

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

FINAL REPORT

(Adopted at the December 15, 2006 plenary session)

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

**FINAL REPORT ON IMPLEMENTATION IN THE REPUBLIC OF ECUADOR OF THE
CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND, AND
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY
IN THE FIRST ROUND¹**

INTRODUCTION

1. Contents of the Report

This Report refers, first, to the review of implementation in the Republic of Ecuador of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the second round: Article III, paragraphs 5 and 8, and Article VI.

Second, the Report will examine follow-up to the recommendations that were formulated to the Republic of Ecuador by the MESICIC Committee of Experts in the first round, which are contained in the Report on that country adopted by the Committee at its Fifth Meeting, and published on the following website: http://www.oas.org/juridico/spanish/mec_inf_ecu.pdf.

2. Ratification of the Convention and adherence to the Mechanism

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

In addition, the Republic of Ecuador signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption, on June 4, 2001.

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the Republic of Ecuador

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Ecuador and in particular from the Commission for Civic Control of Corruption (CCCC), which was evidenced, *inter alia*, in the Response to the Questionnaire and the constant willingness to clarify or complete its contents. Together with its Response, the Republic of Ecuador sent the provisions and documents it considered pertinent.

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on December 15, 2006, at its tenth meeting, held at OAS Headquarters in Washington D.C., United States, December 11-16, 2006.

³ These documents were received by the "Latin American Development Corporation (CLD) – Ecuador Chapter of TI" by e-mail on July 17, 2006.

For its review, the Committee took into account the information provided by the Republic of Ecuador up to July 17, 2006 and that requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and Other Provisions.

2. Document received from the civil society organizations³

The Committee also received, within the time limit established in the schedule for the second round adopted at its Ninth Meeting⁴, a document from the Latin American Development Corporation, the Ecuador Chapter of Transparency International, submitted by that organization.⁵

II. REVIEW OF IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND

1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

1.1. SYSTEMS OF GOVERNMENT HIRING

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

The Republic of Ecuador has a set of provisions related to the system of government hiring, among which the following principal systems should be noted:

- Constitutional provisions applicable to all public servants, such as those contained in Article 124 of the Constitution, which stipulates the principles that govern the organization of Public Administration. This article states that both entry and promotion within the civil service and the administrative career shall be decided on the basis of merit and competitive examinations, and only under exceptional circumstances can public servants be freely appointed to and removed from office.

- Legal and other provisions, applicable to a majority of public servants, such as those contained in the following:

- Article 89 of the Organic Law on the Civil Service provides that “ the Administrative Career and Salary Scales (LOSCCA) which establish the administrative career⁶ within the civil service and Articles 1 and 3 thereof which provide that application of the law is compulsory for all State institutions, entities and bodies, with the exceptions provided for in the law. In relation to this, article 5 of the LOSCCA stipulates that officials in the Legislature, the Judiciary and the Public Prosecutions Service shall not come under the Civil Service and shall be governed by the laws of those branches.

⁴ This Meeting was held from March 27 to 31, 2006 at the OAS headquarters in Washington D.C., USA.

⁵ These documents were received in by email electronic format on July 17, 2006 and can be found at: http://www.oas.org/juridico/spanish/mesicic2_ecu_sp.htm.

⁶ Article 89 of the LOSCCA states that “within the civil service, the administrative career, in order to ensure the efficiency of public functions, by implementing the merit-based and competitive examination system, guarantees stability for suitable public servants.” The article goes on to state that “Pursuant to the provisions of the second paragraph of Article 124 of the Political Constitution of the Republic, the system for the free appointment and removal of public officials shall be applied in exceptional cases.”

They shall, nonetheless, be subject to the rights, duties, obligations and prohibitions contained in this Law⁷

- Article 52 of the LOSCCA⁸ which states that enforcement of that Law with respect to the administration of public sector human resources and the remuneration of public servants shall be the responsibility of the National Secretariat of Human Resources and Remuneration (SENRES) and the Human Resources Technical Administration Units (UARHs) in each public entity.

- Article 151 of the Regulations to the Organic Law on the Civil Service, the Administrative Career and Salary Homologation and Remuneration (RLOSCCA) through which the Staff Recruitment Subsystem is created, this being the technical process whereby suitable candidates who comply with the requisites established for holding a position are defined and selected through merit and an examination. Pursuant to Article 152 of those Regulations, the Staff Recruitment Subsystem shall operate on the basis of legality, neutrality, credibility, equality and transparency. Article 154 also states that the Staff Recruitment Subsystem shall comprise the following stages: vacancy announcement, recruitment and trial period.

- The Technical Regulation on the Staff Recruitment Subsystem (NTSSP), whose purpose is to establish the technical and operational instruments and mechanisms that allow the Human Resources Technical Administration Units (UARHs) of the State institutions, entities, bodies and enterprises to match the candidates available for civil service positions⁹.

- Articles 6 and 7 of the NTSSP, whereby in order to implement the Staff Selection Process, a Merit and Competition Tribunal is set up to evaluate the information provided by the candidates, classify it in accordance with the parameters established in the vacancy announcement, examines the candidates, draws up the merit and competition reports containing each candidate's score and announces the winner of the competition.

⁷ Article 5 of the LOSCCA states the following “*Servants not included in the civil service.- The following are not included in the civil service: a) Dignitaries or authorities elected by popular vote; b) Elected or appointed officials; pursuant to the Political Constitution of the Republic and the corresponding laws, by the National Congress or by the President of the Republic; c) Members of the Armed Forces and the National Police, which are governed by their own laws; d) Dignitaries, authorities or members of collegiate bodies or corporations responsible for managing State institutions; e) Officials and servants of the legislature which are governed by their own laws; f) Officials and servants of the Judicial Branch, Public Prosecutions Service, Constitutional Court, Supervisory Body of the Traffic Commission of the Province of Guayas and foreign service officials seconded abroad, governed by its law; g) Employees of State institutions governed by the Labor Code; and, h) Teaching staff and university researchers, teaching, professional and management staff governed by the Higher Education, Law and the Law on Careers in Teaching (Ley de Carrera Docente y Escalafón del Magisterio Nacional).*”

Servants of State institutions included in sub-paragraphs e), f) and h) of this Article will be subject to the rights, duties, obligations and prohibitions provided for in this Law”.

⁸ Article 54 of the LOSCCA states that “*The following bodies will be responsible for applying the Law for the development of human resources management and State remuneration matters: a) the National Technical Secretariat for Human Resources Development and Public Sector Remunerations; and b) Human resources management units in each public entity.*”

⁹ Article 1 of the Technical Regulations states that: “*The purpose of these technical regulations is to establish the technical and operating instruments and mechanisms that enable the Human Resources Technical Administration Units (UARHs) of the State institutions, entities, bodies and enterprises, to ascertain whether the requirements indicated in the profile of competencies of candidates are met.*”

- Article 4 (4) of the NTSSP which states that the vacancy announcement must be advertised through each UAHR and the competition conditions be published in the press and broadcast on radio, TV and by satellite, to ensure that all citizens are informed thereof.

- Article 12 of the NTSSP, which states that the invitation must be based on the principles of free competition and transparency. Paragraph c) of this article provides that the vacancy announcement must state the name of the entity placing the vacancy announcement, the requirements of the position, budget item number, the gross monthly salary, the place of work, certification that there is no reason why public office may not be held, and the place and deadline for submitting documentation.

The NTSSP stipulates that the selection process must be complied with in a clear, timely, precise and proper manner. In the case of the announcement and selection stages, SENRES has designed forms SENRES RH SEL 001 to 006 as technical tools to enable the UARHs to implement the stages of the process correctly.

- Legal and other provisions of various legal nature, applicable to the employees of the Legislative branch, among which the following should be noted:

- Those contained in Article 21-B.2. of the Organic Law on the Legislature (LOFL), states the Administrative Council of the Legislative Branch has the authority to appoint and remove employees of the National Congress in keeping with the provisions of the Law on Career Employees in the Legislature (LCAFL). The members of the Administrative Council of the Legislative Branch shall be appointed in keeping with the provisions of Article 21-A of the LOFL.

- Article 1 of the Law on Career Employees in the Legislature (LCAFL) establishes civil service and administrative careers and regulates them. Article 1-B of the LCAFL provides that permanent staff in the legislative branch shall be appointed by a Commission, based on merit and a competitive examination. In the case of temporary employees of the Legislative Branch, the Regulations thereon stipulate that they must be appointed by the President of the Congress on his/her own initiative, or at the request of the Vice-President, the legislators or the commissions, and employed under contract.

- Legal and other provisions applicable to public servants of the Judicial branch, among which the following should be noted:

- Article 204 of the Constitution of the Republic which states that, with the exception of the magistrates of the Supreme Court, magistrates, judges, officials and employees of the Judiciary shall be appointed based on merit and a competitive examination, as required, as provided for by law.

- The Organic Law on the Judiciary provides for and regulates careers in the Judiciary. Article 13 (1 and 20) of this law states that the attributions and duties of the Supreme Court are to appoint or remove higher court ministers, dismiss judges, officials and employees in jurisdictional functions for gross misconduct or serious failure to perform their duties, or for abandoning office for more than eight days (...), and appoint and remove secretaries, higher officials and other officials and employees of the Court.

Article 159 of the Organic Law on the Judiciary states: *“The National Administrative Career Commission is established under the dependency of the Supreme Court and composed according to the provisions of the Regulations therein.”* In this case the members of the National Judiciary Career

Commission shall be appointed in accordance with Article 82 of the Regulations on the Judicial Career.¹⁰

- Article 2 of the Organic Law on the National Judiciary Council, which states how the Council is conformed.

- Article 4 of the Regulations on the Judicial Career (RCJ), which states that candidates for civil service positions in the Judiciary must be able to exercise their rights of citizenship, and have been declared suitable and selected by the National Judiciary Career Commission and not have been legally disqualified from holding public office.

- Article 1 of the Regulations on Recruitment of Staff for the Judiciary (RCSPFJ) which states that the Commission on Human Resources and the Executive Directorate shall participate in the staff recruitment process and may be assisted by other dependencies. Article 11 of the Regulations states that contracts for personnel services shall have duration of up to 90 days and may be renewed twice, for an equal term or until the project is concluded.

- Legal and other provisions applicable to the public servants of the oversight bodies, in particular the following:

- Article 8 (g) of the Organic Law on the Public Prosecutions Service which states that it is the responsibility and prerogative of the State Prosecutor for appointing the entity's district prosecutors and fiscal agents, subject to a merit-based and competitive examination; and also deputy prosecutors to process cases, if the number and complexity of them warrants it. Article 8 (h) states that the duties and attributions of the State Prosecutor also include appointing the entity's other officials.

- Article 25 of this Law establishes the Directorate of Human Resources as a support unit and indicates that it shall have the following functions: "*a) Advise the State Prosecutor on the formulation of policies, standards and procedures regarding the management of the Public Prosecutions Service; b) Plan, organize and monitor activities related to the management of Public Prosecutions Service staff; c) To answer for the organization and assistance given to anyone who cooperates in the composition of the courts in order to guarantee their attendance; and, d) Any other functions assigned by the State Prosecutor in relation to the nature of this entity*".

- Article 20 of the Regulations to the Organic Law on the Public Prosecutions Service (RLOMP), which provides that the National Directorate of Human Resources shall be made up of the Personnel, Social Service and Training Departments and the Registration and Control Unit.

- Article 4 of the Instructions on Recruitment of Staff for the Public Prosecutions Service (IRSPMP), which states that "*the Staff Recruitment and Selection subsystem must be applied when filling all existing positions in the Public Prosecutions service with the exception of the State Prosecutor who shall be appointed by the Hon. National Congress*". Article 14 of those Instructions indicates that the Merit and Competition Tribunals shall be in charge of conducting based on merit and a competitive examination.

¹⁰ The Committee notes that Ecuador presented the new Regulations on Merit-Based Examinations for the Judiciary after the deadline for submitting the response to the questionnaire, because it only came into force on July 19, 2006. That is the reason why no in-depth review of this regulation was conducted.

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

With respect to the constitutional and legal provisions that refer to the systems of government hiring in the Republic of Ecuador that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention.

Notwithstanding, the Committee considers it appropriate to make a number of observations on the advisability of complementing, developing and adapting certain legal provisions that refer to those systems.

- In relation to the system for recruiting public servants under the central system, the Committee considers the following:

The Committee notes that Section III of the Regulations to the Organic Law on the Civil Service, the Administrative Career and Salary Scales (RLOSCCA), Articles 20 to 26, provides for the existence of contracts for occasional, professional, labor and outsourced services not subject to a competitive entrance process.

In the case of occasional services, Article 20 of the RLOSCCA provides that: *“the maximum duration of an occasional contract for services shall be equivalent to the remaining time of the current fiscal year. It may not be renewed during the next fiscal year and shall not be subject to merit or a competitive examination.”*

However, according to the paragraph next to that one: *“Those who by the nature of the work, as determined in the technical report of the UAHR of each institution, require a longer period than the deadline established in the preceding paragraph, are excepted from that timeframe, in the understanding that this does not constitute a permanent activity that grants stability to the employee. The monthly remuneration for this type of contract shall be determined in the respective scale.”*

In such cases the Committee would like to state its concern about temporary contracts for occasional services under the terms contained in this article, since although it is true that the regulation states in principle a term limited to the fiscal year, the exception that would make it possible to extend the term to meet the needs of the service, could in time give rise to continuous renewals, without complying with the system based on merit and a competitive examination. (See Chapter III, Section 1.1, Recommendation 1.1.1. of this Report).

- In regards to the system for government hiring for the Legislative Branch, the Committee considers the following:

- The Law on the Administrative Career in the Legislative Branch (LCAFL) provides for two types of public servants: permanent and occasional. Permanent staff are those that belong to the permanent administrative structure of the National Congress as well as public servants to the Commissions. Articles 1-A and 1-B of this Law states that permanent staff in the Legislature is appointed by the *Comisión de Mesa*, subject to merit and a competitive examination.

The Committee notes that neither the Organic Law on the Legislature (LOFL) or the LCAFL state how merit and competitive examinations should be conducted, nor does there appear to be any provision regarding the announcement of vacancies or the advertising of recruitment requirements. The Committee will make a recommendation on the matter. (Chapter III, Section 1.1., Recommendation 1.1.2 (a) of this Report).

- With respect to appeals against the result of competitions, Article 5 of the LCAFL states that “officials and employees who feel that their stability and other rights and guarantees have been jeopardized may appeal to the Comisión de Mesa, and this body must decide on complaints within a 15 day period.” The following paragraph states that, “if no decision has been reached after the Comisión de Mesa has issued a resolution or at the end of the period indicated in the previous paragraph, the official or employee may appeal to the District Tribunal on Administrative Matters.”

Although this article does not specifically refer to appeals against the results of merit and competitive examinations, the Response of the Republic of Ecuador to the Questionnaire¹¹ indicates that this would be the proper tribunal to hear such cases.

However, the Committee notes that this rule specifically indicates that only officials and employees who believe that their stability, rights and guarantees have been jeopardized can exercise this right, but it makes no mention of other candidates who have applied for a position and believe they have grounds to contest the whole or part of the process. Consequently, people who are neither officials nor employees of the Legislative Branch and who are trying to enter the system are not allowed to appeal. The Committee will make a recommendation on the matter. (Chapter III, Section 1.1., Recommendation 1.1.2. (b) of this Report).

- Article 1-A of the LCAFL provides for two types of administrative public servants: permanent and occasional. Paragraph a) of this article defines permanent legislative staff include as “(personnel) in the administrative structure of the National Congress and all the, civil servants of the Legislative Commissions established in Article 60 of the Constitution of the Republic with appointments, with the exception of the Secretaries and Advisors of these Commissions.” Paragraph b) of the article defines occasional legislative staff as “advisors, and civil servants of the legislative blocs, of the special and occasional commissions, legislators’ secretaries and other temporary or freelance staff. Article 1-B states that occasional legislative personnel shall be appointed by “the President of Congress, by his own initiative or at the request of the Vice President, legislators or commissions, and this appointment shall be made through a contract.”

The Committee points out that no definition of “other temporary or occasional staff” is given, nor is any time limit indicated for this kind of staff. This would suggest that personnel could be hired for an indefinite period, without being subject to merit and a competitive examination, and that they could exercise the same functions as permanent staff, under the denomination “other temporary or occasional staff”. The Committee will make a recommendation on the matter. (Chapter III Recommendation 1.1.2. (c), Section 1.1. of this Report).

- In regards to the system for recruiting public servants for the Judiciary, the Committee considers the following:

- As far as the recruitment system is concerned, Article 9 of the Regulations on the Judicial Career states that if there is a vacancy, the National Judicial Career Commission shall determine the type of competition and invite suitable persons to apply. This Article also provides that an appointment will be filled according to the results of the competition and the nominating authority shall be informed of the decision.

Article 82 of the Regulations determines the composition of the National Judicial Career Commission.

¹¹ See page 8 of Ecuador’s Response to the Questionnaire.

Regarding the suitability referred to in Article 9 of the Regulations, Article 8 indicates that the decision will be taken as follows: The National Judicial Career Commission will study the applications and declare suitable the candidate who complies with the minimum requirements for the position in question, according to the Law and the Job Classification Manual.

The Committee also points out that, although Article 9 states that the National Judicial Career Commission shall determine the type of competition to be held and shall invite the candidates declared as suitable, nowhere do the Regulations or the Organic Law on the Judicial Career mention that these competitions will be held, how they will be notified, what the selection requisites or the provisions for advertising them, nor is any mention made of mechanisms through which candidates can appeal a decision if they consider this necessary. The Committee will therefore make a recommendation on the matter. (Chapter III, Section 1.1., Recommendation 1.1.3 (a) and b) of this Report).

- Paragraph 2, Article 10 of the Regulations on the Judicial Career indicates that “*Under exceptional circumstances, if the service is urgently required and no-one has been selected, the nominating authority may appoint whomsoever it considers suitable.*”

The Committee notes that this standard does not establish any criterion or condition to determine what is meant by the service being urgently required, or whether this type of employment is temporary or permanent. Likewise if the suitability of the candidates has already been determined, this means that the competition may already be open and that, by alleging urgency, one of the candidates may be appointed without actually having been through a merit-based, competitive selection process, thereby eliminating other candidates who may be better qualified, and violating the general principle established in Article 124 of the Constitution. The fact that candidates may not appeal, further aggravates the situation.

This same reasoning would apply in the case of there being a vacancy that has not yet been opened to competition, leaving the nominating authority free to select civil servants by alleging an urgent requirement for the service. (Chapter III, Section 1.1., Recommendation 1.1.3 (c) of this Report).

- In regards to the system for recruiting public servants for the Public Prosecutions Service, the Committee considers the following:

- Article 5 of the Instructions on Recruitment of Staff for the Public Prosecutions Service (IRSPMP) states that in the case of closed competitions, vacancies must be advertised in an official circular, while in the case of open competitions, they must be advertised in a major national or local newspaper. In both cases the selection requisites shall be stated under the terms indicated in the IRSPMP.

The Committee notes that in the case of open competitions, in addition to them being announced in the press, they should also be advertised through the media (radio, TV, satellite, Internet). It will make a recommendation on the matter. (Chapter III, Section 1.1., Recommendation 1.1.4. (a) of this Report).

Article 22 of the IRSPMP indicates that, if the candidate disagrees with the score given by the Merit and Competition Tribunal in any phase of the competition, he/she may appeal to the Tribunal in writing only on the same day the results are published by the Secretary to the Tribunal and the

Tribunal shall consider appeals immediately and decide upon them, recording its decision in the proceedings. The decision shall be binding and cannot be appealed.

The Committee considers that there are some problems with this system. In the first place, insufficient time is allowed to appeal the decision since the candidate must present his appeal the same day the results of the competition are published. Moreover, if the results are published at the end of the working day, the deadline would be even shorter and in some cases impossible to meet, particularly in the case of external candidates or those who reside in the provinces or out of town.

The Committee further notes that appeals must be submitted to the same Merit and Competition Tribunal that held the competition, and its decision may not be appealed, so there is in effect no second recourse. The Committee shall make a recommendation on the matter. (Chapter III, Section 1.1., Recommendation 1.1.4. (b) of this Report).

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

The Response by the Republic of Ecuador to the questionnaire reads “*We are unable to state the objective results obtained because the standards and systems under review have not been in place for long and therefore there is no information or statistical data available on the National Information System on Institutional Development, Human Resources and Remuneration of Civil Servants*”¹².

This statement is corroborated by the Report presented by the CLD, which states that “*in relation to the system in force, the results and experience handled within the system for recruiting public servants in our country is practically non-existent since the administrative and oversight body has only had legal status since October 6, 2004, and it was not until February 23, 2006 that a staff recruitment system was put in place*”¹³.

However, in that same Report, the CLD pointed out the fact that several systems are exempted from the LOSCCA, and that the exempt institutions establish their own selection system, which is not always consistent with the central system. The Committee notes that the analysis of the Reports shows that some of the inconsistencies that existed in the past appear to have been solved as a result of the publication of the LOSCCA and the creation of the Staff Recruitment Subsystem. However, there are still some voids and inconsistencies in the systems that are excluded from the LOSCCA, which are governed by their own laws and that could be better harmonized with the general system. The Committee will issue a recommendation in this regard. (Chapter III, Section 1.1., Recommendation 1.1.5., of this Report).

Lastly, considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, it will make a recommendation in this regard. (Chapter III, General Recommendation 4.2, of this Report).

¹² See page 9 of Ecuador’s Response to the Questionnaire

¹³ See page 7 of the Report on the Latin American Development Corporation - CLD

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

1.2.1. 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 systems, among which the following should be noted:

- Legal and other provisions applicable to all public servants, such as those contained in the following:
 - Codification of the Government Procurement Law (LCP) and its Regulations which are binding upon the State and public sector entities – as defined in Article 118¹⁴ of the Political Constitution – that outsource work execution and the procurement of goods and the provision of services not regulated by the Consulting Services Law (LCP, Article 1). The principal provisions of both these laws are:
 - Article 1 of the LCP, which states that *“The State and the public sector entities – as defined by article 118 of the Political Constitution – which contract public works, and procure goods or services not regulated by the Consulting Services Law shall be subject to this law.”*
 - Article 2 of the LCP which refers to special procurement procedures and states that public sector institutions that have been excluded by a special law, are not subject to this law. This Article also states that contracts for the procurement of medical, pharmaceutical and surgical products by public sector entities that provide health services, including the Ecuadorian Social Security Institute, are also excluded and are only subject to the regulations issued on the matter by the President of the Republic. It further provides that contracts whose purpose is to carry out social communication activities to inform the public of the actions of the National Government, or public sector entities, are also excluded. Lastly it states that the entities indicated in Article 118 (5) of the Constitution¹⁵ shall be subject to the provisions of this law exclusively, as far as contracts entered into and financed partly or wholly with public funds or State subsidies are concerned.
 - Article 4 of the LCP which states that for the procurement of movable property, procurement of services not regulated by the Consulting Services Law, and commercial leasing, proceedings shall be applied in accordance to the amount of the budget:
 - a) Tenders: If the sum exceeds the amount resulting from multiplying the rate of 0.00004 with the Initial State Budget for the corresponding fiscal exercise. (approximately US\$342,568.53); and
 - b) Public Competitive Bids: if the sum does not exceed the amount referred to in the previous sub-paragraph, but exceeds 0.00002 of the Initial State Budget for the corresponding fiscal exercise. (approximately US\$171,284.27).

¹⁴ Art. 118 –State institutions shall be: Bodies and dependencies of the Legislature, the Executive and the Judiciary. 2. Electoral bodies. 3. Oversight and regulatory bodies. 4. Entities belonging to the autonomous sectional regime.

¹⁵ Article 118 (5) of the Constitution refers to *“The bodies and entities created by the Constitution or the law to exercise state powers, to provide public services or to develop economic activities on behalf of the State.”*

- c) Not subject to the precontractual procedures stipulated in the LCP¹⁶: Cases in which the amount is less than the 0.00002 referred to in sub-paragraph b) of the Initial State Budget for the corresponding financial year (i.e. less than US\$171,284.27).
- Article 5 of the LCP which states that contracts involving the purchase of real estate, leasing of movable property and real estate, and those awarded with the proceeds of loans granted by multilateral agencies to which Ecuador belongs, shall be subject to the special procedures contained in this law.
- Article 6 of the LCP which states which contracts shall be exempt from complying with the regular pre-contractual procedures. These are:
 - Contracts necessary to meet severe emergencies due to *force majeure* or Acts of God and which are only intended to right the damage caused or prevent damage from occurring;
 - Contracts necessary to execute priority projects to meet agreements entered into with foreign governments that offer advantageous financing conditions or by multilateral agencies of which Ecuador is a member. In this case the provisions of Article 53 of this law will apply.
 - Contracts required to execute works, provide services or purchase goods, which are entered into with “*foreign private financing derived from agreements or commitments entered into with other governments*”¹⁷, in response to a formal request from the Government of Ecuador;
 - Those classified by the President of the Republic as necessary for national security. These shall be undertaken by the Armed Forces or the National Police;
 - Swap contracts, even if the cost of one of the goods exceeds up to 20% of the amount assigned to the other and the corresponding owner undertakes to pay the difference;
 - Contracts for an artistic, literary or scientific work;
 - International mail transportation contracts which are governed by the Universal Postal Union or Postal Union of the Americas and Spain agreements and by the legal and regulatory provisions issued to that effect;

¹⁶ Article 4, Paragraph 2 (b) of the LCP states that “Procurement of furniture, execution of works, provision of services not regulated by the Consulting Services Law, for less than the 0.0002 referred to in sub-paragraph b) of the Initial State Budget for the corresponding financial year, shall not be subject to the precontractual procedures provided for in this law, but pertinent regulations shall be issued by each of the contracting bodies in order to enter into the corresponding contracts.

¹⁷ N.B. According to Resolution No. 159-97-TC of the Constitutional Court, published in the Official Register, Supplement 240 of January 21, 1998, the words in quotation marks were declared Unconstitutional in substance. However, they appear in force in this Coding. N.B. According to the *fe de erratas* published in Official Register 294 of March 28, 2001, the words in quotation marks are deleted.

- Contracts whose contracting procedure provided for in the LCP would have been null and void upon reopening and which classified by the President of the Republic as urgent, except as provided for in Article 29 (d) of this law;
 - Contracts for the purchase of spare parts or accessories for equipment and machinery maintenance by government institutions;
 - Contracts which are exempted by special laws from the need for a tender or public competitive bid;
 - Contracts for the purchase of goods which are proven to be the only ones in the market, are available from a sole supplier and entail the use of exclusive marks or patents, when there is no alternative solution;
 - Contracts entered into between the State and public sector entities, or entered into among public sector entities, when at least two thirds of their subscribed capital belongs to public or private sector entities with a social or public purpose.
- The last paragraph of Article 6 of the LCP, regarding procurement procedures in cases that are exempted from the regular procedures (tender or public competitive bid) which states that *“The highest authority of the ministry of the legal representatives of the entity shall be responsible for entering into the contracts referred to in this Article, as far as compliance with the legal requirements, including the provisions of Article 60 of this law, are concerned, and also in determining the reason for entering into the contract without a tender or public competitive bid, in accordance with the previous sub-paragraphs. That authority shall ensure that the contractor is legally, technically and economically solvent, provides sufficient guarantees pursuant to the law, and that the contract is convenient to the national and institutional interests”*.
 - Article 8 of the LCP which determines that each ministry, secretariat, regional subsecretariat with a decentralized budget, or public sector body or entity must have a Procurement Committee for the tendering and public competitive bidding process. This Committee shall have five members.
 - Article 9 of the LCP which states that the members of the Procurement Committee shall be the Minister or his/her delegate, who will act as the Chair; the Director of Legal Advice, three technicians, two of whom shall be appointed by the entity and one by the professional association whose field of activity is the one with the greatest participation in the project according to the estimated value of the contract. The Ministry or Under-Secretary appointed by the Committee shall act as Secretary.
 - Article 23 of the LCP which, insofar as identification of criteria for selecting contractors is concerned, states that the Committee will only consider proposals that are in conformity with the precontractual documents and the law; and that the referential budget will not be taken into account for the purpose of evaluating offers and awarding contracts.
 - Article 24 of the LCP whereby in all public tenders and competitive bids, the Procurement Committee will appoint a Technical Commission in charge of evaluating the proposals. The Technical Commission will prepare comparative tables of the offers and a report with

comments that provide the Committee with the information required to award the contract. The Article also states that when evaluating offers, the Commission will only consider the values given, without calculating any possible price adjustment.

- Title III of the LCP which establishes the common and special provisions for tenders and public competitive bids. Article 26 of the LCP states that in all cases the Committee shall award a contract to the offer who presented the bid that is in the best interests of the nation and the institution.
- Article 60¹⁸ of the LCP which states that after a contract is awarded pursuant to the tender and competitive bidding procedures in place, and before it is signed, reports must first be submitted by the Auditor General's Office and the Attorney General's Office.
- Article 72 of the LCP which states that if bidders or awardees wish to file a complaint about the pre-contractual or award conditions of a bid, they must post a bond for 7% of the bid with the complaint, as provided for in Article 73 of this Law. If the entity considers the complaint to be ill-founded or malicious, the bond will be forfeited immediately.
- Article 106 of the LCP which states that whoever considers that a contract that has been awarded should be declared null and void may submit a complaint to the highest authority of the contracting agency, the Auditor General's Office or the Prosecutor General's Office, and the case must be accompanied by supporting documents. If the complaint is considered to be well-founded, either of the aforesaid officials may begin procedures to declare the contract null and void.
- Article 112 of the LCP, in regards to the Registry of Non-Compliance, states that it is mandatory for public sector entities to report to the Auditor General's Office of any contractors who have failed to comply with their contractual obligations or have refused to sign the contracts awarded to them, in order to enter them in the Registry. This report must be accompanied by the supporting documentation.

- The Consulting Services Law and its Regulations whose Article 4 states that contracts related to consulting services, as well as contracts for consulting services or consulting support services, that

¹⁸ Article 60 LCP: *"Prior to being entered into, contracts awarded pursuant to public tendering or bidding processes require that reports be issued by the Auditor General's Office and the Attorney General's Office.*

"These reports will be necessary for entering into contracts for an amount equal to or more than the base price for public calls for bids, even if they were not subject to a tender or competitive bidding process.

"If the contract requires the disbursement of public funds from the National Government's Budget, the report by the Minister of Economics and Finance will also be required.

"If due to the nature or object of the contract other reports are required, these will be subjected to the legislation on the matter.

"The above-mentioned officials shall issue their reports within fifteen days of receipt of the award document, the offer of the successful bidder, the reports on the calculation of the price readjustment formulae and the model grids, and the draft contract. If the informing official fails to notify the successful bidder of the result within that term, the decision will be deemed favorable.

"Any original clarification or documentation required by the informing official must be requested within five days of receipt of the respective documentation.

"Once the reports have been obtained, or upon expiry of this term, the contract will be signed, taking into account any comments made, if any."

are entered into by public sector dependencies, entities or bodies, shall be governed by this Law and its regulations, and that any issues not covered by them shall be governed by the legal standards applicable thereto.

- Article 12 of the Consulting Services Law which states that the following systems must be followed to contract consulting services:
- Public bid¹⁹: If the estimated amounts are equal to or more than 0.00004 of the Initial State Product (PEI), i.e. approximately US\$342,568.53 for 2006.
 - Private bid²⁰: If the estimated amount of the contract is less than the above amount and more than 0.0004 of the Initial State Product (PEI), i.e. US\$85,642.13 for 2006.
 - Not subject to the pre-contractual procedures established in the LC²¹: If the amount of the contract is less than or equal to 0.00001 of the Initial State Product (PIE), i.e. US\$84,642.13 for 2006.
- Article 14 of the LC which provides for the following exceptions²², according to which the following contracts for consulting services contracts shall not be subject to a public or private bidding process:
 - Contracts necessary to overcome emergencies.
 - Contracts deemed necessary for national security.
 - Contracts exempted from competition by special laws.

¹⁹ Article 12 c) of the Consulting Services Law states that if the estimated amount of the contract is equal to or less than the amount resulting from multiplying 0.0004 by the amount of the Initial State Budget for the corresponding economic year, the contract can be awarded through a public competitive bid.

The estimated amount of the contract means the amount determined by the interested entity or body on the date the call for bids is published.”

²⁰ Article 12 b) of the Consulting Services Law states that: “If the estimated amount of the contract exceeds the amount indicate in the previous sub-paragraph and is less than the result of multiplying 0.0004 by the amount of the Initial State Budget for the corresponding economic year, the contract can be awarded through a private competitive bid.”

²¹ Article 12 a) of the Consulting Law states that “If the amount of the contract is less than or equal to the result of multiplying 0.001 by the Initial State Budget for the corresponding economic year, the contract can be entered into without being subject to a competitive bidding process..

²² Art. 14.- Neither a private nor a public call for bids shall be required to enter into the following contracts for consulting services:

- a) Contracts necessary to overcome serious emergencies such as accidents, earthquakes, floods, droughts and others resulting from force majeure or Acts of God;
- b) Contracts classified by the appropriate authority as necessary for national safety, and
- c) Contracts exempt by special laws from the bidding process established by the law.
- d) The highest authority of the public sector contracting entity shall be responsible for entering into the contracts referred to in this Article and for determining the reason for entering into the contract without a private or public bid.

- Article 34 of the LC which provides that in order for any national or foreign person, legal or natural, to undertake consulting activities in Ecuador, they must first register with the Technical Secretariat of the Consulting Services Committee.
 - Article 29 of the Regulations to the LC, which states that private consulting competitions shall be conducted through written invitation, which will be sent simultaneously to a minimum of three and a maximum of six consultants. Article 53 of these Regulations further establishes the terms and conditions for the announcement of public competitions, as well as the pre-qualification and qualification requirements of the bidders.
 - Article 27 of the LC, which states that economic and technical offers must be evaluated under the following parameters: available technical and administrative capacity; background and experience in similar work; background and experience of the staff who will be assigned to the work and, in the case of companies and partnerships of companies, the minimum participation of permanent staff; work plan, proposed methodology and proven knowledge of the general, local and specific conditions of the consultancy in question; appropriate economic capacity and availability of instruments and equipment required to carry-out the consultancy; furthermore, when national and foreign partnerships are involved, additional consideration will be given to the procedures and methodologies that the foreign consultancies have to offer to make an adequate transference of technology, as well as the widest and best use of the technical capacity of Ecuadorian professionals.
 - Article 32 of the Regulations to the LC, which establishes the conditions for requesting clarification of the terms and conditions of the bid. These conditions will apply to public and private bids alike.
 - Articles 40 and 41 of the Regulations to the LC, which states the parameters to be used for negotiating with the consultant whose technical proposal has received the highest score, and has been selected in first place. The negotiation will be done under pre-established order in Article 41 of the Regulations, in which technical, economic and contractual aspects are fine-tuned and agreed upon.
 - Article 67 of the Regulations which stipulates that in all processes or systems for the procurement of consulting services, all the documents related to methods or procedures – whether under a public or private competitive bidding process – must be posted to the website of the procuring entities. Additionally, the selected and successful bidders, and whoever is responsible for producing information on the bidding process, must deliver electronic files containing full details of the proposals, information and other documentation pertaining to the processes.
 - Article 31 of the Consulting Law (LC) which creates the Consulting Services Committee and states that it is the body responsible for defining the policies for designing, developing and promoting national consultancy. Article 32 stipulates the conditions for its formation, and Article 33 establishes its functions and attributions.
- The Organic Law of the Office of the Auditor General (LOCG) and its Regulations:
- Article 31(16) of the LOCG, which states among the functions and attributions of the Office of the Auditor General the issuing of well-reasoned reports as a pre-requisite for State

Institutions to sign contracts that affect public funds or involve the disbursement thereof, for an amount equal to or greater than the amount indicated in the Law on Public Competitive Bidding Processes (LCP), whether or not there was a competition or bid²³. Article 31(17) further states that the Auditor General's Office must keep an official registry of non-performing contractors and failed awardees on all contracts issued by public sector institutions, based on the request and resolution issued by each contracting entity.

- Article 22 of the Regulations of the LOCG which states that the Auditor General's Office shall advise the procurement committees on the organization and formal development of the pre-contractual procedures, whether they are regulated by the law or not, under the terms of Article 22 which establish the guidelines.
- Article 23 of the Regulations which states that the Auditor General's Office shall prepare models, instructions and forms that will serve as references for the contracts envisaged in the law.

- The Organic Law on the Office of the Attorney General (LOPG) and its Regulations:

- Article 3(f) of the LOPG which lists among the functions of the Attorney General's Office the issuing well-reasoned and justified reports on contracts entered into between State institutions as per Article 118 of the Political Constitution of the Republic, as well as those entered into by legal persons subject to private law who receive public funding, under the terms stated for that subject by the Organic Law on the Office of the Auditor General, whose amount exceeds the base price for public calls for bids, as well as contracts subject to the Law on State Modernization. On the other hand, Article 3(g) adds that it is a function of the Attorney General's Office to supervise compliance with those contracts. For that purpose he must propose or adopt whatever legal action may be necessary to defend the national patrimony and the public interest;

- Law on the State Modernization, whose Article 38 states that the Administrative and Fiscal District Appeals Courts shall hear and rule, within the scope of their jurisdiction, on all suits and appeals resulting from acts, contracts, administrative actions and Regulations issued, signed or produced by public sector entities. An affected party must file a complaint or appeal before the court with jurisdiction in that party's domicile. The procedure must be in accordance with the provisions of the Law on the Jurisdiction of Administrative Appeals or the Tax Code, if applicable. To take legal action against an institution of the public sector, filing an administrative complaint or exhausting administrative procedures will not be a previous requirement. However, if legal action is taken against a public sector institution, and an administrative claim has already been filed, the later shall be null and void.

- Executive Decree 1565 of June 29, 2006, which requires among other things that all entities and executive branches as defined in Article 2 of the Regulations of the Legal-Administrative System of the Executive Branch publish through the Public System for Public Contracting of Ecuador, CONTRATANET, the pre-contractual procedures for the acquisition of goods and services, as well as construction, whose budgets exceed the result of multiplying the coefficient 0.000002 (two millionths) by the amount of the Initial Budget of the State for the corresponding fiscal year.

²³ See Article 31, paragraph 16 of the LOPG.

- Executive Decree 122, whose Article 5 provides that the Executive Branch's entities must publish each year, electronically, the registry of qualified contractors and the requirements for their registration.

- Internal rule No. 250-01 that requires that a registry of contractors be kept for contracts that do not exceed the base price for public calls for bids²⁴.

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

With respect to the main legal provisions regulating Government procurement of goods and services in Ecuador, the Committee notes that, on the basis of the information available to it, they may be said to constitute a set of measures that are relevant for promoting the purposes of the Convention.

Nevertheless, the Committee deems it appropriate to express some comments regarding the advisability of considering the need for supplementing, developing and adapting certain provisions related to the aforementioned systems:

- Firstly, regarding procurement systems with or without a public tender, the Committee notes that Articles 2 to 6 of the Government Procurement Law and Articles 12 to 14 of the Consulting Services Law establish a series of exceptions, exclusions and special procedures that lead to a fragmentation of the procurement system and of the procedures that it intends to implement through the aforementioned norms.

Ecuador, in its response to the questionnaire²⁵ states that: *“The fundamental characteristic of selection systems regulated by public sector entities is the variety of thresholds, procedures, and basic requirements for qualifying for the awarding of a contract. This means that the candidates must be familiar with the procedures and the requirements that they have to meet, depending on the contracting entity”*

This is reaffirmed in the Report of the CLD²⁶ which states that *“The country also has various special systems in which each autonomous government (sic) entity issues individual rules on procurement. Many of these entities were actually set up as autonomous bodies precisely in order to avoid*

²⁴ Internal Rule 250 – 00 AREA: INTERNAL CONTROL RULES FOR THE AREA OF INVESTMENTS IN STOCKS AND DURABLE GOODS, 250 – 01 TITLE: PROCUREMENT states that: Any Public Sector entity or body shall, if necessary, have a Committee or unit in charge of procurement, which shall determine the process to be followed when programming, purchasing, storing and distributing materials, tools and goods, as well as other durables necessary for the entities to undertake their activities.

In each entity, minimum and maximum stocks shall be established for procurement so that purchases are only made when necessary and the right quantities acquired, in accordance with criteria of austerity, efficiency, effectiveness and economy.

The highest authority and the members of the procurement and storage Committee shall be responsible for approving quotes, tenders and competitive bids. This will involve:

Consideration of a minimum of three quotes;

Keeping an up-to-date register of suppliers and quotes in order to ensure proper quality and product price control;

Determining an economy-based criterion when purchasing goods;

Taking into account the useful life of fungible materials or materials used on a day-to-day basis; and

Considering expiry dates in the case of medicines and perishables in general.”

²⁵ See Page 11 of Ecuador's Response to the Questionnaire.

²⁶ See page 8 of the Report of the CLD

enforcement of the Government Procurement Law (LCP), which is considered excessively complicated in its attempt to improve the efficiency of government services in key areas of the economy.”²⁷

The CLD’s Report further states that ²⁸“(. . .) current Government Procurement Law addresses the basic aspects and principles of procurement. However, the lack of clarity of some of its fundamental provisions and the vague definitions of what constitutes an emergency situation and other justifications to avoid competition encourage subjective decisions”.

The Committee therefore considers that the State under review should consider the advisability of revising the exclusions, exceptions and special systems for procurement and clarify the emergency and other exceptional situations. It should also revise the system of amounts established in Article 4 of the LCP and Article 12 of the LC, in order to bring the procurement systems and practices in line with one another and thereby ensure compliance with the principles of openness, equity and efficiency envisaged in the Convention. The Committee will make a recommendation on the matter. (Chapter II, Section 1.2., Recommendation 1.2.1 of this Report).

- Secondly, regarding governing and administering authorities of the systems and control mechanisms, the Committee notes that in the case of public tenders and bids, the law provides for the participation of a Procurement Committee, who in turn will set-up a Technical Commission responsible for evaluating proposals²⁹.

In addition, a Technical Consulting Commission is responsible for managing the processes for hiring consultants. This Commission can in turn set up support group sub-committees³⁰. Further, Article 60 of the LCP requires for the Auditor General and the Attorney General to submit their reports before a contract is awarded through a tender or public competitive bidding process,

However, the Committee observes that the aforementioned rule states that in procurement cases exempt from competitive bidding, the highest government procurement authority shall be responsible awarding the contracts and also for determining the reason why a particular contract is not subject to a private or public bidding process.

The Committee feels that the State under review should consider the advisability of creating an official central authority in charge of Government Procurement which would encourage information and statistics to be drawn up, develop standardized procedures, promote the training and professionalization of public officials in charge of these procedures, prepare a registry of suppliers, keep a list of standardized prices and plan government procurement from a social development perspective. The Committee will make a recommendation on the matter. (Chapter III, Section 1.2., Recommendation 1.2.2., sub-paragraph a) of this Report).

- Regarding the registry of Contractors, the Committee notes that Article 5 of Executive Decree. 122, provides that each year, the agencies and branches of the Executive must publish electronically the registry of qualified contractors and the requirements for their registration. In addition, Internal Control Rule. 250-01 provides for a contractors registry for contracts that do not exceed the base

²⁷ *Ibid*

²⁸ See page 9 of the Report of the CLD

²⁹ See Article 24 of the LCP

³⁰ See Articles 31 to 33 of the LC.

price for public calls for bids. The Committee wishes to point out that there appears to be no other provision regarding the obligation to keep and publish registries of contractors.

The foregoing is corroborated by the State under review. According to paragraph 2 of the section on the registry of contractors in Ecuador's Response to the Questionnaire³¹: "*The Government Procurement Law contains no provision requiring that a centralized registry of contractors of works, goods or services be kept; the only provision on such registries is for contracts that do not exceed the sum for a public call for bids for which the Auditor General's Office issued Internal Control Rule No. 250-01*".

The Committee feels that the State under review should consider the advisability of amending the existing legislation in order to create a centralized registry of contractors of works, goods and services. This registry should be compulsory for all State bodies and dependencies, its purpose being to foster the principles of openness, equity and efficiency provided for in the Convention. The Committee will make a recommendation on the matter. (Chapter III, Section 1.2., Recommendation 1.2.2. (b) of this Report).

- Inasmuch as the methods and information systems for public procurement are concerned, the Committee observes that use of the CONTRATANET system is only compulsory for the agencies and branches of the Executive.

The foregoing is stated in the Report of the CLD³², which indicates that: "*The serious problem with CONTRATANET at present is that each contracting unit can choose whether or not to participate in the system. Therefore participation is not complete and CONTRATANET cannot be used as a control mechanism and source of information.*"

The Committee therefore feels that the State under review should consider the advisability of taking steps to make it compulsory for all entities of the State to use CONTRATANET, which would strengthen the integration of procurement systems and their transparency. (Chapter III, Section 1.2., Recommendation 1.2.3. of this Report).

- In regards to selection criteria for contractors, the Committee acknowledges the existence of a set of provisions on this matter. However, it notes that when contracts are awarded through public tenders or public competitive bids, this is done on the basis of the offer that is most convenient to national and institutional interests, without indicating how this convenience is determined.

The Committee takes note of the absence of criteria on the awarding of contracts not subject to public tender or a competitive bid, those governed by special laws, or those that are exempt or excluded from the LCP and the LC.

Ecuador's Response to the Questionnaire on that matter³³ indicates that "*Pre-contractual Tendering and Public Competitive Bidding procedures are public. Offers must be submitted in one envelope and the successful bidder is assessed through a system that ascertains compliance or failure with requirements established in the pre-contractual documents, concerning legal, technical, economic*

³¹ See page 14 of Ecuador's response to the Questionnaire.

³² See page 9 of the Report of the CLD.

³³ See page 11 of Ecuador's Response to the Questionnaire

and administrative capacities. The offer most convenient to the nation's interests³⁴ is selected out of all the offers that meet the requirements. The Law does not determine the scope of that convenience."

The response goes on to indicate³⁵: *"Article 26 of the Government Procurement Law regarding the awarding of contracts states that the Committee will award the contract to the bid that is most convenient to the country's national and institutional interests. This allows for a high degree of discretion, and the possibility of analyzing elements other than economic ones."*

The Report of the CLD³⁶ points out that there is a similar gap on the selection process of consultants: *"In regards to selection criteria, there are serious inconsistencies regarding that could allow for decisions to be made in a discretionary manner. For instance, the Consulting Services Law stresses the importance of quality in the selection of intellectual services, but the selection method does not consider other factors which would allow for more appropriate decisions on various consultancies."*

The Committee therefore deems that the State under review may want to consider the advisability of defining the scope of the term "convenient for national and institutional interests" when awarding contracts and consultancies, and shall formulate the corresponding recommendation. (Recommendation 1.2.4 (a) of Chapter III, Section 1.2.(a) of this report).

It could also consider the importance of establishing selection criteria for contracts not involving a public tender or bid and will make a recommendation on the matter. (Chapter III, Section 1.2., Recommendation 1.2.4. (b) of this Report).

- Lastly, in regards to appeals on contracting processes, the Committee notes that although Article 38 of the Law on the State Modernization provides that the Administrative and Fiscal District Appeals Courts, within the sphere of their competence, shall hear and rule on all suits and appeals resulting from acts, contracts, administrative issues and Regulations issued, signed or produced by public sector entities, the LC does not provide for any administrative appeal against all or part of the process for awarding contracts to other offerers.

The Committee thus considers that the State under review should consider the advisability of making the necessary amendments to include well-defined appeals in the legislation to enable offerers to appeal the procedure for awarding all or part of a contract, which would greatly encourage compliance with the principles of advertising, equity and efficiency foreseen in the Convention. (Chapter III, Section 1.2., Recommendation 1.2.5. of this Report).

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

According to the results section of the response of the Republic of Ecuador³⁷:

"CONTRATANET's results relate to the levels of publication obtained. Despite the fact that the use of CONTRATANET is compulsory only for entities of the Executive Branch, mechanisms such as inter-institutional agreements have been implemented in order to use the system. Since CONTRATANET was first implemented in June 2003, 265 State entities have disclosed information on over 3,800 procurement

³⁴ See Article 26 of the Law on Government Procurement.

³⁵ See page 15 of Ecuador's Response to the Questionnaire.

³⁶ *Ibid.* See page 9.

³⁷ *Ibid.* See page 16.

processes, valued at the time at more than US\$1.798 billion. More than 1,700 public officials have been trained to use the system and there are now 6,000 suppliers registered with CONTRATANET.”

The following processes, classified by type, were published by CONTRATANET, between June 2003 and December 2005:

	Number of processes	Sum total of amounts published (million of dollars)
Tender	260	757
Competitive Bid	546	75
Internal regulation	2.510	1.269

Neither Ecuador’s response to the questionnaire nor the CLD’s Report contribute any other statistical information on this, other than the processes published in CONTRATANET. However, taking this information into account, the Committee notes that the number of contracts entered into through the tendering process (260) and the competition process (546) is very small compared to contracts entered into through the internal rules under different systems excluded from the LCP and the LC (2,510).

The situation is the same in relation to the value of the contracts referred to above: Value of contracts by tender, US\$757 million; value of contracts by competition, US\$546 million; and value of contracts awarded through special procedures, US\$2,510 million.

Taking into consideration that, with the exception of the entities defined in Article 2 of the Regulations of the Legal-Administrative System of the Executive Branch, no other entity is required to use CONTRATANET, and taking into account the fragmented nature of the procurement system, this Committee finds that it is possible to award contracts and consultancies through procedures based on regulations issued by the contracting agencies with a high degree of discretionality, which is likely to hamper compliance with the principles of openness, equity and efficiency envisaged in the Convention.

Lastly, considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, it will make a recommendation in this regard (Chapter III General Recommendation 4.2.. of this Report).

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

2.1 Existence of legal provisions and/or other measures

The Republic of Ecuador has a series of provisions related to the above mentioned systems, among which the following should be noted:

- Constitutional provisions such as the following:

- Article 97(14) which states that all citizens have the duty and the responsibility to report and fight acts of corruption.

- Article 219(4) which states that the Public Prosecutions Service is responsible for the preliminary hearing of cases, directing and promoting pre-trial and criminal trial investigations and guaranteeing protection for victims, witnesses and other participants in criminal trials.

- Article 221 of the Constitution which states that the Commission for Civic Control of Corruption is responsible for hearing and investigating reports of corruption presented, and must guarantee legal protection for anyone who assists in clarifying the facts.

- Legal provisions and other laws and regulations, such as:

- Organic Law on the Public Prosecutions Service, whose Article 33 creates the witness protection program, victims and other participants in a trial, and officials of the Public Prosecutions Service. Through this program, those persons, their spouses and relatives up to the fourth degree by blood and second degree by marriage, are granted protection and assistance if their personal safety or security are at risk, as a result of their involvement in criminal lawsuits.

- Article 69 of the Code of Criminal Procedure determines that the accused is entitled to protection of himself and his privacy and to demand that the Police, the Prosecutor, the Judge and the Court take any necessary measures to guarantee such protection.

- The Victims, Witnesses and other Participants in a Criminal Lawsuit Protection Program, under the direction and coordination of the Public Prosecutions Service, whose article 2 determines that all protection procedures are based on the verification of the links between threat, risk, and pre-procedural and procedural participation. The same article states that protection shall be governed by the principles of willingness, reservation, investigation, linkage, direction and temporary protection.

- Article 8(b) of the Organic Law on the Commission for Civic Control of Corruption requires that its members conduct all their investigations in absolute confidentiality, as well as maintain secret any information obtained directly or indirectly as a result of their work on the Commission, until the investigations are concluded and the corresponding report issued.

- Article 7(e) of the Organic Law of the Commission for Civic Control of Corruption states that it is an function of this Commission to grant, through the appropriate authorities, the legal protection necessary to guarantee the personal safety of people who, on their own accord, cooperate in the clarification of the facts;

- Article 27 of the Rules for the Evaluation of Complaints, states that complaints may be filed directly or indirectly. Direct complaints must be filed in writing and must be signed. Indirect complaints require that written document be submitted, so the alleged act of corruption may be identified, even as a passing reference, for analysis and determination of competence.

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

With respect to the legal provisions for protecting public servants and private citizens who in good faith report acts of corruption, the Committee notes that, on the basis of the information available to it, they may be said to constitute a set of measures that are pertinent for promoting the purposes of the Convention.

Notwithstanding the foregoing, the Committee deems it advisable for the country under review to analyze the possibility of supplementing, developing, or adapting certain provisions related to the aforementioned systems.

- Firstly, Article 8 of the Organic Law on the Commission for Civic Control of Corruption, establishes the direct and indirect ways in which citizens can report acts of corruption. Indirect ways can be anonymous, provided they are backed up by documentation that enables the presumed act of corruption in question to be identified so that it can be investigated.

Article 8 also instructs members, directors, officials, employees and workers of the Commission for Civic Control of Corruption to maintain all knowledge of the investigations it conducts confidential, as well as the information it receives directly or indirectly, until the investigation is completed and the Report issued.

The Report of the CLD³⁸ states that *“there appears to be a mechanism for reporting acts of corruption. It consists of a legal confidentiality (since it has a coercion mechanism, for instance in the case of an official who violates confidentiality). However, it is understood that this confidentiality is only applicable until the Commission issues a Report on the act reported. After that the information is made public. However, this rule does not provide a protection mechanism for persons reporting such acts but rather a means of protecting sensitive information liable to hamper the progress and effectiveness of the investigation.”*

The Committee notes that the Republic of Ecuador could consider appropriate reforms to the legal provisions for public service, so the protection afforded to those who in good faith report acts of corruption, go further than the publication of the relevant Report. A recommendation will be made on the matter³⁹ (Chapter III, Section 2, Recommendation 2.1. (a) of this Report)

- Secondly, the Committee considers that, although there is a Protection Program for Victims, Witnesses and Other Participants in the Criminal Process, this only involves complaints regarding criminal matters and makes no reference to threats or retaliation of another kind that might be classified as criminal offences and be the object of an administrative investigation.

The Committee considers that the Republic of Ecuador could make whatever amendments are necessary to protect people who in good faith report such acts of corruption from threats and reprisals, beyond criminal procedures, particularly taking into account that not all acts of corruption are criminal offences. The Committee will make a recommendation on the matter. (Chapter III, Section 2, Recommendation 2.1. (b) of this report.)

- Regarding witness protection mechanisms, this Committee points out that even though Article 7(e) of the Organic Law on the Commission for Civic Control of Corruption, provides that the Commission must to grant, through the appropriate authorities, the legal protection necessary to guarantee the personal safety of people who, on their own accord, cooperate in the clarification of the facts, no mention is made of the procedure to be followed. It merely states that such cases should be forwarded to the Public Prosecutions Service.

³⁸ See page 12 of the Report of the CLD.

³⁹ The Committee notes that Ecuador has prepared a preliminary draft of the Regulations on the LOSCCA which was presented to the President of the Republic in June 2006. Said draft Regulations contain administrative mechanisms of protection for public servants who in good faith report acts of corruption.

Protection instruments are restricted basically to acts of corruption concerning specific crimes and are more geared towards providing physical protection for the recipients. However, they do not provide any protection towards the labor situation of whistleblowers who are public servants. Such protection would help achieve the purposes of the Convention by encouraging public servants to comply with their duty to report acts of corruption without fear of jeopardizing their employment. The Committee therefore believes that the country under review should consider making the necessary reforms to put in place a more suitable mechanism for these cases. The Committee will make a recommendation on the matter⁴⁰. (Chapter III, Section 2 Recommendation 2.1. (b) of this Report).

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

The Republic of Ecuador includes in its response to the Questionnaire, the statistics issued by the Public Prosecutions Service in 2003 and 2004 regarding the application of the Victim and Witness Protection Program⁴¹. According to these statistics, during this period the program has protected 114 victims.

Regarding the information pertaining to people protected by the Program, the Committee notes that it is useful to establish that the program is working for those criminal cases mentioned in it. Nevertheless, it does not specifically provide information on protection to those who report acts of corruption, and thus it is not useful as an indicator for these cases.

Lastly, considering that the Committee does not have additional other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, it will make a recommendation on the matter (Chapter III, General Recommendation 4.2. of this Report).

3. ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

3.1. Existence of legal provisions and/or other measures

The Republic of Ecuador has a series of provisions related to the criminalization of the acts of corruption provided for in Article VI.1 of the Convention, among which the following should be noted:

- In relation to Article VI.1 (a):

- Article 285 criminalizes bribery under the following terms: “*A public official or person entrusted with a public service who accepts an offer or a promise, or receives gifts or presents, in exchange for doing something in the course of his employment or work, even if it is fair, but not subject to remuneration, shall be sentenced to six months to three years in prison and fined between eight and sixteen US dollars and ordered to repay twice the value received.*”

“*Anyone who accepts offers or promises, or receives gifts or presents, in exchange for performing an act that is manifestly unjust in the course of his employment or work; or from abstaining from performing a duty, shall be sentenced to one to five years in prison and fined between six and thirty-one US dollars and ordered to repay three times the value received.*”.

- Article 286 states that: “*A public official or person entrusted with a public service who, in exchange for accepting offers or promises, or receiving gifts or presents, has acted wrongfully while*

⁴⁰ See page 20 of Ecuador’s Response to the Questionnaire.

⁴¹ See page 21 of Ecuador’s Response to the Questionnaire.

performing his duty, or abstained from performing it, shall be sentenced to minor prison for three to six years and be fined sixteen to seventy-seven US dollars and ordered to repay three times the value received.

- Article 287 states that: *“The guilty party will be sentenced to major prison for four to eight years and fined between sixteen and one hundred and fifty-six US dollars if, in exchange of offers, promises, gifts or presents, has committed a crime in the performance of his duties.”*

- Under Article 288: *“A judge, arbitrator or jury member found guilty of bribery, in addition to the penalties mentioned above, shall be fined three times the amount of the reward. In no case may this fine be less than eight US dollars”.*

- Article 264 criminalizes graft, stating that: *“Any government employee or person entrusted with a public service, who wrongfully demands, obtains or receives rights, quotas, contributions, income or interest, or salaries or gratifications, to which they are not entitled, will receive a sentence of two months to four years imprisonment.”*

“If such action involves violence or threats, the sentence shall be two to six years imprisonment, This sentence shall apply to prelates, priests or other clergy who demand from their congregation members payment against their will, contributions, duties, tithes, or monies not authorized by civil law.”

“Those guilty of the offences foreseen in this Article and in the three previous ones shall also be fined with US\$40 and ordered to repay four times the value received. These penalties will also apply to agents or official descendents of public employees and anyone entrusted with a public service, depending on the foregoing distinctions.”

▪ In relation to Article VI.1 (b):

- Article 290 on active bribery, which occurs when a citizen takes the initiative to corrupt a public servant. According to this article: *“Anyone who uses violence or threats to compel a public official, jury member, arbitrator or mediator, or anyone entrusted with a public function, or corrupts such a person through promises, offers, gifts or presents to do something in the course of his employment or work, even if it is fair, but not subject to remuneration, or to refrain from taking action in accordance with his duty, will be subject to the same penalties as the culprit for allowing himself to be bribed”.*

▪ In relation to Article VI.1 (c):

- Article 257, which criminalizes embezzlement: *“Public servants from public sector organizations or entities and anyone entrusted with a public service who, for his own benefit or that of a third party, misuses public or private monies or their equivalent, or items, deeds, documents, movable and real property which are in their possession because of their position, whether such constitutes theft by fraud, arbitrary misallocation and any other kind of misappropriation, will be punished with regular major imprisonment of eight to twelve years. If the offence is related to national defense funds, the penalty will be an extraordinary prison sentence of twelve to sixteen years.”*

“Misappropriation of public funds shall include the use of funds for purposes other than those foreseen in the appropriate budget, when this also involves abuse for personal gain or that of a third party, for purposes other than the public service”.

“This provision includes public servants who handle funds belonging to the Ecuadorian Social Security Institute or State and private banks. It also includes public servants employed by the Auditor General’s Office and the Superintendent of Banks who are involved in inspections, audits or special examinations, provided that the Reports issued point to complicity or concealment of the crime under investigation”.

“A person found guilty and sentenced will also be disqualified from holding any public position or function; in such cases as soon as the person is sentenced, the trial judge will inform the National Directorate of Personnel and the nominating authority of the respective public servant and the Superintendent of Banks in the case of a bank employee, of the decision . The National Director of Personnel shall abstain from recording appointments or contracts granted in favor of such disqualified persons, and a registry will be kept at the National Directorate of Personnel, giving their names.”

“The statute of limitations for the criminal action will cover twice the length of time indicated in Article 101. Public servants employed by the General Directorate of Revenue and the Customs Authorities will penalized as if they had been involved in Acts of Determination”.

“Also included in the provisions of this Article are officials, administrators, executives or employees of the institutions of the private national financial system, and members or spokespeople of the directors and boards of trustees of these entities if they were involved in committing these offences”.

▪ In relation to Article VI.1 (d):

- Article 569 states that: *“It is a punishable offence for persons to totally or partially conceal goods that have been stolen or obtained by criminal means in order to use them, and a six month to five year prison sentence and a fine of six to sixteen dollars are applicable.”*

- Article 262 which states that: *“Any public employee or person entrusted with a public service who maliciously or fraudulently destroys or deletes documents, deeds, programs, data, databases, information or data messages in an information system or electronic network for whose maintenance and safekeeping they are responsible, or that were entrusted to him by reason of his position, shall be given a minor prison sentence of three to six years.”*

- Article 265 which states that: *“Any public employee who either openly or through a false transaction, or who through a third party takes all or part of a property or effect in whose auction, lease, award, seizure, sequester, judicial division, deposit or administration he is involved because of his position or job shall be punished; likewise if any of the people referred to is involved in a negotiation or speculates for profit or personal interest in connection with that same property or those same effects, or anything in which he is officially involved, will be fined six to twelve percent of the value of such property or deal and sentenced to prison for six months to three years and not entitled to a suspended sentence”.*

- Article 267 which states that *“The Magistrate or Judge who fraudulently becomes a debtor of one of the parties, or makes one of them a guarantor, or enters into a financial agreement with one of them while a trial, process or business deal under his purview is still taking place, shall be fined eight to thirty one US dollars, and have his citizenship rights suspended for three years.*

- In relation to Article VI.1.(e):

- Articles 41 to 43 regarding criminal participation and article 16 corresponding to attempts to participate in a crime⁴².

- Article 369 refers to association and conspiracy: “*Any association created in order to harm persons or property, is a crime that exists solely because of its undertaking.*”

3.2 Adequacy of the legal framework and/or other measures

With respect to the provisions related to criminalization of the acts of corruption provided for in Article VI.1 of the Convention that has been examined by the Committee based on information made available to it, they constitute, as a whole, a set of provisions relevant for promoting the purposes of the Convention.

Notwithstanding, the Committee considers that the country under review should review and supplement some of its legal provisions taking into account the following:

In a study conducted within the framework of a technical cooperation project to ratify and implement the Convention, executed by the OAS with funding from the IDB and the participation of the Office of the Auditor General, the Public Prosecution Service and the Latin American Development Corporation, published in “*Adaptando la Legislación Penal de Ecuador a la Convención Interamericana contra la Corrupción*”⁴³ (“Adapting Ecuadorian Criminal Legislation to the Inter-American Convention against Corruption”), the following recommendations were offered:⁴⁴

- In relation to Articles 285 and 286 as it is applicable to Article VI.1(a) of the Convention, the Committee believes that this provisions, , including the review of economic sanctions, can be modified in order to better reflect the elements for this crime as set on the Convention. The proposed modified text appears in italics as follows:
 - Art. 285.- A public official or person entrusted with a public service who *directly or indirectly* accepts an offer or a promise, or receives gifts or presents *for himself or for another person*, in exchange for doing something in the course of his employment or work, even if it is fair, but not subject to remuneration, shall be sentenced to six months to three years in prison and fined between eight and sixteen US dollars and ordered to repay twice the value received.

⁴² Articles 41 to 44 can be found at:

<http://www.dlh.lahora.com.ec/paginas/judicial/PAGINAS/Codpenal.1.html#anchor1602995>

Article 16 can be found at:

<http://www.dlh.lahora.com.ec/paginas/judicial/PAGINAS/Codpenal.1.html#anchor1598551>

⁴³ The analysis was published in the book: “Adaptando la Legislación Penal de Ecuador a la Convención Interamericana contra la Corrupción”, Subsecretariat of Legal Affairs, OAS Department of Legal Cooperation and Information, 2001 (JL969.5C6 A3 2001 –Ec - /// OEA/Ser.D/XIX3 Add.8). This publication contains the reports of the workshop held in Quito on October 26 and 27, 2000, within the framework of the Project in Support of the Ratification and Implementation of the CICC”(which arose from the cooperation agreement signed by the OAS and the IDB on March 26, 1999). The workshop was organized by the OAS, the IDB, the Auditor General’s Office, the State Prosecutor’s Office and the Latin American Development Corporation of Ecuador.

⁴⁴ See page 18 of the study “Adapting Ecuadorian Criminal Legislation to the Inter-American Convention against Corruption.”

Anyone who accepts offers or promises, or receives gifts or presents, in exchange for performing an act that is manifestly unjust in the course of his employment or work; or from abstaining from performing a duty, shall be sentenced to one to five years in prison and fined between six and thirty-one US dollars and ordered to repay three times the value received.

- Art. 286.- A public official or person entrusted with a public service who, in exchange for accepting offers or promises, or receiving gifts or presents, *for himself or for another person*, has acted wrongfully while performing his duty, or abstained from performing it, shall be sentenced to minor prison for three to six years and be fined sixteen to seventy-seven US dollars and ordered to repay three times the value received.

- With regard to Article VI.1.b of the Convention, the Committee notes that this rule is also reflected in Article 290 of the Criminal Code with reference to active bribery, which is when a citizen takes the initiative to corrupt a public official.

Therefore the Committee considers that the above rule would be more in line with this provision of the Convention if the words “directly or indirectly” and “for another person” contained in article VI.1.b. of the Convention were added.

Article 290 would read as follows:

Anyone who *directly or indirectly, for himself or for another person*, uses violence or threats to compel a public official, jury member, arbitrator or mediator, or anyone entrusted with a public function, or corrupts such a person through promises, offers, gifts or presents to do something in the course of his employment or work, *for himself or for another person*, even if it is fair, but not subject to remuneration, (. . .)

- Thirdly, and with reference to article VI.1.c of the Convention, the Committee notes that although current Ecuadorian legislation sanctions the crime of embezzlement, the Criminal Code does not contain a text similar to the Convention.

The Committee therefore considers that the Republic of Ecuador should criminalize the act of corruption referred to in paragraph VI.1.c. of the Convention. The following wording is suggested: “*Any public servant or person entrusted with a public function shall be sentenced with one to five years in prison for performing actions in the course of his duty, or abstaining to perform them, in order to obtain illicit benefits for himself or for a third party*”.

- In relation to paragraph VI.1.d of the Convention, the Response by the Republic of Ecuador to the questionnaire states that “*there is no express rule in Ecuadorian legislation*” but mentions article 569 of the Criminal Code, in the chapter on Crimes against Property, which punishes the receiving or accepting goods obtained by criminal means.”

The Committee notes that the current legislation would have to be revised in order to adapt it to the provisions of the Convention. The following text is suggested for Article 569 of the Criminal Code: “*Anyone who wrongfully conceals or utilizes movable property, money or documents representing them*

or other valuables obtained by committing any crime, shall be sentenced from six months to five years of prison”⁴⁵.

- Lastly, in regards to Article VI.1.e of the Convention, which includes association or conspiracy among the acts of corruption, the Committee notes that Article 369 of the Criminal Code restricts the possibilities of association to crimes against persons or property only, and that as a result, in order to adapt it to the provisions of the Convention, Article 369 could be worded as follows: “*Any association or conspiracy carried out with the intention of jeopardizing persons, the national treasury or property, is a crime that exists merely by reason of its undertaking*”⁴⁶

The Committee shall make a recommendation to the country under review on the need to bring its legislation into line with the Inter-American Convention against Corruption, in light of the aforementioned study, “Adapting Ecuadorian Criminal Legislation to the Inter-American Convention against Corruption.” (Recommendation 3.1. in Section 3 of Chapter III of this Report).

3.3 Results of the legal framework and/or other measures

The Republic of Ecuador includes in its response to the Questionnaire, two comparative tables containing data provided by the Public Prosecutions Service, the entity in charge of handling public criminal prosecutions regarding complaints of acts of corruption between July 13, 2001 and March 13, 2006 (first table) and the statistics corresponding to the period between January 1, 2004 to December 31, 2005 (second table), shown below:

Complaints processed between July 13, 2001 and March 31, 2006.

Type of offence	Preliminary investigation	Rejection	Others ⁴⁷
Embezzlement	329	334	139
Bribery	22	17	6
Graft	28	17	5
Illicit enrichment	8	16	11
Other crimes ⁴⁸	45	24	8
Total	432	408	169

Statistics for the period January 1, 2004 to December 31, 2005.

Year	2004	2005
Embezzlement	347	452
Bribery	20	28
Graft	12	39
Illicit enrichment	15	20
Other crimes ⁵¹	30	34

⁴⁵ See page 23 of the study “Adapting Ecuadorian Criminal Legislation to the Inter-American Convention against Corruption.”

⁴⁶ See pages 24 to 26 of the study “Adapting Ecuadorian Criminal Legislation to the Inter-American Convention against Corruption.”

⁴⁷ Inhibiciones, agregados a otros procesos penales.

⁴⁸ Conversión, lavado de activos.

⁵¹ Lavado de Activos.

TOTAL	424	573
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The Committee finds the two tables above quite confusing. For instance, according to the first one, 432 complaints were processed during the preliminary investigation. In all, 408 were rejected and 169 were disqualified. The first column shows that in the case of embezzlement there were 329 complaints in the preliminary investigation process, of which there were 334 rejections and 139 disqualifications. There is nothing to indicate whether or not the 334 cases rejected and the 139 disqualified are among the 329 complaints that underwent the preliminary investigation process – which makes no sense since the sum of the first two is greater than 329 – or if these figures are part of a higher number of complaints, some of which may have been concluded and the information on them is not included in this table.

Something similar seems to apply to the second table, which does not show how it relates to the first one. This Committee considers that the information presented by Ecuador in its response to the questionnaire makes it impossible to evaluate the results on this matter in full. (See General Recommendation 4.2).

III. CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO THE IMPLEMENTATION OF THE PROVISIONS SELECTED IN THE FRAMEWORK OF THE SECOND ROUND

Based on the review conducted in Chapter II of this Report, the Committee offers the following conclusions and recommendations regarding implementation by the Republic of Ecuador of the provisions contained in Article III(5) (systems for government hiring and for the procurement of goods and services); Article III(8) (systems for protecting public servants and private citizens who, in good faith, report acts of corruption); and Article VI (acts of corruption) of the Convention, which were selected for review within the framework of the second round.

1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III, (5) OF THE CONVENTION)

1.1 Systems of government hiring

The Republic of Ecuador has considered and adopted measures intended to establish, maintain and strengthen the systems of government hiring, as discussed in Chapter II, Section 1.1 of this report.

In light of the comments made in the above noted section, the Committee suggests that the Republic of Ecuador consider the following recommendations:

- 1.1.1. Strengthen government hiring systems in general. To fulfill this recommendation, the Republic of Ecuador should consider taking the following measure:
 - Follow up the way in which Article 20 of the RLOSCCA is applied with regard to the hiring of occasional services in order to ascertain whether the system prevents successive renewals,

⁵³ The Committee notes that Ecuador presented the new Regulations on the Merit-Based Competition for Judiciary after the deadline for submitting the response to the questionnaire, because it only came into force on July 19, 2006. That is the reason why no review of this regulation was conducted.

so that exceptions are not used as a means of evading merit-based and competitive exams.” (See Chapter II, Section 1.1.2. of this Report.)

1.1.2. Strengthen the systems for the hiring of public servants for the Legislative Function.. To fulfill this recommendation, the Republic of Ecuador could consider the following measures

- a) Make the necessary amendments in order to establish guidelines on implementation of the staff selection subsystem, setting parameters as to how merit and competitive examinations shall be conducted, including the advertising of vacancies and minimum requirements for selection, in order to ensure the principles of legality, fairness, neutrality, equality and transparency. (See Chapter II, Section 1.1.2. of this Report.)
- b) Study the modification of Article 5 of the LCAFL, so candidates who apply for a vacancy through an open competition, and are neither officials nor employees of the Legislative, have access to the same appeals processes as the public servants referred to. (See Chapter II, Section 1.1.2. of this Report.)
- c) Study the modification of paragraph (b) of Article 1-A of the LCAFL, so as to define “temporary or occasional staff,” in order to prevent appointments of public servants for an indefinite period and without having been subject to a merit-based competition, under the heading “other temporary or occasional staff”. (See Chapter II, Section 1.1.2. of this Report.)

1.1.3. Strengthen the systems for hiring public servants for the Judiciary. To fulfill this recommendation, the Republic of Ecuador could consider the following measures:⁵³

- a) Formulate the amendments that need to be made to the Regulations on the Judicial Career (RCJ) in order to set guidelines on the implementation of the subsystem for selecting personnel, establishing the parameters on how the competitions should be conducted, including the mechanism for announcing vacancies and publishing selection requirements, in order to ensure that merit-based and competitive examinations conform to the principles of legality, equity, neutrality, equality and transparency. (See Chapter II, Section 1.1.2. of this Report).
- b) Draft the amendments that should be made to the RCJ in order to set up a mechanism for contesting selection processes, accessible for officials and employees of the Judicial Branch and for external candidates. (See Chapter II, Section 1.1.2. of this Report).
- c) Amend Article 10 of the Regulations on the Judicial Career in order to eliminate the possibility of public officials continuing to be employed without taking a merit-based and competitive examination, because of the alleged urgency for the service. (See Chapter II, Section 1.1.2. of this Report).

1.1.4. Strengthen the systems for hiring public servants for the Public Prosecutions Service. To fulfill this recommendation, the Republic of Ecuador could consider the following measures:

- a) Update Article 5 of the Instructions on Recruitment of Staff for the Public Prosecutions Service (IRSPMP), in order to include other media such as radio, television, satellite,

Internet, etc. when announcing vacancies subject to open competition, thereby ensuring broader publicity of the announcement. (See Chapter II, Section 1.1.2. of this Report).

- b) Amend Article 22 of the IRSPMP to extend the period during which a candidate can contest a competition to a more fair and realistic term, taking into account that the period begins the next day of the publication of the results, in order to guarantee a transparent process. Additionally, make the necessary amendments to ensure that the appealing instance is not the same one that rated the competition. This would ensure the possibility of a second instance for appeals. (See Chapter II, Section 1.1.2. of this Report).

1.1.5. Take the necessary measures to unify and harmonize the systems of government hiring, thereby avoiding its fragmentation, and fostering better compliance with the principles of legality, fairness, neutrality, equality and transparency foreseen in the Convention. (See Chapter II, Section 1.1.2. of this Report).

1.2. Government systems for the procurement of goods and services

The Republic of Ecuador has considered and adopted measures to establish, maintain and strengthen government procurement systems, as described in Chapter II, Section 1.2. of this report.

In light of the comments made in the above noted section, the Committee suggests that the Republic of Ecuador consider the following recommendations:

1.2.1. Strengthen public tendering procedures, public competitive bidding processes and procurement in general. To fulfill this recommendation, the Republic of Ecuador could consider the following measure:

- Review the exceptions, exclusions and special procurement systems, unifying their practices and systems, particularly those contained in Articles 4 to 6 of the Public Procurement Law and Articles 12 and 14 of the Consulting Services Law, and ensuring that public tendering and competitive bidding serve as the general rule for the selection of hiring systems in the state procurement system, thereby ensuring compliance with the principles of openness, equity and efficiency envisaged in the Convention. (See Chapter II, Section 1.2.2. of this Report).

1.2.2 Strengthen the Government Procurement system's mechanisms of control. To fulfill this recommendation, the Republic of Ecuador could:

- a) Create a governing body in charge of overseeing procurement in every State entity, without exception, which would encourage information statistics to be drawn up, develop standardized procedures, promote the training and professionalization of public servants, develop a registry of suppliers, maintain a list of standardized prices and plan government procurement from a social development perspective. (See Chapter II, Section 1.2.2. of this Report).
- b) Create a centralized registry of contractors of works, goods or services, mandatory to all State bodies and dependencies, to foster the principles of openness, equity and efficiency provided for in the Convention. (See Chapter II, Section 1.2.2. of this Report).

1.2.3 Continue strengthening the use of electronic media and information systems for government procurement. To fulfill this recommendation, the Republic of Ecuador could consider the following measure:

- Make it mandatory for all State bodies and dependencies to use CONTRATANET. (See Chapter II, Section 1.2.2. of this Report).

1.2.4 Strengthen the identification of selection criteria for contractors. The State could consider the following measures:

- a) Define the scope of the expression “convenient to national and institutional interests” used in Amend Article 26 of the Law on Public Procurement to define that criterion more accurately (See Chapter II, Section 1.2.2. of this Report).
- b) Establish selection criteria for procurement processes that are not subject to a public tender or competitive process. (See Chapter II, Section 1.2.2. of this Report).

1.2.5 Continue fostering the principles of openness, equity and efficiency foreseen in the Convention. In order to do so, the Republic of Ecuador could consider the following measure:

- Include well-defined appeals in the current legislation so that candidates can contest the results of all or part of the procurement process for consulting services. (See Chapter II, Section 1.2.2. of this Report)

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

The Republic of Ecuador has considered and adopted measures intended to establish, maintain and strengthen systems for protecting public servants and private citizens who in good faith report acts of corruption, as discussed in Chapter II, Section 2 of this Report.

In light of the comments made in the above noted section, the Committee suggests that the Republic of Ecuador should continue to strengthen systems to protect public servants who, in good faith, report acts of corruption. To fulfill this recommendation, the Republic of Ecuador could consider the following measures:

- 2.1 Strengthen the systems to protect public officials and private citizens who, in good faith, report acts of corruption. To fulfill this recommendation, the Republic of Ecuador could consider the following measures:⁵⁴
 - a) Make the necessary amendments to the Organic Law on the Commission for Civic Control of Corruption to protect the identity of people who, in good faith, report acts of corruption in accordance with the legislation regarding public service, even after the Report is published. (See Chapter II, Section 2.2. of this Report).

⁵⁴ The Committee notes that Ecuador has prepared a preliminary draft of the Regulations on the LOSCCA which was presented to the President of the Republic in June 2006.

- b) Make the necessary amendments to current legislation, in order to better protect whistleblowers who in good faith report acts of corruption, and their families, within the framework of public service legislation, so this protection would not be limited to criminal procedures but would include public administration in general. Protection would be extended to labor situations, particularly in the cases of public servants, and in those cases when those acts of corruption could involve a superior or a colleague. (See Chapter II, Section 2.2. of this Report).

3. ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

The Republic of Ecuador has adopted certain measures aimed at updating its criminal legislation by criminalizing the acts of corruption provided in Article VI.1 of the Convention, as expressed in Chapter II, Section 3 of this Report.

In view of the comments made in this section, the Committee recommends that the Republic of Ecuador consider adapt its criminal legislation to the Inter-American Convention against Corruption. To fulfill this recommendation, the Republic of Ecuador could consider the following measure:

- Adapt Ecuadorian criminal legislation to the Inter-American Convention against Corruption, bearing in mind the revisions suggested in the study “Adapting Ecuadorian Legislation to the Inter-American Convention against Corruption.” (See Chapter II, Section 3.2. of this Report).

4. GENERAL RECOMMENDATIONS

Based on the review and contributions made throughout this Report, the Committee suggests that the Republic of Ecuador consider the following recommendations:

- 4.1. Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing, that they are adequately understood, managed and implemented.
- 4.2. Select and develop procedures and indicators, when appropriate and, where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein.

5. FOLLOW-UP

The Committee will consider the periodic update reports submitted by the Republic of Ecuador concerning the progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee, and in accordance with of Article 31 of the Rules of Procedure and other provisions.

Similarly, the Committee will review the progress in implementing the recommendations made in this Report, in accordance with the provisions of Article 29 of the Rules of Procedure.

IV. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN THE FIRST ROUND REPORT

The Committee observes, in relation with the implementation of the recommendations formulated for the Republic of Ecuador in the Report in the First Round of Review, based on the information at its disposal, the following:

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

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

Recommendation 1.1.1:

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

Measures suggested by the Committee:

- *Determine precisely the implications, prohibitions, incompatibilities and disqualifications related to conflicts between private and public interests.*
- *Establish adequate restriction for a reasonable period, when appropriate, for anyone who ceases to hold a public office.*
- *Design and implement mechanisms to inform and train public servants about standards of conduct, including those involving conflicts of interests, and update and train them periodically on such standards.*
- *Evaluate the use and effectiveness of standards of conduct in preventing conflicts of interest and mechanisms for enforcing them in Ecuador, as a means of preventing corruption; and as a result of the evaluation, consider adopting measures to promote, facilitate, consolidate or ensure their effectiveness in achieving this.*
- *Conduct a study on the possibility of compiling standards of conduct for correct, honorable and adequate compliance with the public functions referred to in the Convention. (This measure would also be considered pertinent in relation to the recommendations contained in Chapter III, sub-paragraphs 1.2.1 and 1.3.1 of this Report, and must thus be understood as being included therein).*

In its response, the country under review presents information with respect to the above recommendation. In this regard, the Committee notes as steps which contribute to progress in implementation of the recommendation the measures taken with respect to:

- Compilation by the National Congress, at the request of the CICC's Implementation Bureau, the standards related to the prohibitions, disqualifications and incompatibilities for preventing conflicts of interest⁵⁵.

- Design of a self-assessment questionnaire for public institutions on the use and effectiveness of standards of conduct to prevent conflicts of interest, and enforcement mechanisms⁵⁶.

⁵⁵ See page 27 of Ecuador's response to the Questionnaire

⁵⁶ See page 27 of Ecuador's response to the Questionnaire

- Training for public servants on the Law on the Civil Service, Administrative Careers and Salary Homologation (LOSCCA), by the National Secretariat of Human Resources and Remuneration–SENRES⁵⁷.

- Preparation of the draft Code of Conduct for Public Servants in the Executive, which has been presented to the President of the Republic and is still pending approval⁵⁸.

The CLD's report on implementation of this recommendation states that: *“No formal, definitive action has been taken to date to promote the actions suggested by the Committee in relation to the implementation of laws, training or regulatory systems regarding conflicts of interest. Therefore no evaluation has been undertaken on the legislation, nor have any compilations been made or made public on the matter. However, the CCC, through the CICC 's Implementation Bureau has prepared a preliminary draft Code of Conduct and a specific body of legislation on Conflicts of Interest, which must be disseminated at a later date⁵⁹.”*

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Ecuador to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties mentioned by the CLD⁶⁰ in implementing this recommendation.

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

Recommendation 1.2.1.

Strengthen the system of control of public resources.

Measures suggested by the Committee:

- *Consider the possibility that, subject to the appropriate procedures, the Bill on the Modernization of the Criminal Treatment of Corruption referred to in Chapter II, Section 1.2.2. of this Report, be passed into law by the competent authority.*
- *Design and implement mechanisms to inform and train all public servants on the standards of conduct referred to and to answer queries on thereon, and to train and update them on those standards.*
- *Evaluate the use and effectiveness of standards of conduct to ensure the adequate conservation and use of public resources and existing enforcement mechanisms in Ecuador, as means of preventing corruption and, as a result of that evaluation, consider adopting measures to promote, facilitate and consolidate or ensure their effectiveness for that purpose.*

In its response, the Republic of Ecuador presents information with respect to the above recommendation, pointing out that *“In view of the fact that the Bill on the Modernization of the Criminal Treatment of Corruption has been sent to the National Congress for review by the Commission on Civil and Criminal*

⁵⁷ See page 27 of Ecuador's response to the Questionnaire

⁵⁸ See page 27 of Ecuador's response to the Questionnaire

⁵⁹ See page 22 of the Report of the CLD

⁶⁰ See page 22 of the Report of the CLD.

Matters, it was felt that it should be analyzed together with other legal initiatives designed to rationalize the Criminal Treatment of Acts of Corruption and Congress has thus been asked to remit the other bills that have been submitted on this subject⁶¹“.

In regard to the implementation of this recommendation, the CLD’s report states that *“the specific recommendations of the Committee’s Report include the promotion of the Bill on the Modernization of the Criminal Treatment of Corruption, which has lacked the support it needs in order to be implemented. Neither the recommendations on the review of current legislation nor training on its content for public servants have counted with sufficient promotion to ensure measurable results.”⁶²*

The Committee takes note of the need for the Republic of Ecuador to give additional attention to the implementation of the recommendation. Similarly, the Committee takes note of the difficulties mentioned by both the Republic of Ecuador⁶³ and CLD⁶⁴ in implementing this recommendation.

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

Recommendation 1.3.1

Strengthen the mechanisms through which the Republic of Ecuador can report to the appropriate authorities acts of corruption committed in the course of their public functions, of which they are aware.

Measures suggested by the Committee

- *Prepare wording (Article 97 (14) of the Political Constitution) establishing the duty and responsibility to fight acts of corruption by reporting public servants who fail to report such acts by identifying the pertinent administrative responsibilities and the sanctions for them.*
- *Facilitate compliance with this constitutional obligation, through whatever media are deemed adequate, regulating their use; and develop the protection program provided for by law, so that people who report such acts are given maximum protection against threats or retaliation as a result of fulfilling this obligation.*
- *Train public officials on the existence and purpose of the responsibility to report to the appropriate authorities acts of corruption in the performance of public functions, of which they are aware.*

In its response, the Republic of Ecuador presents information with respect to the above recommendation⁶⁵. In this regard, the Committee notes as steps that contribute to progress in implementation of the recommendation the measures taken with respect to: presentation in June 2006, to the President of the Republic by the Commission for the Civic Control of Corruption, of the draft Regulations to the Organic Law on the Civil Service, the Administrative Career and Salary Homologation (LOSCCA), regarding protection of people who in good faith report acts of corruption

⁶¹ See page 27 of Ecuador’s Response to the Questionnaire.

⁶² See page 27 of Ecuador’s Response to the Questionnaire.

⁶³ See page 27 of Ecuador’s Response to the Questionnaire.

⁶⁴ See page 23 of the Report of the CLD.

⁶⁵ See pages 27 and 28 of Ecuador’s Response to the Questionnaire.

which, among other things, is designed to provide public officials and servants to this law, with administrative protection mechanisms (⁶⁶)”.

The CLD’s report concerning implementation of this recommendation states that “*Acts of corruption tend not to be reported by public officials and, in turn, there are no administrative responsibilities or sanctions for cases where such acts are not reported*⁶⁷”.

The Committee takes note of the steps taken by the Republic of Ecuador to proceed with the implementation of the forgoing recommendation as well as the need for the country under review to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties observed by CLD in implementing this recommendation⁶⁸; and of the information provided by the internal bodies that participated in the implementation of that recommendation and the specific needs for technical assistance identified by CLD⁶⁹.

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

Recommendation 2.1

Strengthen systems for declaring income, assets and liabilities

Measures suggested by the Committee

- *Regulate the conditions, procedures and other relevant aspects regarding the need for public servants to register sworn statements of income, assets and liabilities, as appropriate.*
- *Evaluate and follow-up compliance with the obligation for public servants to present sworn statements of assets, indicating the degree of compliance and the measures that need adjusting or correcting.*
- *Optimize the systems for analyzing the content of sworn statements of income, assets and liabilities in order to detect and prevent conflicts of interest, and detect possible cases of illicit enrichment.*

In its response, the Republic of Ecuador presents information with respect to the above recommendation. In this regard, the Committee notes as steps which contribute to progress in implementation of the recommendation the measures taken with respect to:

- Entry into effect on May 18, 2004 of the Law on Access to Public Information which, within the framework of the appropriate procedure, makes possible access to public servants’ sworn statements of net worth.

⁶⁶ See Annex 3 of Ecuador’s Response to the Questionnaire: “Draft Decrees, Reform to the Regulations to the Organic Law on the Civil Service, the Administrative Career and Salary Homologation, in relation to the protection of persons reporting acts of corruption”.

⁶⁷ See page 23 of the Report of the CLD.

⁶⁸ See page 23 of the Report of the CLD.

⁶⁹ See pages 23 y 24 of the Report of the la CLD.

- Drafting by the Commission for the Civic Control of Corruption, the Public Prosecutor's Office and the Auditor General's Office, with support from the National Congress, the Attorney General's Office and the *Corporación Latinoamericana para el Desarrollo* (Latin American Development Corporation), of a new Bill on Sworn Statements of Net Worth to be presented to the National Congress for review and approval⁷⁰.

The CLD report, regarding the implementation of this recommendation, states “*Unfortunately the statement of net worth in Ecuador has not been used as a means of controlling illicit enrichment accumulated in the performance of public functions. Despite being a mandatory prior requirement to holding public office, there is no way of monitoring compliance with this requirement, and even less means of evaluating whether there are presumptions of enrichment. Statements are not systematized and it is hard to gain access to them, which hampers control by society*”⁷¹.

The Committee takes note of the steps taken by the Republic of Ecuador to proceed with the implementation of the forgoing recommendation as well as the need for the country under review to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties observed by CLD in implementing this recommendation⁷².

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

Recommendation 3.1

Strengthen the oversight bodies concerning the functions they perform related to the effective enforcement of the provisions of article III, paragraphs 1, 2, 4 and 11 of the Convention, with the objective of ensuring the effectiveness of such oversight, by: providing them with the necessary resources to do an excellent job; ensuring that they receive improved support for their activities, as appropriate, as well as the ongoing evaluation and monitoring of these activities.

In its response, the Republic of Ecuador presents information with respect to the above recommendations. In this regard, the Committee notes as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:⁷³

- An “Institutional Coordination” workshop was carried-out, and was attended by representatives of ten State institutions, with the purpose of determining their degrees of competency and geared to establishing a relationship among each other, and assessing potential common ground and coordination.

The Committee takes note of the steps taken by the Republic of Ecuador to proceed with the implementation of the foregoing recommendations as well as the need for the country under review to continue giving attention to the implementation of these recommendations. In addition, the Committee takes note of the difficulties mentioned by the country under review⁷⁴ and by CLD in implementing this recommendation.

⁷⁰ See page 28 of Ecuador's Response to the Questionnaire.

⁷¹ See page 24 of the Report of the CLD.

⁷² See page 24 of the Report of the CLD.

⁷³ See page 28 of Ecuador's Response to the Questionnaire.

⁷⁴ See page 28 of Ecuador's Response to the Questionnaire.

Recommendation 3.2

Adopt whatever measures are necessary to configure and consolidate the Anti-Corruption System of Ecuador– SAE, provided for in Executive Decree 122 of 2003.

In its response, the Republic of Ecuador presents information with respect to the above recommendations. In this regard, the Committee notes as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:⁷⁵

- The creation, through Executive Decree 1776 dated June 21, 2004 of the Commission for the Application of the Anti-Corruption System of Ecuador (SAE). It is worth noting that Ecuador's response to the questionnaire states that, since the institutions that had been working on the topic were not included, it is not operating at this time.

The CLD's report regarding the implementation of this recommendation states that: *“One of the most relevant recommendations issued by the Committee refers to the consolidation of the SAE. This was an opportunity for inter-institutional coordination and was conducive to the establishment of a State Anti-Corruption Policy. Due to political factors, especially the inter-institutional zeal of the Oversight Bodies comprising it, the System was dismantled, resulting in this vacuum to persist, and the window of opportunity for consolidating a national strategy has probably been lost”⁷⁶.*

The Committee takes note of the difficulties mentioned by the country under review⁷⁷ and by CLD in implementing this recommendation, as well as of the need that the country under review continues providing special attention to this issue.

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

4.1 Mechanisms for access to information

Recommendation 4.1.1

Strengthen mechanisms to guarantee access to public information.

Measures suggested by the Committee

- *Strengthen the mechanisms for enforcing the right of civil society and citizens to access to public information and to have access to the decisions through which requests for information are denied, to guarantee citizens easy access to those mechanisms and so that such mechanisms be effective in protecting the right to obtain public information. The possibility that, subject to the pertinent procedure, the Bill on Access to Public Information referred to in Chapter II, Section 4.2.2. of this Report, will be passed into law by the appropriate authority, should be considered.*

⁷⁵ See page 28 of Ecuador's Response to the Questionnaire.

⁷⁶ See page 24 of the Report of the CLD.

⁷⁷ See page 28 of Ecuador's Response to the Questionnaire.

- *Evaluate the use and effectiveness of mechanisms for access to information in the power or under the control of Ecuador's public institutions, as a means of preventing corruption and, as a result of that evaluation, consider adopting measures to promote, facilitate and consolidate or ensure their effectiveness in so doing.*

In its response, the Republic of Ecuador presents information with respect to the above recommendations, and the Committee notes as steps which contribute to the progress in implementation of the recommendation, the measures taken in relation to the adoption and publication of the Organic Law on Transparency and Access to Information of May 18, 2004, and its Regulations, published on January 19, 2005⁷⁸.

Regarding the implementation of this recommendation, the CLD's report states "*Without doubt, since the Country Report and the recommendations of the Committee of Experts were issued, the situation of access to public information has changed dramatically in Ecuador. To date, the Organic Law on Transparency and Access to Information has been issued, as have its Regulations. Information on this body of law has been widely disseminated and promoted, making it one of the most significant achievements in the fight against corruption in the country. Of course, there is still a long way to go before its terms are genuinely implemented, particularly due to the lack of knowledge about the procedures involved by the very public officials in charge of administering access to information.*"⁷⁹

The Committee observes with satisfaction the issuing of the Organic Law on Transparency and Access to Information and its Regulations, and takes note of the steps taken by the Republic of Ecuador to proceed with the implementation of the foregoing recommendations as well as the need for the country under review to continue giving attention to the implementation of these recommendations. In addition, the Committee takes note of the difficulties mentioned by the CLD in implementing this recommendation; and from the information provided on the internal bodies that have participated in implementing said recommendation.

4.2 Mechanisms for consultation

Recommendation 4.2.

Complement the existing consultation mechanisms, establishing procedures, as appropriate, that provide an opportunity for public consultation prior to the designing of public policies and final approval of legal provisions.

Measures suggested by the Committee

- *Widely publicize and disseminate the draft legal provisions and conduct transparent processes to make it possible to consult the interested sectors regarding the formulation of bills, decrees and resolutions within the scope of Executive Branch.*
- *Take the necessary measures to define and institutionalize consultation with civil society. It is suggested that consideration be given to the possibility that the Bill related to the Organic Law for Social Control of the Public Branch referred to in Chapter II, Section 4.3.2. of this Report, be passed into law by the competent authority, subject to the appropriate procedures.*

⁷⁸ See page 29 of Ecuador's Response to the Questionnaire.

⁷⁹ See page 25 of the Report of the CLD.

- *Conduct a comprehensive assessment of the use and effectiveness of the consultation mechanisms in place in Ecuador, as a means of preventing corruption and, as a result of that evaluation, consider adopting measures to promote, facilitate and consolidate or ensure their effectiveness for that purpose.*

In its response the Republic of Ecuador presents information with respect to the above recommendation⁸⁰, and states in its Response to the Questionnaire that “*It is important to first define the scope of consultation before establishing as a mandatory mechanism. Workshops on the issue must be prepared, so from the ensuing discussion a decision can be made regarding the issues and mechanisms in which previous consultation would be used.*”

Also, with respect to the implementation of this recommendation, the CLD’s Report states among other things⁸¹, that: “*Since the Country Report and the recommendations of the Committee of Experts were issued, little has changed in the field of citizen consultation mechanisms. The Public Administration has no specific proposal or structured plan to help social integration in the definition of plans, projects, budgets or any consultation mechanism that will systematically articulate the inter-relationship with civil society.*”

The Committee takes note of the need for the Republic of Ecuador to give additional attention to the implementation of the recommendation. It also takes note of the difficulties observed by the CLD in the process for implementing this recommendation⁸².

4.3 Mechanisms to encourage active participation in public administration

Recommendation 4.3.1

Strengthen and continue to implement mechanisms to encourage non-governmental and civil society organizations to participate in public administration, and take steps to repeal legislation that is liable to discourage such participation.

Measures suggested by the Committee

- *Establish additional mechanisms to strengthen participation by non-governmental and civil society organizations in efforts to prevent corruption and develop public awareness of the problem, and disseminate awareness about the participation mechanisms in place and their use. It is therefore suggested that, subject to the appropriate procedures, the possibility of the Bill on Oversight of the Public Branches of Power by Civil Society (Proyecto de Ley de Control Social del Poder Público) referred to in Chapter II, Section 4.4.2. of this Report, be passed into law by the appropriate authority, be considered.*
- *Repeal the contempt laws (leyes de desacato).*

In its response, the country under review presents information with respect to the previous recommendation. In this regard, the Committee notes as steps that contribute to progress in the implementation of the recommendation, the measures taken with respect to: approval by the Commission for Civic Control of Corruption on November 30, 2005, of the Regulations on the Creation and Work of

⁸⁰ See page 29 of Ecuador’s Response to the Questionnaire.

⁸¹ See page 26 of the Report of the CLD.

⁸² See page 26 of the Report of the CLD.

Citizen Watchdog Groups, which determine how civil society can undertake social monitoring and supervision of public administration through citizen involvement⁸³.

Likewise, regarding the implementation of this recommendation, the CLD states in its Report⁸⁴ that “As we mentioned in the previous point, there is no State policy that seeks to motivate and coordinate participation by civil society in public administration on a permanent basis”.

The response of Ecuador to the Questionnaire did not make reference to the repealing of contempt laws (*leyes de desacato*).

The Committee takes note of the progress made by the Republic of Ecuador on the implementation of the foregoing recommendation, and of the need to continue giving attention to the implementation of this recommendation, especially the repealing of legislation liable to discourage the participation of non-governmental and civil society organizations from participating in public administration. It also takes note of the difficulties observed by the country under review in the process for implementing this recommendation; of the information provided by the Republic of Ecuador on the internal bodies that have participated in implementing this recommendation; and of the comments presented by civil society.

4.4 Mechanisms to encourage participation in public administration

Recommendation 4.4.1

Strengthen and continue to implement mechanisms that encourage non-governmental and civil society organizations to participate in following up public administration.

Measures suggested by the Committee

- *Promote ways, when appropriate, to make it possible for people in public functions to enable, facilitate or assist non-governmental or civil society organizations to follow up their performance in public activities. It is suggested therefore that, subject to the appropriate procedures, the Bill on Oversight of the Public Branches of Power by Civil Society referred to in Chapter II, Section 4.5.2. of this Report, be passed into law by the appropriate authority.*
- *Design and implement programs to disseminate mechanisms to facilitate the follow-up of public administration and, when appropriate, train civil non-governmental and civil society organizations, and give them the necessary tools, to use such mechanisms.*

In its response, the Republic of Ecuador presents information with respect to the above recommendation⁸⁵. In this regard, the Committee notes, as steps which contributes through progress in the implementation of the recommendation, the measures taken with respect to:

- Plans undertaken by the Commission for Civic Control of Corruption to encourage civil society to take part in the follow-up of public administration, such as the implementation of Citizen Watchdog Groups (*Veedurías Ciudadanas*), as a tool for social supervision, especially of a preventive nature, to ensure citizen participation in the enhancement of political life and social development.

⁸³ See page 29 of Ecuador’s Response to the Questionnaire.

⁸⁴ See pages 26 and 27 of the Report of the CLD.

⁸⁵ See pages 29 and 30 of Ecuador’s Response to the Questionnaire.

- Training on the contents of the Proposal for Citizen Awareness of the Commission for Civic Control of Corruption, to members of the District Development Committees (*Comités de Desarrollo Cantonal*) in the parishes and districts as part of the activities in a Framework Agreement signed with CARE and a local NGO.

In order to implement this recommendation, the CLD's Report states that: "*For some years now the CICC has implemented a citizen watchdog program which promotes participation in public administration by civil society, especially in regards to procurement. This program seeks to comply with the Commission's prime obligation: to investigate possible acts of corruption and report irregularities to the pertinent bodies for processing and possible punishment. Despite the dissemination and the success achieved through this method of social mobilization, there are still some considerable voids regarding the follow-up capacity referred to in the recommendation; one of the main obstacles to any initiative in this regard is precisely the lack of real access to public information*"⁸⁶.

The Committee takes note of the steps taken by the Republic of Ecuador to proceed with the implementation of the foregoing recommendation as well as the need for the country under review to continue giving attention to the implementation of this recommendation. It also takes note of the difficulties mentioned by the CLD⁸⁷ in implementing this recommendation; of the information provided on the internal bodies that have participated in implementing that recommendation⁸⁸; and of the specific needs identified by civil society⁸⁹.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

▪ Recommendation 5.1

Determine and prioritize specific areas in which the Republic of Ecuador considers it needs technical cooperation from other States party and international cooperation agencies in order to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.

The Response by the Republic of Ecuador to the questionnaire did not refer to this recommendation. In light of this fact, the Committee takes note of the need for the Republic of Ecuador to give additional attention to its implementation.

Recommendation 5.2

Continue with the effects to exchange technical cooperation with other States party on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption.

The Response by the Republic of Ecuador to the questionnaire did not refer to this recommendation. In light of this fact, the Committee takes note of the need for the Republic of Ecuador to give additional attention to its implementation.

⁸⁶ See page 27 of the Report of the CLD.

⁸⁷ See page 27 of the Report of the CLD.

⁸⁸ See page 29 of the Response of Ecuador to the Questionnaire.

⁸⁹ See pages 27 and 28 of the Report of the CLD.

Recommendation 5.3

Design and implement a comprehensive dissemination and training program for the appropriate authorities and officials so they understand the provisions on reciprocal assistance for investigating and judging acts of corruption envisaged in the Convention and other treaties signed by Ecuador and are able to apply them.

It is thus recommended that the appropriate officials be trained to achieve the broadest level of reciprocal technical and legal cooperation possible to prevent, detect, investigate and sanction acts of corruption.

The Response by the Republic of Ecuador to the questionnaire did not refer to this recommendation. In light of this fact, the Committee takes note of the need for the Republic of Ecuador to give additional attention to its implementation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The Committee did not make any recommendations to the Republic of Ecuador on this matter.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1

Design and implement, when appropriate, training programs for public servants responsible for applying the systems, standards, measures and mechanisms considered in this Report, to ensure that they are properly understood, handled and applied.

The Response by the Republic of Ecuador to the questionnaire did not refer to this recommendation. In light of this fact, the Committee takes note of the need for the Republic of Ecuador to give additional attention to its implementation.

Recommendation 7.2

Select and develop procedures and indicators, when appropriate, to find out if the recommendations made in this Report have been followed up, and inform the Committee, through the Technical Secretariat, of the progress made in this area. In order to do so, the country under review could take into account the list of the most common indicators applicable in the Inter-American system, which are available for the selection indicated by the State under Analysis published by the Technical Secretariat of the Committee on the OAS's webpage, and information obtained from the analysis of the mechanisms developed in accordance with recommendation 7.3 below.

The response by the Republic of Ecuador to the questionnaire did not refer to this recommendation. In light of this fact, the Committee takes note of the need for the Republic of Ecuador to give additional attention to its implementation.

Recommendation 7.3

Develop procedures to analyze the mechanisms mentioned in this Report and the recommendations contained in them, when appropriate and if they do not yet exist.

The response by the Republic of Ecuador to the questionnaire did not refer to this recommendation. In light of this fact, the Committee takes note of the need for the Republic of Ecuador to give additional attention to its implementation.