and its regulation clearly aim at establishing, maintaining and strengthening said standards, as provided for in Article 3 of the Inter-American Convention against Corruption, and will prove their pertinence by achieving the above objectives. Nevertheless, the following issues must be raised:

- Article 123 of the Constitution stipulates that public servants must abstain from becoming involved in cases where their interests conflict with those of the agency or entity for whom they provide services. Although this provision could be broadly interpreted to cover cases of conflicts of interest related to trade union interests, or circumstances such as membership in a professional association or a non-governmental organization, the Committee believes that it would be appropriate for the Republic of Ecuador to consider legally fleshing out this constitutional concept by specifically regulating the most relevant possibilities vis-à-vis such situations. This would complement the standards established by the Law on Administrative Careers and the Civil Service and its Regulation, which contain provisions dealing with other conflict of interest situations.
- No specific standards exist to prevent conflicts of interest that occur following the performance of public functions; for example, standards that prohibit public servants from becoming involved in official matters of which they were aware or in entities with which they maintained official links and, in general, all situations which can lead former civil servants to take undue advantage of their previous position.

With respect to the standards designed to prevent conflicts of interest that occur following the performance of public duties, mention should be made of the exception contained in Article 176 of the General Law on a Financial System Institutions, which stipulates that “neither the Superintendent of Banks and Insurance, within his field of jurisdiction, nor the “Intendente” General may be part of the institutions referred to in this law until one year after having left their position”.

No mechanisms exist to inform and train public servants on the standards designed to prevent conflicts of interest, or to respond to requests for advice and consultation by public servants with a view to detecting and substantiating conflict of interest situations.

The Committee also believes it is timely to suggest that the Republic of Ecuador carry out a study on the possibility of compiling the standards of conduct for the correct, honorable and proper fulfillment of public functions referred to in the Convention. This consideration is also pertinent with respect to Sections 1.2.2 and 1.3.2 in Chapter II of this report, and shall be understood to apply to them as well.

Taking into account these considerations, the Committee will formulate recommendations with respect to this issue.

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

Ecuador's Response concerning the above results⁶ states that: "The country does not have an information system that enables it to provide objective data and statistics concerning the results obtained through the application of the standards and mechanisms referred to in this and other sections of the questionnaire".

Although some information is provided later in the same Response⁷ concerning activities carried out by the State Prosecutor's Office, the Auditor General's Office, the Commission for Civic Control of Corruption (CCCC), the Executive Branch, the Judicial Branch and other oversight agencies, it is not sufficiently detailed to enable the assessment of the results of said standards and mechanisms.

However, it should be pointed out that the Response⁸ (under the heading "some general conclusions"), does highlight the need to "enforce these standards", to continue to "develop new standards and mechanisms", and to collect "statistics against (sic) impunity".

As well, reference is made in the Response⁹ to a document drawn up by the Ecuadoran Episcopal Conference. The Response reproduces a number of the paragraphs from this document considered as criteria similar to those expressed above. Two of these paragraphs read as follows:

1. "The country does not currently have adequate standards or mechanisms to stop corruption. Those that do exist do not offer adequate guarantees when it comes to reporting, investigating and prosecuting corruption. Constitutional oversight agencies are not able to act efficiently, due to lack of inter-institutional coordination and the low level of public awareness of the values and practices of the fight against corruption, among other factors. (...)

2. Standards designed to avoid 'conflicts of interest' in the performance of public functions do exist. However, they are not sufficient and – more importantly – these standards are not adequately enforced. Generally speaking, corruption has the ability to conjoin individuals, individual functions, and their interests, with collective interests".

In addition, in reference to standards of conduct and mechanisms in general, the document prepared by the Latin-American Development Corporation (CLD) - Ecuador Chapter of Transparency International¹⁰ mentions the following:

"73,567 outstanding regulatory provisions refer to the various categories of public servants. This number corresponds to 57% of all regulations in Ecuador.

Nevertheless, of the total number of cases resolved by the Commission for Civic Control of Corruption (CCCC) in the year 2001 (112), 91% included indicators of liability.

There is an apparent contrast, then, between the relative number of provisions related to the duties of public servants, and the small percentage of cases investigated by the CCCC in which no indicators of liability whatsoever were uncovered".

⁶ Response of the Republic of Ecuador to the Questionnaire, page 16

⁷ Response of the Republic of Ecuador to the Questionnaire, pages 17 and 18

⁸ Response of the Republic of Ecuador to the Questionnaire, pages 18 and 19

⁹ Response of the Republic of Ecuador to the Questionnaire, pages 19 and 20

¹⁰ Document submitted by the Latin American Development Corporation (CLD) - Ecuador Chapter of Transparency International, pages 6 and 7.

Further on in the same document¹¹, in reference to the “underlying principles” or regulations designed to prevent conflicts of interest, it is stated that “it is essential to develop mechanisms that lead to the effective application of these principles and the corresponding standards...”

The Committee does not believe it has sufficient information to enable a comprehensive assessment of the results of the above-mentioned standards of conduct and mechanisms. However, the comments related to their effectiveness contained in the country response and in the document presented by the Latin-American Development Corporation (CLD) - Ecuador Chapter of Transparency International, referred to earlier, should be taken into account. They underline the need for the Republic of Ecuador to consider carrying out a study on the use and effectiveness of such standards and mechanisms as instruments to prevent corruption. Based on the outcome of this study, Ecuador should consider the adoption of measures designed to ensure the effectiveness of these standards and mechanisms.

Taking into account this circumstance, the Committee will formulate a recommendation.

1.2 STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PROPER CONSERVATION AND USE OF RESOURCES ENTRUSTED TO GOVERNMENT OFFICIALS.

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

The Republic of Ecuador has a set of provisions related to the above-mentioned standards of conduct, of which the following should be highlighted:

- Constitutional provisions, such as those contained in Article 20 of the Constitution, that oblige the institutions of the State, its representatives and assignees, to compensate individuals for the damages caused by the deficient provision of public services or by the acts of its civil servants or employees in the performance of their functions. Article 20 also enshrines the right of repeal of the State in order to enforce the liability of the above individuals when, as determined by a court, they have caused damage through malevolent intent or serious negligence.
- Legal provisions, the most important of which are found in the Basic Law on the Auditor General’s Office, and which deal directly with this topic. These provisions govern State institutions in general, as well as entities in private law, concerning public property or resources at their disposal; they establish in a comprehensive fashion the State’s system of oversight, review and auditing; they also lay the basis for internal and external audits (sections I and II).
- The Law on Administrative Careers and the Civil Service, which obliges public servants to safeguard the economy of the State and to ensure the conservation of the documents, tools, equipment, furniture and property in general entrusted to their custody, administration or use (Article 58, paragraph f).
- The Basic Law on Fiscal Transparency, Stabilization and Liability, which contains standards related to the formulation and central and decentralized implementation of public finances; furthermore, it includes standards for access to information related to the public requirement for transparency and citizen oversight.

¹¹ Document submitted by the Latin American Development Corporation (CLD) - Ecuador Chapter of Transparency International, pages 10 and 11.

- Executive Decree No. 44 RO/ 11, 2003, which contains standards to restrict public expenditures designed to ensure the proper conservation and use of property entrusted to public servants, such as the provision that stipulates that State vehicles may only be used for official activities (Article 10).
- Provisions are also contained in: the Law on Financial Administration and Oversight; the Law on the Economic Regulation and Control of Public Expenditures; the Law on Modernizing the State; the Code of Ethics of the Employees of the Auditor General's Office; and a number of regulations related to the various public entities.

The Republic of Ecuador also has mechanisms designed to enforce the above-mentioned standards of conduct, of which the following should be highlighted:

- The Constitution. Article 3, paragraph 6 stipulates that the State has the obligation to guarantee an administration free of corruption; Article 121 provides that the standards for determining administrative, civil or criminal liability in the handling and administration of public funds, property or resources, shall apply to the dignitaries, functionaries and civil servants of the State's institutions and agencies.
- The Basic Law on the Auditor General's Office. Article 31 stipulates that it is up to the Auditor General's Office to establish the following: individual administrative liability for contravention of the legal and regulatory provisions and of the standards of the above law; civil liability for the economic damage suffered by the respective entity or agency because of the acts or omissions of its public servants; indicators of criminal liability. Chapter V (Articles 38 to 70) contains provisions for determining said liability, and contemplates measures such as the imposition of sanctions for administrative offences and the recovery of losses caused to the State.
- The Law on Administrative Careers and the Civil Service. Article 61 stipulates that public servants who fail to comply with their obligations or contravene the provisions of this law or its regulations, or related laws, shall incur administrative liability that shall be the object of disciplinary sanctions without prejudice to criminal or civil liability. Article 62 establishes the disciplinary sanctions.
- The Criminal Code. Chapter III of the Code provides for sanctions of this nature for individuals involved in specified offences related to certain criminal behavior such as graft (Article 257); the use of workers paid by the State or property of the public sector for one's benefit or that of a third party (Article 257.1); taking economic advantage of secret, reserved or restricted information (Article 257.2); collecting illicit commissions or altering prices when procuring articles and goods for the public sector (Article 260); the malicious and fraudulent destruction of documents or deeds deposited with them by virtue of their position (Article 262); illicit enrichment (Article 269.1).

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

The standards and mechanisms in the area of the proper conservation and use of resources entrusted to public servants in the performance of their functions, based on the information made available to the Committee, are pertinent for promoting the objectives of the Convention.

In fact, as mentioned in the Response from Ecuador¹², all public servants or official agents, be they elected, designated, appointed, or delegated, are liable for the public resources entrusted to them or under their jurisdiction.

It should be pointed out that two of the most important pieces of legislation in this field, that is, the Basic Law on the Auditor General's Office and the Basic Law on Fiscal Transparency, Stabilization and Liability, were adopted relatively recently (May and July of 2002, respectively). This underscores the desire of Ecuador to modernize the standards and mechanisms related to this area. Another indicator of this same desire is the existence of the Bill on Modernizing the Criminal Treatment of Corruption, which is mentioned in the update to Ecuador's response. In this respect, the Committee wishes to suggest that in order to deal with issues that are important to ensure the proper conservation and use of public resources, it would be appropriate for the Republic of Ecuador to consider the possibility of having the appropriate authority adopt this bill into law once the corresponding procedures have been completed¹³.

The Committee believes that since Ecuador is in the process of updating these standards and mechanisms, it would be appropriate for the Republic of Ecuador to consider implementing programs for informing and training public servants in this area, as well as mechanisms to respond to requests for advice and consultation by civil servants in this respect.

Taking into account the above considerations, the Committee will formulate a recommendation.

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

Ecuador's Response concerning the above results¹⁴ states that: "The country does not have an information system that enables it to provide objective data and statistics concerning the results obtained through the application of the standards and mechanisms referred to in this and other sections of the questionnaire".

Although some information is provided later in the same Response¹⁵ concerning activities carried out by the State Prosecutor's Office, the Auditor General's Office, the Commission for Civic Control of Corruption (CCCC), the Executive Branch, the Judicial Branch and other oversight agencies, it is not sufficiently detailed to enable the assessment of the results of said standards and mechanisms.

However, it should be pointed out that the Response¹⁶ (under the heading "some general conclusions"), does highlight the need to "enforce these standards", to continue to "develop new standards and mechanisms", and to collect "statistics against (sic) impunity".

As well, reference is made in the Response¹⁷ to a document drawn up by the Ecuadoran Episcopal Conference. The Response reproduces a number of the paragraphs from this document considered as criteria similar to those expressed above. One of these paragraphs reads as follows:

"3. Standards do exist that are designed to ensure the conservation and appropriate use of resources assigned to public servants in the performance of their duties. Nevertheless, these standards are often ignored, resulting in damage to the collective wealth. One need only to refer to the entire set of standards

¹² Response of the Republic of Ecuador to the Questionnaire, page 12

¹³ Update of the Response of the Republic of Ecuador to the Questionnaire, page 23.

¹⁴ Response of the Republic of Ecuador to the Questionnaire, page 16

¹⁵ Response of the Republic of Ecuador to the Questionnaire, pages 17 and 18

¹⁶ Response of the Republic of Ecuador to the Questionnaire, pages 18 and 19

¹⁷ Response of the Republic of Ecuador to the Questionnaire, pages 19 and 20

for the tendering of public works, which is one of the main ways that funds are misused or misappropriated”.

In addition, the document submitted by the Latin-American Development Corporation (CLD) - Ecuador Chapter of Transparency International¹⁸, in reference to the standards of conduct designed to ensure the conservation and appropriate use of resources entrusted to public servants, notes the following:

“A worthwhile addition to the State’s report is the importance, in practice, of the regulations issued by the Auditor General’s Office based on Article 212 of the Constitution, with the objective of regulating the administration of State property and money.

The application of these regulations is designed to avoid the perpetration of acts of corruption that affect the tax authorities. Nevertheless, as can be seen from the following data, 45% of the regulations issued by the Attorney General’s Office are more than ten years old. The failure to update these regulations is an unhappy circumstance considering the advances in modernization due, above all, to the increasingly generalized use of new technologies in public administration”.

The same document¹⁹ later adds that: “...on the other hand, appropriate oversight of the use of public resources imposes the requirement that governmental accounting processes be completed by the end of the fiscal period, and that the most complete possible information related to financial management be made available on the Internet”.

Taking into account the above considerations, the Committee will formulate recommendations in this area.

The Committee does not have sufficient information to enable a comprehensive assessment of the results of the above-mentioned standards of conduct and mechanisms. However, the comments related to their effectiveness contained in the country response and in the document presented by the Latin-American Development Corporation (CLD) - Ecuador Chapter of Transparency International, referred to earlier, should be taken into account. They underline the need for the Republic of Ecuador to consider carrying out a study on the use and effectiveness of such standards and mechanisms as instruments to prevent corruption. Based on the outcome of this study, Ecuador should consider the adoption of measures designed to ensure the effectiveness of these standards and mechanisms.

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

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

The Republic of Ecuador has a set of provisions related to the above-mentioned standards of conduct and mechanisms, of which the following should be highlighted:

- Article 97, paragraph 14 of the Constitution, which enshrines the right and responsibility of all citizens to report and combat acts of corruption.

¹⁸ Document submitted by the Latin American Development Corporation (CLD) - Ecuador Chapter of Transparency International, page 26.

¹⁹ Document submitted by the Latin American Development Corporation (CLD) - Ecuador Chapter of Transparency International, page 27

- The Law on Administrative Careers and the Civil Service. Article 58, paragraphs d) and h), establishes that public servants must obey and respect the legitimate orders of their superiors, determine whether such orders may be illegal or immoral, and inform their superiors concerning acts that may cause damage to the administration.
- The above-mentioned Law on Administrative Careers and the Civil Service. Article 61 stipulates that public servants that fail to comply with their obligations or contravene the provisions of this law or its regulations, or related laws, shall incur administrative liability that shall be the object of disciplinary sanctions without prejudice to criminal or civil liability. Article 62 establishes the disciplinary sanctions.
- The Criminal Code. Article 292 establishes as an offence (punishable by a prison term of from 15 days to 6 months) the fact that a public servant that has become aware of the perpetration of an offence fails to bring it immediately to the attention of a committing magistrate.
- The Basic Law on the State Prosecutor's Office. Article 3, paragraph j), stipulates the duties of the above-mentioned agency to ensure the protection of the victims, witnesses and other participants in criminal lawsuits.
- The Law on the Commission for Civic Control of Corruption. In accordance with Article 221 of the Constitution, Article 7, paragraph e), assigns to the Commission for Civic Control of Corruption (CCCC) the task of providing legal protection for the personal security of individuals who spontaneously collaborate in clarifying the facts of a given case.

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

The standards and mechanisms related to the measures and systems that require public servants to report acts of corruption in the public service of which they are aware, as reviewed by the Committee based on the information made available, are relevant for the promotion of the objectives of the Convention.

Nevertheless, the Committee believes that the comments made in the section of the response of the Republic of Ecuador²⁰ entitled "some general conclusions" should be taken into account. Under the header "development of new standards and mechanisms", mention is made of the need for the "...protection of informants through concrete mechanisms of legal protection for individuals who, in good faith and with evidentiary documents, contribute to the investigations of oversight agencies; access to information on public resources and management; harsher sentences and, above all, measures that break the chain of complicity and silence among those who participate in committing acts of corruption".

The Committee believes it would be appropriate for the Republic of Ecuador to consider strengthening its mechanisms in this area. This would make it easier for public servants to comply with their duty to report acts of corruption and would provide them with effective protection against the threats and retaliation they may endure as a consequence of such compliance.

With respect to the constitutional law (Article 97, num. 14 Political Constitution) that establishes the duty and responsibility to combat acts of corruption in the event that public servants fail to report such acts, through the identification of the relevant administrative liabilities and their respective sanctions, the Committee also believes that it would be appropriate for the Republic of Ecuador to consider including

²⁰ Response of the Republic of Ecuador to the Questionnaire, page 19.

expressly and specifically in the law this constitutional obligation, along with the applicable sanction, despite the fact that these matters are generically expressed in the Law on Administrative Careers and the Public Service.

Taking into account the above considerations, the Committee will formulate recommendations in this area.

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

Ecuador's Response²¹ concerning the above results states that: "The country does not have an information system that enables it to provide objective data and statistics concerning the results obtained through the application of the standards and mechanisms referred to in this and other sections of the questionnaire".

Although some information is provided later in the same Response²² concerning activities carried out by the State Prosecutor's Office, the Auditor General's Office, the Commission for Civic Control of Corruption (CCCC), the Executive Branch, the Judicial Branch and other oversight agencies, it is not sufficiently detailed to enable the assessment of the results of said standards and mechanisms.

However, it should be pointed out that the Response²³ (under the heading "some general conclusions") does highlight the need to "enforce these standards", to ensure the "dissemination of standards and informed social censure", and to collect 'statistics against (sic) impunity".

The committee wishes to highlight one of the paragraphs of the Response²⁴ referred to earlier. Under the heading entitled "dissemination of standards and informed social censure", the Response states: "Despite the existence of a broad range of standards, the low level of citizen awareness of these standards hampers the strengthening of an informed social censure, which could unearth corrupt practices – be they large or small – in the various social sectors and which could unravel, over time, the networks that give rise to such practices".

The Committee does not believe it has sufficient information to enable a comprehensive assessment of the results of the above-mentioned standards of conduct and mechanisms. However, the comments related to their effectiveness contained in the country response, referred to earlier, should be taken into account. They underline the need for the Republic of Ecuador to consider informing public servants concerning the existence and purpose of the responsibility to report to the competent authorities acts of corruption in the performance of their functions.

Taking into account this circumstance, the Committee will formulate a recommendation.

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

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

²¹ Response of the Republic of Ecuador to the Questionnaire, page 16

²² Response of the Republic of Ecuador to the Questionnaire, pages 17 and 18

²³ Response of the Republic of Ecuador to the Questionnaire, pages 18 and 19

²⁴ Response of the Republic of Ecuador to the Questionnaire, page 19

The Republic of Ecuador has a set of standards and measures with respect to the above-mentioned systems, of which the following should be highlighted:

- Article 122 of the Constitution. This Article establishes the obligations to present a sworn declaration of net worth (including income, assets and liabilities) on the part of civil servants that are appointed or removed at will, those designated for a fixed period, those who handle public resources or property, citizens elected by popular vote, and members of the police force.
- The Law Regulating Sworn Declarations of Net Worth, issued in May 2003. Articles 1 to 9 describe in detail who should present sworn declarations of net worth. The law also: determines when such declarations must be presented; indicates the contents of said declarations; establishes a procedure for their review by the Auditor General's Office.
- The Basic Law on the Auditor General's Office. Article 31, paragraph 9 of this law assigns the following tasks to the Auditor General's Office, among others: to demand and review sworn declarations of net worth and to investigate cases of presumed illicit enrichment, in accordance with Article 122 of the Constitution and the regulations issued in this respect; to notify the electoral agencies or the corresponding appointing authority of cases of non-compliance with the prevailing standards in order that the relevant legal measures may be taken, without prejudice to the authority of the Auditor General's Office in this area.
- The Law on Administrative Careers and the Civil Service (Article 11) and its Regulations (Articles 15 and 16). These articles stipulate that the sworn declaration of net worth must take the form of a public document or of a document authenticated by a notary, and must be presented upon taking up the position and again when leaving.
- Executive Decree No. 122, 2003. Article 7 of this decree stipulates that the appointment of individuals who are obliged to present a sworn declaration of net worth and who fail to do so will be revoked. Article 9 expands on the above obligation to cover all citizens who, in accordance with the Constitution and the Inter-American Convention against Corruption, are considered to be public servants.

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

The standards and mechanisms related to systems for the disclosure of income, assets and liabilities reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

Nevertheless, the Committee believes it would be appropriate for the Republic of Ecuador to consider complementing the above systems with a regulation concerning the duly established conditions, procedures and practices for publicizing the sworn declarations of net worth provided by public servants.

Taking into account that the response of the Republic of Ecuador²⁵ mentions that "...the information could be made public with the authorization of the Auditor General", the Committee believes that it would be appropriate for the Republic of Ecuador to consider issuing a regulation to this effect.

Taking into account the above considerations, the Committee will formulate recommendations in this area.

²⁵ Response of the Republic of Ecuador to the Questionnaire, page 21.

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

The response of Ecuador²⁶ notes the following:

“The main result obtained is of a dissuasive nature due to the danger incurred by contravening the standards. Sworn declarations from approximately 40% of those public servants obliged to file such declarations are currently being processed and Ecuador hopes to consolidate this process with the support of the Latin-American Development Corporation, which has entered into negotiations with oversight agencies from the Republic of Mexico.

The Auditor General’s Office has improved the processing of this information by adding professional staff and purchasing basic equipment that will soon be installed. Follow-up on the effects and results of the sworn declaration of net worth will be achieved through the agreement signed with the Latin-American Development Corporation and with the support of Mexico.

These conditions will enable Ecuador to determine the validity of the statements of income, assets and liabilities of the civil servants and dignitaries of the State, obtain reliable statistical data, and detect possible irregularities”.

The following comment is made in the Memo of Clarification to the previous response²⁷:

“With respect to the statement that declarations from approximately 40% of those individuals obliged to file such declarations are being processed, it should be pointed out that this percentage refers to the level of compliance with the obligation. In addition, the data correspond to the initial date on which they were requested. The following data have been updated and recorded at the national level: 10, 366 sworn declarations of net worth, including 5,693 from the provinces and 4,673 from Pichincha.

The following information is also of interest:

Communications were sent to the senior officials of all the public entities of the country in order to ensure that the civil servants and dignitaries covered by the provisions of Article 122 of the Constitution of Republic and of Agreement 022-CG dated July 5, 2000, and published in the Official Gazette No. 119 dated July 5, 2000, comply with the obligation to present sworn declarations of net worth, an obligation that had been partially respected in the past.

Similarly, the Electoral Supreme Court issued Memo No. 34842-DIRCO dated October 31, 2002 in which it established that dignitaries elected by popular vote must comply with said obligation prior to taking up their position”.

In addition, in the document presented by the Latin-American Development Corporation (CLD) - Ecuador Chapter of Transparency International²⁸, in reference to “principles underlying” the regulations designed to prevent conflicts of interest, the following comment appears:

“It is essential to develop a mechanism that leads to the effective application of these principles and of the corresponding standards. In particular, it is necessary to organize and enable broad access to data concerning potential or incumbent public servants, such as data contained in sworn declarations of net

²⁶ Response of the Republic of Ecuador to the Questionnaire, page 21.

²⁷ Memo of Clarification dated February 4, 2003, pages 1 and 2.

²⁸ Document submitted by the Latin American Development Corporation (CLD) - Ecuador Chapter of Transparency International, pages 10 and 11.

worth. This would be complemented by the creation of a review team prior to the taking up of the respective position; this team would be in charge of determining the existence of conflicts of interest, should they exist”.

Further on in the above-mentioned document²⁹, in reference to the systems for disclosing income, assets and liabilities, the following comments are made:

“As of August 10, 1998, the date on which the current Constitution came into effect, the Auditor General’s Office took over the responsibility of carrying out the follow-up and control of declarations of net worth.

In July 2000, this agency issued the Regulation on the presentation of sworn declarations of net worth.

As for the operational implementation of the recording, follow up and control carried out by the Auditor General’s Office; by December 2001 information corresponding to 974 public servants and dignitaries had been entered into the database built for this purpose”.

The Committee does not believe it has adequate information to carry out a comprehensive assessment of the results of the systems for disclosing income, assets and liabilities. However, with respect to the implementation of these systems, the answers contained in the country response, as well as the comments contained in the document submitted by the Latin-American Development Corporation (CLD) - Ecuador Chapter of Transparency International, deserve to be taken into account. They raise the need for the Republic of Ecuador to consider strengthening these systems, in such a fashion as to enhance the analysis of their contents by the competent authority with the objective of making use of this instrument to detect and prevent conflicts of interest and to detect possible cases of illicit enrichment. The Committee also believes it would be appropriate for the Republic of Ecuador to consider reviewing and following up on compliance by public servants with the obligation to present a sworn declaration of net worth, pointing out the degree of compliance and suggesting suitable measures to modify or correct the situation.

The Committee acknowledges the efforts made by the Republic of Ecuador this area. They are reflected in the recent issuance of a law that regulates in a specific and detailed manner the obligation to present a sworn declaration of net worth (RO/83 dated May 16, 2003) and of an Executive Decree (No. 122/2003) which provides for sanctions and extends the coverage of the obligation; they are also reflected in the statements contained in the country response, which describes efforts designed to ensure compliance with said obligation on the part of those concerned, to ensure that the follow up of the effects and results of the declarations is carried out, and to encourage the validity of these declarations in practice.

Taking into account the above considerations, the Committee will formulate recommendations in this area.

3. OVERSIGHT BODIES RELATED TO 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 other measures

The Republic of Ecuador has a set of standards related to oversight bodies in charge of performing functions concerning compliance with the provisions contemplated in paragraphs 1, 2, 4 and 11 of Article 3 of the Convention, of which the following should be highlighted:

²⁹ Document submitted by the Latin American Development Corporation (CLD) - Ecuador Chapter of Transparency International, page 46.

- Constitutional provisions, such as those contained in Articles 211, 212 and 213 of the Constitution (Auditor General's Office); Articles 214, 215 and 216 (Attorney General's Office); Article 265 (Court of the Exchequer); Articles 216, 217 and 219 (State Prosecutor's Office) and Articles 220 and 221 (Commission for Civic Control of Corruption (CCCC)).
- Legal provisions, such as those contained in: the Basic Law on the Auditor General's Office (Articles 1, 5 to 25, and 29 to 31); the Basic Law on the Attorney General's Office (Articles 2 to 4); the Basic Law on the State Prosecutor's Office (Articles 1 to 4); the Code of Criminal Procedure (Articles 65 to 67, 206 and 215 to 224); and the Law on the Commission for Civic Control of Corruption (Articles 1 to 22).

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

The Republic of Ecuador has a set of standards related to oversight bodies in charge of performing functions concerning compliance with the provisions contemplated in paragraphs 1, 2, 4 and 11 of Article 3 of the Convention; these standards cover the above provisions, if one takes into account the existence of bodies of this nature with general or specific authority for ensuring such compliance, and constitute progress in implementing these provisions.

Based on the information made available, the Committee notes that in this area the Republic of Ecuador has standards pertinent to the promotion of the objectives of the Convention.

3.3 Results of the legal framework and/or of other measures

Although the response of the Republic of Ecuador³⁰ contains some information concerning activities carried out by the State Prosecutor's Office, the Auditor General's Office, the Commission for Civic Control of Corruption (CCCC), the Executive Branch, the Judicial Branch and other oversight agencies, this information does not enable the assessment of the results of the activities concerning each separate provision contained in paragraphs 1, 2, 4 and 11 of Article III of the Convention, since this information is not broken down. The same comment is valid when it comes to the information provided in this area by the Latin-American Development Corporation (CLD) - Ecuador Chapter of Transparency International in the corresponding chapter of its document³¹.

However, it should be pointed out that the response of the State being reviewed³², describes the need to strengthen existing oversight agencies when it states:

“In general, an acceptable level of coordination appears to exist among the various oversight agencies. However, it would also appear necessary to counter a certain tendency towards institutional protagonism and to offer the citizenry the type of practical and conclusive result that can be derived from institutional teamwork.

In doing so, the country's institutional structure of oversight and decision-making would be strengthened, and the fight against corruption would be moved beyond the scope of short-term intentions.

³⁰ Response of the Republic of Ecuador to the Questionnaire, pages 17 and 18.

³¹ Document submitted by the Latin American Development Corporation (CLD) - Ecuador Chapter of Transparency International, pages 50 to 55.

³² Response of the Republic of Ecuador to the Questionnaire, pages 24 and 25.

The above measures would also have important practical repercussions when it comes to the secrecy that must surround investigations in order to guarantee that those presumed responsible for acts of corruption do not flee before they can be prosecuted.

In addition, it is necessary to ensure improved external, technical and financial cooperation designed to strengthen joint institutional activities, harmonize policies and avoid uncoordinated activities.”

As well, reference is made in the Response³³ to a document drawn up by the Ecuadoran Episcopal Conference. The Response reproduces a number of paragraphs from this document, including the following:

“The country does not currently have adequate standards or mechanisms to stop corruption. Those that do exist do not offer adequate guarantees when it comes to reporting, investigating and prosecuting corruption. Constitutional oversight agencies are not able to act efficiently, due to lack of inter-institutional coordination and the low level of public awareness of the values and practices of the fight against corruption, among other factors. (...)”

The Committee does not believe it has sufficient information to enable the comprehensive assessment of the results of the above-mentioned oversight agencies in relation to each of the provisions of paragraphs 1, 2, 4 and 11 of Article III of the Convention. However, the comments concerning said agencies that appear in the country response, referred to earlier by the Committee, should be taken into account. They underline the need for the Republic of Ecuador to consider strengthening these agencies, and thereby ensure the effectiveness of their oversight activities. The Committee will formulate a recommendation in this respect.

The Committee acknowledges the efforts made by the Republic of Ecuador in this area. These are reflected in Executive Decree No. 122, 2003; Article 12 of this decree establishes as a priority of the State to set up and consolidate the Ecuadoran Anti-Corruption System (SAE). The SAE is defined as an “integrated and coordinated set of agencies, entities, public and private services that determine, implement and monitor – within their respective jurisdictions – policies, plans, programs and activities designed to eradicate corruption”. However, taking into account the fact that the response of the State under review³⁴ highlighted the “urgent need” for the political authorities of the organizations involved to subscribe to the SAE Formal Agreement and to establish the Superior Council and the Executive Commission, the Committee will formulate a recommendation in this respect.

In a document entitled “SAE Draft Working Document, Reforms of July 1, 2003 – State Policy Against Corruption and Impunity” provided by the Republic of Ecuador as Attachment 5 to the Update of its Response, it is stated that for such a policy to be maintained over time and implemented, it would be necessary to: “b) Strengthen the constitutional and legal mandates of each of the oversight agencies in the fight against corruption and impunity, specifically as concerns those activities that fall under their exclusive jurisdiction.”³⁵

The Committee believes that this reflects the desire of the State under review to move in the direction indicated earlier, to strengthen the above-mentioned agencies with the objective of ensuring effective oversight.

³³ Response of the Republic of Ecuador to the Questionnaire, page 19. The document referred to in this page of the Response is dated August 31, 2002.

³⁴ Update of the Response of the Republic of Ecuador to the Questionnaire, page 41

³⁵ Attachment No.5 “SAE Draft Working Document. Reforms of July 1, 2003 – State Policy Against Corruption and Impunity”, page 3

Taking into account the above considerations, the Committee will formulate recommendations in this area

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11)

4.1 GENERAL PARTICIPATION MECHANISMS

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

The Republic of Ecuador has a set of provisions related to the above-mentioned mechanisms, of which the following should be highlighted:

- Constitutional provisions, such as those contained in the following provisions of the Constitution: Article 1, which provides that the government is republican, presidential, elected, representative, responsible, alternating, participatory, and decentralized; Article 26, which enshrines the right of citizens to present bills to the National Congress, to be consulted in those cases provided for under the Constitution, to oversee the acts of public authority bodies, and to revoke the mandate conferred on dignitaries by popular vote; Article 97, which includes among the rights and responsibilities of the citizens that of participating in the political, civic and community life of the country in an honest and transparent fashion.
- Legal provisions, such as those contained in the Law on State Decentralization and Social Participation; the Law on the Commission for Civic Control of Corruption and its Regulation; the Basic Law on Rural Parish Councils; the Law on Community Organization and Systems; the Elections Act and its Regulation; and the Law on Modernizing the State.

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

The existing constitutional provisions in Ecuador concerning the matter being reviewed are those of a democratic state, to the extent that its Constitution enshrines the participatory nature of its government, and are pertinent for the achievement of the objectives of the Convention. The related legal standards also tend to enhance the above objectives, and will be taken into account when reviewing each of the participatory mechanisms listed in the classification included in the methodology for the review of the implementation of Article III, paragraph 11 of the Convention.

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

The Response of Ecuador does not provide information on this matter. This lack of information does not enable the comprehensive assessment of the results in this area. Taking into account this circumstance, the Committee will formulate a recommendation.

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 Ecuador has a set of provisions related to the above-mentioned mechanisms, of which the following should be highlighted:

- Constitutional provisions, such as those contained in the following articles of the Constitution: Article 23, paragraph 15, which enshrines the right of citizens to petition the authorities and to receive an answer within a reasonable time frame; Article 81, which provides that the State must guarantee the right to access to sources of information and that access to information contained in the public archives will not be restricted, except for documents where such restrictions are required for reasons of national security or other reasons expressly established in the law; Article 94, which guarantees the right of all individuals to access information on themselves or their property in the possession of private or public entities.
- Legal provisions such as those contained in the Basic Law on Fiscal Transparency, Stabilization and Liability. Article 18 of this law provides that the State shall guarantee citizen oversight of the public administration through free access to the accounting and budgetary documents and information related to the credit contracts and operations of all the entities of the public sector (and also of the private sector if property and other resources of the public sector are involved); Article 77 of the Basic Law on the Auditor General's Office, which establishes the responsibility of the Ministries of State and of the senior officials of State institutions to inform periodically the citizenry as to the results of the management of said institutions; Article 28 of the Law on Modernizing the State, which allows public authorities 15 days to reach a decision on a petition, failing which it shall be determined that the petition is accepted; Article 202 of the Criminal Code, which penalizes authorities that in any way hamper the free exercise of the right to petition.
- Provisions issued through Executive Decree (No. 122, RO 25, 2003), which covers a project known as CONTRATENET. By virtue of this project, all public institutions must publish the invitation to submit tenders and/or bids prior to the selection of the contractors, along with the corresponding documents. The Decree also contains guarantees concerning access to information.
- Standards of a legal nature concerning access to information are also found in the Basic Law on Rural Parish Councils, the Basic Law on Customs, and the Municipal Code for the Metropolitan District of Quito.

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

The standards and mechanisms related to access to information reviewed by the Committee, based on the available information, are pertinent for the promotion of the objectives of the Convention.

Nevertheless, the Committee believes that it would be appropriate for the Republic of Ecuador to consider strengthening the mechanisms designed to enforce the right of civil society to appeal decisions under which requests for information are denied, so as to guarantee easy access to said mechanisms and to ensure that the mechanisms are effective in protecting the right to access to government information.

Although Ecuador stated in its response³⁶ that it has mechanisms such as recourse to constitutional protection in the event that the public administration violates the constitutional right of access to public information, the Committee holds the above belief because it also noted that the same response³⁷ contained the following:

“Nevertheless, the application of the standards mentioned requires the identification of mechanisms designed to enforce these standards; in Ecuador, for example, the practical use of the right to access is

³⁶ Response of the Republic of Ecuador to the Questionnaire, page 26.

³⁷ Response of the Republic of Ecuador to the Questionnaire, page 27.

very limited, and the application of recourse to constitutional protection has been even more limited in those cases in which the public administration has denied requests for information.

In this regard, civil society organizations also have a major responsibility of identifying practical and over-arching mechanisms designed to enhance and ensure the viability of such provisions, above all when it comes to the monitoring of the public administration.”

The Committee believes that the State being reviewed has shown its desire to move in the direction mentioned earlier, particularly since one of the paragraphs in the update of its response contains the following statement³⁸;

“Nevertheless, the practical use of the right to access to information is very limited due to Ecuador’s tradition of according more weight to the law than the Constitution, and due to the limited efforts by judges in promoting fundamental rights and their effective protection. For this reason, various political players from civil society and society in general (such as the Ecuador Chapter of Transparency International) and the Commission for Civic Control of Corruption (CCCC) proposed draft legislation which resulted in the Bill on Access to Public Information. This Bill was approved by the National Congress at first reading and will be given definitive approval during the second reading within a few days; the legislation contains seven preambular paragraphs, seven sections, thirty three articles, five transitional provisions and two final provisions”.

With respect to the Bill on Access to Public Information referred to above, the Committee believes that given the importance of this piece of legislation, it would be appropriate for the Republic of Ecuador to consider the possibility of having the appropriate authority adopt this bill into law once the corresponding procedures have been completed

Taking into account the above considerations, the Committee will formulate recommendations in this area.

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

Although the Response of Ecuador does not contain information on the results in this area, the Committee believes that the following comments in the said response³⁹ concerning the enforcement of the standards should be taken into account: “...the practical use of the right to access is very limited”. They underline the need for the Republic of Ecuador to consider conducting an evaluation of the use and effectiveness of existing mechanisms to ensure access to information held by (or under the control of) State institutions, as instruments for preventing corruption. As an outcome from said evaluation, consider the adoption of measures to promote, facilitate, and consolidate or ensure the effectiveness of these instruments for this purpose.

The Committee believes that the above could be particularly beneficial for Ecuador, taking into account the following comment in its response:⁴⁰ “...the contents and scope of a future law on access to information are currently being debated”.

Taking into account the above considerations, the Committee will formulate recommendations in this area.

³⁸ Update of the Response of the Republic of Ecuador to the Questionnaire, page 44.

³⁹ Response of the Republic of Ecuador to the Questionnaire, page 27.

⁴⁰ Response of the Republic of Ecuador to the Questionnaire, page 27.

4.3 CONSULTATIVE MECHANISMS

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

The Republic of Ecuador has a set of provisions related to the above-mentioned mechanisms, of which the following should be highlighted:

- Constitutional provisions, such as those contained in the following articles of the Constitution: Article 26, which enshrines the right of citizens to be consulted in cases provided for in the Constitution; Article 84, paragraph 5, which stipulates the right of indigenous peoples to be consulted on policies that could affect their environment or culture; Articles 103 to 108, which establish the cases and conditions for holding referenda and the obligation to accept the results of such referenda; and Article 113, which refers to the calling of referenda.
- Provisions such as those contained in Articles 1 to 41 of the Regulation on Referenda and Revocation of Appointment; Articles 115 to 121, and 130 of the Elections Act; and Article 43 of the Law on State Decentralization and Social Participation.

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

The standards with respect to consultative mechanisms reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

Nevertheless, the Committee believes that the following paragraphs in the Response of Ecuador⁴¹ should be taken into account:

“On the other hand, although Ecuadoran legislation does not stipulate that it is obligatory to consult civil society organizations, over the past few years a number of worthwhile instruments have been developed: round tables, assemblies, meetings and public hearings on issues of national, provincial or local importance, most often the important issues of the day.

In many cases, such actions have resulted from initiatives or pressure on the part of citizens organizations, although it is well known that state authorities or entities agree to such mechanisms in order to reach agreement on issues that give rise to strong debate or differences”.

The Committee believes it would be appropriate for the Republic of Ecuador to consider complementing the existing consultative mechanisms by, for example, establishing procedures, when appropriate, that provide the opportunity to conduct public referenda prior to the final approval of legal provisions.

The Committee acknowledges the efforts made by the State under review in this area. These efforts are reflected in various paragraphs of the update to Ecuador’s response⁴² that: describe the subscription of a convention (Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries); provide for consultation of the people involved each time legislative or administrative measures are envisioned that may affect them directly; concern the creation of a body within the Presidency of the Republic (Secretariat on Planning and Social Dialogue) designed to strengthen the capacity of the government to coordinate its activities with those in the social arena.⁴³

⁴¹ Response of the Republic of Ecuador to the Questionnaire, page 28.

⁴² Update of the Response of the Republic of Ecuador to the Questionnaire, page 46.

⁴³ Update of the Response of the Republic of Ecuador to the Questionnaire, page 47.

The Committee also believes that the State under review has shown its desire to complement existing consultative mechanisms. This is reflected in the update to Ecuador's response, which describes the preparation of a corresponding legal initiative by the Commission for Civic Control of Corruption (CCCC), known as the Bill on Social Control of Public Authority, which is currently moving through parliament. Given the importance of this piece of legislation, the Committee believes that it would be appropriate for the Republic of Ecuador to consider the possibility of having the appropriate authority adopt it into law once the corresponding procedures have been completed.

Taking into account the above considerations, the Committee will formulate recommendations in this area.

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

Although the Response of Ecuador does not contain information on the results in this area, the Committee believes that the following comments in the said response⁴⁴ should be taken into account: "...the participation of citizens in adopting public policies through the use of the above-mentioned referenda is not enshrined in medium- and long-term administrative decisions". These comments underline the need for the Republic of Ecuador to consider conducting an evaluation of the use and effectiveness of existing consultative mechanisms as instruments for preventing corruption. As an outcome from said evaluation, consider the adoption of measures to promote, facilitate, and consolidate or ensure the effectiveness of these instruments for this purpose.

Taking into account the above considerations, the Committee will formulate recommendations in this area.

4.4 MECHANISMS TO ENCOURAGE ACTIVE PARTICIPATION IN PUBLIC ADMINISTRATION

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

The Republic of Ecuador has a set of provisions related to the above-mentioned mechanisms, of which the following should be highlighted:

- Constitutional provisions, such as those contained in the following articles of the Constitution: Article 225, which provides that the State shall, among other things, strengthen citizen participation through decentralization and de-compartmentalization; and Article 230, which stipulates that, without prejudice to provisions contained in the Constitution, the law shall determine the structure, integration, duties and tasks of the municipal councils and provincial councils, and shall ensure the effective application of the principles of autonomy, administrative decentralization and citizen participation.
- Provisions such as those contained in the following laws: Article 4 of the Law on State Decentralization and Social Participation, which states that the ultimate objectives of State decentralization and social participation are to develop and encourage social participation in the public administration as well as to promote self management within community and social groups; Article 7 of the Law on the Commission for Civic Control of Corruption, which establishes the duty of the Commission for Civic Control of Corruption (CCCC) to encourage citizen participation and citizen organization in creating a culture of legality and honesty; Article 4, which provides for said Commission to include members of civil society organizations; and in

⁴⁴ Response of the Republic of Ecuador to the Questionnaire, page 27.

Article 26 of the Law's regulatory statute, which stipulates that the Commission shall promote the establishment of a Citizen's Network to Combat Corruption.

- Standards of a similar nature concerning these participatory measures are also found in: the Elections Act and its Regulation; the Law on Political Parties; the Law on the Municipal System; the Basic Law on Local Parish Councils; and the Law on Community Organization and Systems.

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

The standards related to the above-mentioned mechanisms reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

However, the Committee believes that the following paragraphs contained in the Response of Ecuador⁴⁵ should be taken into account:

“Mechanisms of participatory planning are applied particularly at the departmental and local government level, although in a limited fashion to date.

However, as a whole, measures designed to promote more active and democratic citizen participation are at an early stage”.

In addition, the document of the Latin-American Development Corporation (CLD) - Ecuador Chapter of Transparency International⁴⁶, in reference to participatory mechanisms in general, mentions the following:

“Unfortunately, regulations concerning the exercise of social control do not include incentives designed to stimulate citizen participation, apart from a simple interest in the matter subject to oversight”.

The Committee believes it would be appropriate for the Republic of Ecuador to consider strengthening and continuing to implement mechanisms that encourage non-governmental and civil society organizations to participate in public administration.

As well, the Committee believes that the State under review has indicated its desire to move in the direction mentioned above; the update to its response⁴⁷ points to the existence of a legal initiative taken by the Commission for Civic Control of Corruption (CCCC) known as the Bill on the Social Control of Public Authority. One of the paragraphs of this Bill proposes that “All State institutions should create participatory mechanisms that enable citizens to become involved and to make a contribution to the development of the country”. Given the importance of this piece of legislation, the Committee believes that it would be appropriate for the Republic of Ecuador to consider the possibility of having the appropriate authority adopt it into law once the corresponding procedures have been completed.

In addition, based on information collected by the Committee Secretariat in accordance with the methodology for reviewing the implementation of the provisions selected⁴⁸, the Committee observes the existence in the juridical framework of the State under review a number of standards generically

⁴⁵ Response of the Republic of Ecuador to the Questionnaire, page 28.

⁴⁶ Document submitted by the Latin American Development Corporation (CLD) - Ecuador Chapter of Transparency International, page 110.

⁴⁷ Update of the Response of the Republic of Ecuador to the Questionnaire, pages 47 and 48.

⁴⁸ Methodology for the review of the implementation of the provisions of the Convention selected within the framework of the first round, Chapter VI (Document SG/MESICIC/doc.21/02)

described in a report⁴⁹ of the Office of the Rapporteur for Freedom of Expression of the OAS as “laws on contempt”. The latter could inhibit the participation of non-governmental organizations and civil society in efforts to prevent corruption.

The Committee wishes to refer to the pertinent sections of the above-mentioned report⁵⁰, which help to clarify not only the situation in Ecuador but also that of a number of countries in the American Hemisphere. In the case of Ecuador, the report considered the following standards from the Criminal Code to be “laws on contempt”:

“Article 230. Any individual who offends the President of the Republic or the person in charge of the Executive Branch, through threats or insults, shall be punished by prison terms from six months to two years and fined from one hundred to five hundred sucres.

Article 231. Any individual who offends any of the public servants listed in Article 225 in the performance of their duties or by reason of such duties, through threats, insults, or violence, shall be punished by prison terms from fifteen days to three months and fined from fifty to three hundred sucres. Individuals who commit the offences detailed in the previous paragraph against other civil servants that do not have jurisdiction shall be punished by prison terms of from eight days to one month.

Article 232. Any individual who shows contempt for any court, state corporation, or public servant, in the performance of their duties, with words, gestures or acts of intent, or disturbs or interrupts the performance of their duties, shall be punished by a prison term of from eight days to one month.

Article 233. Similar punishment shall apply to individuals that insult or offend any other person who may be present or in the presence of the courts or the public authorities”.

The Committee believes it is appropriate to recommend that the Republic of Ecuador consider repealing the standards mentioned above, along the lines indicated in the pertinent chapter of the Rapporteur’s report mentioned above⁵¹. It is the opinion of the Committee that these standards could constitute a disincentive to the participation of civil society for fear of being charged with an above-mentioned “offence of contempt”.

Taking into account the above considerations, the Committee will formulate recommendations in this area.

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

Although the Response of Ecuador does not provide information concerning the results of these mechanisms, one paragraph of the Response⁵² entitled “dissemination of standards and informed social censure” contains the following comment:

“Despite the existence of a broad range of standards, the low level of citizen awareness of these standards hampers the strengthening of an informed social censure, which could unearth corrupt practices – be they

⁴⁹ Report of the Special Rapporteur for Freedom of Expression 2000, Chapter III, page 11. This report can be consulted on the website of the OAS.

⁵⁰ Report of the Special Rapporteur for Freedom of Expression 2000, Chapter III, page 11. This report can be consulted on the website of the OAS.

⁵¹ Report of the Special Rapporteur for Freedom of Expression 2000, Chapter III, page 26. This report can be consulted on the website of the OAS.

⁵² Response of the Republic of Ecuador to the Questionnaire, page 19.

large or small – in the various social sectors and which could unravel, over time, the networks that give rise to such practices”.

As well, a document drawn up by the Ecuadoran Episcopal Conference⁵³, which was appended to the above-mentioned response, states the following in one of its paragraphs:

“The participation of civil society in efforts to punish and prevent corruption is weak, and reflects the weakening of the social fabric affecting Ecuadoran society as a whole. Generally speaking, civil society is not organized and the possibility for participation and the actual exercise of its rights and obligations is low”.

The Committee believes that the above-mentioned comments should be taken into account in order to underline the need for the Republic of Ecuador to consider raising public awareness about the problem of corruption and to promote the awareness and use of established participatory mechanisms.

Taking into account the above considerations, the Committee will formulate recommendations in this area.

4.5 PARTICIPATION MECHANISMS 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 Ecuador has a set of provisions related to the above-mentioned mechanisms, of which the following should be highlighted:

- Constitutional provisions, such as those contained in the following articles of the Constitution: Article 26, which enshrines the right of citizens to oversee the acts of public bodies; Articles 109 to 113, which cover the revocation of the mandate of a number of authorities elected by popular vote at the initiative of the citizens, for acts of corruption or unjustified failure to implement their work plan; Article 220 which, among other aspects, stipulates that the Commission for Civic Control of Corruption (CCCC), on behalf of the citizen, shall promote the elimination of corruption; and Article 237, which provides that the law shall establish the forms of social control.
- Legal provisions, such as those contained in Articles 37 and 40 of the Law on State Decentralization and Social Participation, which confer review and oversight functions to the neighborhood committees and parish councils with respect to public works and services; Article 4 of the Basic Law on Rural Parish Councils, which attributes review functions to said councils concerning the carrying out of plans, programs and projects; Article 18, which provides that the Parish Assembly shall be a space for citizen participation, control and consultation; Article 20, paragraph e), which includes among the tasks of the parish council that of overseeing and reporting all acts of corruption committed by public servants or employees in their performance of their duties within the parish; Article 94 of the Basic Law on the Auditor General’s Office, which admits the possibility of popular action in reporting irregularities within the public administration; and Articles 45 and following of the Regulation for Popular Referenda and the Revocation of Mandate, which regulate matters related to this mechanism.

⁵³ Attachment 10. Ecuadoran Episcopal Conference, page 2.

- As well, standards of a legal nature related to these participatory mechanisms can be found in: the Law on the Commission for Civic Control of Corruption and its Regulation; the Law on Provincial Systems; the Law on Municipal Systems; the Law on Community Organization and Systems; and the Municipal Code for the Metropolitan District of Quito.
- Regulatory provisions, such as those contained in the Regulation on the Creation and Operation of Oversight and Advisory Commissions issued on April 18, 2001 by the Commission for Civic Control of Corruption (CCCC). This regulation governs the development of specific activities related to the oversight and social control of the public administration, which is the objective of the Oversight Commissions, and the conducting of specialized activities designed to define policies and technical mechanisms that would enable increased transparency of public administration activities, which is the objective of the Advisory Commissions.

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

The standards related to the above-mentioned mechanisms reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

Nevertheless, the Committee believes that the following paragraph contained in the Response of Ecuador⁵⁴ under the heading “monitoring of the public administration”, should be taken into account:

“It is urgent to establish new ways of monitoring the public administration that include the participation of the civil society organizations that apply to all public institutions, in a gradual and sustained process by type of institution or area of control. (...)”.

The Committee believes it would be appropriate for the Republic of Ecuador to consider strengthening and continuing to implement mechanisms that encourage non-governmental and civil society organizations to participate in monitoring the public administration.

As well, the Committee believes that the State under review has indicated its desire to move in the direction mentioned above; the update to its response⁵⁵ points to the existence of a legal initiative taken by the Commission for Civic Control of Corruption (CCCC) known as the Bill on the Social Control of Public Authority. The Bill proposes to develop constitutional concepts related to citizen oversight of the acts of public body authorities. Given the importance of this piece of legislation, the Committee believes that it would be appropriate for the Republic of Ecuador to consider the possibility of having the appropriate authority adopt it into law once the corresponding procedures have been completed.

Taking into account the above considerations, the Committee will formulate recommendations in this area.

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

Although the Response of Ecuador does not provide information concerning the results of these mechanisms, this same response⁵⁶ includes the following statement:

⁵⁴ Response of the Republic of Ecuador to the Questionnaire, page 19.

⁵⁵ Update of the Response of the Republic of Ecuador to the Questionnaire, pages 47 and 48.

⁵⁶ Response of the Republic of Ecuador to the Questionnaire, page 29.

“Citizen participation is promoted by a number of public sector entities and institutions, which have developed a series of instruments designed to enhance the right to information. For example, a series of web pages and databases have been made available or are being developed in the country.

However, although the efforts to increase the transparency of state activities constitute notable progress, they remain isolated and limited in terms of the information they provide. Because of the media in which the data are provided (Internet or reports of working groups that do not facilitate or encourage consultation) as well as the type or technical specificity of the information itself (promotion of the administration or technical data), they neither stimulate nor encourage greater participation in the monitoring of the public administration”.

The Committee believes that the above-mentioned comments should be taken into account. They underline the need for the Republic of Ecuador to consider developing activities that would facilitate the efforts of civil society and non-governmental organizations to monitor the acts of public servants, and to implement programs to publicize these participatory mechanisms and provide training in their use.

The Committee acknowledges the efforts made by State under review in this area, which are reflected in the section of the update to its response⁵⁷ that details the creation of some forty citizen’s oversight groups by the Commission for Civic Control of Corruption (CCCC), beginning in the year 2000.

Taking into account the above considerations, the Committee will formulate recommendations in this area.

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

Ecuador has a set of provisions in this area, including bilateral agreements that were noted in its response⁵⁸, and the update to its response⁵⁹, subscribed with other States: international instruments such as the Inter-American Convention on the Taking of Evidence; the Inter-American Convention on the Execution of Preventive Measures; The Inter-American Convention on Extradition; the Inter-American Convention on Letters Rogatory and its Protocol; the Sanchez de Bustamante Code of Private International Law.

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

The provisions mentioned by Ecuador in its Response can contribute to achieving the objectives of the Convention of promoting and facilitating mutual assistance among State Parties; they can also serve to meet the specific goals of the Convention related to the investigation and prosecution of acts of corruption, to the extent that they can be used for such purposes.

As well, consideration is given to the comment by Ecuador in the update to its response⁶⁰ to the effect that “Ecuadoran central authorities have received no requests for mutual assistance with respect to the Convention, nor have they formulated such a request”.

⁵⁷ Update of the Response of the Republic of Ecuador to the Questionnaire, page 50.

⁵⁸ Response of the Republic of Ecuador to the Questionnaire, pages 29 and 30.

⁵⁹ Update of the Response of the Republic of Ecuador to the Questionnaire, pages 50 to 53.

⁶⁰ Update of the Response of the Republic of Ecuador to the Questionnaire, page 53.

Mention should also be made of the document entitled “SAE draft working document “Reforms of July 1, 2003 – State Policy against Corruption and Impunity”, presented by the Republic of Ecuador as Attachment No. 5 to the update to its response. The document states: “In the international sphere priority should be given to: deepening and extending relationships, commitments and activities stemming from international instruments subscribed by the countries in this area; ensuring financial and technical cooperation, above all for investigatory and judicial cooperative activities; improving the credibility of national programs, plans and policies in this area; developing and strengthening international relationships in order to make the extradition of suspects charged with crimes of corruption more viable”⁶¹.

The Committee wishes to highlight the importance of ensuring that the treaties subscribed by the Republic of Ecuador in the area of mutual assistance, as well as the Inter-American Convention Against Corruption, be applied to concrete cases of acts of corruption; this presupposes an adequate knowledge of their provisions on the part of those responsible for applying them.

Taking into account the above considerations, the Committee will formulate recommendations in this area.

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

The Response of Ecuador indicates that “Ecuadoran control authorities have neither received nor formulated mutual assistance requests under the Convention”⁶².

5.2. MUTUAL TECHNICAL COOPERATION

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

In the Response of Ecuador⁶³, it is noted that “as regards the provisions of the Constitution and legislation in general, there are no restrictions in Ecuador concerning mutual technical cooperation and, even less so in the areas covered by this questions in the Questionnaire”.

In the update to its response⁶⁴, the Republic of Ecuador mentions the signing of two agreements related to this issue. The first is the Complementary Agreement for Technical Cooperation on Automating Government Contracts, subscribed on March 20, 2000 between the Commission for Civic Control of Corruption (CCCC) and the Secretariat of Auditing and Administrative Development of the United States of Mexico. The second is the Agreement between the government of Switzerland and the government of the Republic of Ecuador relative to the financing and implementation of the project known as the “Development of a Transparent and Flexible System for Public Sector Contracts – CONTRATANET”, signed on December 19, 2001.

In the update to its response⁶⁵, the Republic of Ecuador also refers to the participation of its representatives in the “International Seminar on Public Ethics and the Fight against Corruption: Basis for a Regional Policy”, held in Lima, Peru on June 18 and 19, 2003.

⁶¹ Attachment No.5 : “SAE Draft Working Document. Reforms of July 1, 2003 – State Policy Against Corruption and Impunity”, page 5

⁶² Update of the Response of the Republic of Ecuador to the Questionnaire, page 58.

⁶³ Response of the Republic of Ecuador to the Questionnaire, page 30.

⁶⁴ Update of the Response of the Republic of Ecuador to the Questionnaire, pages 54 and 55.

⁶⁵ Update of the Response of the Republic of Ecuador to the Questionnaire, pages 55 to 57.

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

The Committee believes that it is positive that no restrictions on mutual technical cooperation exist within the legal framework of Ecuador as concerns the Convention; it is also positive that Ecuador has signed bi-national agreements in this field and has participated in seminars on this topic. However, taking into account the importance for Ecuador to have mechanisms designed to ensure the development of mutual technical cooperation activities, as well as the comments contained in paragraph 5.1.2 of this report with respect to Attachment 5 to the update of the response of Ecuador, the Committee will formulate recommendations in this regard.

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

The response of Ecuador⁶⁶ concerning this issue contains the following comments:

“There are a number of technical cooperation programs related to the fight against corruption as well as to aspects of the Inter-American Convention against Corruption. However, they have been limited, and remain so. These include, among others, training programs provided by the World Bank, cooperative resources provided by the Inter-American Development Bank to the Commission for Civic Control of Corruption (CCCC), support from USAID through the ESQUEL Foundation, and the coordination between the OAS and the Latin-American Development Corporation for the purpose of developing the project on harmonizing the Criminal Code with the provisions of the Inter-American Convention Against Corruption.

The State Prosecutor’s Office and Attorney General’s Office, key organizations in the fight against corruption, have not received specific financial and technical cooperation”

The Committee appreciates that Ecuador has developed cooperative programs related to the fight against corruption, and although said cooperation did not occur within the framework of the Convention, it is considered useful because it enables matters covered by such cooperative programs to be identified.

Furthermore, taking into account the limited nature of the above-mentioned cooperative programs, as described in the country’s response, and the absence of such programs in organizations considered to be central to this fight, the Committee will formulate recommendations in this area.

In the update to the response⁶⁷, mention is made of the Complementary Agreement on Technical Cooperation concerning Automating Government Contracts, subscribed between the Commission for Civic Control of Corruption (CCCC) and the Secretariat for Auditing and Administrative Development of the United States of Mexico. The document states that “the results obtained in this regard have been positive”, a fact that the Committee wishes to put on record as progress in this area.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

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

In the update to its response⁶⁸, the State under review notes the following with respect to central authorities: “Through Executive Decree No. 122, published in Official Gazette No. 125 on February 19, 2003, the President of Republic of Ecuador, Lucio Gutiérrez Burbúa, designated the Commission for

⁶⁶ Response of the Republic of Ecuador to the Questionnaire, page 30.

⁶⁷ Update of the Response of the Republic of Ecuador to the Questionnaire, page 57

⁶⁸ Update of the Response of the Republic of Ecuador to the Questionnaire, pages 57 and 58.

Civic Control of Corruption (CCCC) as central authority for the purposes of the Inter-American Convention Against Corruption. This designation was communicated to the Organization of American States in March 2003 by the representative of Ecuador to the OAS, Minister Federico Maneses”.

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

The designation of the Commission for Civic Control of Corruption (CCCC) is appropriate for the promotion of the objectives of the Convention.

6.3 Results of the legal framework and of other measures

In the Update of the Response of Ecuador⁶⁹, reference is made to the comments in paragraph 5.1.3 of the current report concerning the fact that “Ecuadoran control authorities have neither received nor formulated mutual assistance requests under the Convention”.

III. CONCLUSIONS AND RECOMMENDATIONS

Based on the review carried out and described in Section 2 of this report, the Committee wishes to make the following conclusions and recommendations with respect to the implementation by the Republic of Ecuador of the provisions contained in Article III, Paragraphs 1 and 2 (standards of conduct and mechanisms to enforce these standards of conduct); Article III, Paragraph 4 (systems for disclosing income, assets and liabilities); Article III, Paragraph 9 (oversight bodies, only with respect to how these bodies perform functions relating to the compliance of the provisions listed in Paragraphs 1, 2, 4 and 11 of Article III of the Convention); Article III, Paragraph 11 (mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption); Article XIV (assistance and cooperation); and Article XVIII (central authorities) of the Convention, all of which were selected within the framework of the first round.

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

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

The Republic of Ecuador 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 2, Section 1.1 of this report.

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

- 1.1.1 Strengthen the implementation of laws and regulatory systems related to conflicts of interest.

In meeting this recommendation, the Republic of Ecuador may wish to take into account the following measures:

- a. Accurately identify implications, prohibitions, incompatibilities and disqualifications related to conflicts between private interests and the public interest.

⁶⁹ Update of the Response of the Republic of Ecuador to the Questionnaire, page 58.

- b. Establish adequate restrictions, as applicable and for a reasonable period, for those who cease to exercise a public function (see section 1.1.2 of Chapter II of this report).
- c. Design and implement mechanisms for informing and training all public servants with respect to the standards of conduct, including those relating to conflicts of interest, and to respond to requests for advice and consultation on the standards by public servants, as well as provide periodic training and updating with regard to said standards.
- d. Conduct evaluations of the use and effectiveness of the standards of conduct for preventing conflicts of interest and of the mechanisms existing in Ecuador to enforce these standards, as instruments for preventing corruption. As an outcome from said evaluations, consider the adoption of measures to promote, facilitate, and consolidate or ensure the effectiveness of these instruments for this purpose.
- e. Carry out a study on the possibility of compiling the standards of conduct for the correct, honorable and proper fulfillment of public functions referred to in the Convention. (This consideration is also pertinent with respect to Sections 1.2.2 and 1.3.2 in Chapter II of this report, and shall be understood to apply to them as well.)

1.2 Standards of conduct and mechanisms to ensure the conservation and proper use of resources entrusted to public officials.

The Republic of Ecuador 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 officials in the performance of their functions, as mentioned in Chapter 2, Section 1.2 of this report.

In view of the comments made in this section, the Committee suggests that the Republic of Ecuador consider the following recommendations:

1.2.1 Strengthen the system of control of public resources.

In meeting this recommendation, the Republic of Ecuador may wish to take into account the following measures:

- a. Consider the possibility of having the Bill on Modernizing the Criminal Treatment of Corruption, mentioned in Chapter II, Section 1.2.2 of this report, adopted by the appropriate authority once the corresponding procedures have been completed.
- b. Design and implement mechanisms for informing and training all public servants with respect to the standards of conduct, including those relating to conflicts of interest, and to respond to requests for advice and consultation on the standards by public servants, as well as provide periodic training and updating with regard to said standards.
- c. Conduct an evaluation of the use and effectiveness of the standards of conduct for ensuring the conservation and proper use of public resources and of the mechanisms existing in Ecuador to enforce these standards, as instruments for preventing corruption. As an outcome from said evaluation, consider the adoption of measures to promote,

facilitate, and consolidate or ensure the effectiveness of these instruments for this purpose.

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

The Republic of Ecuador 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 performance of public functions, in accordance with the comments in Chapter 2, section 1.3 of this report.

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

- 1.3.1 Strengthen existing mechanisms in the Republic of Ecuador that require public servants to report to appropriate authorities acts of corruption in the performance of public functions.

In meeting this recommendation, the Republic of Ecuador may wish to take into account the following measures:

- a. Develop the constitutional law (Article 97, num. 14 Political Constitution) that establishes the duty and responsibility to report and combat acts of corruption in the case of public servants that fail to report such acts, through the identification of the pertinent administrative liabilities and their corresponding sanctions.
- b. Facilitate compliance with said constitutional obligation by using the means of communication judged to be appropriate, by regulating its use, and by developing the witness protection program established under the law, such that informants are guaranteed more protection, than the ones that exist currently, against potential threats or retaliation that may be directed toward them as a consequence of complying with this obligation.
- c. Train public servants about the existence and purpose of the responsibility to report to appropriate authorities acts of corruption in the performance of public functions.

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

The Republic of Ecuador has considered and adopted measures designed to establish, maintain and strengthen systems for registration of income, assets and liabilities of persons who perform public functions in certain posts as specified by law, and, where appropriate, for making such disclosures public, in accordance with the comments in Chapter 2, Paragraph 2 of this report.

In view of the comments made in the above-mentioned paragraph, the Committee suggests that the Republic of Ecuador consider the following recommendation:

- 2.1 Strengthen systems for the disclosure of income, assets and liabilities.

In meeting this recommendation, the Republic of Ecuador may wish to take into account the following measures:

- a. Regulate the conditions, procedures and other appropriate aspects related to publicizing the sworn declarations of net worth) of public servants (including income, assets and liabilities, as appropriate).
- b. Review and follow up on compliance by public servants with the obligation to present a sworn declaration of net worth (including income, assets and liabilities), pointing out the degree of compliance and suggesting suitable measures to modify or correct the situation.
- c. Optimize systems for reviewing the contents of sworn declarations of net worth with the objective of detecting and preventing conflicts of interest, as well as detecting possible cases of illicit enrichment.

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

The Republic of Ecuador has considered and adopted measures designed to establish, maintain and strengthen oversight bodies that carry out functions related to the effective enforcement of the provisions selected for review within the framework of the first round (Article III, paragraphs 1, 2, 4, and 11 of the Convention), in accordance with the comments in Chapter 2, paragraph 3 of this report.

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

- 3.1 Strengthen the oversight bodies concerning the functions they perform related to the effective enforcement of the provisions of Articles 1, 2 4, and 11 of the Convention, with the objective of ensuring the effectiveness of such oversight, as follows: provide them with the necessary resources to do an excellent job; ensure that they receive improved support for their activities; establish mechanisms that enable effective institutional coordination of their activities, as appropriate, as well as the ongoing evaluation and monitoring of these activities.
- 3.2 Adopt the necessary measures to set up and consolidate the Sistema Anticorrupcion del Ecuador – SAE (Ecuadoran Anti-corruption System), as stipulated in Executive Decree No. 122, 2003 (see Chapter II, section 3.3 of this report).

4. MECHANISMS TO ENCOURAGE PARTICIPATION OF CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11)

The Republic of Ecuador has considered and adopted measures designed to establish, maintain and strengthen mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption, in accordance with comments in Chapter 2, paragraph 4 of this report.

In view of the comments made in the above paragraph, the Committee suggests that the Republic of Ecuador consider the following recommendations:

4.1 Mechanisms to facilitate access to information

4.1.1 Establish legal standards that guarantee access to public information.

In meeting this recommendation, the Republic of Ecuador may wish to take into account the following measures:

- a. Strengthen the mechanisms designed to enforce the right of civil society and of citizens to access to public information and to appeal decisions under which requests for information are denied, so as to guarantee easy access to said mechanisms and to ensure that the mechanisms are effective in protecting the right to public information. In this respect, consider the possibility of having the Draft Basic Law on Access to Public Information, mentioned in Chapter II, Section 4.2.2 of this report, adopted by the appropriate authority once the corresponding procedures have been completed.
- b. Carry out a study on the use and effectiveness of mechanisms for access to information held by (or under the control of) public institutions in Ecuador, as instruments to prevent corruption. Based on the outcome of this study, Ecuador should consider the adoption of measures designed to promote, facilitate, consolidate and ensure the effectiveness of these mechanisms for this purpose.

4.2 Consultative mechanisms

- 4.2.1 Complement existing consultative mechanisms by establishing procedures, as appropriate, that enable public consultations to take place prior to the development of public policies and the final approval of legal provisions.

In meeting this recommendation, the Republic of Ecuador may wish to take into account the following measures:

- a. Increase the publication and dissemination of draft legal provisions and hold transparent processes that enable consultation with interested sectors concerning the preparation of draft laws, decrees or resolutions by the Executive Branch.
- b. Take the necessary measures to establish and define the institutionalization of consultations with civil society. In this respect, the Committee suggests that the Republic of Ecuador consider the possibility of having the Draft Basic Law on Social Control of Public Authority, mentioned in Chapter II, Section 4.3.2 of this report, adopted into law by the appropriate authority once the corresponding procedures have been completed.
- c. Carry out a comprehensive study on the use and effectiveness of existing consultative mechanisms in Ecuador, as instruments to prevent corruption. Based on the outcome of this study, Ecuador should consider the adoption of measures designed to promote, facilitate, consolidate and ensure the effectiveness of these mechanisms for this purpose.

4.3 Mechanisms to encourage participation in public administration

- 4.3.1 Strengthen and continue to implement mechanisms that encourage civil society and non-governmental organizations to participate in public administration. As well as to make progress in repealing standards that may discourage such participation.

In meeting this recommendation, the Republic of Ecuador may wish to take into account the following measures:

- a. Establish mechanisms, in addition to those that already exist, to strengthen the participation of civil society and non-governmental organizations in efforts to prevent corruption and to raise public awareness of the problem; as well, promote the awareness and use of established participatory mechanisms. In this respect, consider the possibility of having the Draft Basic Law on Social Control of Public Authority, mentioned in Chapter II, Section 4.4.2 of this report, adopted into law by the appropriate authority once the corresponding procedures have been completed.
- b. Repeal the so-called ‘laws on contempt’ (see Chapter II, section 4.4.2 of this report).

4.4 Mechanisms for participation in monitoring public administration

- 4.4.1 Strengthen and continue to implement measures that encourage civil society and non-governmental organizations to participate in the monitoring of the public administration.

In meeting this recommendation, the Republic of Ecuador may wish to take into account the following measures:

- a. Promote ways, when appropriate, that enable public servants to permit, facilitate or assist civil society and non-governmental organizations to develop activities for monitoring their public activities. In this respect, consider the possibility of having the Draft Basic Law on Social Control of Public Authority, mentioned in Chapter II, Section 4.5.2 of this report, adopted into law by the appropriate authority once the corresponding procedures have been completed.
- b. Design and implement programs to publicize participatory mechanisms concerning the monitoring of public administration and, when appropriate, train and provide the necessary tools to civil society and non-governmental organizations in order to use such mechanisms.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

The Republic of Ecuador has adopted measures in relation to mutual technical cooperation and mutual assistance, in accordance with the provisions of Article XIV of the Convention, as described and reviewed in Chapter 2, paragraph 5 of this report.

In view of the comments made in the above paragraph, the Committee suggests that the Republic of Ecuador consider the following recommendations:

- 5.1 Determine and prioritize specific areas in which the Republic of Ecuador needs technical cooperation from other States and international cooperation agencies to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.
- 5.2 Continue efforts to foster technical cooperation exchanges with other State Parties on the most effective ways and means to prevent, detect, investigate and punish acts of corruption.

- 5.3 Design and implement a comprehensive program for informing and training competent authorities and public servants with the objective of ensuring that they are aware of and can apply mutual legal assistance provisions related to the investigation or prosecution of acts of corruption covered in the Convention and in other treaties subscribed by the Republic of Ecuador.

Similarly, train competent public servants to ensure the greatest possible mutual technical and legal assistance in order to prevent, detect, investigate and punish acts of corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

The Republic of Ecuador has complied with Article XVIII of the Convention by designating the Commission for Civic Control of Corruption as the central authority for the purposes of international assistance and cooperation provided for in the Convention.

7. GENERAL RECOMMENDATIONS

Based on the review and the contributions that appear throughout this report, the Committee suggests that the Republic of Ecuador 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, as well as the recommendations in this report.

8. FOLLOW-UP

The Committee will consider the periodic update reports submitted by the Republic of Ecuador concerning progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with the provisions of Article 30 of the Rules of Procedure.

Similarly, the Committee will review the progress in implementing the recommendations made in this report, in accordance with the provisions of both Article 31 and, when and if appropriate, Article 32 of the Rules of Procedure.

The Committee wishes to note the Republic of Ecuador's request, made through a written communication directed to the Secretariat of the Committee on February 6, 2004, that this report be published on the

Mechanism's Internet website or by any other means of communication, pursuant to Article 25 (g) of the Rules of Procedure.