

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

FINAL REPORT

(Adopted at the June 27, 2008 plenary session)

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF GUATEMALA 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 presents, first, a review of the implementation in Guatemala 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 examines the follow-up to the implementation of the recommendations that were formulated to Guatemala 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 Eighth meeting and published at the following web page: http://www.oas.org/juridico/english/mec_rep_gtm.pdf

2. Ratification of the Convention and adherence to the Mechanism

According to the official register of the OAS General Secretariat, Guatemala deposited the instrument of ratification of the Inter-American Convention against Corruption on July 3, 2001.

In addition, Guatemala signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on December 19, 2001.

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the Republic of Guatemala

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Guatemala, and in particular from the Commission for Transparency and against Corruption (*Comisión para la Transparencia y Contra la Corrupción*), which was evidenced, *inter alia*, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its Response, the Republic of Guatemala sent the provisions and documents it considered pertinent. That response, and those provisions and documents may be consulted on the following Web page: www.oas.org/juridico/spanish/mesicic2_gtm_sp.htm

For its review, the Committee took into account the information provided by Guatemala up to November 2, 2007, 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.

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 June 27, 2008, at its Thirteenth meeting, held at OAS Headquarters, June 23-27, 2008.

2. Documents received from civil society organizations

The Committee also received, within the deadline established the Calendar for the Second Round adopted at its Ninth Meeting², documents from the nongovernmental organization “*Acción Ciudadana*”, (National Chapter of Transparency International) submitted electronically.³

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 Guatemala has a set of provisions related to systems of government hiring, among which the following, dealing with the principal systems, should be noted:

- Constitutional provisions applicable to all public servants, such as those set out in Articles 108 and 113 of the Constitution, which provide, respectively, that relations between the state, its decentralized or autonomous entities, and their workers are governed by the Civil Service Law, except when the rules and laws of the individual agencies apply; and that all Guatemalans have the right to apply for public employment or posts and admission to such positions shall be based exclusively on merit as regards capacity, suitability, and honesty.

- Legislative provisions and sundry other provisions applicable to public servants in the executive branch, such as the following:

- The Civil Service Law (Decree 1748 of 1968, of the Congress of the Republic), Article 3 of which recognizes, *inter alia*, the following principles: the right of all Guatemalans citizens to apply for positions in public service, the exercise of which right shall not be impeded if they meet the requirements and qualifications prescribed by law; the article also states that positions in the public administration shall be adjudicated on the basis of capacity, training and honesty of candidates and that, therefore, it is necessary to establish a competitive process for the award of those positions, instituting the civil service career. This article also states that any positions that should not be subject to a competitive process owing to their nature and purpose must be stipulated by law.

Article 4 of the aforesaid Law indicates which persons are considered public servants for the purposes of its application.¹ Article 9 creates the National Civil Service Board and the National Civil Service Office as superior authorities responsible for its application. Article 19 sets out the functions of the aforesaid Board, which include, to approve or reject draft rules prepared by its director prior to their sanction by the President of the Republic, and to investigate and settle at the administrative level, on appeal, grievances with respect to recruitment, selection, appointment, assignments or reassignment of positions, transfers, suspensions, terminations, and dismissals. Article 21 provides that the National Civil Service Office is the executive body in charge of application of this Law,

² This meeting was held March 27 to 31, 2006, at OAS headquarters.

³ These documents was received by email on November 2, 2007, and can be found at: http://www.oas.org/juridico/spanish/mesicic2_gtm_inf_sc_sp.doc

Article 25 of which accords its Director important functions, such as to organize said Office, oversee the correct application of this Law and its regulations, organizing an administration system for public administration employees; and to recruit, select, and propose eligible candidates for competitive positions, in accordance with the precepts contained in this Law.

Article 31 of the aforesaid Law provides that government servants are divided into the following categories: 1. Exempt positions; 2. Non-competitive positions; and 3. Competitive positions. Article 32 states that Exempt positions are not subject to the provisions of this Law and lists the positions in this category;ⁱⁱ Article 33 mentions that non-competitive positions include the positions of: 1. Technical Adviser; 2. Legal Adviser; and, 3. Hospital Director, and states that servants in this category are subject to all of the provisions contained in this Law except those concerned with appointment and dismissal; Article 34 provides that competitive positions include all positions not covered by exempt and non-competitive positions as well as those specifically listed in the Competitive Positions Classification System set forth in this Law.ⁱⁱⁱ

The Civil Service Law sets out the admission requirements for competitive positions at Article 42.^{iv} For its part, Article 43 provides that the National Civil Service Office is responsible for the organization, calls for candidates, direction and holding of admission tests, and promotions, in accordance with this Law and its regulations;^v Article 45 contains rules on admission to examinations, the content of calls for candidates, and their publication, stipulating that they must be published at least 15 days before the date set by the Office for the examination by the means that it considers most appropriate; however, at all events, the notice shall be published in the Official Gazette and in one other broadly distributed national newspaper;^{vi} Article 46 provides that in order to be declared eligible, the candidate must score an average of at least 75% in the various tests that they take; Article 47 refers to examinations scores, notification of examined candidates, and the right of the latter to request rectification of any error in their scores and to appeal to National Civil Service Board if they believe themselves wronged in the admission process and test scores; Article 48 provides that the names of the persons who pass examinations shall be entered in the admission and promotion registers in descending order of the scores attained; and Article 50 states that the appointing authority shall choose the new servants from the roll of eligible candidates presented to it by the director of the National Civil Service Office within the period stipulated in the appropriate regulations.

Finally, Article 52 of the Civil Service Law provides that provisional or emergency appointments may be made for a non-extendable period of up to six months when, due to an absence or shortage of candidates as referred to at Article 51 of the Law or because of a duly corroborated emergency, it is impossible to fill vacancies in the manner prescribed by this Law. Article 53 provides that any appointment made in contravention of this Law and its regulations shall be null and void; and Article 89 sets out faults arising from infringements of this Law and its regulations.

- Governmental Decision 18-98 of the President of the Republic of 1998, which contains the Regulations of the Civil Service Law, Article 16 of which provides that the National Civil Service Office, in implementing the personnel selection process in coordination with ministries and other agencies of the executive branch, shall empower the latter to conduct a preselection process in the manner described in the said article.^{vii} Article 18 notes that the aforementioned Office, through ministries and agencies of the executive branch, shall invite those interested to participate in the competitive examination for vacant competitive positions through such communication mechanisms as it deems appropriate. Article 22 provides that those who pass the various exams in accordance with the established test score parameters or because they meet the necessary academic, work

experience, or other requirements considered necessary to occupy the post, shall be declared eligible candidates and their names entered in the registries of the National Civil Service Office, ministries and agencies of the executive branch in descending order of their results.

The aforementioned Regulations also indicate, at Article 29, that in order to fill vacant competitive positions open to candidates for first-time entry, re-entry, promotion, transfers and swaps, the Appointing Authority shall proceed to appoint the candidate selected from the roll of candidates declared eligible by the National Civil Service Office to which end the procedure stipulated therein shall be followed.

- Legal provisions applicable to public servants in the legislative branch, such as the following:

- The Civil Service Law of the Legislative Branch (Decree 44-86 of 1986, of the Congress of the Republic), Article 4 of which indicates who is considered an employee of the legislative branch for the purposes of this law;^{viii} Article 5 contains the basic principles recognized by the Law, including the right of all Guatemalans to apply for positions in the legislative branch, which shall be awarded exclusively on the basis of merit as regards capacity, suitability, and honesty, and without discrimination in the award of posts. This article also states that the application, admission, and candidate selection procedure shall be determined by the appropriate regulations and that positions in the legislative branch shall be adjudicated by means of a competitive process, bearing in mind the capacity, honesty, and morality of candidates.

Article 10 of the preceding law states that the Executive Board of the Congress and each of its members, within the scope of their jurisdiction, shall be the superior administrative authorities and shall submit to the plenary any matters whose nature requires that they be brought to its attention in accordance with the Constitution and the law. Article 11 states that all employees of the legislative branch, including those on the payroll and staff hired under contract, shall be appointed by the Speaker of the Congress, who is required to inform the Executive Board of all appointments.

The aforementioned Law, at Article 17, also determines which are competitive and non-competitive positions, stating that the Executive Board shall draw up a manual on the duties and responsibilities corresponding to each post and group them into categories, based on the factors of need, nature, and job requirements with regard to capacity, experience, education, merit, seniority, and such other complementary values as may be deemed relevant. This article adds that the presentation of criminal and police records shall not be necessary in order for prospective employees to be able to work in the legislative branch; merely that they be Guatemalan.⁴

Article 21 of this Law provides that any worker affected by an assignment or reassignment from a position shall have up to three days to submit a request for a review of their case by the Executive Board of the Congress, which shall issue a final decision within 30 days, following the presentation of an opinion by the Congressional Committee on Labor and Social Security.

⁴ The state under review reported, in its comments on the draft preliminary report on Guatemala for the second round of review, that “since January, 2008, the submission of criminal background information is a requirement for the hiring of administrative personnel in the legislative branch.” In addition, the country under review provided Memorandum No. SP-01/08-mg, dated March 12, 2008, in which the Director of Personnel of the Congress of the Republic expresses that, “by instruction from President Eduardo Maldonado, I request that each file containing a request for hiring, include the criminal and police background information.” This measure is not analyzed in this report since it was adopted after the deadline set by the Committee for supplying information for analysis (see section I of this report, “Summary of Information Received).

- The Regulations of the Civil Service Law of the Legislative Branch, adopted by the Executive Board of the Congress of the Republic in 1987, Article 4 of which provides that to occupy a competitive position, candidates must meet the basic requirements set forth in the classification schedule for the category of position in question and complete the selection procedure established in the Manual of General Standards and Procedures, and that candidates to non-competitive positions shall comply with the stipulations contained in the pertinent job classification schedule and supplementary instruments, without prejudice to other requirements set forth in this and other applicable laws. Article 6 refers to qualifications and general requirements for appointments and contracts.^{ix}

Article 9 of the above regulations provides that the unit in charge of personnel management shall coordinate the competitive staff recruitment and selection process and determine admission and promotion tests in accordance with the appropriate procedure. Article 10 states that for the purposes of the preceding article, competitive tests shall be used in keeping with the systems approved for that purpose by the Executive Board of the Legislative Branch, and that persons applying for non-competitive positions shall be exempt from admission or promotion tests but shall meet the qualifications and requirements established by the law, these regulations, and other applicable legal provisions, as well completing the prescribed selection process.

The aforesaid regulations also provide, at Article 11, that when a vacancy arises, the unit in charge of personnel management will prepare a formal vacancy announcement within two days after it arises and submit it to the Speaker of the legislative branch for approval. Article 11 adds that all vacancy announcements must state the exact terms, conditions, and requirements of the vacancy in question, as well as the opening and closing dates for candidates to submit applications, and that all matters regarding publication, disclosure and voiding of the call for candidates shall be determined in accordance with the Manual of Standards and Procedures.

The aforesaid legal instrument also mentions at Article 12 that, in order to be declared eligible, candidates shall attain the minimum scores set in the evaluation system or meet the requirements established by the law, the regulations, and other applicable provisions, according to the nature of the position, and indicates, at Article 13, that the unit in charge of personnel management shall keep an archive of records of eligible candidates for different categories of post, information on which shall be conveyed to the Office of the Speaker of the legislative branch for the appointment of permanent employees whether contracted or on the payroll.

Furthermore, Article 15 of the above-cited regulations states that employees shall be appointed in accordance with their labor relationship with the legislative branch, thus: a) Permanent Staff shall be those appointed to specific positions with an indefinite duration; b) Contracted Staff shall be appointed to specific positions of a temporary or transitional nature as well as for a particular project or service; c) payroll staff shall be appointed to specific positions of a temporary or transitional nature as well as for a particular project or service.

Article 17 of the aforesaid regulations provides that when appointments are of a provisional, emergency, or temporary nature, that fact shall be set down for the record in the decision. Article 24 states that a Classification Schedule shall be prepared for the purposes of application of the Civil Service Law of the Legislative Branch, which shall set out the duties and responsibilities of competitive and non-competitive positions and group said positions into categories. Article 27 provides that the Executive Board of the Legislative Branch shall make amendments to the schedule and conduct periodic reviews of all posts contained therein at least once every two years.

- The Organic Law of the Legislative Branch (Decree 63-94 of 1994, of the Congress of the Republic), Article 153 of which provides that the Congress shall draw up the rules on classification of positions and categories for permanent staff, budgeted for and according to payroll, taking into account the service needs and availability in the Congress. This article also states that service positions are classified as competitive and non-competitive and provides that the relations of the legislative branch with its administrative, technical, and services personnel shall be governed by a specific law in keeping with Article 170 of the Constitution. This provision also states that competitive service posts include the administrative and technical positions in Congress, and adds that competitive positions include the posts of: a) Legislative Director; b) Finance Director; c) Administrative Director; d) Director of Personnel; e) Director of the Internal Audit Office. This provision also provides that successful candidates in competitions or the posts listed therein shall be appointed by the Executive Board of the Congress with a vote in favor of two thirds of its total members and that these positions shall be awarded on the basis of the capacity, suitability, honesty, and integrity of candidates.

The above-cited law also provides at Article 154, that non-competitive positions include the following posts: a) Operatives, maintenance workers and janitors; b) Advisers to legislative committees and blocs; c) professional advisers and other individuals contracted for specific projects. Article 155 states that the relationship of advisers with legislative blocs and congressional committees is contractual in nature, governed by the Civil Code and not the Labor Code, and that their functions shall be determined by contracts signed with the Congress of the Republic and with the particular congressional committees and legislative blocs in each case.

- Legislative provisions and various other provisions applicable to public servants in the judicial branch, such as the following:

- The Judicial Career Law (Decree 41-99 of 1999, of the Congress of the Republic), Article 1 of which provides that the judicial career system governs entry, tenure, promotion, training, discipline, and other activities of judges, regardless of their category or rank, in order to ensure their dignity, independence, and professional excellence in the exercise of their judicial duties. Article 4 states that the supervisory bodies for the judicial career system are the Judicial Career Council, the Judicial Discipline Board, the application committees and the Institutional Training Unit. Article 6 contains the functions of the Judicial Career Council, which include issuing calls for applications, as referred to at Article 16 of this law, for competitions for entry to the judicial career by judges, regardless of their category

Article 10 of the preceding law sets out the powers of the application committees,^x and states that they are in charge of the examination of the application files prepared by the Judicial Career Council and any other papers presented to them for the purposes of preparing lists of candidates to sit on the Supreme Court of Justice, the Appellate Court and tribunals of the same rank in accordance with the provisions set forth in this law, and adds that, in order to ensure due transparency in the selection process and appropriate grading of the personal and professional merits of candidates, the committees, as part of the selection procedure, in addition to reviewing the credentials and data put forward by the Council, shall adopt such measures and procedures as they consider advisable and necessary, including the holding of public or private individual interviews. This article also provides that the list of candidates selected by the Application Committee is to be published in the Official Gazette and in at least two other widely distributed daily newspapers, and that it be forwarded to the Congress of the Republic at least 15 days before the constitutional term of office of the incumbent judges expires.

The aforesaid Law also states, at Article 13, that the judicial career system only encompasses those who exercise jurisdiction and powers in the administration of justice by constitutional mandate, dividing them into four categories or classes, with no order of seniority, as follows: a) Justices of the Supreme Court of Justice; b) Judges of the Appellate Court and other collegiate tribunals; c) Judges of first instance; d) Justices of the peace.

As regards entry to the judicial career system, the aforementioned law provides at Article 14 that this shall be by appointment of the Supreme Court of Justice in the case of judges, regardless of their category or rank, and by election by the Congress of the Republic in the case of appellate and supreme court judges, irrespective of their category. This article adds that all applicants to judgeships shall meet the requirements and qualifications set forth in the Constitution and laws and shall participate in the competition established in each case by the competent body. Article 15 sets out the requirements and qualifications to be met by applicants to judgeships.^{xi}

Article 16 of the aforesaid law refers to the announcement of competitions, and states that it is for the Judicial Career Council to convene competitions for admission to the judicial career system for judges, and provides that the announcement shall be published at least three times in the Official Gazette and in at least two other widely distributed daily newspapers at least 20 days before the prospective date of the competition and that the announcement shall indicate, *inter alia*, the legal, cultural, educational, and formal requirements to be met by candidates; the deadline, place, and schedule for obtaining the terms and conditions of the competition and submitting applications.^{xii}

The Judicial Career Law also governs, at Article 17, the preparation and publication of the list of candidates eligible to compete,^{xiii} and refers at Article 18 to the evaluation of candidates to judgeships by the Institutional Training Unit, and the preparation of the list of approved eligible candidates.^{xiv}

Finally, the Judicial Career Law governs, at Articles 19^{xv} and 21,^{xvi} respectively, the selection procedures for appointed and elected judges.

- The General Regulations of the Judicial Career Law (Decision 6-2000 adopted by the Supreme Court of Justice in 2000), Chapter I of which governs the composition, functions, and procedures of the Judicial Career Council; Chapter II of the General Regulations covers the composition, functions, and procedures of Judicial Discipline Boards, and Chapter III provides that the School of Judicial Studies is the Judicial Institutional Training Unit.

- The Civil Service Law of the Judicial Branch (Decree 48-99 of 1999, of the Congress of the Republic), Article 2 of which creates the career system for auxiliary staff and administrative and technical employees of the judicial branch. Article 4 creates the competitive examination system by which everyone is entitled to apply for the positions referred to in this Law (except those positions subject to free appointment and removal provided at Article 13) and adds that appointments shall be made exclusively on the basis of training, experience, capacity, and honesty.

Article 9 of the aforesaid Law provides that the President of the Supreme Court of Justice and of the Judicial Branch is the exclusive superior administrative authority of the civil service. Article 10 creates the Human Resources System for the purposes of administration of the civil service. Article 11 sets out the positions under the competitive examination system as well as those covered by the free appointment and removal system. Article 12 provides that the competitive examination system refers to the procedure for appointments to positions with permanent duties that are described as such, specifically in the Positions and Salaries Classification and Evaluation Manual in the Judicial

Branch. Article 13 provides that the free appointment and removal system includes positions of direct logistical support to the President of the Judicial Branch and Justices of the Supreme Court of Justice, that the positions shall be set out in the Job and Salary Classification System, and that in no circumstances shall these positions be part of the administrative career system.

The aforementioned Law also sets out, at Article 16, the admission requirements to the competitive examination system and states that, in order to join the career system for auxiliary judicial staff and administrative and technical employees, a person must be in full enjoyment of their civil and political rights and meet the requirements set out therein.^{xvii}

Article 17 of the above-cited Law concerns vacancy announcements and notes in this respect that a policy of open calls for candidates shall be observed in filling positions under the competitive examination system, with the aim of recruiting the best candidates through adequate disclosure. Article 18 provides that anyone may apply for a position in the judicial branch provided that they meet the requirements set forth in this Law and that, in order to ensure suitability in the selection process, public competitive examinations and prequalification processes shall be organized, noting that tests may be: a) oral; b) written; or, c) practical.

Article 19 of the Civil Service Law of the Judicial Branch provides that only those who meet the admission requirements and pass the respective tests shall be considered eligible. Article 20 states that eligible candidates shall be entered in a register and that the Human Resources System is responsible for their placement in strict descending order of their test scores. This article also states that when requested by the appointing authority,^{xviii} the aforesaid system shall forward a list of the 10 highest-scoring candidates, in descending order, provided that the number of candidates makes that possible.

Finally, the above-cited law refers at Article 29 to three classes of appointment: regular or ordinary, provisional, and temporary. Article 30 defines regular or ordinary appointments as those determined by the appointing authority after the requirements set forth in this law have been met and bearing in mind the system to which the position belongs.^{xix} Article 31 provides that when there is an absence or shortage of eligible candidates in the appropriate register or an urgent need in the service, a provisional appointment may be made which shall have a maximum duration of six months. Article 32 states that in the temporary absence of the incumbent, the appointing authority may make a temporary appointment not to exceed six months.

- The General Regulations of the Civil Service Law of the Judicial Branch, (Decision 31-2000 adopted by the Supreme Court of Justice in 2000), Article 4 of which provides, with respect to the competitive system, that for the purposes of Articles 3 and 12 of the law, vacancies shall be filled, first with judicial branch employees who pass the competitive examination mentioned in Article 25 of the Law and then, if any vacancies remain, through an open call for candidates issued in keeping with Article 17 of the Law.⁵ Article 11 of these regulations also provides that the types of recruitment for admission to the judicial branch competitive examination system are: a) Internal, which encompasses judicial branch employees who have applied for promotion or transfer; b) External, which applies to persons who do not work for the judicial branch and have submitted an employment application.

⁵ Article 25 of the Civil Service Law of the Judicial Branch provides for a competitive examination for promotion of judicial branch employees and officials.

Article 12 of the aforesaid regulations provides that the Human Resources System shall invite those interested to take part in the competitive examination process to fill positions in the judicial branch through the media that it deems most appropriate, providing information on the title of the vacant post, its position in the organizational structure, the principal duties, place of work, working hours, requirements in accordance with the Positions and Salaries Classification and Evaluation Manual, pay, and any other aspects deemed appropriate to include.

The aforementioned regulations govern, at Article 14,^{xx} the tests or exams to be held. Article 15 concerns the scoring system,^{xxi} and Article 17 provides that the Human Resources System, when the number of candidates so allows, shall present a list in descending order of the 10 highest-scoring candidates to the immediate superior of the vacant position, who, on the basis of interviews and evaluations, shall choose and recommend the candidate that they consider best suited to the appointing authority for the final decision. Article 17 adds that no one shall be appointed, promoted, or transferred unless they have taken part in the competitive examination.

- Legislative provisions and various other provisions applicable to public servants in the Office of the Attorney General, such as the following:

- The Organic Law of the Office of the Attorney General [*Ministerio Público*] (Decree 40-94 of 1994, of the Congress of the Republic), Article 59 of which provides that the Attorney General of the Republic shall adopt regulations governing the administrative staff career system. Article 75 creates the Career System of the Office of the Attorney General, and provides that appointments of district attorneys, divisional attorneys, prosecutors and assistant prosecutors shall be made based on the competitive examination of candidates, with the following taken into account: The requirements set forth in this law for occupying the respective post; 2. Records attesting to the candidate's particular suitability in areas connected with the position as well as their solid legal training; and, 3. Performance record in professional practice or as a prosecutor. This article adds that to evaluate these aspects a public oral hearing will be held to examine candidates on aspects relating to constitutional principles and laws in force and that the competition will be open to all candidates.

Article 76 of the aforesaid Law provides that the Council of the Office of the Attorney General will announce a public competition at least once a year to form a list of candidates for the various positions in the Office of the Attorney General and that the registration requirements shall be the same as those for the position to which the candidate aspires. This article also provides that candidates shall remain on the list for two years from the time of their inclusion therein and that the annual competition is designed exclusively to fill vacancies in the list and shall not be held unless there are vacancies therein.

Article 77 of the Law states that the Council of the Office of the Attorney General shall annually select from a roll of 10 candidates proposed by the Training Unit, a jury composed of five professionals of recognized integrity and that said jury shall evaluate candidates and issue an opinion indicating those who have been selected and those who have not. This article also provides that the jury shall prepare a merit list from those selected, starting with the person who obtained the highest rating and ending with the individual who obtained the lowest, and that a list shall be drawn up to fill the positions of district attorneys, divisional attorneys, prosecutors and assistant prosecutors.

The above-mentioned article also provides that the merit list shall be published on three occasions over a 15 day period in the Official Gazette and that the aforesaid opinion may void one or more of the vacancies to be filled in the next competition, and adds that if all the vacancies in the list for a

position are voided a special competition shall be held, and that any individual or organization of persons may challenge the inclusion of a candidate in the merit list within three days after its publication, on the grounds that they do not meet the requirements to occupy the position; such challenges are decided by the jury against which there is no possibility of appeal.

Article 78 of the aforesaid Organic Law provides that appointments to fill positions in the Office of the Attorney General shall be made by choosing candidates exclusively from the list in order of merit, unless the person concerned requests that the order be changed to their detriment. Article 79 states that the Council of the Office of the Attorney General is in charge of organizational and procedural aspects of competitions and shall draw up the relevant rules of procedure, make such modifications as may be necessary, and keep current the records of the candidates that comprise the respective lists.

Finally, the aforementioned law provides at Article 80 that the following shall be ineligible for admission to a career in the Office of the Attorney General: 1. Anyone who lacks sufficient physical and mental aptitude, as determined by professionals; 2. Anyone who has been disqualified from any public office or from practicing as an attorney or notary, or deprived of their rights as citizens, for the duration of their disqualification.

- Legislative provisions and various other provisions applicable to public servants of municipalities, such as the following:

- The Municipal Service Law (Decree 1-87 of 1987, of the Congress of the Republic), Article 3 of which recognizes fundamental principles, including the right of all Guatemalan citizens to apply for municipal posts, the award of which shall be based exclusively on merit as regards capacity, training, efficiency, and honesty. Accordingly, a competitive examination procedure must be created for filling posts, instituting the civil service career system and identifying by law those positions which, due to their nature and purposes, should remain outside the competitive examination process.

The preceding law, at Article 4, indicates who is considered a municipal employee;^{xxii} at Article 8, creates the Office of Municipal Human Resources for the purposes of its application; accords at Article 15 important functions to its director, including that of providing advisory services to municipalities on the correct application of this law and its regulations, organizing human resources management systems at the service of the municipal administration in keeping with the principles set forth in this law; and provides at Article 17, with respect to appointing authorities, that, unless otherwise provided in the Municipal Code, all appointments of municipal employees shall be made: a) in the case of the Municipal Secretary and Treasurer, by the Municipal Corporation; and, b) in the case of all other staff, by the respective Municipal Mayor in accordance with the internal regulations approved by the Municipal Council. Article 17 adds that municipalities shall consult the Human Resources Advisory Office on the qualifications to be met to discharge the duties of any posts and may also request the proposition of candidates for vacant posts.

Article 18 of the aforementioned Law provides that for the purposes of application of the Law and its Regulations, as well as with other provisions connected with the Municipal Human Resources Advisory Office, positions in the service of municipalities are divided into the following categories: a) Positions of trust or subject to free appointment and removal; and, b) Career positions. Article 19 provides that employees who occupy positions of trust or those subject to free appointment and removal are not governed by the provisions on appointment and dismissal contained in this law and identifies the positions in this category.^{xxiii} Article 20 states that career positions are those that do not

come under the preceding article and are subject to all of the provisions contained in this law and its Regulations.

Article 21 of the aforesaid Municipal Service Law provides that the Municipal Human Resources Advisory Office shall create a Job Classification System for positions in the municipal service, which shall be divided into categories, as well as keeping an up-to-date specifications manual on categories and positions that defines the nature of the duties, powers, minimum training and experience requirements, and regulations that set administration standards for the Job Classification System to be taken into account by municipalities for hiring purposes. Article 26 refers to admission requirements for the career positions.^{xxiv}

The Municipal Service Law, provides at Article 27 that each municipality shall be responsible for the organization, announcement, management, and implementation of admission and promotion tests in accordance with this law and its regulations and that to that end it may request the services of the Municipal Human Resources Advisory Office. Article 28 states that tests shall be open and designed to determine the capacity, aptitude, and skills of candidates in performing the duties of the post in question, which may be oral, written, mixed, or on-the-job. Article 31 provides that candidates shall only be considered eligible and entered in the appropriate register if they obtain a minimum average score of 65% in the various tests they take.

Article 32 of the aforementioned law provides that candidates shall be notified within 10 calendar days counted from the date of the examinations of their scores therein and their entry in the register of eligible candidates, assuming they pass, and that anyone who has participated in the competition may request a review of their examinations and, as appropriate, ask that the results be rectified. Furthermore, their scores shall be corrected if an error is detected in them as a result of the review. This article also states that anyone who considers themselves wronged by the decision of municipalities with respect to admission and examination scores may file an appeal to vacate the decision in accordance with the law.

Article 34 of the above law provides that municipalities in the country shall organize their admission and promotion registers and that the names of the persons who pass the exams shall be entered in the appropriate registers in descending order of the scores obtained. Article 36 states that in filling any vacancies that arise in the municipal service career system, the appropriate appointing authority may request the Municipal Human Resources Advisory Office for a roll of all eligible candidates for the position in question.

Finally, the aforementioned Municipal Service Law refers at Article 37 to provisional and emergency appointments and notes in this respect that when, as a result of a duly corroborated emergency, it is impossible to fill vacancies in the manner prescribed by this Law, the appointing authority may appoint any person who meets the requirements for the category of position in question.

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

The constitutional, legal and various other provisions governing the principal hiring systems for public officials in the country under review that the Committee has examined, on the basis of the information made available to it, can be seen to represent a set of measures that are relevant for promoting the purposes of the Convention.

Notwithstanding the foregoing, the Committee believes it would be appropriate to offer a number of comments regarding the advisability for the country to give consideration to the expansion, development and adjustment of certain provisions related to those systems.

- As regards the executive branch, the Committee observes the following:

To begin with, the Committee notes that though Article 4 of the Civil Service Law considers as a public servant for the purposes of its application, anyone who holds a position in the public administration, the scope of application of the aforesaid law does not cover all public servants engaged by the executive branch, given that there are numerous agencies and entities that belong to it that have their own personnel administration systems and which, therefore, are not subject to the public servant employment provisions contained in the Civil Service Law, as the country's observations in that regard in its response show.⁶

While the Committee understands that the existence of special personnel administration systems may be rooted in the Constitution inasmuch as Article 108 thereof provides for the existence of such systems, it also believes that it would be advisable for the country under the review to consider the adoption of appropriate measures to ensure the requisite harmony that the management of different public servant employment systems requires, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention. The Committee will formulate recommendation in this regard (see Recommendation 1.1.1(a) in Chapter III, Section 1.1 of this report).

With respect to the foregoing, it should be noted that the document presented by the civil society organization "*Acción Ciudadana*" mentions the following:⁷

"However, the above-described system is not generally applicable, even among institutions in the executive branch. There are around 45 different systems that operate in parallel to the Civil Service Law and, therefore, a large number of public officials are under the aegis of these systems, including the military and police, teachers, judicial and legislative branch employees, and the employees of all 332 municipalities in the country (see Annex 1)."

In second place, the Committee notes that Article 45 of the Civil Service Law provides that calls for candidates shall be published at least 15 days before the date set by the National Civil Service Office for the examination by the means that it considers most appropriate, and that at all events the notice shall be published in the Official Gazette and in one other broadly distributed national newspaper. However, Article 18 of the Regulations of that Law does not mention the aforesaid time limit for publication of calls for candidates or the obligation that it be published in the Official Gazette and in another broadly distributed national newspaper; it merely states in that respect that the aforementioned Office, through ministries and departments of the executive branch, shall invite persons interested to participate in the examination for vacancies in competitive positions through such communication mechanisms as it deems appropriate.

With respect to the foregoing, the Committee considers that it would be advisable for the country under review to consider the adoption of appropriate measures to make the provisions on publication of calls for candidates for vacant posts in competitive positions contained in Article 18 of the

⁶ Response of Guatemala to the Questionnaire, pp. 3 to 5

⁷ Document "Independent Follow-Up Report on Implementation of the Inter-American Convention against Corruption in Guatemala," presented by "*Acción Ciudadana*". p. 4

Regulations of the Civil Service Law consistent with the provisions in that respect set forth in Article 45 of the Civil Service Law, so as to make clear the obligation to observe the time limit set by the latter article for said publication, in addition to the requirement to do so, whatever the case, in the Official Gazette and in another broadly distributed newspaper, without prejudice to the possibility of resorting to such other communication mechanisms as may be deemed appropriate. The Committee will formulate a recommendation in this regard (see Recommendation 1.1.1(b) in Chapter III, Section 1.1 of this report).

It should be noted in this regard that in its response, the country under review made the following observations: “For the most part, the human resources recruitment and selection process is managed by the Human Resources Offices at the institutions concerned, which hold internal and external calls for candidates, as the circumstances warrant. Government institutions generally use broad-circulation print media to publicize public calls for candidates to fill vacancies.”⁸

Third, the Committee observes that though Article 48 of the Civil Service Law and, in similar fashion, Article 22 of its Regulations provide that the names of the persons who pass examinations shall be entered in the admission and promotion registers of the National Civil Service Office in descending order of the scores attained, both Article 50 of said Law and Article 29 of its Regulations, permit the appointing authority to choose the new servant from the roll of eligible candidates presented to it by the director of the aforesaid Office, without mentioning the requirement that this selection process take the order of the scores obtained into account.

With respect to the foregoing, in light of the principle of equity provided in the Convention, and bearing in mind, furthermore, that the aforementioned articles contained in the Civil Service Law and its Regulations refer to a merit-based civil service admissions system, the Committee is of the opinion that the country under review should consider adopting provisions that require the appointing authority to bear in mind the order of scores attained by eligible candidates in the competition, in order to select the one who should occupy the position to be filled. The Committee will formulate a recommendation in this regard (see Recommendation 1.1.1(c) in Chapter III, Section 1.1 of this report).

- As regards the legislative branch, the Committee observes the following:

First, the Committee notes that Article 17 of the Civil Service Law of the Legislative Branch provides that the presentation of criminal and police records shall not be necessary in order for prospective employees to exercise their right to work in the legislative branch.

It should be noted in this respect, that all of the other civil service admissions systems in the country under review, which have been examined in this report, contain provisions which require the presentation of records.

On this point, since one of the purposes of the Convention is to prevent corruption, the Committee believes it would be useful for the country under review to consider harmonizing the provisions regarding the qualifications and experience required for entry into the legislative branch with the rules established by the other systems for admission to public service in force in the country that have been examined in this report, thereby ensuring that uniform criteria are applied to such matters. The Committee will make a recommendation on this point (see Recommendation 1.1.2, paragraph (a), in section 1.1 of Chapter III of this Report).

⁸ Response of Guatemala to the Questionnaire, p. 12

Second, the Committee observes that Article 4 of the Regulations of the Civil Service Law of the Legislative Branch provides that in order to occupy a competitive position, candidates must meet the basic requirements set forth in the classification schedule for the category of position in question and complete the selection procedure established in the Manual of General Standards and Procedures. Furthermore, Article 11 provides that all matters regarding publication, disclosure and voiding of the call for candidates shall be determined in accordance with said Manual. However, according to the information provided by the country under review in this regard,⁹ this Manual does not yet exist. Accordingly, the Committee will make a recommendation to the effect that it consider expediting its adoption, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention, and that the aforementioned aspects regarding the selection mechanism and calls for candidates be included therein (see Recommendation 1.1.2(b) in Chapter III, Section 1.1 of this report).

Third, the Committee observes that Article 12 of the Regulations of the Civil Service Law of the Legislative Branch provides that, in order to be declared eligible, candidates shall attain the minimum scores set in the evaluation system or meet the requirements established by the law, the regulations, and other applicable provisions, according to the nature of the position, and that Article 13 of the aforesaid Regulations indicates that the unit in charge of personnel management shall keep an archive of records of eligible candidates for different categories of post, information on which shall be conveyed to the Office of the Speaker of the legislative branch for the appointment of permanent employees whether contracted or on the payroll. However, there is no provision in the aforementioned legal text that, in the case of competitive positions, an order of preference must be established in accordance with the scores obtained in the evaluation, or that the candidate with the best evaluation should be selected.

With respect to the foregoing, the Committee is of the opinion, that in light of the principle of equity provided in the Convention, and in order to ensure the effectiveness of the merit-based civil service admissions system, the country under review should consider the adoption of provisions, in the case of competitive positions, that require an order of preference to be established in registers of eligible candidates, in keeping with their scores in the evaluation, and that the candidate with the best evaluation should be selected. The Committee will formulate a recommendation in this regard (see Recommendation 1.1.2(c) in Chapter III, Section 1.1 of this report).

Fourth, the Committee notes that though Article 17 of the Regulations of the Civil Service Law of the Legislative Branch provides that when appointments are of a provisional, emergency, or temporary nature, that fact shall be set down for the record in the decision, no maximum time limit is provided for such appointments, which would permit the indefinite engagement of civil servants through appointments that are in essence temporary.

With respect to the foregoing, the Committee considers that it would be advisable for the country under review to consider setting a maximum time limit for the provisional, emergency, or temporary appointments referred to in the aforementioned article. The Committee will formulate a recommendation in this regard (see Recommendation 1.1.2(d) in Chapter III, Section 1.1 of this report).

Fifth, the Committee notes that neither the Civil Service Law of the Legislative Branch nor its Regulations, offer any challenge mechanisms against decisions adopted in the selection process

⁹ Response to a request for information from the Technical Secretariat in this regard, submitted by electronic mail on February 20, 2008.

governed by these standards. The Committee believes that the existence of such challenge mechanisms would help to ensure the effectiveness of the aforesaid process and, therefore, it will formulate a recommendation to the country under review to the effect that it consider its introduction (see Recommendation 1.1.2(e) in Chapter III, Section 1.1 of this report).

- As regards the judicial branch, the Committee observes the following:

First, the Committee notes that Article 12 of the Civil Service Law of the Judicial Branch provides that the competitive examination system refers to the procedure for appointments to positions with permanent duties that are described as such, specifically in the Positions and Salaries Classification and Evaluation Manual in the Judicial Branch.

With respect to the foregoing, the Committee is of the opinion that, in light of the principle of equity provided in the Convention, and bearing in mind, moreover, that Article 12 of the Civil Service Law of the Judicial Branch refers to a merit-based civil service admissions system, the country under review should consider the identification in the text of said law of the positions that would come under the competitive examination system, or the inclusion of a provision therein to the effect that the competitive examination system shall be deemed to cover all posts not classed as subject to free appointment and removal in accordance with Article 13 of the aforesaid law, without making the foregoing subject to the requirement that they be specifically included in the competitive examination system in the Manual mentioned therein. The Committee believes that this would ensure the appropriate stability of a merit-based civil service admissions system, inasmuch as the determination of the posts included in the system would not be subject to the modifications that may be easily made to the aforesaid Manual. The Committee will formulate a recommendation in this regard (see Recommendation 1.1.3(a) in Chapter III, Section 1.1 of this report).

Second, the Committee notes that though Article 17 of the Civil Service Law of the Judicial Branch provides that a policy of open calls for candidates shall be followed in filling positions under the competitive examination system, designed to recruit the best candidates through adequate disclosure, there is no deadline set between the publication of the call for candidates and the start of the selection process, nor are the mechanisms to be used for its disclosure precisely identified. The Committee believes that the introduction of such a deadline as well as a precise identification of the aforementioned disclosure mechanisms, would help to ensure the effectiveness of the call for candidates in the selection process and therefore, it will formulate a recommendation to the country under review to the effect that it consider their introduction (see Recommendation 1.1.3(b) in Chapter III, Section 1.1 of this report).

Third, the Committee notes that Article 20 of the Civil Service Law of the Judicial Branch and Article 17 of its Regulations provide that eligible candidates shall be entered in a register and that the Human Resources System is responsible for their placement in strict descending order of their test scores and that when requested by the appointing authority, the aforesaid system shall forward a list of the 10 highest-scoring candidates, in descending order. However, both Article 30 of the aforesaid Law and Article 17 of its Regulations permit the appointing authority to appoint the new servant based on a recommendation from the immediate superior of the competitive position to be filled as to the eligible candidate whom they consider best suited for the post, without stipulating that this selection take into account the order of scores obtained by those candidates.

With respect to the foregoing, the Committee is of the opinion that, in light of the principle of equity provided in the Convention, and in order to ensure the effectiveness of the merit-based civil service

admissions system, the country under review should consider, with respect to positions to be filled through the competitive examination system, the introduction of a provision that makes it a requirement, in selecting the person to occupy the vacant post, to take into account the order of scores obtained by the candidates in the competition. The Committee will formulate a recommendation in this regard (see Recommendation 1.1.3(c) in Chapter III, Section 1.1 of this report).

Fourth, the Committee observes that neither the Judicial Career Law, nor the Civil Service Law of the Judicial Branch, offer any challenge mechanisms against decisions adopted in the selection processes governed by these laws. The Committee believes that the existence of such challenge mechanisms would help to ensure the effectiveness of the aforesaid processes and, therefore, it will formulate a recommendation to the country under review to the effect that it consider their introduction (see Recommendation 1.1.3(d) in Chapter III, Section 1.1 of this report).

- As regards the Office of the Attorney General, the Committee observes the following:

First, the Committee notes that although Article 59 of the Organic Law of the Office of the Attorney General states that the Attorney General of the Republic shall adopt regulations governing the administrative staff career system, according to information supplied by the country under review in this respect,¹⁰ those rules have yet to be adopted. Accordingly, the Committee will formulate a recommendation to the effect that it consider their prompt adoption, taking into account, to that end, the principles of openness, equity and efficiency enshrined in the Convention (see Recommendation 1.1.4(a) in Chapter III, Section 1.1 of this report).

Second, the Committee notes that although Article 76 of the Organic Law of the Office of the Attorney General provides that the Council of the Office of the Attorney General will announce a public competition at least once a year to form a list of candidates for the various positions therein, there is no deadline set between the publication of the call for candidates and start of the selection process, nor are the mechanisms to be used for its disclosure precisely identified. The Committee believes that the introduction of such a deadline as well as a precise identification of the aforementioned disclosure mechanisms would help to ensure the effectiveness of the call for candidates in the selection process and, therefore, it will formulate a recommendation to the country under review to that effect (see Recommendation 1.1.4(b) in Chapter III, Section 1.1 of this report).

Third, the Committee notes that although Article 77 of the Organic Law of the Office of the Attorney General provides that any individual or organization of persons may challenge the inclusion of a candidate in the merit list to be drawn up in the wake of the competition, on the grounds that they do not meet the requirements to occupy the position; however, no challenge mechanism is provided against any other decisions adopted in the selection process, such as the results of the evaluations or non-inclusion of candidates in the list. The Committee believes that the existence of such challenge mechanisms would help to ensure the effectiveness of the aforesaid process and, therefore, it will formulate a recommendation to the country under review to the effect that it consider their introduction (see Recommendation 1.1.4(c) in Chapter III, Section 1.1 of this report).

- As regards municipalities, the Committee observes the following:

First, the Committee notes that although the Municipal Service Law, at Article 8, creates the Municipal Human Resources Advisory Office for the purposes of its application, and in other articles

¹⁰ Response to a request for information from the Technical Secretariat in this regard, submitted by electronic mail on February 21, 2008.

assigns it important functions to that end, according to comments made by the country under review in its response to the Questionnaire, this Office is not yet operational:¹¹

“The municipalities of the Republic, which number 332 in total, are not part of the Civil Service System. They are governed by a general law -the Municipal Service Law- which was enacted in 1987. The aforesaid law provides for the creation of a Municipal Human Resources Advisory Office, which would have the same functions as ONSEC, except at the municipal level. This Office has not yet begun to operate and, therefore, despite the existence of the aforementioned law, municipal employees are essentially unprotected when it comes to their rights, do not necessarily perform their obligations, and act in accordance with internal regulations adopted by a number of municipalities. It should be added that despite being part of the public sector, the Constitution grants municipalities autonomy and, therefore, the executive branch is required to allocate to them a financial contribution equivalent to 10% of the regular State budget, although they have no say in that regard.”

With respect to the foregoing, the Committee considers that given the fundamental importance of the functioning of the Municipal Human Resources Advisory Office for the application of the Municipal Service Law, which creates the Office, the country under review should consider adopting, through the appropriate authority, the measures necessary to bring it into operation and to supply it with the resources required for that purpose. The Committee will formulate a recommendation in this regard (see Recommendation 1.1.5(a) in Chapter III, Section 1.1 of this report).

Second, the Committee notes that although Article 27 of the Municipal Service Law provides that each municipality shall be responsible for the organization, announcement, management, and implementation of admission and promotion tests in accordance with this law and its regulations, there is no deadline set between the publication of the call for candidates and start of the selection process, nor are the mechanisms to be used for its disclosure precisely identified. The Committee believes that the introduction of such a deadline as well as a precise identification of the aforementioned disclosure mechanisms, would help to ensure the effectiveness of the call for candidates in the selection process and therefore, it will formulate a recommendation to the country under review to that effect (see Recommendation 1.1.4(b) in Chapter III, Section 1.1 of this report).

Third, the Committee notes that Article 34 of the Municipal Service Law provides that municipalities in the country shall organize their admission and promotion registers and that the names of the persons who pass the exams shall be entered in the appropriate registers in descending order of the scores obtained; and that Article 36 of the same law states that in filling any vacancies that arise in the municipal service career system, the appropriate appointing authority may request the Municipal Human Resources Advisory Office for a roll of all eligible candidates for the position in question. However, the above-cited law contains no provision that makes it a requirement, in selecting the person to occupy the position to be filled, to take account of the order of scores obtained by said candidates.

With respect to the foregoing, the Committee is of the opinion that, in light of the principle of equity provided in the Convention, and in order to ensure the effectiveness of the merit-based civil service admissions system, the country under review should consider adopting provisions that make it a requirement, in the case of municipal service career positions, to bear in mind the order of scores attained by candidates in the competition when selecting who should occupy the position to be filled.

¹¹ Response of Guatemala to the Questionnaire, p. 5

The Committee will formulate a recommendation in this regard (see Recommendation 1.1.5(c) in Chapter III, Section 1.1 of this report).

Fourth, the Committee observes that while Article 37 of the Municipal Service Law, refers to provisional and emergency appointments, and notes in this respect that when, as a result of a duly corroborated emergency, it is impossible to fill vacancies in the manner prescribed by this Law the appointing authority may appoint any person who meets the requirements for the category of position in question, no maximum time limit is provided for such appointments, which would permit the indefinite engagement of employees through appointments that are in essence temporary.

With respect to the foregoing, the Committee considers that it would be advisable for the country under review to consider setting a maximum time-limit for the provisional and emergency appointments referred to in the aforementioned article. The Committee will formulate a recommendation in this regard (see Recommendation 1.1.5(d) in Chapter III, Section 1.1 of this report).

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

The Republic of Guatemala supplied the following information in its reply to the Questionnaire on results in the framework of the executive branch:¹²

- A statistical table on measures adopted by the National Civil Service Office from 2005 to 2007, including those relating to “Personnel Recruitment,” which mention the number of “Evaluations by competitive examination” and “Résumé Evaluations” carried out in that period. This table is available at: http://www.oas.org/juridico/spanish/mesicic2_gtm_sp.htm

- A statistical table from the National Civil Service Office on “Number of positions for headings 011 and 022 by Ministry, Secretariat, and other agencies of the executive branch,” as of September 2007. This table is available at: http://www.oas.org/juridico/spanish/mesicic2_gtm_sp.htm

- A statistical table from the National Civil Service Office, concerning decentralized entities under the administration of said Office, on “Number of positions according to labor relationship, by entity,” as of September 2007, available at: http://www.oas.org/juridico/spanish/mesicic2_gtm_sp.htm

The Committee considers that the foregoing information serves to establish that the National Civil Service Office has carried out the evaluations mentioned in the first of the aforementioned statistical tables and that the Office has records on the number of positions in the entities mentioned in the two other statistical tables.

The country under review also included the following comments in its response to the Questionnaire:¹³

“The National Civil Service Office manages the human resources database, from which it is possible to supply, on request, the executive branch with candidates who are eligible to occupy positions in the public administration, in order to facilitate admission to competitive positions. However, it is important to mention that as a result of political interference, the number of candidates hired by the

¹² Response of Guatemala to the Questionnaire, pp. 13 to 16

¹³ Response of Guatemala to the Questionnaire, pp. 11 and 12

competitive examination process has declined in comparison to the numbers hired by non-competitive processes, thus limiting merit-based admissions to the civil service.”

In light of the foregoing, the Committee believes that the country under review should consider adopting appropriate measures to guarantee the effectiveness of the merit-based civil service admissions system by ensuring the use, wherever appropriate, of the competitive examination selection process, in accordance with statutory provisions (see Recommendation 1.1.1(d) in Chapter III, Section 1.1 of this report).

Finally, in addition to highlighting the importance of replying in full to the questions on results in the questionnaire, given that it does not have information on the legislative and judicial branches, the Office of the Attorney General, or the municipalities, that would allow a comprehensive evaluation of the results of those organs and entities in this area, the Committee will formulate a recommendation to them in that regard (see General Recommendation 4.2 in Chapter III of this report).

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 Guatemala has a series of provisions regarding the systems referred to, notably:

- Legislative provisions and various other provisions applicable to all State entities, including the following:

- The Law on State Contracting (Decree 57-92 of 1992, of the Congress of the Republic),¹⁴ Article 1 of which provides that the purchase, sale, and procurement of all goods, supplies, works and services required by the different branches of government, their decentralized autonomous entities, implementing units, municipalities, and state- or municipal-owned companies are governed by this Law and its Regulations. Article 1 of the Law also states that the provisions contained in this Law and its Regulations in this area, shall be applied in a supplementary manner to the provisions contained in the international agreements and treaties to which the Republic of Guatemala is a party, provided that the former do not run contrary to the latter.

The foregoing Law identifies at Article 9 the superior authorities^{xxv} which appoint the members of the Tender Board and approve the contract award in all tender processes. Article 10 provides that the Tender Board and/or the Purchasing Board are the organs with exclusive authority, respectively, to receive and grade bids and award the contract. Article 11 provides that the tender board shall be composed of five members appointed by the superior administrative authority, who, preferably, shall be officials of the contracting entity. Articles 12, 13, and 14, respectively, set out the grounds for ineligibility, exemption, and recusal of said members. Article 15 provides that the Purchasing Board shall be composed of three members who shall be officials of the contracting entity and appointed by the superior administrative authority. Article 16 of the Law states that said Board shall have the same powers, functions, responsibilities and duties as the Tender Board.

Article 17 of the Law states that when the total amount of the goods, supplies and works exceeds the quantities set forth in Article 38,^{xxvi} the procurement or contract shall be conducted by Public Tender,

¹⁴ The Law on State Contracting was reformed by Congressional Decrees 20-97, 29-2001, 34-2001, 73-2001, and 11-2006. The version of the law examined in this report incorporates the amendments introduced by those decrees.

barring the exceptions contained in Title III, Chapter III (Articles 43, 44, and 45) of the Law.^{xxvii} This provision adds that if the amount is lower than that sum, the operation shall be subject to the requirements of the purchasing or the direct purchase method, in accordance with this Law and its Regulations.

Article 18 of the aforementioned law refers to the tender documents, and provides that the following documents, as appropriate, shall be drawn up in order to carry out a Public Tender: 1. Terms and conditions of tender; 2. General specifications; 3. Technical specifications; 4. Special provisions; and, 5. Construction drawings, in the case of works projects. Article 19 also sets out requirements for the terms and conditions of tender,^{xxviii} mentioning, *inter alia*, the guidelines to be followed by the tender board in grading bids submitted, and noting that those requirements shall also apply, to the extent appropriate, to the purchasing method, preparation of terms of reference, and contracting in the case of the exceptions contained in Article 44 of this Law.

Article 23 of the Law on State Contracting provides that calls to tender shall be published at least twice in the Official Gazette and twice in one other broadly distributed newspaper, as well as in the State Contracts and Procurement System (GUATECOMPRAS), with an interval of not more than fifteen (15) business days between the publication of the two notices. This article adds that there must be an interval of at least forty (40) days between the publication of the last notice and the date set for the submission and receipt of bids.

Article 28 of the aforementioned Law states that the following criteria shall be used in determining which bid is most advisable and favorable to the interests of the State: quality, price, time, characteristics and other requirements set out in the terms and conditions, which shall also prescribe the percentage assigned to each of the aforesaid elements, unless the price is requested, in which case the decision shall go to the lowest bid. This Article adds that in the case of works projects, the Board shall take into account the official estimated total cost. Article 29 refers to integration of the official price in the case of works projects. Article 33 provides that the Board shall award the tender to the bidder that, having conformed to the requirements and conditions set forth in the terms of tender, offers the bid that best suits the interests of the State. Article 35 provides that the Board shall appropriately notify each of the bidders within three days after the reasoned decision is issued. Finally, Article 36 states that the Board shall have two days after its decision becomes final in which to forward the dossier to the superior authority, which shall approve or reject the decision and, in the event of the latter, order, with a duly reasoned explanation, a review of said decision based on the observations that it puts forward.^{xxix}

Article 38 of the aforesaid Law provides that when the price of the goods, works, or supplies, or the remuneration for services, is greater than thirty thousand quetzals (Q. 30,000.00) but less than the following amounts,^{xxx} the procurement or contract may be conducted by the purchasing method, as follows: a) In the case of municipalities, up to nine hundred thousand quetzals (Q. 900,000.00); b) In the case of the State and other entities up to nine hundred thousand quetzals (Q. 900,000.00). This provision adds that under the purchasing system, the power to approve forms, appoint the board, and approve the award, rests with the administrative authorities immediately senior to those mentioned in Article 9 of this Law (Superior Authorities) and that if the goods, supplies, or remuneration for services are provided for in the Open Contract, then the purchasing method shall be in order and, should it proceed, conducted on the liability of the official who authorized it.

Article 39 of the Law on State Contracting provides that the purchasing form shall include at least three firm bids from providers who engage permanently in the line of business with which the

procurement by tender or purchase is concerned; are legally incorporated for that purpose, and are in a position to sell or subcontract the goods, supplies, works, or services required. Article 40 of this Law indicates how bids should be submitted,^{xxxii} while Article 42 provides that, as appropriate, the provisions on tendering shall apply in a supplementary manner to the rules on purchasing.

The Law on State Contracting refers at Article 43 to Direct Purchase, saying that any procurement operation carried out in a single act, with one person and for a price of up to thirty thousand quetzals (Q. 30,000.00), shall be conducted under the liability and with the prior approval of the superior administrative authority of the entity concerned, taking into account the price, quality, delivery time, and other circumstances that favor the interests of the State, and its decentralized and autonomous agencies, according to the procedure determined by the said authority. This provision adds that in the absence of genuine offers, as governed by Article 32 of this Law,^{xxxiii} the direct purchase method may be used, without regard to the thresholds set forth in Article 38.

Article 46 of the aforesaid Law deals with Open Contracts and exempts all goods and supplies purchases made by the branches of government and agencies mentioned in Article 1 of this Law from tender and purchasing requirements when such purchases are made directly from suppliers with which the Ministry of Public Finance, following supplier qualification, price comparison, and award of the various items, has entered into open contracts. This provision adds that the Regulations of this Law shall govern all aspects connected with such matters.

Articles 64, 65, 66, and 67 provide for the bid bond, performance bond, advance payment bond, and a bond guaranteeing the conservation of the work, its quality, or operation, to be put up by the contractor. Articles 71, 72, 73, and 74 refer to the registers for Prequalified Works Contractors, Prequalified Consultants, Providers, and Contracts. Article 75 provides, for the purposes of the Contracts Register, that, in the event of the approval, nonperformance, cancellation, rescission, or annulment of a contract, the contracting entity shall forward a copy of the relevant decision to the Office of the Comptroller General for registration, control, and oversight purposes. Article 76 states that anyone who wishes to participate in public tender or purchasing procurement processes must be entered in the appropriate register of prequalified persons.

Article 80 of the aforesaid law lists the persons who are ineligible to participate in purchasing or public tender processes or from contracting with the State.^{xxxiii} Articles 81 and 82 set forth penalties for all public officials or employees who improperly divide up contracts in order to avoid the purchasing or public tender methods, as well as for those who breach their obligations under this Law and its Regulations. Article 83 refers to other infringements and states that any other infringements of this Law or its regulations committed by public officials and employees, as well as any infringements committed by anyone directly or indirectly involved in the contracting process, shall give rise to a fine of up to the equivalent of five percent (5%) of the total value of the contract, without prejudice to their liability to legal action. Article 88 provides that the financial penalties referred to in this Law and its regulations shall be imposed by the Office of the Comptroller General or by the Office of the Superintendent of Banking, as appropriate, when they concern State officials or employees, and that when they concern private citizens the fine shall be imposed by the appropriate superior authority in accordance with this Law.

Finally, Article 99 of the Law on State Contracting provides that a motion for annulment [*recurso de revocatoria*] against decisions adopted by a superior administrative authority may be brought with a higher-ranked authority within the same ministry or decentralized or autonomous entity. Article 100 provides for a motion for reversal [*recurso de reposición*] to be brought against decisions adopted by

ministries and those adopted by individual or collegiate superior administrative authorities of decentralized or autonomous entities. Article 101 states that the foregoing challenges may only be introduced in government procurement processes under this Law and that those challenges shall exhaust administrative remedies. Article 102 deals with the submission of disputes to the jurisdiction of the Contentious Administrative Tribunal once administrative and conciliation proceedings have been exhausted.^{xxxiv}

- The Regulations of the Law on State Contracting (Governmental Decision No. 1056-92 of 1992, of the President of the Republic),¹⁵ Article 8 of which sets out the minimum contents of calls to tender and provides that the branches of government, their decentralized and autonomous entities, implementing units, municipalities, state-owned or municipal companies and all entities subject to this Law, prior to the procedure set forth in the Law and its Regulations, shall arrange for and publish in the Government Procurement Information System (GUATECOMPRAS) notices and calls to tender as well as all information connected with the purchase, sale, and contracting of goods, supplies, works, and services of which they have need, and that said information shall be of a public nature and available at the Internet website, www.guatecompras.gt. This provision also states that the Ministry of Public Finance, through the Government Procurement Regulatory Department,¹⁶ shall determine the dates, standards, procedures, technical matters and aspects pertaining to security and liability governing the launch and use of the aforesaid system.

Article 16 of the aforesaid regulations refers to the requirements to be met by bidders in procurement by the purchasing method; Article 16 bis concerns the submission of the purchasing form and other relevant documents for those interested in the purchasing process, and provides that the form may be submitted electronically, (via GUATECOMPRAS) or in paper form. Article 18 deals with necessary and urgent procurement operations to resolve situations of national interest or social benefit, and provides that the adoption of the decision referred to in Article 44 (1.3) of the Law on State Contracting¹⁷ shall require the existence of Terms and Conditions of Procurement, General and Technical Specifications, Special Provisions and a source of financing for the procurement of goods, supplies, and services. Furthermore, in the case of works procurement, there shall also exist a clearly defined project that has land for its construction, studies, designs, and construction drawings, and meets all the requirements necessary to ensure execution of the project with the applicable engineering techniques, satisfying the need with the urgency required. The article also provides that adoption of the decision shall require a prior favorable opinion from all of the entities mentioned in said article.^{xxxv}

- Law of Administrative Disputes (Decree No. 119-96 of the Congress of the Republic), Article 7 of which provides for revocation remedies against resolutions adopted by an administrative authority that has a hierarchical superior within the same ministry or decentralized/autonomous agency; Article 9 of which provides for replacement remedies against resolutions adopted by ministries and against those adopted by hierarchically superior administrative authorities, individual and collegiate alike, within decentralized and autonomous agencies; and Article 17 of which states that these

¹⁵ The Regulations of the Law on State Contracting have been reformed by several different Governmental Decisions, *inter alia*, 487-94, 644-2005, 368-2006, 401-2006, 512-2006 and 151-2007. The version of the law examined in this report incorporates the amendments introduced by those decisions.

¹⁶ The Law of the Executive Branch (Decree 114-97) indicates at Article 35(t) that one of the functions of the Ministry of Public Finance is to “Coordinate the procurement system of the central government and its decentralized and autonomous entities.”

¹⁷ Included among the exceptions to the public tender and purchasing procurement processes provided for at Article 44 of the Law on State Contracting are necessary and urgent procurement operations to resolve situations of national interest or social benefit.

administrative remedies of revocation and replacement are to be the only regular forms of challenge within the centralized and decentralized/autonomous public administration, except for those cases in which a resolution must be examined by a Labor and Social Welfare Tribunal.

- Legislative provisions and various other provisions applicable in special circumstances to certain contracts, such as the following:

- Those entered into under Article 1, paragraph 2 of the Law on State Contracting, which provides that the provisions in this regard contained in this Law and its Regulations shall be applied in a supplementary manner to the provisions contained in the international agreements and treaties to which the Republic of Guatemala is a party, provided that the former do not run contrary to the latter.

- Those entered into under Article 54 of the Law on State Contracting, which states that the provisions of ordinary law shall govern contracts entered upon by the State through its centralized or decentralized entities that do not originate from procedures set forth in this Law or in which the administrative entity acts as a person governed by private law.

1.2.2 Adequacy of the legal framework and/or other measures

With respect to the legal and various other provisions governing the principal public procurement systems in the country under review, the Committee sees that, on the basis of the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

Notwithstanding the foregoing, the Committee believes it would be appropriate for it to offer a number of comments regarding the advisability that the country give consideration to the expansion, development, and adaptation of certain provisions related to those systems

First, the Committee notes that under the provisions of Article 1, paragraph 1 of the Law on State Contracting, this Law applies to all government contracts; however, pursuant to paragraph 2 of this Article, there are, at the same time, contracts that, having been entered into under the aegis of international conventions and treaties, are exempt from the provisions contained in this Law, which shall only be applied to those contracts in a supplementary manner provided it do not run contrary to said treaties or conventions.

Similarly, in accordance with Article 54 of the Law on State Contracting, contracts entered into by State entities that do not originate from procedures set forth in this Law, or in which the administrative entity acts as a person governed by private law, are not governed by this law but by the provisions of ordinary law.

The Committee understands that the origin of the existence of special procurement systems may lie in international conventions and treaties, or be grounded in the unique and specialized nature of certain types of contract; however, it also believes that it would be advisable for the country under review to consider adopting appropriate measures to ensure the requisite harmony for the management of diverse procurement systems, such that there is clarity both with respect to the scope of application of the regulations that govern each of them and as regards their concurrent operation, in the cases where provision is made for as much, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention. The Committee will formulate a recommendation in this regard (see Recommendation 1.2 (a) in Chapter III, Section 1.2 of this report).

With respect to the foregoing, it should be noted that the document presented by the civil society organization “*Acción Ciudadana*”, mentions the following:¹⁸

“There is a whole parallel government procurement system that is facilitated by Articles 1 and 54 of the Law on State Contracting. This system can be found in three types of actor that administer and execute State funds:”

The aforesaid document then goes on to comment on the following cases:

- a) “Trusts set up in financial entities that manage a considerable amount of funds allocated to investment, specifically in large and small infrastructure projects.”
- b) “Nongovernmental Organizations (NGOs) that execute State funds allocated to investment in the form of public works contracts.”
- c) “Government procurement through international agencies, such as the United Nations Development Programme (UNDP), the International Organization for Migration (IOM), and the United Nations Office for Project Services (UNOPS).”

The comments made in the aforesaid document include the following:

“As a result of the foregoing, when government procurement processes are carried out by third parties, the standards that apply to State institutions lose their validity because the contractor functions as a person governed by private law, and, therefore, pursuant to Article 54 of the Law on State Contracting, ordinary law applies.

When procurement processes are carried out by international agencies such as UNOPS or UNDP, there is some guarantee of their transparency by virtue of the rules and regulations that govern those bodies. The greatest risk arises when procurement processes are carried out through nongovernmental organizations since, apart from acting as persons governed by private law, they apply the procedures set forth in the Law on State Contracting and its Regulations in a discretionary manner.”

Second, the Committee observes that Article 43 of the Law on State Contracting affords the superior administrative authority of the entity concerned the power to use the special system of direct purchase as the contracting procedure. The Committee believes that it would be useful for the country under review to consider the establishment of a standard procedure for such procurement applicable to all State entities, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention, such that the procurement operation is not subject to the procedure that the superior administrative authority of the state entity concerned might choose at their discretion but to said standard procedure. The Committee will formulate a recommendation in this regard (see Recommendation 1.2 (b) in Chapter III, Section 1.2 of this report).

With respect to the foregoing, it should be noted that the document presented by the civil society organization “*Acción Ciudadana*”, mentions the following:¹⁹

¹⁸ Document “Independent Follow-Up Report on Implementation of the Inter-American Convention against Corruption in Guatemala,” presented by “*Acción Ciudadana*”. pp. 11 to 16

¹⁹ Document “Independent Follow-Up Report on Implementation of the Inter-American Convention against Corruption in Guatemala,” presented by “*Acción Ciudadana*”. p. 11

“The direct purchase mechanism is applied to purchases for amounts up to US\$3,872.38 (Q 30,000.00).²⁰ The Law on State Contracting and its Regulations do not stipulate a procedure for procurement operations of this type, which must be determined by the superior administrative authority of the purchasing entity, under whose liability and authority the purchase is made.”

Third, the Committee observes that Article 44 (1.3) of the Law on State Contracting provides that an exception to the obligations to use the public tender and purchasing procurement methods, are the purchase and contracting of goods, supplies, works, and services that are necessary and urgent to resolve situations of national interest or social benefit, provided that the foregoing is declared as such in a decision adopted by the respective president of each branch of government. The Article also mentions that the branch of government, ministry or entity concerned shall be liable for the classification they declare in each instance and are required to accompany the decision adopted with all the supporting information.

With respect to the foregoing, the Committee believes that it would be advisable for the State under review to consider the adoption of a definition of the concepts of national interest or social benefit on which to base the declaration that the respective president of each of branch of government is required to issue when this special procurement procedure is used, as well as the classification in that regard that the branch of government, ministry, or entity concerned must adopt. The Committee considers that this would help to ensure better guidelines with respect to what could be regarded as a situation of national interest or social benefit for the purposes of government procurement, and so prevent the use of this special procedure to avoid the public tender or purchasing procurement methods. The Committee will formulate a recommendation in this regard (see Recommendation 1.2 (c) in Chapter III, Section 1.2 of this report).

Fourth, the Committee notes that, under Article 35 (t) of the Law of the Executive Branch, one of the functions of the Ministry of Public Finance is to coordinate the procurement system of the central government and its decentralized and autonomous entities, and that, pursuant to Article 8 of the Regulations of the Law on State Contracting, said Ministry has a Government Procurement Regulatory Department. However, the Committee believes that it would be advisable for the country under review to consider the strengthening of the governing organ for government procurement so that its scope is not limited to the central government and its decentralized and autonomous entities, but encompasses all State entities governed by the Law on State Contracting, in order to strengthen its enforcement. The Committee will formulate a recommendation in this regard (see Recommendation 1.2 (d) in Chapter III, Section 1.2 of this report).

With respect to the foregoing, it should be noted that the document presented by the civil society organization “*Acción Ciudadana*”, mentions the following:²¹

“The Law of the Executive Branch mentions at Article 35 (t), that one of the functions of the Ministry of Public Finance is “*To coordinate the procurement system of the central government and its decentralized and autonomous entities*”. The Ministry exercises that function through the Government Procurement Regulatory Department. However, this entity performs weakly because it lacks the force of law to take the necessary steps to develop and implement national policy on government procurement, and its framework of action is confined to central government institutions.

²⁰ A footnote to this paragraph in the document presented by *Acción Ciudadana* notes that “this report adopts a benchmark exchange rate of Q 7.74717 to US\$1.00, in keeping with that listed at <http://www.banguat.gob.gt> on October 11, 2007.”

²¹ Document “Independent Follow-Up Report on Implementation of the Inter-American Convention against Corruption in Guatemala,” presented by “*Acción Ciudadana*”. p. 18

This situation was acknowledged in the review of the Law on State Contracting carried out by the Permanent Forum of Political Parties in the framework of National Interest Projects, which mentioned that *‘There is a need for a governing or centralizing institution to establish general policies or guidelines on action and supervision in the administration of procurement processes and procedures.’*”

1.2.3 Results of the legal framework and/or other measures

The Republic of Guatemala provided the following information in the section on results in its response to the Questionnaire:²²

“A total of 3,556 suppliers have been awarded contracts in the year to date, with a total of 6,851 since the launch of GUATECOMPRAS in October 2003.”

Footnote that refers to the above-transcribed paragraph notes the following:²³

“All information connected with contracts awarded to date as well as other relevant data is available at www.guatecompras.gob.gt.”

Having consulted the aforementioned website, it was found that it contains information on contracts awarded, although it does not mention the percentage of contracts that were awarded through tenders or other procurement mechanisms.

The GUATECOMPRAS website also provides information on the number of municipalities that publish information about their procurement activities; according to the most recent statistical tables (May 26, 2006), 305 of the 332 municipalities do so and 27 have yet to do so.

With respect to the foregoing, it should be borne in mind that Article 8 of the Regulations of the Law on State Contracting, provides that the branches of government Agencies, its decentralized and autonomous entities, implementing units, municipalities, state- or municipal-owned companies and all entities subject to this Law, shall arrange for and publish in the Government Procurement Information System (GUATECOMPRAS) notices and calls to tender as well as all information connected with the purchase, sale, and contracting of goods, supplies, works, and services of which they have need, and that said information shall be of a public nature and available at the Internet website of said System.

In light of the foregoing, the Committee will formulate a recommendation to the country under review that its consider the adoption, through the appropriate authority, of pertinent measures to ensure that municipalities comply with the obligation provided at Article 8 of the Regulations of the Law on State Contracting, to publish information on their procurement activities on the Internet website of the GUATECOMPRAS System, as provided in the aforesaid provision (see Recommendation 1.2 (e) in Chapter III, Section 1.2 of this report).

It should be noted in this respect that in the document presented by the civil society organisation “*Acción Ciudadana*”, mentions the following:²⁴

²² Response of Guatemala to the Questionnaire, p. 19

²³ Response of Guatemala to the Questionnaire, p. 20, footnote from p. 28

²⁴ Document “Independent Follow-Up Report on Implementation of the Inter-American Convention against Corruption in Guatemala,” presented by “*Acción Ciudadana*”. p. 19

“In spite of the fact that it is a legal requirement to use the GUATECOMPRAS System, there are state institutions that do not do so. Most opted to use the system when it became compulsory to do so but many have gradually withdrawn from it and opted instead to use third parties to carry out procurement processes. Annex 3 shows that several municipalities that started to use GUATECOMPRAS in 2004 and 2005, ceased to do so in 2006 in 2007, and for those years the number of procurement processes published at www.guatecompras.gt is recorded as zero.”

The GUATECOMPRAS website also contains information on so-called “challenges,” which, according to the site, “is the way in which GUATECOMPRAS users request, criticize, protest, or complain about a decision, an administrative procedure or stage, or a purchase or contracting process.”

Based on information provided on “challenges” at the GUATECOMPRAS website, the document presented by the civil society organisation “*Acción Ciudadana*”, mentions the following:²⁵

“As of Friday, November 2, 2007, the number of challenges presented totaled 1,667, of which 1,088 (65%) have been rejected, 306 (18%) are under review (most of them work presented more than six months earlier, so it is fair to assume that they will never receive a response) and 273 (16%) have been accepted. This information may be corroborated at <http://www.guatecompras.gt/inconformidad/consultaInc.aspx?r=1>.”

In light of the foregoing information, and bearing in mind the importance of so-called “challenges” for control of procurement activity, the Committee will formulate a recommendation to the country under review that it consider the adoption, through the appropriate authority, of pertinent measures to ensure that challenges presented by users of the “GUATECOMPRAS” system receive a timely response (see Recommendation 1.2 (f) in Chapter III, Section 1.2 of this report).

Finally, in addition to highlighting the importance of replying in full to the questions on results in the questionnaire, given that, other than the aforementioned, the Committee does not have any additional information on which to make a comprehensive evaluation of the results of state entities in this area, it will formulate a recommendation to them in this respect (see General Recommendation 4.2 in Chapter III of this report).

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

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

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

- The Code of Criminal Procedure (Decree 51-92 of 1992, of the Congress of the Republic), Article 297 of which provides that anyone who has knowledge of a publicly actionable crime shall inform the police, the Office of the Attorney General or the courts verbally or in writing. This provision adds that the person who reports the crime shall be identified.

²⁵ Document “Independent Follow-Up Report on Implementation of the Inter-American Convention against Corruption in Guatemala,” presented by “*Acción Ciudadana*”. p. 24

- The Law for Protection of Persons Involved in Proceedings and Persons Connected with the Administration of Criminal Justice (Decree 70-96 of 1996, of the Congress of the Republic), Article 1 of which creates the protection service for persons involved in proceedings and persons connected with the administration of criminal justice, known as the “Protection Service” within the framework of the Office of the Attorney General. Article 2 states that the overarching objective of the service is to provide protection to officials and employees of the judicial branch, the civilian security forces, and the Office of the Attorney General, as well as to witnesses, expert witnesses, consultants, joint plaintiffs, and other persons at risk due to their involvement in criminal proceedings and adds that it shall also provide protection to any journalists in need thereof, due to being at risk as a result of performing their informative function.

Furthermore, Article 3 of the preceding law, identifies the Executive Board and the Protection Office as organs of the protection system. Article 8 provides protection plans within the protection service, mentioning the following: a) Protection of the beneficiary with security personnel; b) Change of residence of the beneficiary, which may include housing, travel, and living expenses; c) Protection, with security personnel, of the beneficiary's residence and place of work; d) Change of identity of the beneficiary; and, e) Such other benefits as the Executive Board deems advisable.

Article 9 of the aforementioned law provides that requests for protection as beneficiaries of the service shall be presented by any official, employee, or journalist who believes their life or safety to be in danger, providing such information as may be relevant.

- Decree 11-2006 of 2006, of the Congress of the Republic, on “Legal Reforms for Implementation of the Dominican Republic-Central America-United States Free Trade Agreement,” which amends the Criminal Code, and provides, with respect to Articles 439 (Solicitation or acceptance of bribes), 442 (Offering of bribes), and 442 Bis (Transnational offering of bribes), that persons who in good faith report the acts mentioned in those articles shall be protected by the appropriate authorities, in accordance with the laws in force.

- The Regulations of the Law for Protection of Persons Involved in Proceedings and Persons Connected with the Administration of Criminal Justice (Decision 2-2007 of 2007, adopted by the Council of the Office of the Attorney General), Article 24 of which provides that anyone involved in a criminal proceeding whose life or safety is at risk may benefit from the protection measures provided at Article 8 of Decree 70-96, provided that they guarantee their participation in effectively supporting the proceeding, in the manner set forth in these Regulations, as witnesses under protection. Article 24 also provides that said protection may be extended, as necessary, to the spouse or partner, parents, children, and siblings of the beneficiary, as well as to any other person connected to them and at risk for the same reasons.

Articles 40 and 41 of the aforesaid Regulations set out the criteria for admission to the Protection Service. Article 43 and the articles that follow it govern the processing of requests for protection. Article 55 provides that all measures adopted in connection with the Protection Service shall be implemented with the utmost secrecy. Article 56 states that anyone who breaches the secrecy to which the preceding article refers shall be liable to the appropriate administrative, criminal and/or civil penalties provided by the law. Article 57 deals with the financial resources for said Service.

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

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

The foregoing notwithstanding, the Committee notes that Article 297 of the Code of Criminal Procedure, which establishes the obligation for all persons to report publicly actionable crimes of which they are aware, expressly provides that the person who reports the crime shall be identified, which precludes the possibility of anonymous complaints and identity-protected complaints.

It should be mentioned in this regard, that in its response to the Questionnaire,²⁶ the country under review expresses the following: “In Guatemala, the complaints are one of the mechanisms for the initiation of criminal proceedings. However, there is no regulated mechanism for anonymous complaints or identity-protected complaints.

The Committee also observes that the Law for Protection of Persons Involved in Proceedings and Persons Connected with the Administration of Criminal Justice and its Regulations provide protection measures for persons involved in criminal proceedings; however, protection measures are not provided for public servants or private citizens who report acts of corruption that might not be recognized as crimes but could be the subject of an administrative investigation.

The Committee notes, furthermore, that the protection measures provided in the Law for Protection of Persons Involved in Proceedings and Persons Connected with the Administration of Criminal Justice and its Regulations, are essentially designed to protect the physical integrity of their beneficiaries but not to provide whistleblower protection for public officials in the workplace, which would contribute to the achievement of the purposes of the Convention, to the extent that such measures encourage public servants to fulfill their duty to report acts of corruption without fear of a possible deterioration in their working conditions.

In addition, the Committee finds that no provision is made for mechanisms for reporting threats or reprisals that informants may face.

Based on the foregoing, the Committee will formulate a recommendation to the country under review (see the recommendation in Chapter III, Section 2 of this report), to the effect that it consider the adoption, by the appropriate authority, of a comprehensive regulation on the protection of public officials and private citizens who in good faith report acts of corruption, including protecting their identities, in keeping with its Constitution and the fundamental principles of its domestic legal system.

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

Guatemala’s reply to the questionnaire,²⁷ provides the following information on results in this area:

“There are no statistical data at present because insufficient time has passed since the creation of the department of the Office of the Attorney General designated for this purpose.”

²⁶ Response of Guatemala to the Questionnaire, p. 21

²⁷ Response of Guatemala to the Questionnaire, p. 21

Given that it does not have information that would enable it to perform a comprehensive assessment of the results in this area, the Committee will formulate a recommendation to the country under review in this regard (see General Recommendation 4.2 in Chapter III of this report).

3. ACTS OF CORRUPTION (ARTICLE VI(1) OF THE CONVENTION)

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

The Republic of Guatemala has a set of provisions regarding criminalization of the acts of corruption provided for in Article VI(1) of the Convention, among which the following, which are contained in its Criminal Code and other laws,²⁸ should be mentioned:

▪ As regards Article VI(1)(a):

- Article 439 of the Criminal Code (as amended by Article 118 of Decree 11-2006 of 2006, of the Congress of the Republic) (Solicitation or acceptance of bribes): “Any public servant or employee who intentionally requests or accepts,²⁹ whether directly or indirectly, any object of financial value or any other benefit as a favor or gift, or a promise or advantage, for themselves or for another person, in exchange for the performance or omission by that public servant or employee of any act in the exercise of their public functions, shall be punished with four (4) to ten (10) years of imprisonment, a fine of fifty thousand (Q50,000.00) to five hundred thousand (Q500,000.00) quetzals, and special disqualification from public office for twice the length of the prison sentence, without prejudice to imposition of the applicable penalty for the offense committed. When the public servant or employee compels or induces the gift, offer, or promise, the penalty shall be increased by one third.”³⁰

▪ As regards Article VI(1)(b):

- Article 442 of the Criminal Code (as amended by Article 119 of Decree 11-2006 of 2006, of the Congress of the Republic) (Offering of bribes): “Anyone who intentionally gives or offers, whether directly or indirectly, a public servant or employee any object of financial value or any other benefit as a favor or gift, or a promise or advantage, for themselves or for another person, in exchange for the performance or omission by that public servant or employee of any act in the exercise of their public functions, shall be punished with four (4) to ten (10) years of imprisonment and a fine of fifty thousand (Q50,000.00) to five hundred thousand (Q500,000.00) quetzals. Any individual who indirectly helps, collaborates, motivates, encourages, abets, promotes, or conspires in the commission of the acts described in the preceding paragraph, and who is determined to be an accomplice in the aforementioned acts, shall be punished with the penalty mentioned therein lowered by one third.”

²⁸ Decree 11-2006 of 2006, of the Congress of the Republic, on Legal Reforms for Implementation of the Dominican Republic-Central America-United States Free Trade Agreement, amends, at Chapter VII, certain offenses recognized in the Criminal Code, including Solicitation or acceptance of bribes (Article 439) and Offering of bribes (Article 442).

²⁹ Pursuant to Article I(2) of the General Provisions of the Criminal Code, for the purposes of criminal law, a public official is defined as “someone who, by legal mandate, popular election, or legitimate appointment, exercises duties, power, jurisdiction or representation of an official nature,” and public employee as “someone who, without legal powers for independent decision-making, performs or carries out orders, or performs the work of an agent or guardian of public order.”

³⁰ On p.23 of the Response of Guatemala to the Questionnaire says: “The exchange rate at October 1, 2007, was Q7.71 = US \$1.00.”

- As regards Article VI(1)(c):

- Article 419 of the Criminal Code (Breach of Duty): “Any public servant or employee who omits, refuses to carry out, or delays any act inherent to their function or post shall be punished with one to three years of imprisonment.”

- Article 449 of the Criminal Code (Extortion): “The crime of extortion is committed by: 1.- Any public servant or employee who, whether directly or indirectly or through simulated acts, acquires an interest in any contract or operation in which they are involved by reason of their duties. This provision applies to arbitrators, experts, accountants, guardians, executors and trustees in respect of the functions they perform as such. 2.- Any public servant or employee who, in order to profit, interposes their influence so as to obtain a decision from any authority, or an opinion to be presented to said authority. Those responsible shall be punished with one to three years of imprisonment and a fine of three hundred to three thousand quetzals.”

- Article 451 of the Criminal Code (Illegal Exaction): “Any public servant or employee who demands payment of illegal or excessive contributions, taxes, fees or municipal taxes, shall be punished with six months to two years of imprisonment and a fine of fifty to three hundred quetzals. - If the public servant or employee converts the proceeds of the illegal exaction mentioned in the preceding paragraph for their own profit or that of a third party, the aforementioned penalties shall be doubled.”

- As regards Article VI(1)(d):

- Article 2 of the Law against Money Laundering (Decree Law 67-2001 of 2001, of the Congress of the Republic): “Money laundering. The crime of money laundering is committed by anyone who, themselves or through a third party: a) Invests, converts, transfers or carries out any financial transaction with property or money in the knowledge, or who by reason of their position, job, trade, or profession are required to know, that said property or money are the proceeds of a crime; b) Acquires, possesses, administers, holds or uses properties or money in the knowledge, or who by reason of their position, job, trade, or profession are required to know, that said property or money are the proceeds of a crime; c) Conceals or impede the determination of the true nature, origin, location, destination, movement, or ownership of property or money, or of rights relative to such property or money in the knowledge, or who by reason of their position, job, trade, or profession are required to know, that said property or money are the proceeds of a crime.”

- Article 272 of the Criminal Code (Improper Withholding and Misappropriation): “Anyone who, to the detriment of another person, appropriates or misappropriates money, effects, or any other movable property that they have received for safekeeping or as an agent or administrator, or in any other capacity whereby they have the obligation to deliver or return them, shall be punished with six months to four years of imprisonment and a fine of one hundred to three thousand quetzals.”

- Article 474 of the Criminal Code (Accessory after the Fact [*Encubrimiento Propio*]): “A person is an accessory after the fact when, without conspiracy, connivance, or agreement in advance with the perpetrators or accomplices, but with knowledge after the fact, they commit any of the following acts: 1.- Conceal the criminal or facilitate their escape; 2.- Refuse without due cause to deliver to the authorities any accused person, fugitive, or criminal who is in the residence or dwelling of the person so requested; 3.- Help the perpetrator or accomplice to elude the investigations of the authorities or evade their inquiries; 4.- Receive, conceal, suppress, render unusable, take advantage of, keep, hide, traffic, or otherwise trade in objects, effects, instrumentalities, evidence, or traces of the crime;

anyone responsible as an accessory after the fact shall be punished with two months to three years of imprisonment.”

- Article 475 of the Criminal Code (Accessory before the Fact [*Encubrimiento Impropio*]) “A person is an accessory before the fact when: 1. They habitually harbor, hide, or protect criminals or in any way conceal arms or the effects of crime even should they not have specific knowledge thereof. –2. It must be presumed from the circumstances of the crime’s commission that they engaged in one of the acts referred to in the preceding article. - Those responsible for the crime referred to in the first clause of this article shall be punished with two to four years of imprisonment. - Those responsible for the crime referred to in the second clause of this article shall be punished with a fine of fifty to one thousand quetzals. - Should the person responsible trade in the objects concerned or habitually engage in trafficking activities therein, whether they be new or used, the penalty shall be six months to two years of imprisonment and a fine of one hundred to two hundred thousand quetzals.”

▪ As regards Article VI(1)(e):

- Article 35 of the Criminal Code (Persons Responsible): “In the case of felonies, the perpetrators and the accomplices are criminally responsible. In the case of misdemeanors only the perpetrators are responsible.”

- Article 36 of the Criminal Code (Perpetrators): “Perpetrators are: 1. Those who take part directly in the commission of acts that constitute a criminal offense; 2. Those who force or directly induce others to commit a criminal offense; 3. Those who cooperate in the commission of the offense, whether it be in its preparation or execution, performing actions without which it could not have been committed; 4. Those who, having come together with another person or persons in order to commit the crime, are present at the moment of its consummation.”

- Article 37 of the Criminal Code (Accomplices) Accomplices are: “1. Those who motivate or encourage another in their decision to commit a crime; 2. Those who promise that they will provide help or cooperation after the fact; 3. Those who supply information or the appropriate means to carry out a crime; and, 4. Those who act as liaison or intermediaries between the participants in order to bring about their concurrence in the crime.”

- Article 62 of the Criminal Code: “Unless otherwise specified, it shall be understood that all penalties mentioned in the law for a felony shall be imposed on the perpetrator of the consummated crime.”

- Article 63 of the Criminal Code: “The attempted commission of a crime and complicity in a consummated crime shall give rise to the sentence provided in the law for the perpetrator of the consummated crime, reduced by one third.”

- Article 64 of the Criminal Code: “An accomplices in the attempted commission of a crime shall be punished with the sentence provided in the law for the perpetrator of the consummated crime, reduced by two thirds.”

- Articles 442, 474, and 475 of the Criminal Code concerning, respectively, Offering of bribes; Accessory after the Fact; and Accessory before the Fact (transcribed above).

- Article 2 of Decree No. 21-2006, the Law Against Organized Crime, which provides that for the purposes of that law, an organized criminal group or criminal organization shall be taken as meaning

any structured group of three or more people that exists during a certain time and acts in concert with the purpose of committing one or more of the following offenses: “... (e.1) Embezzlement, misappropriation, graft, fraud, collusion, and perverting the course of justice.”

- Article 3 of Decree No. 21-2006, the Law Against Organized Crime, which provides that the crime of conspiracy is committed by a person who pacts with another or others with the purpose of committing one or more of the offenses listed in the article, including those listed in section (e.1) thereof: “Embezzlement, misappropriation, graft, fraud, collusion, and perverting the course of justice.”

- Article 4 of Decree No. 21-2006, the Law against Organized Crime, which provides that the crime of criminal association is committed by an individual who participates in or establishes an association of the following kind: “1. One that has the purpose of committing a crime, or one that once established, works for the commission thereof.”

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

With respect to the provisions criminalizing the acts of corruption provided for in Article VI(1) of the Convention, the Committee observes that, on the basis of the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

Nonetheless, the Committee considers that the country under review, in order to improve the provisions in its legal framework, could modify them, taking into account the following observations:

- Article 439 of the Criminal Code (as amended by Article 118 of Decree 11-2006 of the Congress of the Republic), which classifies Solicitation or acceptance of bribes and relates to Article VI(1)(a) of the Convention, could be modified to include “persons who exercise public functions” as perpetrators of the offense, in addition to the “public servants or employees” provided in said article (see Recommendation 3.1(a) in Chapter III, Section 3 of this report).

- Article 442 of the Criminal Code (as amended by Article 119 of Decree 11-2006 of the Congress of the Republic), which classifies Offering of bribes and relates to Article VI(1)(b) of the Convention, could be modified to include “persons who exercise public functions” as recipients of benefits offered or given, in addition to the “public servants or employees” provided in said article, (see Recommendation 3.1(b) in Chapter III, Section 3 of this report).

- Articles 419, 449 and 451 of the Criminal Code, which criminalize, respectively, Breach of Duty, Extortion, and Illegal Exaction and relate to Article VI(1)(c) of the Convention, could be modified to include “persons who exercise public functions” as perpetrators of the offense, in addition to the “public servants or employees” provided in said article (see Recommendation 3.1(c) in Chapter III, Section 3 of this report).

With respect to the foregoing, it is worth recalling the following comments made in a study carried out in the framework of a technical cooperation project for ratification and implementation of the

Convention, carried out by the OAS with financial cooperation provided by the IDB and the participation of authorities of the country under review:³¹

“There is confusion in the terminology employed in the domestic laws: the Constitution recognizes three categories of public servant: dignitaries of the nation (deputies of Congress), public officials, and state workers. For the purposes of criminal liability, the Criminal Code sets out definitions of public employee and public official in Article 1(2) of its General Provisions. The latter includes those who, by legal mandate, popular election, or legitimate appointment, exercise duties, power, jurisdiction or representation of an official nature. A public employee is defined as someone who, without legal powers for independent decision-making, performs or carries out orders, or performs the work of an agent or guardian of public order. These provisions are ambiguous for the purposes of determining the characteristics of the perpetrator who exercises public functions because there is a lack of clarity with respect to specific consultancy projects, decentralized agencies, and semipublic companies in which the State has a majority interest.”

In addition, the Committee believes that the criminal provisions set out in Articles 2, 3, and 4 of the Law Against Organized Crime, which address conspiracy and criminal association and which are related to paragraph (e) of Article VI(1) of the Convention, could be improved by extending them to cover all the conduct identified in that article of the Convention (see Recommendation 3.2, in section 3 of Chapter III of this Report).

Finally, the Committee wishes to recognize the efforts of the country under review to move forward with the adaptation of its criminal laws to the provisions of the Convention, as evidenced by the comments in its response,³² in which it says that “a preliminary draft law which seeks to introduce amendments to the Criminal Code was submitted by the President of the Republic to Congress on July 13, 2005. This preliminary draft is identified as Bill 3277.”

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

In its response to the Questionnaire concerning results in this area,³³ the Republic of Guatemala notes that “from January 2005 to May 2007, 268 complaints of acts of corruption were received by the Office of the Attorney General and 189 sentences issued in summary and ordinary proceedings.”

With respect to the foregoing information, the Committee considers that it serves to show that in the Republic of Guatemala, complaints of “acts of corruption” have been processed and sentences handed down in connection therewith.

The foregoing notwithstanding, in consideration of the fact that, other than the aforementioned, the Committee does not have any additional information processed in such a way as to permit a comprehensive evaluation of the results connected with the offenses criminalized by the country under review in connection with the acts of corruption provided in Article VI(1) of the Convention, it will formulate a recommendation to it in this respect (see General Recommendation 4.2 in Chapter III of this report).

³¹ The study was prepared by *Universidad Rafael Landívar* of Guatemala and published in the book “*Adaptando la Legislación Penal de Guatemala a la Convención Interamericana contra la corrupción*” [Adapting Guatemala’s Criminal Laws to the Inter-American Convention against Corruption]. The quotation shown here appears on page 13 of this book, which is available for consultation at the following URL: <http://www.oas.org/juridico/spanish/agendas/guateprelim.htm>

³² Response of Guatemala to the Questionnaire, p. 28

³³ Response of Guatemala to the Questionnaire, p. 27

III. CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO THE IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED IN 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 Guatemala has considered and adopted measures intended to establish, maintain, and strengthen the systems of government hiring, as indicated in Section 1.1 of Chapter II of this report.

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

1.1.1 Strengthen government hiring systems in the executive branch. To comply with this recommendation, the Republic of Guatemala could take the following measures into account:

- a) Adopt appropriate measures to ensure the requisite harmony that the management of different public servant employment systems requires, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention (see Chapter II, Section 1.1.2 of this report).
- b) Adopt appropriate measures to make the provisions on publication of calls for candidates for vacant competitive positions contained in Article 18 of the Regulations of the Civil Service Law consistent with the provisions in that respect set forth in Article 45 of the Civil Service Law, so as to make clear the obligation to observe the time limit set by the latter article for said publication, in addition to the requirement to do so, whatever the case, in the Official Gazette and in another broadly distributed newspaper, without prejudice to the possibility of resorting to such other communication mechanisms as may be deemed appropriate (see Chapter II, Section 1.1.2 of this report).
- c) Adopt provisions that require the appointing authority to take into account the order of scores attained by eligible candidates in the competition held in the framework of the merit-based civil service admissions system, in order to select the one who should occupy the position to be filled (see Chapter II, Section 1.1.2 of this report).
- d) Adopt appropriate measures to guarantee the effectiveness of the merit-based civil service admissions system by ensuring the use, wherever appropriate, of the competitive examination selection process, in accordance with statutory provisions (see Chapter II, Section 1.1.3 of this report).

1.1.2. Strengthen government hiring systems in the legislative branch. To comply with this recommendation, the Republic of Guatemala could take the following measures into account:

- a) Harmonize the provisions regarding the qualifications and experience required for entry into the legislative branch with the rules established by the other systems for admission to public

service in force in the country that have been examined in this report, thereby ensuring that uniform criteria are applied to such matters. (See section 1.1.2 of Chapter II of this Report.)

- b) Expedite the adoption of the Manual of General Procedures and Standards referred to in Articles 4 and 11 of the Regulations of the Civil Service Law of the Legislative Branch, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention, and include therein rules on aspects concerning the selection procedure to occupy a competitive position as well as on publication, disclosure and voiding of the call for candidates (see Chapter II, Section 1.1.2 of this report).
- c) Adopt provisions, in the case of competitive positions, that require an order of preference to be established in registers of eligible candidates, in keeping with their scores in the evaluation, and that the candidate with the best evaluation should be selected (see Chapter II, Section 1.1.2 of this report).
- d) Set a maximum time-limit for the provisional, emergency, or temporary appointments referred to in Article 17 of the Regulations of the Civil Service Law of the Legislative Branch (see Chapter II, Section 1.1.2 of this report).
- e) Introduce mechanisms to challenge decisions adopted in the selection process (see Chapter II, Section 1.1.2 of this report).

1.1.3 Strengthen government hiring systems in the judicial branch. To comply with this recommendation, the Republic of Guatemala could take the following measures into account:

- a) Identify in the text of the Civil Service Law of the Judicial Branch the positions that would come under the competitive examination system, or the inclusion of a provision therein to the effect that the competitive examination system shall be deemed to cover all posts not classed as subject to free appointment and removal in accordance with Article 13 of the aforesaid law, without making the foregoing subject to the requirement that they be specifically included in the competitive examination system in the Manual mentioned therein (see Chapter II, Section 1.1.2 of this report).
- b) Set a deadline for publication of calls for candidates to fill positions under the competitive examination system referred to at Article 17 of the Civil Service Law of the Judicial Branch, so that this is done sufficiently in advance of the start of selection processes, as well as precisely identify the mechanisms to be used for their disclosure (see Chapter II, Section 1.1.2 of this report).
- c) Introduce a provision, with respect to positions in the competitive system referred to at Article 30 of the Civil Service Law of the Judicial Branch, that makes it a requirement, in selecting the person to occupy the vacant post, to take into account the order of scores obtained by the candidates in the competition (see Chapter II, Section 1.1.2 of this report).
- d) Introduce mechanisms to challenge decisions adopted in the selection processes governed by the Judicial Career Law and the Civil Service Law of the Judicial Branch (see Chapter II, Section 1.1.2 of this report).

1.1.4 Strengthen government hiring systems in the Office of the Attorney General. To comply with this recommendation, the Republic of Guatemala could take the following measures into account:

- a) Expedite the adoption of the regulations governing the administrative staff career system provided at Article 59 of the Organic Law of the Office of the Attorney General, taking into account, to that end, the principles of openness, equity and efficiency enshrined in the Convention (see Chapter II, Section 1.1.2 of this report).
- b) Set a deadline for publication of calls for candidates to fill positions in the Office of the Attorney General referred to in Article 76 of the Organic Law of the Office of the Attorney General, so that this is done sufficiently in advance of the start of selection processes, as well as precisely identify the mechanisms to be used for their disclosure (see Chapter II, Section 1.1.2 of this report).
- c) Introduce mechanisms to challenge decisions adopted in the selection processes governed by the Organic Law of the Office of the Attorney General (in addition to that provided at Article 77 to challenge the inclusion of a candidate in the merit list), including decisions on evaluation results and non inclusion of candidates in said list (see Chapter II, Section 1.1.2 of this report).

1.1.5 Strengthen government hiring systems in municipalities. To comply with this recommendation, the Republic of Guatemala could take the following measures into account:

- a) Adopt, through the appropriate authority, the measures necessary to bring into operation the Municipal Human Resources Advisory Office, created at Article 8 of the Municipal Service Law for the application of said Law, and to supply it with the resources required for that purpose (see Chapter II, Section 1.1.2 of this report).
- b) Set a deadline for publication of calls for candidates referred to in Article 27 of the Municipal Service Law, so that this is done sufficiently in advance of the start of selection processes, as well as precisely identifying the mechanisms to be used for their disclosure (see Chapter II, Section 1.1.2 of this report).
- c) Adopt provisions that make it a requirement, in the case of municipal service career positions, to bear in mind the order of scores attained by candidates in the competition when selecting who should occupy the position to be filled (see Chapter II, Section 1.1.2 of this report).
- d) Set a maximum time-limit for the provisional and emergency appointments referred to in Article 37 of the Municipal Service Law (see Chapter II, Section 1.1.2 of this report).

1.2. Systems for government procurement of goods and services

The Republic of Guatemala has considered and adopted measures aimed at creating, maintaining, and strengthening systems for government procurement of goods and services in keeping with what is stated in Chapter II, Section 1.2 of this report.

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

- Strengthen government procurement systems.

To carry out this recommendation, the Republic of Guatemala could take the following measures into account:

- a) Adopt appropriate measures to ensure the requisite harmony for the management of diverse procurement systems, so that there is clarity both with respect to the scope of application of the regulations that govern each of them and as regards their concurrent operation, in the cases where provision is made for this, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention (see Chapter II, Section 1.2.2 of this report).
- b) Establish a standard procedure for procurement conducted through the special system of direct purchase provided for in the Law on State Contracting, that applies to all State entities, taking into account, to that end, the principles of openness, equity and efficiency enshrined in the Convention (see Chapter II, Section 1.2.2 of this report).
- c) Define the concepts of national interest or social benefit on which to base the declaration that the respective president of each branch of government is required to issue when this special procurement procedure is used, as well as the classification in that regard that the branch of government, ministry, or entity concerned must adopt (see Chapter II, Section 1.2.2 of this report).
- d) Strengthen the governing organ for government procurement so that its scope is not limited to the central government and its decentralized and autonomous entities, but encompasses all State entities governed by the Law on State Contracting (see Chapter II, Section 1.2.2 of this report).
- e) Adopt, through the appropriate authority, pertinent measures to ensure that municipalities comply with the obligation provided for by Article 8 of the Regulations of the Law on State Contracting to publish information on their procurement activities on the Internet website of the GUATECOMPRAS System (see Chapter II, Section 1.2.3 of this report).
- f) Adopt through the appropriate authority, pertinent measures to ensure that challenges presented by users of the “GUATECOMPRAS” system receive a timely response (see Chapter II, Section 1.2.3 of this report).

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

The Republic of Guatemala has considered and adopted certain measures aimed at creating, maintaining, and strengthening systems to protect public servants and private citizens who in good faith report acts of corruption, as described in Chapter II, section 2 of this report.

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

- Strengthen systems to protect public servants and private citizens who in good faith report acts of corruption.

To carry out this recommendation, Guatemala could take the following measure into account:

- Adopt, through the appropriate authority, a comprehensive regulation on the protection of public officials and private citizens who in good faith report acts of corruption, including protecting their identities, in keeping with its Constitution and the fundamental principles of its domestic legal system, which could include, among others, the following aspects:
 - a) Reporting mechanisms, such as anonymous complaints and identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption.
 - b) Protection measures for those who report acts of corruption that might not be defined as criminal offenses, but which could be subject to administrative investigation.
 - c) Protection measures, targeting not just the protection of the physical integrity of whistleblowers and their families, but also the protection of their positions of employment, particularly for public officials and when the acts of corruption could involve their superiors or coworkers.
 - d) Mechanisms for reporting the threats or reprisals that informants may face, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection.
 - e) Mechanisms to facilitate international cooperation in the above areas, when appropriate.

3. ACTS OF CORRUPTION (ARTICLE VI(1) OF THE CONVENTION)

The Republic of Guatemala has adopted measures aimed at defining as criminal offenses the acts of corruption provided for at Article VI(1) of the Convention, as described in Chapter II, Section 3 of this report.

In view of the comments made in that section, the Committee offers the following recommendations to Guatemala:

3.1. Modify the following articles of the Criminal Code as follows:

- a) Article 439 of the Criminal Code (as amended by Article 118 of Decree 11-2006 of the Congress of the Republic), which classifies solicitation or acceptance of bribes and relates to paragraph Article VI(1)(a) of the Convention, could be modified to include “persons who exercise public functions” as perpetrators of the offense, in addition to the “public servants or employees” provided by that article (see Chapter II, Section 3.2 of this report).
- b) Article 442 of the Criminal Code (as amended by Article 119 of Decree 11-2006 of the Congress of the Republic), which classifies offering of bribes and relates to paragraph Article VI(1)(b) of the Convention, could be modified to include “persons who exercise public functions” as recipients of benefits offered or given, in addition to the “public servants or employees” provided by that article (see Chapter II, Section 3.2 of this report).

- c) Articles 419, 449 and 451 of the Criminal Code, which criminalize, respectively, Breach of Duty, Extortion, and Illegal Exaction and relate to Article VI(1)(c) of the Convention, could be modified to include “persons who exercise public functions” as perpetrators of the offense, in addition to the “public servants or employees” provided by that article (see Chapter II, Section 3.2 of this report).
- 3.2 Expand the criminal provisions set out in Articles 2, 3, and 4 of the Law Against Organized Crime, which address conspiracy and criminal association and are related to the paragraph (e) of Article VI.1 of the Convention, by extending them to cover all the conduct identified in that article of the Convention (see section 3.2 of Chapter II of this Report).

4. GENERAL RECOMMENDATIONS

Based on the review and contributions made throughout this Report, the Committee suggests that the Republic of Guatemala 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. (see Sections 1.1.3, 2.3 and 3.3 of Chapter II of this Report).

5. FOLLOW-UP

The Committee will consider the periodic update Reports submitted by the Republic of Guatemala concerning progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with the provisions 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

The Committee observes, in relation with the implementation of the recommendations formulated for the Republic of Guatemala 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

Strengthen the implementation of laws and systems to regulate conflicts of interest.

Measures suggested by the Committee

- a. *Regulate potential conflicts of interest and apply these measures to all public servants. Given their importance, these cases should be treated specifically and in greater detail (see Chapter II, subsection 1.1.2 of this report).*
- b. *Establish adequate restrictions for people leaving a public post, such as forbidding them to handle cases in which they were involved while performing their public functions or cases connected with entities with which they were recently linked through their former public post.*
- c. *Design and implement mechanisms with verifiable indicators that serve to resolve issues raised by public servants regarding their own possible conflicts of interest, and adopt measures to enable situations involving conflicts of interest detected, such as an exemption or self-disqualification mechanism, to be settled without delay.*
- d. *Further the process to reform the Civil Service Law so that it regulates certain aspects related to conflicts of interest that have not yet been developed in the legislation in force.*
- e. *Adopt, through the appropriate authority, the Code of Ethics of the Office of the Comptroller General of Accounts. (This recommendation also applies to Chapter III, section 1.2. of this report, taking into account the contents of Chapter II, section 1.2.2. thereof).*

In its response, the State under review presents information on measures c. and e. of the foregoing recommendation. In this regard, the Committee notes the following measures as steps which contribute to progress in implementation thereof:

With respect to measure c. of the recommendation, the State under review provides the following information:³⁴

- “The Office of the Presidential Commissioner for Transparency and against Corruption drew up a draft Governmental Decision to set out rules on, and create consultation and detection mechanisms for, potential conflicts of interest. The purpose of this draft is to amend the Regulations for the Law

³⁴ Response of Guatemala to the Questionnaire, p. 30

on Probity and Responsibilities of Public Officials and Employees, providing a definition of “conflict of interests” as well as setting out what steps public officials should take when faced with such a situation and, should they not, the penalties to which they would be liable for their failure to do so. The draft has been submitted to the General Secretariat of the Office of the President of the Republic for adoption as a Governmental Decision.”

With respect to measure e. of the recommendation, the State under review provides the following information:³⁵

- “Furthermore, the Directorate of Ethics and Morals of the Office of the Comptroller General drew up a new draft Code of Ethics in pursuance of one of the core lines of work of the current administration of the Office of the Comptroller General, which is the fight against corruption and timely entry into force of Decree 31-2003 of the Congress of the Republic (Law on Probity and Responsibilities of Public Officials and Employees) and Decree 89-2002 of the Congress of the Republic (Organic Law of the Office of the Comptroller General).”

The Committee takes note of the steps taken by the State under review to advance in the implementation of measures c. and e. of the foregoing recommendation, and of the need for it to continue to give attention thereto, bearing in mind that those steps have to do with the preparation of draft or proposed legislation not yet on the statute books and in light of what it noted in its response to the effect that “the fundamental difficulty in implementing the aforementioned recommendation is the lack of express legal rules in that regard.”³⁶

Furthermore, bearing in mind that the information supplied in the response³⁷ with respect to measure a. of the recommendation refers to standards adopted before the date of the report of the first review round that contains it (September 30, 2005), and that the response does not refer to measures b. and d. of that recommendation, the Committee takes note of the need for the Republic of Guatemala to give further attention to their implementation.

Finally, the Committee takes note of the information provided on the internal agencies that have participated in the process of implementing this recommendation.^{xxxvi}

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

Strengthen the implementation of laws and systems to regulate the conservation and proper use of public resources.

Measures suggested by the Committee

- a. *Encourage the adoption of legislation that criminalizes illicit enrichment as an offense, taking into account that there are various existing legal initiatives in this regard (see Chapter II, subsection 1.2.2 of this report). (This recommendation also applies to Chapter*

³⁵ Response of Guatemala to the Questionnaire, p. 31

³⁶ Response of Guatemala to the Questionnaire, pp. 29 and 30

³⁷ Response of Guatemala to the Questionnaire, p. 31

III, section 2 of this report, taking into account the contents of Chapter II, subsection 2.2. thereof).

- b. Adopt the appropriate measures to conclude the implementation of the State Contracting and Procurement System (GUATECOMPRAS).*
- c. Continue to adopt whatever measures are deemed appropriate so that the funds collected are handled transparently (see Chapter II, subsection 1.2.2 of this report).*
- d. Extend awareness of the electronic tools designed to improve oversight of and access to financial and bookkeeping information via the various electronic systems described in subsection 1.2.1 of this report.*

In its response, the State 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:

With respect to measure a. of the recommendation, the State under review provides the following information:³⁸

- “As regards criminalization of illicit enrichment, two bills have been presented to Congress: the first was prepared by the Presidential Commission for Transparency and against Corruption and submitted as a presidential bill; the second was prepared by the Office of the Comptroller General and presented by Deputy Nineth Montenegro.”

With respect to measure b. of the recommendation, the State under review provides the following information:³⁹

- The programming carried out to move forward with and complete implementation of the GUATECOMPRAS system, which is shown in a diagram;⁴⁰ as well as the way in which the different stages of the system have progressed, as described in the response in a chronological table (Table 6), at the foot of which there is a note providing the following data consulted at the Ministry of Public Finance website (www.guatecompras.gob.gt) on October 28, 2007:

“1285 procurement units belonging to 98 Central government entities, decentralized entities, autonomous entities and the armed forces (100% of the total); 325 municipalities (97% of the total); 38 public entities of other types; 15 international agencies (World Bank, IDB, Central American Bank for Economic Integration (BCIE), UNOPS, UNDP, UNFPA, European Commission, GTZ, Spanish Agency for International Cooperation (AECI), Cepredenac, IOM, Trifinium Plan, IICA, the Italian Cooperation Agency, World Vision); five trusts that managed public funds; 197 private non-profit entities.”

- Use of the GUATECOMPRAS system by entity, as shown in a table for the 2003-2007 period (Table 7), with information current as of October 31, 2007, obtained from www.guatecompras.gob.gt (Management Statistics).

³⁸ Response of Guatemala to the Questionnaire, p. 32

³⁹ Response of Guatemala to the Questionnaire, pp. 33 to 38

⁴⁰ Response of Guatemala to the Questionnaire, p. 33

- “Implementation of the recommendation on GUATECOMPRAS has proceeded according to an activity schedule which can be verified at the following website: www.guatecompras.gt .”

With respect to measure c. of the recommendation, the State under review provides the following information:⁴¹

“The Government of Guatemala continues to adopt measures to ensure that funds collected are handled transparently. The information available on the mechanisms that have been implemented may be consulted at the Transparency Portal of the Ministry of Public Finance (www.minfin.gob.gt).”

With respect to measure d. of the recommendation, the State under review provides the following information:⁴²

- “A range of measures have been implemented to extend awareness of electronic tools, including updating, improvement, expansion, and modification of government Internet portals or web sites. The foregoing include the Transparency Portal of the Ministry of Public Finance (www.minfin.gob.gt or <http://transparencia.minfin.gob.gt>) and the municipal transparency portal (<http://siafmuni.minfin.gob.gt>); the GUATECOMPRAS portal (www.guatecompras.gob.gt); the Integrated Financial Administration and Oversight and Government Auditing System (SIAF-SAG) (www.siafsag.gob.gt); Integrated Municipal Administration System (SIAF-MUNI), (www.siafmuni.minfin.gob.gt); the public administration’s Integrated Accounting System (SICOIN) (www.sicoin.minfin.gob.gt); Government Goals Information System (SIGOB) (www.sigob.segeplan.gob.gt); Participation Forums (<http://snit.segeplan.gob.gt>), a virtual news service that publishes a newsletter on Development Councils, through which three physical, open forums have been held and attended by approximately 1050 individuals, who included representatives of government entities, civil society organizations; international agencies, rural farmers, women's, indigenous and youth organizations, as well as private business; the National Strategic Planning System (<http://sinit.segeplan.gob.gt>); the follow-up module for the National Public Investment System (SNIP), which makes it possible to monitor physical progress and financial execution in projects (<http://snip.segeplan.gob.gt>); the Economy Ministry consumer protection portal (www.diacogob.gt); the portal of the Office of the Comptroller General www.contraloria.gob.gt; and the portal of the Office of the Superintendent of Tax Administration (SAT) (www.sat.gob.gt).”

The Committee takes note of the steps taken by the State under review to advance in the implementation of measure a. of the foregoing recommendation, and of the need for it to continue to give attention thereto, bearing in mind that those steps have to do with the presentation of legislative initiatives that have not yet been adopted into the statute books and in light of what it noted in its response to the effect that, to the effect that “the fundamental difficulty in implementing the aforementioned recommendation is the lack of express legal rules in that regard.”⁴³

The Committee also takes note of the satisfactory consideration by the State under review of measures b., c., and d. of the recommendation, which, by their nature, require a continuation of efforts.

⁴¹ Response of Guatemala to the Questionnaire, p. 39

⁴² Response of Guatemala to the Questionnaire, pp. 39 and 40

⁴³ Response of Guatemala to the Questionnaire, p. 32

Finally, the Committee takes note of the information provided in the response on the internal agencies that have participated in the process of implementing measures a.,^{xxxvii} b.,^{xxxviii} and d.^{xxxix} of 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

Strengthen the mechanisms the Republic of Guatemala has to require public officials to report to the appropriate authorities acts of corruption of which they are aware.

Measures suggested by the Committee

- a. Adopt and implement additional protective measures to encourage government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.*
- b. Implement training programs for public servants in relation to standards on the responsibility of public officials to report acts of corruption of which they are aware; and to disseminate the means available to them in order for them to comply with that obligation*

In its response,⁴⁴ the State under review prevents information with respect to measure b. of the foregoing recommendation. In this regard, the Committee notes the following measure as a step that contributes to progress in implementation thereof:

- “The Presidential Commission for Transparency and against Corruption in conjunction with the National Institute of Public Administration, has promoted training courses for public officials and employees. Posters and literature have also been distributed to all executive branch entities to promote the values to be observed by public officials as well as the general anti-corruption reporting mechanism.”

The Committee takes note of the steps taken by the State under review to advance in the implementation of measure b. of the foregoing recommendation, and of the need for it to continue to give attention thereto, bearing in mind the observations contained in its response,⁴⁵ to the effect that “it is necessary to implement a comprehensive awareness raising program to ensure that public servants report acts of corruption without any fear of reprisals.”

Furthermore, bearing in mind that the country under review did not refer in its response to measure a. of the foregoing recommendation, the Committee takes note of the need for the Republic of Guatemala to give further attention to its implementation.

Finally, the Committee takes note of the information provided on the internal agencies that have participated in the process of implementing said recommendation.^{x1}

⁴⁴ Response of Guatemala to the Questionnaire, p. 41

⁴⁵ Response of Guatemala to the Questionnaire, p. 41

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

Recommendation

Strengthen systems for filing declarations of income, assets and liabilities.

Measures suggested by the Committee

- a. *Regulate the conditions, procedures and other aspects under which sworn statements of net worth could be made public, in accordance with the fundamental principles of Guatemalan legislation.*
- b. *Optimize the analysis systems contained in the sworn declarations of net worth, in order for them to also serve as a useful tool to detect and prevent conflicts of interest, as appropriate, in addition to serving as an adequate instrument for detecting possible cases of illicit enrichment.*
- c. *Strengthen provisions on verification by the Office of the Comptroller General of Accounts, of the content of the declarations presented upon entry and established in Article 24 of the Law on Probity and Responsibilities of Public Officials and Employees, and bring them in line with the provisions of Article 21 of that law, to provide that entity with systems that enable it to promote and carry out the appropriate verification.*
- d. *Adapt the forms on which sworn statements of net worth are presented, to require declarers to comply with the minimum requisites on supplying information under Article 23 of the Law on Probity and Responsibilities of Public Officials and Employees, and the information required under the last paragraph of this law, whereby declarers must state that the assets and income declared are the only ones they possess (see Chapter II, subsection 2.2 of this report).*

In its response, the State under review presents information on measures b) and d. of the foregoing recommendation. In this regard, the Committee notes the following measures as steps which contribute to progress in implementation thereof:

With respect to measure b. of the recommendation, the State under review provides the following information:⁴⁶

- “As an alternative institutional measure to implement the recommendation, the Office of the Superintendent of Tax Administration (SAT) is making improvements, for this agency, to the analysis systems of the contents of sworn declarations of net worth, pursuant to Board Decision 35-2005, Rules on Registration, Control, and Reporting to the Board of Directors of Comparative Sworn Declarations of Net Worth of the Staff of the Office of the Superintendent of Tax Administration , Article 9 of which provides as follows: “The review of the information, system functionality and system operations shall be functions of the Internal Audit Department, which shall evaluate all sworn declarations of net worth (analysis of net worth evaluation) in keeping with its annual activities plan, using to that end, such methods and techniques as it deems necessary and giving particular attention to the declarations of staff who work in areas considered sensitive owing to their risk...” This

⁴⁶ Response of Guatemala to the Questionnaire, pp. 30 and 31

department performs an annual review and verification of compliance by SAT officials and employees with respect to sworn declarations of net worth. Auditing methods and techniques have been used, such as measurement of financial ratios, analysis of changes in reported figures, and verifications in related information systems. The results of the verification and review of comparative sworn declarations of net worth undergoes an initial inspection by the Human Resources Department, which is responsible for requesting the relevant clarifications. These results are set down in a results report presented to the SAT Board of Directors.”

With respect to measure d. of the recommendation, the State under review provides the following information:⁴⁷

- “Implementation is underway of the electronic declaration of probity system,” in respect of which a graph is included that describes a project in that respect (Graph 2).

- “A project is being developed to modify the form currently in use. This project is under discussion with a view to its approval. It contains a number of aspects for detecting possible conflicts of interests.”

The Committee takes note of the steps taken by the State under review to advance in the implementation of measures b. and d. of the foregoing recommendation, and of the need for it to continue to give attention thereto, bearing in mind that those steps have to do with incomplete implementation processes or projects under discussion, and in light of what it noted in its response to the effect that a particular difficulty in implementing this recommendation is “the absence of a law that criminalizes failure to file sworn declarations of net worth. One of the reforms to the Criminal Code proposed by the executive branch to Congress is the creation of the crime of failure to file sworn the corrections of net worth.”⁴⁸

Furthermore, bearing in mind that the country under review did not refer in its response to measures a. and c. of the foregoing recommendation, the Committee takes note of the need for the Republic of Guatemala to give further attention to their implementation.

Finally, the Committee takes note of the information provided on the internal agencies that have participated in the process of implementing said recommendation.^{xli}

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

Recommendation

Strengthening the work of the oversight bodies regarding the functions exercised in relation to compliance with the provisions contained in Article III (1), (2), (4) and (11) of the Convention, as appropriate, in order to ensure the efficacy of the oversight, providing them with the resources necessary for performing their functions; striving to give them the greatest political and social support; and strengthening the mechanisms that ensure the institutional coordination and ongoing evaluation and follow-up of their actions, as well as promoting new mechanisms for that purpose, as appropriate.

⁴⁷ Response of Guatemala to the Questionnaire, pp. 42 and 43

⁴⁸ Response of Guatemala to the Questionnaire, pp. 43 and 44.

In its response, the State 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:

- The institutional building measures for the Office of the Comptroller General described in the response.⁴⁹

- The efforts to strengthen the aforementioned oversight body, which target three core areas described in the response: fight against corruption and impunity (Table 9); restructuring of the institution and relations with monitored organs (Table 10); dignification of the institution internally and externally (Table 11).⁵⁰

The Committee takes note of the steps taken by the State under review to advance in the implementation of the foregoing recommendation, as regards the efforts to strengthen the Office of the Comptroller General, and the need for it to continue to give attention thereto, bearing in mind the existence of other oversight bodies to which it did not refer in its response and in light of what it noted in its response to the effect that “one of the most serious obstacles to implementing this recommendation is a lack of funds to enable the Office of the Comptroller General to carry out its legally mandated functions in full.”⁵¹

Finally, the Committee takes note of the information provided on the internal agencies that have participated in the process of implementing said recommendation.^{xlii}

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

4.1 Mechanisms for access to information

Recommendation

Implement laws which support access to public information.

Measures suggested by the Committee

- a. *Encourage the adoption of comprehensive access to information legislation that would, among other things, regulate the process for receiving requests so they can be acted upon without delay, and the process for appeals in the event of those requests being refused and for sanctions to be applied in the event of failure to supply information, taking into consideration the various legislative initiatives in this regard.*
- b. *Implement training and dissemination programs dealing with mechanisms for facilitating access to public information, in order to help civil servants and citizens understand them and to optimize the use of the technology available for that purpose.*

⁴⁹ Response of Guatemala to the Questionnaire, pp. 44 to 46

⁵⁰ Response of Guatemala to the Questionnaire, pp. 46 to 48

⁵¹ Response of Guatemala to the Questionnaire, p. 48.

In its response,⁵² the State under review prevents information with respect to measure a. of the foregoing recommendation. In this regard, the Committee notes the following measure as a step that contributes to progress in implementation thereof:

- “With respect to the subject of the law on Free Access to Information, approximately nine different preliminary draft bills have been submitted with the sponsorship of various entities (both governmental and civil society). However, none have been passed. These bills are available for consultation on the website of the Congress of the Republic: www.congreso.gob.gt .”

The Committee takes note of the steps taken by the State under review to advance in the implementation of measure a. of the foregoing recommendation, and of the need for it to continue to give attention thereto, bearing in mind that said steps have to do with the presentation of preliminary draft bills that have not been adopted into law, a fact that is mentioned in the response as an obstacle to the implementation of this recommendation.⁵³

Furthermore, bearing in mind that the country under review did not refer in its response to measure b. of the foregoing recommendation, the Committee takes note of the need for the Republic of Guatemala to give further attention to its implementation.

Finally, the Committee takes note of the information provided on the internal agencies that have participated in the process of implementing said recommendation.^{xliii}

4.2 Mechanisms for consultation

Recommendation

Complement existing mechanisms on consultation, establishing procedures, when appropriate, to allow for making public consultations prior to designing public policies and prior to the final adoption of legal provisions.

Measures suggested by the Committee

- a. Strengthen existing mechanisms to enable those sectors to consult matters regarding the design of public policies and the formulation of bills, decrees and resolutions within the sphere of the different State agencies.*
- b. Strengthen the System of Development Councils and existing mechanisms and develop suitable mechanisms in areas other than those that already exist.*

In its response, the State under review presents information with respect to the above recommendation. In this regard, the Committee highlights the following measures as steps that lead it to conclude that the recommendation has been satisfactorily considered:

With respect to measure a. of the recommendation, the State under review provides the following information:⁵⁴

⁵² Response of Guatemala to the Questionnaire, p. 49

⁵³ Response of Guatemala to the Questionnaire, p. 51

⁵⁴ Response of Guatemala to the Questionnaire, pp. 49 and 50

- “One of the mechanisms implemented by the Guatemalan State to enable those interested to consult about public policy design is the electronic portal of the Presidential Secretariat for Planning and Programming (www.segeplan.gob.gt), which sets out the government's policies. Furthermore, Governmental Decision 91-2004, which creates the Office of the Presidential Commissioner for Transparency and against Corruption, states that one of the functions of this Office is to advise the President of the Republic on design of general policies, draft laws, regulations, and procedures to prevent and combat corruption and to promote a culture of transparency.”

- “In the course of its activities, the Presidential Commissioner for Transparency and against Corruption drew up the General Standards on Access to Public Information in the Executive Branch and its Agencies; Code of Ethics of the Executive Branch; Labeling of Works and Projects, as a societal oversight tool. A number of law bills are currently before Congress, including ones on illicit enrichment, criminal code reform, and access to public information. In terms of Governmental Decisions, there is the reform of the Regulations for the Law on Probity and Responsibilities of Public Officials and Employees, which governs conflicts of interests.”

With respect to measure b. of the recommendation, the State under review provides the following information:⁵⁵

- “A number of measures have been adopted with respect to Development Councils. The Presidential Secretariat for Planning and Programming (SEGEPLAN) is using the National Public Investment System (SNIP), which shows all of the projects that have been carried out since 2001, with an estimated 34,500 projects at different stages. It is available for consultation online at www.segeplan.gob.gt or <http://snip.segeplan.gob.gt>.”

- “There is a permanent training and technical assistance program for development councils and implementing units that strengthens them and enhances the impact of public investment executed through them. There are other systems for strengthening development councils, such as the National Strategic Land-Use Planning System (SNIPET). This may be consulted at <http://sinit.segeplan.gob.gt> and through its respective follow-up and evaluation modules and training programs.”

The Committee takes note of the satisfactory consideration by the State under review of the above-transcribed recommendation, which, by its nature, requires a continuation of efforts in its implementation, and of the information provided on the internal agencies that have participated in the process of implementing said recommendation.^{xliv}

4.3 Mechanisms to encourage participation in public administration

Recommendation

Strengthen and continue to implement mechanisms to encourage civil society and nongovernmental organizations to participate in public management, and continue to take steps to eliminate laws that could discourage such participation.

Measures suggested by the Committee

- a. *Establish additional mechanisms to the existing ones to strengthen participation by governmental and nongovernmental organizations in anti-corruption efforts.*

⁵⁵ Response of Guatemala to the Questionnaire, p. 50

- b. *Where appropriate, promote the creation, through the Office of the Comptroller General of Accounts, of mechanisms for citizen participation, pursuant to the provisions of Article 3, paragraph (b) of the Organic Law of the Office of the Comptroller General of Accounts.*
- c. *Continue to take steps to eliminate “contempt laws” contained in articles 411, 412 and 413 of the Criminal Code.*
- d. *Design and implement programs to disseminate the mechanisms for encouraging civil society and nongovernmental organizations to participate in public management and, when appropriate, provide them with training and the necessary tools to apply those mechanisms.*

In its response, the State under review presents information with respect to the above recommendation. In this regard, the Committee highlights the following measures as steps that lead it to conclude that the recommendation has been satisfactorily considered:

With respect to measure a. of the recommendation, the State under review provides the following information:⁵⁶

- “As mechanisms to strengthen the participation of civil society and nongovernmental organizations in anti-corruption efforts, in May 2006 the *Roundtable for Dialogue on Transparency and Societal Oversight* was held in the framework of the *National Agreement for Implementation of Social Expenditure to Reduce Poverty*. The event was attended by various government institutions and civil society organizations and identified 36 concrete measures in the areas of prevention, control, and fight against corruption. These measures were presented to the executive branch, which undertook to put them into practice.”

- “The adoption of Governmental Decision No. 536-2006, which governs the obligation of all executive branch institutions to inform the general public, by means of labels or billboards, of the works or projects that they implement in the exercise of their public endeavors constitutes a stride in this area. Thus, the aim is to encourage societal oversight of works or projects underway by the parties concerned and their communities.”

- “For its part, the Presidential Secretariat for Planning and Programming (SEGEPLAN) has basically implemented three main lines of action: the Government Goals Information System (SIGOB), the National Public Investment System (SNIP),⁵⁷ the Public Investment Transparency and Quality Network.

SIGOB (<http://sigob.segeplan.gob.gt/>) is a management and efficiency tool that facilitates transparency and citizen participation in follow-up and monitoring of government goals,⁵⁸ and consists of different information search categories in the framework of the Government's General Policy (Government Guidelines 2004-2008, the Economic and Social Reactivation Program; Millennium Development Goals and Peace Agreements).

SNIP (<http://snip.segeplan.gob.gt/>) consists of an electronic portal that supplies information in real time on public works programming. In other words, information is available on the Internet that permits societal oversight to monitor the public investment activities of all state implementing units.

⁵⁶ Response of Guatemala to the Questionnaire, pp. 51 and 52

⁵⁷ Decree 11-2007 of the Congress of the Republic

⁵⁸ Adopted by Governmental Decision 458-2007 of October 3, 2007.

SEGEPLAN has continued to implement the *Public Investment Transparency and Quality Network*, which consists of a forum composed of government agencies and civil society organizations that foment the transparent use of public resources and quality spending. The activities of this network led to the holding of the above-mentioned Dialogue Roundtables, follow-up on which is at present coordinated by the Office of the Vice President of the Republic.”

With respect to measure b. of the recommendation, the State under review provides the following information:⁵⁹

- “According to Article 3 of its Organic Law, the Office of the Comptroller General, is required, *inter alia*, to provide support in the design and implementation of citizen participation mechanisms. In keeping with this provision, in April 2005, it began to stage a series of events that center on the issue of societal oversight as a mechanism to help spread awareness among public officials and employees, as well as among civil society organizations nationwide, about the issues of accountability, access to public information, probity, transparency, and quality of spending. In Phase I, 28 regional seminars were held in 20 departments, which provided training to a total of 3,791 people; 55 municipal training seminars were held, which were attended by 1,214 individuals; and 64 Societal Oversight Committees (COAS) were set up in eight departments. In Phase II, which spanned the period from January 2007 to the present, a number of training events on design of annual plans were held; 17 new Societal Oversight Committees were created; and 40 municipal training seminars were held with a total of 536 attendees. In Phase III, which will cover 2008, efforts will continue in the area of awareness raising and strengthening of Societal Oversight Committees, as well as in the use of information systems such as SNIP, SIAF-MUNI, SIAFITO-MUNI, SICOIN WEB, and GUATECOMPRAS, among others. Create a National Complaints Center and carry out the necessary follow-up.”

With respect to measure c. of the recommendation, the State under review provides the following information:⁶⁰

- “The 'contempt laws' contained in Articles 411, 412 and 413 of the Criminal Code were ruled unconstitutional by the Constitutional Court in its judgment of April 20, 2006, in case 122-2005. Having been declared unconstitutional, these articles no longer give rise to a criminal offense.”

With respect to measure d. of the recommendation, the State under review provides the following information:⁶¹

- “There are different training programs in place, whose aim is to raise awareness about mechanisms to stimulate participation in public affairs. These include a permanent training program on the use of GUATECOMPRAS and SIAF SAG offered by the Ministry of Public Finance,⁶² which targets suppliers, buyers, and auditors.”

- In addition to the foregoing, the State under review draws attention to the academic agenda developed by the National Institute of Public Administration (INAP) and provides a statistical table (Table 12) that contains information on the courses that it imparted in the 2005-2007 period.

⁵⁹ Response of Guatemala to the Questionnaire, pp. 52 and 53

⁶⁰ Response of Guatemala to the Questionnaire, p. 53

⁶¹ Response of Guatemala to the Questionnaire, p. 53

⁶² Available for consultation at <http://www.guatecompras.gob.gt>

The Committee takes note of the satisfactory consideration by the State under review of the above-transcribed recommendation, which, by its nature, requires a continuation of efforts in its implementation, and of the information provided on the internal agencies that have participated in the process of implementing said recommendation.^{xiv}

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

Recommendation

Strengthen and continue implementing mechanisms that encourage civil and nongovernmental organizations to participate in the monitoring of public management.

Measures suggested by the Committee

- a. *When appropriate, promote new forms of participation to enable, facilitate or help nongovernmental organizations to develop activities to monitor public management.*
- b. *Design and implement programs directed at civil society to disseminate mechanisms for monitoring public management and provide civil society and nongovernmental organizations with the training and necessary tools to apply those mechanisms.*

In its response,⁶³ the State 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:

- “The Presidential Secretariat for Planning and Programming (SEGEPLAN) has implemented the follow-up module for the National Public Investment System (SNIP), which makes it possible to monitor physical progress and financial execution in projects. The system is used by ministries, secretariats, funds, and decentralized, autonomous, and semiautonomous entities through their respective implementing units and may be accessed at www.segeplan.gob.gt or <http://snip.segeplan.gob.gt>.”

- “There is a training program in place for the Office of the Comptroller General on the follow-up module. The program was launched in June 2007 and as of August 2007 training had been provided to 125 senior officials and auditors.”

- “The National Strategic Land-Use Planning System is a stakeholder identification mechanism which is used, among other things, to locate key stakeholders in both the public and the private sector, with a view to encouraging, *inter alia*, the participation of civil society organizations, including women's groups and indigenous peoples. At present the Planning Agents group has been formed, which consists of 378 entities that include civil society organizations. The PET Follow-Up and Evaluation Committee, which is largely composed of civil society organizations is currently engaged in the land-use review phase.

The Committee takes note of the satisfactory consideration by the State under review of measure a. of the preceding recommendation, which, by its nature, requires a continuation of efforts.

⁶³ Response of Guatemala to the Questionnaire, p. 56

In addition, the Committee takes note of the need for the Republic of Guatemala to give further attention to the implementation of measure b. of the recommendation, bearing in mind that the training program to which it refers in its response targets a branch of government, while the aforesaid measure refers to civil society as the training recipient.

Finally, the Committee takes note of the information provided on the internal agencies that have participated in the process of implementing said recommendation.^{xlvi}

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

Recommendation 5.1

Design and implement a comprehensive dissemination and training program for authorities and officials, so they become familiar with and can apply the mutual assistance provisions to enable them to investigate and prosecute the acts of corruption provided for in the Convention and in other treaties signed by the Republic of Guatemala.

The reply of the Republic of Guatemala to the Questionnaire does not refer to this recommendation. In light of the foregoing, the Committee takes note of the need for the Republic of Guatemala to give further attention to its implementation.

Recommendation 5.2

Identify and prioritize specific areas in which the Republic of Guatemala considers that it needs the technical cooperation of other States Parties in order to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.

The reply of the Republic of Guatemala to the Questionnaire does not refer to this recommendation. In light of the foregoing, the Committee takes note of the need for the Republic of Guatemala to give further attention to its implementation.

Recommendation 5.3

Continue its efforts to exchange technical cooperation with other States Parties regarding the most effective ways and methods for preventing, detecting, investigating and punishing acts of corruption.

In its response,⁶⁴ the State 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:

- “The Twelfth International Anticorruption Conference was held in Guatemala City from November 15 to 18, 2006, with the theme “*Towards a fairer world: Why is corruption still blocking the way?*” The Conference was an important event that was attended by more than 1200 delegates from 125 countries, who met to discuss and consider the scourge of corruption and its adverse impact on today’s societies and governments, and produced important conclusions and declarations.

One of the key outputs of the above mentioned conference was the signing of the *Guatemala Declaration for a Corruption Free Region*⁶⁵ by the presidents of the countries of Central America,

⁶⁴ Response of Guatemala to the Questionnaire, p. 57

⁶⁵ See <http://www.comisionados.gob.gt>

Panama, and the Dominican Republic, which sets out concrete goals in the fight against (14 commitments) to be implemented by 2010.

The Twelfth International Anticorruption Conference also saw the signing by the Persons Responsible from the Competent Organs and Institutions for Transparency and Anticorruption of the Central American countries, Panama, and the Dominican Republic, of a Memorandum of Understanding and Technical Cooperation Agreement in consonance with Article XIV of the Inter-American Convention against Corruption.”

- “Another important development was Guatemala's ratification of the *United Nations Convention against Corruption*, depositing its instrument with the General Secretariat of the United Nations on November 3, 2006. With this gesture the Republic of Guatemala demonstrates its clear interest in taking a stand against corruption. The Office of the Attorney General was appointed as the central authority.”

The Committee takes note of the satisfactory consideration by the State under review of recommendation 5.3, transcribed above, which, by its nature, requires a continuation of efforts in its implementation, and of the information provided on the internal agencies that have participated in the process of implementing said recommendation.^{xlvii}

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The Committee did not formulate recommendations on this provision of the Convention to the State under review because it considered that the Republic of Guatemala complied with Article XVIII of the Convention by appointing the Commissioner for Transparency and against Corruption as the central authority for the purposes of the assistance and international cooperation provided for in the Convention.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1

Design and implement, when appropriate, programs to train civil 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.

In its response,⁶⁶ the State 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:

- “One of the general recommendations put to Guatemala concerns training necessary to ensure compliance with rules on transparency and the fight against corruption. To that end, the *Commission for Transparency and against Corruption*, as the central authority, has designed training programs with the collaboration of the *National Institute of Public Administration*, in order jointly to impart the *Standards on Free Access to Public Information in the Executive Branch and its Agencies*, the

⁶⁶ Response of Guatemala to the Questionnaire, pp. 58 and 59

schedule for which is set out in the INAP 2007 ⁶⁷Academic Agenda, in addition to other training programs for various state institutions.”

- “As part of a permanent training program, the Ministry of Public Finance offers officials, suppliers, and users training courses to ensure the proper use of GUATECOMPRAS and SIAF SAG.”⁶⁸

The Committee takes note of the satisfactory consideration by the State under review of recommendation 7.1, transcribed above, which, by its nature, requires a continuation of efforts in its implementation, and of the information provided on the internal agencies that have participated in the process of implementing said recommendation.^{xlviii}

Recommendation 7.2

Select and develop procedures and indicators, when appropriate, that make it possible to verify follow-up on the recommendations made in this report, and report back to the Committee, through the Technical Secretariat, in this regard. For the purposes indicated, Guatemala could consider taking into account the list of the most widely used indicators, applicable in the inter-American system, that were available for the selection indicated by the country under analysis, which has been published on the OAS website by the Technical Secretariat of the Committee, as well as information derived from the analysis of the mechanisms developed in accordance with recommendation 7.3 which follows.

The reply of the Republic of Guatemala to the Questionnaire does not refer to this recommendation. In light of the foregoing, the Committee takes note of the need for the Republic of Guatemala to give further attention to its implementation.

Recommendation 7.3

Develop, when appropriate and where they do not yet exist, procedures for analyzing the mechanisms mentioned in this report, as well as the recommendations contained herein.

The reply of the Republic of Guatemala to the Questionnaire does not refer to this recommendation. In light of the foregoing, the Committee takes note of the need for the Republic of Guatemala to give further attention to its implementation.

⁶⁷ See <http://www.inapgt.com>

⁶⁸ See <http://www.guatecompras.gob.gt>

ENDNOTES

ⁱ “Article 4. Public servant. For the purposes of this Law, a public servant is defined as an individual who occupies a post in the public administration by virtue of an appointment, contract, or any other legally recognized link, whereby they are required to provide their services or personally execute works in exchange for a salary, under the continued supervision and direct management of the public administration.”

ⁱⁱ “Article 32. Exempt positions. Exempt positions are not subject to the provisions contained in this Law and include the following: 1. Officials appointed by the President on the recommendation of the Cabinet; 2. Government ministers and vice ministers, secretaries, under-secretaries, and advisers to the Office of the President of the Republic, directors general and departmental governors; 3. Career officials and employees in the Diplomatic Service in accordance with the Organic Law of the Diplomatic Service of Guatemala; 4. Treasurer General of the Nation; 5. Government Notary 6. Manager of the National Lottery; 7. Cabinet officials; 8. Property registrars and corresponding personnel; 9. Inspector General of Labor. 10. Officials of the Office of the President of the Republic who report directly to the President; 11. Members of the security forces; 12. Persons hired to provide services on a provisional or part-time basis or for a limited time under a special contract; 13. Employees of the Secretariat of the Office of the President of the Republic; 14. Not more than 10 public officials or servants in each government ministry appointed to positions of trust by the respective minister; 15. Persons who perform duties *ad honorem*.”

ⁱⁱⁱ “Article 35. Classification schedule. For application purposes, the National Civil Service Office shall draw up a classification schedule, setting out the duties and responsibilities for competitive and non-competitive positions and shall group those positions into categories. For that purpose, the director of the National Civil Service Office shall keep current: 1. A list of position categories and of the job series or grades determined. - 2. A manual of category specifications, setting out the duties, responsibilities, and minimum qualifications for each category of positions. - 3. A manual containing the job classification rules.”

^{iv} “Article 42. Admission requirements. Admission to a competitive position requires that candidates: 1. Possess the moral, intellectual, and physical aptitude to discharge the duties of a post. 2. Meet the special minimum requirements set forth in the category specifications manual for the post concerned. 3. Demonstrate their suitability by undergoing the tests, examinations, or competitions provided in this Law and its regulations. 4. Be selected and appointed by the appointing authority from the roll of candidates certified by the National Civil Service Office. 5. Satisfactorily complete the probation period. 6. Meet the other requirements contained in the regulations of this Law.”

^v Article 43 of the Civil Service Law adds, at paragraphs 2 and 3, that the National Civil Service Office “may, should its director deem it advisable, request technical advisory services from the agencies with the vacancies or from other institutions or persons, in order to prepare and apply the tests, if necessary” and that “Tests should allow free competition and be designed to determine the capacity, aptitude, and ability of candidates to discharge the duties of the post in question. Tests may be oral, written, physical, or a combination thereof.”

^{vi} “Article 45. Admission Applications and Calls for Candidates. Admission or examinations are free for all persons who meet the requirements for the post in question. Nevertheless, the Director of the National Civil Service Office may, with due cause, reject any application and strike from the register or refuse certification of the name of anyone they consider does not meet the requirements set forth in the law and its regulations. Calls for candidates shall be issued at least 15 days before the date set by the Office for the examination by the means that it considers most appropriate; however, at all events, the notice shall be published in the Official Gazette and in one other broadly distributed national newspaper. Calls for candidates shall indicate the duties and functions of the post, desirable or mandatory requirements, how to apply, and the date, place and time of the examination.”

^{vii} “Article 16. Examinations. The National Civil Service Office in implementing the personnel selection process in coordination with ministries and other agencies of the executive branch, shall empower the latter to conduct a pre-selection process in the following manner: 1. The ministry or agency shall request the National Civil Service Office to appoint a representative-examiner to carry out and supervise the process; 2. Once all of the phases of the personnel selection process have been completed, the representative-examiner of the National Civil Service Office and the representative or representatives of the ministry or agency shall sign the relevant

record, which shall specify the different phases of the process and the order of the results obtained by the candidates in the various tests conducted; 3. The dossier or dossiers on the persons preselected shall be forwarded to the National Civil Service Office with a request for certification of eligible candidates, so as to continue with the appointment process.”

^{viii} “Article 4. Employee of the Legislative Branch. For the purposes of this Law, an employee of the legislative branch is defined as an individual who occupies a post in the administration by virtue of an appointment, contract, or any other legally recognized link, whereby they are required to provide their services in exchange for a salary, under the continued supervision and direct management of the Executive Board of the legislative branch, or of the appropriate authority, in the exercise of administrative duties.”

^{ix} “Article 6. Qualifications and General Requirements. The appointments and contracts to which the preceding Article refers shall be awarded exclusively on the basis of merit as regards capacity, honesty and efficiency; all persons appointed or contracted shall meet the following requirements: a) Pass the aptitude and competency tests in accordance with the systems and procedures approved by the Executive Board of the legislative branch; b) Meet the requirements set for the post in question in the legislative branch job classification schedule; c) Satisfy other requirements, including any applicable special requirements, consistent with the nature of the work.”

^x Article 11 of the Judicial Career Law, provides that “The application committees and the Institutional Training Unit shall carry out their functions in accordance with the provisions contained in this Law as well as those set forth in specific regulations that shall be issued by the Supreme Court of Justice on the recommendation of the Judicial Career Council.”

^{xi} “Article 15. Requirements and qualifications. Applicants to judgeships, irrespective of their category, must be Guatemalan in origin, of recognized honorableness, be in full enjoyment of their civil and political rights, and be practicing licensed lawyers. - In the case of Judges of the Court of Appeals and tribunals of the same rank, it shall also be required that they be over 35 years old, have been a judge of first instance, or have been a practicing lawyer for more than five years. - In the case of Justices of the Supreme Court of Justice it shall also be required that they be over the 40 years old and have been a judge of the Court of appeals or of collegiate tribunals of the same rank, or have been a practicing lawyer from more than 10 years.” The foregoing provision accords with Article 207 of the Political Constitution, which provides: “Requirements to be a magistrate or judge. Magistrates and judges must be native Guatemalans, of known honor, and have the right to fully exercise their rights as citizens and be barred lawyers, subject to the exceptions specified by law with respect to this last requirement, as concerns certain judges in the private jurisdiction and minor judges.”

^{xii} Article 16 of the Judicial Career Law, also provides that “the application must contain, inter alia, the applicant's particulars, curriculum vitae and their certificates, including their professional license, a certificate of no criminal record and a certificate from the Professional Conduct Tribunal of the College of Lawyers and Notaries of Guatemala and any other documents deemed pertinent whose presentation might be requested in the call for applicants.”

^{xiii} “Article 17. Information and lists. The Judicial Career Council shall prepare a list of registered persons and verify, in each instance, compliance with the requirements set down in this Law. Having completed the verification, the Judicial Career Council shall draw up the roll of candidates eligible to compete and inform the interested parties of its decision. Said list of candidate shall be published in the Official Gazette and at least two other broadly distributed daily newspapers, and forwarded, in the case of lower court judges, to the Supreme Court of Justice and, in the case of appellate and Supreme Court judges, to the respective application committees. - Any person who so wishes shall have five days, counted from the publication date of the last notice, in which to convey documented information on the candidates to the Judicial Career Council or the application committees, as appropriate. The mechanisms and formalities for receipt and appraisal of the aforesaid information shall be governed by special rules of procedure issued by the Council.”

^{xiv} “Article 18. Evaluation and eligibility. The Institutional Training Unit is required to perform an evaluation of all candidates to the position of judge, regardless of category, which shall be based on such tests as may be deemed advisable and on public or private, personal interviews. - Once the evaluation has been completed, a list of approved eligible candidates shall be prepared in descending order of their individual scores. - All candidates who passed shall pursue the appropriate course at the Judicial Institutional Training Unit, the duration of which shall be at least six months.

^{xv} Article 19. Appointment of judges. Candidates who pass the training course at the Judicial Institutional Training Unit be declared eligible and appointed by the Supreme Court of Justice, as appropriate, as justices of the peace and judges of first instance and assigned to existing vacancies, of which they shall take possession within a month of having taken the respective oath; they may also be appointed to the position of judges *pro tempore*, in accordance with Article 34 of this Law.

^{xvi} “Article 21. Election of Appellate and Supreme Court Judges. The election of Justices of the Supreme Court of Justice and of regular judges of the Appellate Court and other tribunals of the same rank, is the exclusive purview of the Congress of the Republic and shall be done from a list of eligible candidates presented by the respective application committees with a vote in favor of at least two thirds of their members.”

^{xvii} “Article 16. Admission requirements of the competitive examination system. Everyone has the right to apply for admission to the competitive examination system. In order to join the career system for judicial auxiliary staff and administrative and technical employees, a person must be in full enjoyment of their civil and political rights and: a. Be of sufficiently sound health to enable them satisfactorily to discharge the duties of the office; b. Meet the job requirements set out in the Positions and Salaries Classification and Evaluation Manual; c. Be a person of recognized honorableness; d. Pass the tests, examinations, and competitions provided in this Law and its regulations; e. Be eligible; f. Pass the induction program provided; g. Have no conviction confirmed in a final judgment within 10 years prior to their appointment for any of the following crimes: embezzlement, tax evasion, contraband, misrepresentation, forgery, robbery, fraud, malfeasance in office, bribery, illegal exaction, violation of a secret; h. Any other requirement other requirement set forth in the regulations of this Law.”

^{xviii} “Article 26. Appointing authority. For the purposes of this Law, the President of the Supreme Court of Justice is the appointing authority for positions in the auxiliary judicial staff career system, while the President of the Judicial Branch is for those in the administrative and technical employee career system.” - “Article 28. Prohibitions on the appointing authority. Apart from the prohibitions contained in other laws, the appointing authority is also prohibited to: a. Appoint relatives, within the degrees recognized by law, of the President of the Judicial Branch or of Justices of the Supreme Court of Justice to the positions of Chiefs of Administrative Units; b. Appoint or promote a worker without the respective vacancy or position available, as provided in the Positions and Salaries Classification and Evaluation Manual or, in the case of a competitive position, to appoint any candidate who has not participated in the competitive examination or finished among the top 10 candidates; c. Dismiss judicial employees and officials without just cause and without observing due process guarantees; d. Appoint or allow spouses or relatives within the degrees recognized by law to work in the same judicial or administrative unit.”

^{xix} Paragraphs 2 and 3 of Article 30 of the Civil Service Law of the judicial branch provide, “In the case of competitive positions, the appointing authority shall request from the Human Resources System, when the number of candidates so allows, a list of the 10 highest-scoring candidates in descending order for inclusion in the list of eligible candidates to be proposed to the immediate superior of the post, who shall recommend to the appointing authority the candidate that they consider best suited for the position. - In the case of positions subject to free appointment and removal, as a minimum, the requirements mentioned in paragraphs a), b) and c) of Article 16 of this Law must be met.”

^{xx} “Article 14. Tests and examinations. Tests and examinations shall include: a) Psychometric tests; b) Technical tests. The Human Resources System shall select the combination of tests to measure the abilities of candidates. The Human Resources System shall apply technical tests, as appropriate, through the Human Resources Supply Unit. Tests shall be conducted with the advice of personnel from the agency where the vacancy is located. Technical tests for auxiliary judicial staff shall be carried out with the support of the Institutional Training Unit.”

^{xxi} “Article 15. Scoring System. The human resources system shall develop, obtain, and apply suitable psychometric and technical tests in order to conduct competitive examinations. It shall also prepare an objective system with which to quantify the results of interviews, investigation of references, and test and examination results.”

^{xxii} “Article 4. Municipal employee. For the purposes of this Law, a municipal employee is defined as an individual who provides a service remunerated by the municipal treasury by virtue of an appointment, contract, or any other legally established link, whereby they are required to provide services or formally execute works

in exchange for a salary, under the immediate or delegated supervision and management of the municipality or one of its offices.”

^{xxiii} “Article 19. Positions of Trust or Subject to Free Appointment and Removal. Employees who occupy positions of trust or subject to free appointment and removal are not bound by the provisions contained in this Law as regards appointment and dismissal; they include the posts of: a) Auxiliary mayor; b) Contract personnel; c) Members of the municipal police force; d) Director and Deputy Director of the Municipal Human Resources Advisory Office; e) Employees whose functions are declared to be ‘of trust’ in accordance with the relevant regulations; f) Personnel who serve *ad-honorem*.”

^{xxiv} “Article 26. Admission Requirements. In order to be admitted to a career position, candidates must meet the following requirements: a) Be Guatemalan citizens and in free exercise of their civil rights; b) Possess the necessary moral, physical, and intellectual aptitude to discharge the duties of the post; c) Meet the special minimum requirements set forth in the personnel rules of the municipality in question; d) Submit to the tests, examinations, or competitions provided in this Law and its regulations; e) Be selected and appointed by the Appointing Authority in accordance with the procedures set forth in this Law and its regulations; f) Not to have been convicted in a final judgment for crimes that imply dishonesty, such as theft, robbery, fraud, bribery, malfeasance in office, misrepresentation, embezzlement of public funds or illegal exaction, and, in general, any offences against government property; g) Not to be legally ineligible; h) Meet the other requirements provided in the regulations on this Law.”

^{xxv} Law on State Contracting: “Article 9. Superior Authorities. The following superior authorities shall appoint the members of the Tender Board and approve the contract award in all tender processes: 1. FOR THE LEGISLATIVE AND JUDICIAL BRANCHES: 1.1. For amounts less than nine hundred thousand quetzals (Q.900,000.00), the Speaker of the legislative branch or the President of the judicial branch; 1.2. For amounts greater than of nine hundred thousand quetzals (Q. 900,000.00), these superior administrative organ of the branch of government in question. – 2. FOR THE CONSTITUTIONAL COURT AND THE SUPREME ELECTORAL TRIBUNAL: 1.1. For amounts less than nine hundred thousand quetzals (Q. 900,000.00), the President of the Constitutional Court or the President of the Supreme Electoral Tribunal, respectively; 1.2. For amounts greater than of nine hundred thousand quetzals (Q. 900,000.00) the plenary of the Constitutional Court or of the Supreme Electoral Tribunal, as appropriate. – 3. FOR DEPARTMENTS AND ENTITIES OF THE EXECUTIVE BRANCH WITHOUT LEGAL PERSONALITY: 3.1. In the case of those that are part of a ministry, the Minister for the sector; 3.2. In the case of those that are not part of a ministry, these superior administrative authority; 3.3. In the case of implementing units: 3.3.1. The executive director, manager, or the equivalent official, for amounts less than nine hundred thousand quetzals (Q. 900,000.00); 3.3.2. The Minister for the sector for amounts greater than of nine hundred thousand quetzals (Q. 900,000.00). – 4. FOR DECENTRALIZED AND AUTONOMOUS GOVERNMENT ENTITIES WITH LEGAL PERSONALITY: 4.1. The manager, or the equivalent official, when the total value is less than nine hundred thousand quetzals (Q. 900,000.00); 4.2. The executive board, maximum authority, or, as appropriate, whoever performs the functions thereof, when the total value is greater than nine hundred thousand quetzals (Q.900,000.00). – 5. FOR MUNICIPALITIES AND THEIR COMPANIES LOCATED IN DEPARTMENTAL SEATS: 5.1. The Mayor or the manager, as appropriate, for amounts less than nine hundred thousand quetzals (Q. 900,000.00); 5.2. The municipal corporation or the maximum authority of the company, when the total value is greater than exactly nine hundred thousand quetzals (Q.900,000.00). – 6. FOR MUNICIPALITIES AND THEIR COMPANIES LOCATED OUTSIDE DEPARTMENTAL SEATS: 6.1. The Mayor or the manager, as appropriate, for amounts less than nine hundred thousand quetzals (Q. 900,000.00); 6.2. The municipal corporation or the maximum authority of the company, for amounts greater than of nine hundred thousand quetzals (Q. 900,000.00). – Negotiations financed with funds provided in the form of loans granted by the Municipal Development Institute or by overseas financial entities to the Municipal Corporation shall be subject to the favorable opinion of said Institute, whose opinion shall be deemed favorable if it does not respond to the enquiry or issue the relevant opinion within 30 days counted from the date of receipt of the dossier.”

^{xxvi} Law on State Contracting. “Article 38. Amount. When the price of the goods, or the works, supplies, or remuneration for services is greater than thirty thousand quetzals (Q. 30,000.00) but less than the following amounts, the procurement or contract may be conducted by the purchasing method, as follows: a) In the case of municipalities, when the price is not greater than nine hundred thousand quetzals (Q. 900,000.00); b) In the

case of the State and other entities, when the price is not greater than nine hundred thousand quetzals (Q. 900,000.00).” According to the observations of the civil society organization “*Acción Ciudadana*” on p. 11 of its Independent Follow-Up Report on Implementation of the Inter-American Convention against Corruption in Guatemala, “based on data supplied at <http://www.banguat.gob.gt> on October 11, 2007, using a benchmark exchange rate of Q 7.74717 = US\$ 1.00” produces the following equivalencies: “The direct purchase method applies to procurement operations in amounts up to US\$ 3,872.38 (Q 30,000.00).”- “The purchasing method applies for procurement operations in amounts from US\$ 3,872.38 to US\$ 116,171.45 (Q 30,000.00 to Q 900,000.00). Public tenders (national or international) are used for amounts in excess of US\$ 116,171.45 (Q 900,000.00).”

^{xxvii} Law on State Contracting, Chapter III, Title III: “Article 43. Direct purchase. Procurement operations conducted in a single act with one person and for a price of up to thirty thousand quetzals (Q. 30,000.00), shall be conducted under the liability and with the prior approval of the superior administrative authority of the entity concerned, taking into account, the price, quality, delivery time, and other circumstances that favor the interests of the State, and its decentralized and autonomous agencies, according to the procedure determined by the said authority. – In the absence of genuine offers, as governed by Article 32 of this Law, the direct purchase method may be used without regard to the thresholds set forth in Article 38. “Article 44.- Exceptions. The following exceptions are provided: 1. Procurement under the tender or the purchasing methods shall not be obligatory for government agencies and entities, in accordance with the procedure set out in the Regulations of this Law and in the following cases: - 1.1. Procurement of goods, works, services and supplies to protect borders, bridges, natural resources subject to international rules, or the territorial integrity of Guatemala. 1.2. Procurement and contracting of goods, supplies, works and services that are indispensable for resolving situations arising from states of emergency declared in accordance with the Constitutional Law on Public Order which may have caused the suspension of public services or when such suspension is imminent. - The declarations provided at subsections 1.1 and 1.2, shall be expressly made through Governmental Decisions adopted by the executive branch at meetings of the Cabinet. 1.3. Procurement and contracting of goods, supplies, works and services that are necessary and urgent to resolve situations of national interest or social benefit, provided that the foregoing are declared as such in a decision adopted by the respective president of each branch of government, thus: 1.3.1. Executive branch, with the Cabinet; 1.3.2. Legislative branch, with the Executive Board; 1.3.3. Judicial branch, with its superior administration organ. – The declaration in each instance shall mention the works, goods, services or supplies that may be procured, as well as the amount and the deadline by which the operations shall be carried out. The branch of government, ministry, or entity concerned shall be responsible for qualification in each case, and shall accompany their declaration with all the information justifying their decision. - 1.4. Procurement of movable and immovable property and outfitting of Guatemala's embassies, legations, consulates, or missions abroad; there must, however, exist a prior specific budget item, or else the procurement conform to the provisions contained in Article 3 of this Law. - 1.5. Procurement of works or services for state agencies abroad; there must, however, exist a prior specific budget item, or else the procurement conform to the provisions contained in Article 3 of this Law. - 1.6. Procurement of armament, ammunition, equipment, construction materials, aircraft, ships and other vehicles, fuel, lubricants, provisions, and services or supplies done on behalf of the Army of Guatemala and its institutions by the Ministry of National Defense, to the extent necessary for the fulfillment of its purposes. – 1.7. Procurement of metals necessary to mint coins, systems, equipment, molds for banknotes and stock certificates required by the Bank of Guatemala owing to the nature of its functions. Purchases of gold and silver must be made at the international prices of the day quoted on the London Stock Exchange, or lower. - 1.8. Purchase of immovable property, whose location makes it indispensable for the construction or public works or provision of public services, which can only be bought from one person, and whose price does not exceed the valuation performed by the Ministry of Public Finance. - 1.9. Procurement of individual professional services in general. - 1.10. Procurement and contracting of goods, supplies and services from sole providers. Sole or exclusive providers and services shall be qualified in accordance with the procedure set out in the Regulations of this Law. – 2. Public tender shall not be compulsory in the following cases; however, such case shall require procurement by the purchasing method or whichever procedure this Law or its Regulations determine: 2.1 Leasing, with or without the option to buy, immovable property, plant and equipment in or outside national territory, in accordance with the procedure set out in the Regulations of this Law. - 2.2 Contracting of studies, designs,

works supervision, and technical services, in accordance with the procedure set out in the Regulations of this Law. - 2.3 Purchase of scientific, artistic, or literary works; subject to an opinion in favor from the competent authority, in accordance with the Regulations of this Law. - 2.4 Procurement of natural deposits used for the construction of public works. - 2.5 Contracts entered on by the Supreme Electoral Tribunal for holding electoral processes. - “Article 45.- Standards Applicable to Exceptions. Any contracts in which any of the exceptions referred to in the preceding article apply shall be subject to the other provisions contained in this Law and its Regulations.

^{xxviii} Law on State Contracting “Article 19.- Requirements for Terms and Conditions of Tender. Terms and conditions of tender, as appropriate, shall contain at least the following: 1. The requirements to be met by bidders; 2. General and specific characteristics in the case of goods and/or services; 3. The place and manner in which the work is to be executed, the goods delivered, or the services provided. 4. A list of the documents that the sealed bid should contain, in the original and the requisite number of copies, one of which shall be turned over to the bidders; 5. An indication that the bidder shall put up, as appropriate, the guarantees referred to in Title V, Single Chapter of this Law; 6. In special cases and when the superior authority deems it advisable, the guarantees to be put up by the contractor, along with an indication as to the risks to be covered, the life of the guarantees, and their amounts; 7. Form of payment for the work, goods, or services; 8. The percentage of the advance payment and procedure for its release when granted; 9. The place, exact address, date and time at which the ceremony for presentation, receipt, and opening of sealed bids would be held; 10. A sworn statement that the bidder is not in arrears to the State or any of the entities mentioned in Article 1, of this Law, or, failing that, a formal undertaking that in the event they are awarded the contract they shall accredit, prior to signing the contract, that they have made the appropriate payment; 11. An indication of the manner of integration of unit prices by line; 12. The criteria that the tender board shall observe in grading the bids received; 13. An indication of the requirements deemed essential; 14. A specimen bid and the draft agreement. - The foregoing requirements shall also apply, as appropriate, for the purposes of procurement by purchasing, preparation of terms of reference, and contracting in the exceptions contained in Article 44 of this Law. The Regulations shall set out the requirements for specific cases.”

^{xxix} Article 36 of the Law on State Contracting adds, “If a review is ordered, the dossier shall, within two (2) days, be returned to the Board, which shall review the evaluation and make the award within five (5) days of its receipt of the dossier. The Board may confirm or amend its decision, duly stating its reasons. Once the dossier has been returned to the superior authority, the latter shall approve the decision of the Board, without prejudice to the right to dispense therewith. The superior authority shall approve or disapprove the decision within five (5) days of its receipt of the dossier.”

^{xxx} According to the observations of the civil society organization “*Acción Ciudadana*” on p. 11 of its Independent Follow-Up Report on Implementation of the Inter-American Convention against Corruption in Guatemala, “based on data supplied at <http://www.banguat.gob.gt> on October 11, 2007, using a benchmark exchange rate of Q 7.74717 = US\$ 1.00” produces the following equivalencies: Q 30,000.00 = US\$ 3,872.38; Q 900,000.00 = US\$ 116,171.45.

^{xxxi} Law on State Contracting. “Article 40. Interested parties shall present their written bids on the form provided in a sealed envelope, attaching the documents with which they were supplied, a photocopy of their business license and/or company license, as well as the other documents requested of them. The unit and total prices shown on bids shall be fixed and stated in quetzals in both digit and word form; no bids shall be accepted after the stipulated deadline.”

^{xxxii} Law on State Contracting. “Article 32.- Absence of Bids. In the event that no bidder responds to the invitation to tender, the Board shall draw up the relevant record and bring that fact to the attention of the respective superior administrative authority, so that it may extend the deadline to receive bids. If still no bidders are forthcoming, the superior authority shall be at liberty to employ the direct purchase method referred to in Article 43 of this Law.”

^{xxxiii} Law on State Contracting. “Article 80.- Prohibitions. The following are prohibited from procurement by purchasing or tender or from contracting with the State under this Law: 1. Anyone who is not listed in the appropriate Register of Prequalified Persons. 2. Anyone who is deprived, in a final judgment, of the enjoyment of their civil rights. 3. Servants or employees of the State or the entities mentioned in Article 1 of this Law, as well as their legal relatives, whenever it is necessary for contracts to be entered into with agencies in which that

public servant or employee provides their services or is under their authority. This prohibition also applies to legal persons when said official is a partner or representative thereof. 4. Anyone who has been directly or indirectly involved in earlier stages of the procurement or contracting process. This prohibition extends to legal relatives as well as to legal persons of which they are partners or representatives.”

^{xxxiv} Law on State Contracting. “Article 102. Jurisdiction of the Contentious Administrative Tribunal. Except as provided at Article 3 of this Law, any dispute concerning breach, interpretation, enforcement, and effects of the acts or resolutions of the entities mentioned in Article 1 of this Law, as well as disputes arising from administrative contracts, shall be submitted to the jurisdiction of the Contentious Administrative Tribunal once administrative and conciliation proceedings have been exhausted.”

^{xxxv} Paragraph 3 of Article 18 of the Regulations of the Law on State Contracting provides, “Adoption of the decision shall require a prior favorable opinion from the following entities: a) The Office of the Comptroller General, so that it might verify compliance with the requirements mentioned in the first paragraph of this article, which requirements shall also ensure attainment of the objectives of the agreement through the contract to be signed; b) The General Secretariat of the National Council for Economic Planning, in order to evaluate the financial investment and the technical and economic feasibility, so as to reliably show that they can resolve the situation of national interest or social benefit invoked; and, in the case of works contracting, to determine that the contract is compatible with the projects provided for in the development plans as well as to verify that the requirements referred to in the second paragraph of this article are met; c) The Ministry of Public Finance, to verify compatibility between the funds required for the contract and those provided in the State budget. - The preceding opinions shall be requested simultaneously from the aforementioned entities, which shall provide them within ten (10) business days of the receipt of the request. - The foregoing is without prejudice to the requirements set forth in the last paragraph of Article 19 of this Law.

^{xxxvi} Response of Guatemala to the Questionnaire, p. 31, which provides the following information: “The entities that have been involved in the efforts to implement the recommendations in this area are the Office of the Comptroller General, the Presidential Commission for Transparency and against Corruption, the General Secretariat of the Office of the President of the Republic, and the Office of the Superintendent of Tax Administration (SAT).”

^{xxxvii} Response of Guatemala to the Questionnaire, p. 33, which provides the following information: “Both the Office of the Comptroller General and the executive branch, through the Presidential Commission for Transparency and against Corruption, have been working on this issue. For more information on the subject, see draft legislation that www.congreso.gob.gt (Bills 3277, 3221 and 3231).”

^{xxxviii} Response of Guatemala to the Questionnaire, p. 39, which provides the following information: “In particular the Ministry of Public Finance, which is the governing body for that system, as well as the State institutions that are required to use the GUATECOMPRAS system. The task of monitoring its proper implementation has involved the Presidential Commission for Transparency and against Corruption, the Office of the Comptroller General, various civil society organizations that engage in monitoring activities, such as *Acción Ciudadana*, and the Public Works Monitoring System (SIMOP).”

^{xxxix} Response of Guatemala to the Questionnaire, p. 39, which provides the following information: “The internal agencies that participate in awareness raising on electronic systems include the following: Ministry of Public Finance; Presidential Secretariat for Planning and Programming (SEGEPLAN); Office of the Comptroller General; Ministry of the Economy; Office of the Superintendent of Tax Administration (SAT).”

^{xl} Response of Guatemala to the Questionnaire, p. 41, which provides the following information: “Presidential Commission for Transparency and against Corruption and the National Institute of Public Administration (INAP).”

^{xli} Response of Guatemala to the Questionnaire, p. 44, which provides the following information: “Office of the Comptroller General, Presidential Commission for Transparency and against Corruption.”

^{xlii} Response of Guatemala to the Questionnaire, p. 48, which provides the following information: “Office of the Comptroller General, Congress of the Republic through the Special Committee on Transparency, Presidential Commission for Transparency and against Corruption, and civil society organizations through the Coalition for Transparency, composed of *Acción Ciudadana*, Center for National Economic Studies (CIEN) and Chamber of Commerce of Guatemala. *Universidad de San Carlos de Guatemala*, Presidential Secretariat for Executive Coordination (SCEP), Office of the Superintendent of Tax Administration (SAT), Ministry of Public Finance,

Presidential Secretariat for Planning and Programming (SEGEPLAN), National Institute of Public Administration (INAP) and International cooperation, United States Agency for International Development (USAID), Republic of China (Taiwan).”

^{xliii} Response of Guatemala to the Questionnaire, p. 51, which provides the following information: “Presidential Commission for Transparency and against Corruption, Presidential Secretariat for Planning and Programming (SEGEPLAN), Executive Secretariat of the Presidency.”

^{xliiv} Response of Guatemala to the Questionnaire, p. 51, which provides the following information: “Presidential Commission for Transparency and against Corruption, Presidential Secretariat for Planning and Programming (SEGEPLAN), Executive Secretariat of the Presidency.”

^{xli v} Response of Guatemala to the Questionnaire, p. 55, which provides the following information: “The internal agencies that have participated include the Presidential Commission for Transparency and against Corruption, the Presidential Secretariat for Planning and Programming (SEGEPLAN); Office of the Comptroller General; Ministry of Public Finance, National Institute of Public Administration (INAP).”

^{xli vi} Response of Guatemala to the Questionnaire, p. 56, which provides the following information: “Presidential Secretariat for Planning and Programming (SEGEPLAN), Office of the Comptroller General and civil society organizations.”

^{xli vii} Response of Guatemala to the Questionnaire, p. 58, which provides the following information: “Presidential Commission for Transparency and against Corruption.”

^{xli viii} Response of Guatemala to the Questionnaire, p. 59, which provides the following information: “Presidential Commission for Transparency and against Corruption, Ministry of Public Finance.”