

MECHANISM FOR FOLLOW-UP ON
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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SAINT KITTS AND NEVIS

FINAL REPORT

(Adopted at the March 20, 2015 plenary session)

SUMMARY

Bearing in mind that Saint Kitts and Nevis was not party to the MESICIC when the First Round of MESICIC was conducted, the present report is a comprehensive review of the implementation of the provisions of the Inter-American Convention against Corruption that the Committee of Experts of the MESICIC selected for review in the First and Fourth Rounds.

The provisions selected for review in the First Round are those provided in Article III, paragraphs 1 and 2, on standards of conduct and mechanisms for enforcing them; Article III, paragraph 4, on systems for reporting declarations of income, assets, and liabilities; Article III, paragraph 11, on mechanisms to promote the participation of civil society and nongovernmental organizations in efforts to prevent corruption; Article XIV, on assistance and cooperation; and Article XVIII, on central authorities.

Article III, paragraph 9 was selected for the Fourth Round, which concerns the “oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.”

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee’s Rules of Procedure and the methodologies it adopted for on-site visits and for the Fourth Round, including the criteria therein established for equal and impartial treatment for all the States Parties, functional equivalence, and the purpose of both the Convention and MESICIC of promoting, facilitating and strengthening cooperation among the States Parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out taking into account the Response received from Saint Kitts and Nevis to the Questionnaire, the information compiled by the Technical Secretariat, and a new and important source of information, namely the on-site visit conducted between October 6 and 8, 2014 by the preliminary review subgroup for Saint Kitts and Nevis, composed of Mexico and Trinidad and Tobago, with the support of the Technical Secretariat. During that visit, the information furnished by Saint Kitts and Nevis was clarified and expanded and the opinions of civil society organizations were heard. This provided the Committee with objective and complete information on those topics.

In keeping with the methodology for the Fourth Round in the case of States not parties to the MESICIC in the First Round, the review of the Convention provisions selected for the First and Fourth Rounds is to determine whether Saint Kitts and Nevis has a legal framework for each of the topics and oversight bodies reviewed, whether the legal framework is adequate for promoting the purposes of the Convention and whether there are objective results. The pertinent recommendations were formulated on the basis of those observations.

Some of the recommendations formulated to Saint Kitts and Nevis for its consideration in connection with the provisions selected for the FIRST ROUND are, among others, the following:

With respect to the review of standards of conduct and mechanisms to enforce them, the recommendations made to Saint Kitts and Nevis included the following: design and implement outreach campaigns, targeting all public servants, on the existence, nature, and scope of the Public Service Act 2011, its Codes, and the Public Service Standing Orders 2014; take the necessary steps for the prompt implementation of the provisions of the Integrity in Public Life Act of 2013 and, at the same time, create and set up the Integrity Commission referred to in section 11 of that statute.

Regarding the review of the systems for registering income, assets and liabilities, the recommendations made included the following: to amend the Integrity in Public Life Act 2013, with a view to regulating the conditions, procedures and other relevant aspects regarding the publication of declarations of asset, income and liabilities, and to make available electronic means for completing the declaration of assets, income and liabilities, as well as for submission to the Integrity Commission, when established.

With regard to the mechanisms to encourage citizen participation, the recommendations included the following: develop legal norms that classify as public any information and documents relating to the performance of public sector organs and entities, that give every person the right to request information in the possession of or under the control of public institutions, and create mechanisms for consultation and to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption in Saint Kitts and Nevis.

As for mutual assistance and mutual technical cooperation, the following was recommended: design and implement a comprehensive training and dissemination program for the competent authorities and officials, so that they are made aware of and are able to apply the provisions contained in the Convention and in other treaties that Saint Kitts and Nevis has signed that concern mutual assistance in the investigation or prosecution of acts of corruption, and consider the possibility of ratifying the Inter-American Convention on Mutual Assistance in Criminal Matters and participate actively in the Meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas (REMJA) and its Working Group on Legal Cooperation in Criminal Matters.

Based on the review and contributions made throughout the report, the following were among the general recommendations also offered: design and implement, where appropriate, training programs for public servants responsible for application of the systems, standards, measures, and mechanisms included in this report, in order to ensure that they are thoroughly understood and properly handled and applied; and select and develop procedures and indicators, as appropriate, for verifying follow-up of the recommendations contained in this Report, and notify the Committee accordingly through the Technical Secretariat.

With respect to the FOURTH ROUND, the four bodies selected by Saint Kitts and Nevis reviewed in this report are the Office of Director of Public Prosecutions, the Magistrates Court, the Office of the Ombudsman and the Royal Saint Christopher and Nevis Police Force. Some of the recommendations formulated in connection with the aforementioned bodies are, among others, the following:

With respect to the Office of Director of Public Prosecutions, appoint the Director of Public Prosecutions in accordance with the terms of section 81 of the Constitution; develop instruments, manuals, and/or guides for directing prosecutors in effectively and correctly initiating and pursuing criminal proceedings for the commission of corrupt acts; and provide this Office with the financial resources necessary to ensure the regular training of prosecutors, in order to strengthen their knowledge and skills in the correct and effective prosecution of crimes, particularly those related to acts of corruption.

As regards the Magistrates Court, provide the Court with the financial resources necessary to ensure permanent, appropriate training for all its officers, including the Magistrates, particularly on topics related to the correct prosecution of cases involving acts of corruption and on ethics, integrity, and transparency in judicial functions.

With respect to the Office of the Ombudsman, adopt, as promptly as possible, the relevant measures to provide the Office of Ombudsman with the human and financial resources necessary for due compliance with its legal functions, and establish mechanisms to ensure effective compliance by the public agencies subject to its oversight with the recommendations issued by the Ombudsman in its investigations.

Concerning the Royal Saint Christopher and Nevis Police Force, complement the documents that describe the functions of its personnel with documented procedures, manuals, or guides related to the functions of investigating corruption crimes; develop regular training programs for the RPF's on proper and effective investigations of corruption crimes; as well as develop campaigns to prevent corrupt practices, to publicize the consequences thereof, and to raise awareness about the duty of respecting and protecting public property.

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

**REPORT ON THE IMPLEMENTATION IN SAINT KITTS AND NEVIS OF THE
CONVENTION PROVISIONS SELECTED FOR ANALYSIS IN THE FIRST AND FOURTH
ROUNDS^{1/}**

INTRODUCTION

1. Contents of the Report^{2/}

[1] This report begins with a comprehensive review of the implementation, in Saint Kitts and Nevis, of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the First Round of Review. The provisions selected for the First Round are those provided in Article III, paragraph 1 (Standards of conduct: conflicts of interest, conservation of public resources, obligation to report); Article III, paragraph 2 (Mechanisms to enforce the standards of conduct); Article III, paragraph 4 (Systems for registering income, assets and liabilities); Article III, paragraph 9 (Oversight bodies); Article III, paragraph 11 (Participation by civil society); Article XIV (Assistance and Cooperation), and Article XVIII (Central Authorities).^{3/}

[2] Second, the report presents a review of the implementation of the provision of the Inter-American Convention against Corruption selected by the Committee of Experts of the MESICIC for the Fourth Round of Review. The provision selected appears in paragraph 9 of Article III of the Convention, which concerns the “oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.”

1. Ratification of the Convention and Adhesion to the Mechanism

[3] According to the official records of the OAS General Secretariat, Saint Kitts and Nevis ratified the Convention on August 4, 2004, and deposited its corresponding instrument of ratification on August 26, 2004.

1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 20, 2015, at its Twenty-fifth Meeting, held at OAS Headquarters, March 16-20, 2015.

2. Bearing in mind that Saint Kitts and Nevis was not a party to the MESICIC when the First Round of MESICIC was conducted, the present preliminary draft report was prepared in accordance with articles 23 (a) and 28 of the Committee’s Rules of Procedure (document SG/MESICIC/doc.9/02 rev. 4), and according to the Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption selected in the Fourth Round and for Follow-up on the Recommendations Formulated in the First Round (document SG/MESICIC/doc. 289/11 rev. 2) and the Format of the country reports (document SG/MESICIC doc. 291/11 rev. 2); the last two of these documents were adopted by the Committee at its Nineteenth Meeting, held at OAS headquarters in Washington, D.C., September 12 – 16, 2011.

3. Chapter XII of the Methodology provides that “*States that were not party to the Mechanism during the First Round of Review shall be subject to the methodology adopted by the Committee for that Round [(SG/MESICIC/doc.21/02)], insofar as the review of the Convention provisions that were selected for that Round are concerned, except with regard to their oversight bodies, which will be analyzed according to the methodology adopted by the Committee for the Fourth Round, taking into account that the Committee agreed at its Eighteenth Meeting that those bodies would be analyzed comprehensively.*”

[4] In addition, on December 9, 2010, Saint Kitts and Nevis signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption.

I. SUMMARY OF INFORMATION RECEIVED

1. Response of Saint Kitts and Nevis

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from Saint Kitts and Nevis and, in particular, from the Attorney General's Chambers, which was evidenced, *inter alia*, in the Response to the Questionnaire and the constant willingness to clarify or complete its contents, and in the support for the on-site visit, to which the following paragraph of this report refers. Together with its Response, Saint Kitts and Nevis sent the provisions and documents it considered pertinent, which are available at: www.oas.org/juridico/english/mesicic4_kna.htm.

[6] The Committee notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-site Visits*⁴. As members of the preliminary review subgroup, the representatives of Mexico and Trinidad and Tobago conducted the on-site visit from October 6-8, 2014, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this report, and its agenda of meetings is attached thereto, in keeping with provision 34 of the above-mentioned *Methodology for Conducting On-site Visits*.

[7] For its review, the Committee took into account the information provided by Saint Kitts and Nevis up to October 8, 2014, as well as that furnished and requested by the Technical Secretariat and the members of the review subgroup, to carry out its functions in keeping with its *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*, and the *Methodology for Conducting On-Site Visits* http://www.oas.org/juridico/english/mesicic_docs_en.htm.

2. Documents and information received from civil society organizations and/or, *inter alia*, private sector organizations, professional associations, academics, and researchers

[8] The Committee did not receive documents from civil society organizations within the time limit established in the schedule for the Fourth Round, in accordance with Article 34(b) of the Committee's *Rules of Procedure*.

[9] Nonetheless, during the course of the on-site visit to Saint Kitts and Nevis, information was collected from civil society organizations and professional associations, who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the *Methodology for Conducting On-Site Visits*. A list of invitees is included in the agenda of the on-site visit, which has been annexed to this report. This information is reflected in the appropriate sections of this report, wherever pertinent.

4. Available at: http://www.oas.org/juridico/english/met_onsite.pdf

II. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS ON THE IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISION SELECTED FOR THE FIRST AND FOURTH ROUNDS

A) REVIEW OF THE IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR THE FIRST ROUND

Legal-institutional framework^{5/}

[10] Saint Kitts and Nevis is a sovereign democratic federal state. It attained independence from the United Kingdom on the 19th day of September 1983. The Constitution of Saint Kitts and Nevis is the supreme law of the land. Chapter I, section 2 of the Constitution provides that if any law is inconsistent with the Constitution, the Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

[11] The governance of Saint Kitts and Nevis is premised on the principles of the separation of powers as espoused in the Constitution. This type of governance is modeled on a tripartite system which divides the state into three branches: an executive, a legislature and a judiciary. Each branch is accorded separate and independent powers and responsibilities under the Constitution and the laws of Saint Kitts and Nevis.

[12] The Executive is comprised of Her Majesty the Queen Elizabeth II as Head of State, the Prime Minister and the Cabinet. Her Majesty is represented in Saint Kitts and Nevis by a citizen of the state who is appointed by Her Majesty as Governor-General. The Governor-General exercises the executive authority in Saint Kitts and Nevis on behalf of Her Majesty. The Prime Minister is appointed to office by the Governor-General. There is also an office of Deputy Prime Minister and other offices of Minister of the Government. The Governor-General may appoint persons to hold the office of Minister on the advice of the Prime Minister.

[13] The Cabinet consists of the Prime Minister, Ministers of Government and the Attorney General, who is the principal legal adviser to the Government. The Cabinet advises the Governor-General and is collectively responsible to the National Assembly for any advice given to the Governor-General by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office. These functions do not apply in relation to: • the appointment and removal from office of Ministers and Parliamentary Secretaries, the assignment of responsibility to any Minister under section 54, or the authorization of another Minister to perform the functions of the Prime Minister during absence or illness; • the dissolution of Parliament; • the matters referred to in section 66 (which relate to the prerogative of mercy); or • in relation to the government of the island of Nevis, any matter in respect of which Parliament has no power to make laws for the island of Nevis.

[14] As the legislative branch of the state, Parliament makes laws for the peace, order and good government of Saint Kitts and Nevis. Except when it is expressly declared, the aforementioned powers of Parliament do not extend to any of the matters identified under Chapter X of the Constitution to which the Nevis Island Legislature has exclusive power to act. Parliament consists of Her Majesty and a National Assembly. The National Assembly is composed of eleven (11) representatives as corresponds with the number of constituencies, and four (4) senators. One senator

5. See Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, pp. 1 to 3, available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_Response_4th_Round.pdf

is appointed by the Governor-General acting in accordance with the advice of the Leader of the Opposition and the remaining three are appointed by the Governor-General acting in accordance with the advice of the Prime Minister. The Speaker of the National Assembly and the Attorney General are also members of the National Assembly.

[15] The Eastern Caribbean Supreme Court is responsible for the administration of justice in Saint Kitts and Nevis. It is comprised of the High Court of Justice and the Court of Appeal and has unlimited jurisdiction in Saint Kitts and Nevis. Less serious cases are heard in the Magistrates Court. The Magistrates Court is divided into three (3) districts. Appeals from the Magistrates Court and the High Court of Justice lie before the Court of Appeal. Appeals from the Court of Appeal are heard by the Judicial Committee of the Privy Council. The Judicial Committee of the Privy Council sits in the United Kingdom and is the highest and final Court of Appeal of Saint Kitts and Nevis. Magistrates, the Registrar of the High Court and persons holding or acting in legal offices in the Attorney General's Chambers or the Office of the Director of Public Prosecutions are appointed by the Governor-General acting in accordance with the recommendation of the Public Service Commission, the Commission having consulted with the Judicial and Legal Services Commission in making its recommendation.

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

1.1. CONFLICTS OF INTEREST

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

[16] Saint Kitts and Nevis has a set of provisions regarding standards of conduct, among which the following should be noted:

[17] – Constitutional provisions,^{6/} such as those found in section 28(1), which provides, *inter alia*, that no person shall be qualified to be elected or appointed as a member of the National Assembly (Representative and Senator) if he or she: (a) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state; (b) is a minister of religion; (c) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law; or (e) which speaks to a person serving a sentence of 12 months or more being disqualified. Furthermore, section 28(2) provides that, if it is so provided by Parliament, a person shall not be qualified to be elected or appointed as a member of the National Assembly if he or she holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election of Representatives or members of the Nevis Island Assembly.

[18] Additionally, section 28(5) of the Constitution states that, if it is so provided by Parliament, and subject to such exceptions and limitations (if any) as Parliament may prescribe, a person shall not be qualified to be elected or appointed as a member of the National Assembly if: (a) he or she holds or is acting in any office or appointment (whether specified individually or by reference to a class of office or appointment) other than the office of elected member or nominated member of the Nevis Island Assembly or member of the Nevis Island Administration; (b) he or she belongs to any defence force or to any class of person that is comprised in any such force; (c) he or she belongs to any police force or

6. Available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_const_stkitts.pdf

to any class of person that is comprised in any such force; or (d) subject to any exceptions or limitations prescribed by Parliament, he or she has any such interest in any such government contract as may be so prescribed.

[19] – Legal provisions, such as those contained in the Public Service (Conduct and Ethics of Officers) Code^{7/} adopted in 2014 pursuant section 53(3)(c) of the Public Service Act of 2011,^{8/} which provides standards regarding the prevention of conflicts of interest in the performance of public functions. These provisions are based on the role of the public service which is outlined in section 5 of the Code. This role includes the provision and administration of the public services for which the Government is responsible with integrity, honesty and impartiality and assisting with the formulation of government policies by the provision of objective, honest, comprehensive, accurate and timely advice. They are also in keeping with section 7 of the Code which indicates that public officers shall conduct themselves with integrity, impartiality and honesty.

[20] In particular, section 10 of the Code states that public officers shall not (a) misuse their official position or information acquired in the course of their official duties to further their private interest or those of others; or receive benefits of any kind from a third party that might reasonably be seen to compromise their personal judgment or integrity. In addition, section 28(1) of the Code indicates that a public officer shall not at anytime engage in any private activity or investment which may conflict with his or her official duties or responsibilities or which places him or her or gives the appearance of placing him or her in a position to use his or her official position for his or her benefit. Further, section 28(2) of the Code provides that a public officer who is of the opinion that any private activity or investment in which he or she is engaged in or has a pecuniary interest in might result in a conflict of interest must fully declare this to the Governor General through the Chief Personnel Officer and must comply with such conditions and restrictions as the Governor General acting in accordance with the recommendation of the Public Service Commission may consider necessary.

[21] Section 29 of the Code provides that a public officer shall not undertake any private work connected with the exercise of his or her duties as a public officer. Also, sections 30 and 31 of the Code provides that a public officer shall not without the permission of the Governor-General acting on the recommendation of the Public Service Commission engage in paid work for private boards or committees or while on leave engage in trade or accept paid employment which will not normally be withheld when a public officer is on leave prior to retirement or resignation.

[22] Also, Saint Kitts and Nevis, in its Response to the Questionnaire^{9/} states that in 2013 the Integrity in Public Life Act^{10/} was passed. This Act, which has not yet entered into force, applies to public officers identified in its First Schedule. The Second Schedule of the Act outlines a code of conduct which indicates that a public official shall (i) not allow his or her private interest to conflict with his/her position, (ii) have regard for his/her responsibility to avoid such conflict and (iii) fully explain such conflict where the conflict is unavoidable. Part II of the Second Schedule defines what constitutes a conflict of interest and outlines the officers' responsibility to take steps to avoid such conflicts of interest. A public officer who acts in a manner that allows or might reasonably be thought to allow a conflict of interest to arise between public and private interests commits the offence of

7. Available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_pub_serv_so_9_2014.pdf

8. Available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_pub_ser_act_19_2011.pdf

9. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 6, supra note 4.

10. Available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_int_pub_lif.pdf

abuse of office and is liable upon conviction to a fine of thirty thousand dollars (EC \$30,000)^{11/} or five years imprisonment.

[23] The legislation of Saint Kitts and Nevis also has mechanisms by which to enforce compliance with those standards of conduct, notably the following:

[24] – The Public Service Commission is established under Chapter VII, section 77, of the Constitution. Section 78 of the Constitution provides that, the power to exercise disciplinary control over persons holding office within the Public Service and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the recommendation of the Public Service Commission. By virtue of section 78(3) of the Constitution this provision applies to all public offices except persons holding the office of Attorney-General, Director of Public Prosecutions, Director of Audit, members of the Police Force, legal officers appointed under section 83 of the Constitution and Permanent Secretaries, heads and deputy head of government departments and Chief Professional Advisers appointed under section 79 of the Constitution. The procedure for disciplinary action taken against these officers is specifically provided for by the Constitution.

[25] The Public Service Commission discharges its functions in accordance with the provisions of the Public Service Act 2011 and the Regulations made under the Act, such as the Public Service (Conduct and Ethics of Officers) Code previously mentioned. Section 31 of the Public Service Act outlines the forms of discipline to include demotion, reduction in salary, suspension, deferment or withholding of increment and surcharge for loss to the Government by the public officer's negligence or misconduct. Section 38 of the Act outlines proceedings for dismissal of a public officer and section 39 provides for the termination of the services of a public officer by dismissal in consequence of disciplinary proceedings.

[26] In particular, failure to comply with the provisions of the Public Service (Conduct and Ethics of Officers) Code in relation to disclosure of conflicts of interests or in regard to the matters outlined in sections 29, 30, and 31 of the Code can constitute misconduct of a serious nature as specified by section 2 of the Code. Serious misconduct refers to improper or unprofessional conduct that may warrant the dismissal of the public officer who is found guilty. Serious misconduct includes failure to observe any laws, orders, rules or regulations governing the public service and failure to report or disclose information that ought reasonably to be reported or disclosed where the consequence of the non-disclosure amounts to a grave injustice, both of which capture the failure to disclose conflicts of interests and the matters outlined in sections 29, 30 and 31 of the Code. A public officer found guilty of serious misconduct may be suspended, compulsorily retired or dismissed from the service or suffer reduction in rank or suspension in increments.

[27] Once a complaint is made against a public officer and such information is brought to the attention of the public officer's Head of Department the matter may be brought to the attention of the Public Service Commission for disciplinary proceedings to be taken. It should be noted that section 55(2) of the Public Service (Conduct and Ethics of Officers) Code provides that an officer shall report to his Head of Department or, in instances where the matter involves the Head of Department, the Head of the Public Service, any instances of breach of the Code of which he or she becomes aware. If the officer having reported the matter is of the view that the response does not represent a reasonable response to the concerns raised the officer may make a written report directly to the Public Service Commission.

11. 1 EC Dollar = approximately 0.37 U.S. Dollar (as of December 16, 2014).

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

[28] With respect to the constitutional and legal provisions addressing standards of conduct intended to prevent conflicts of interest and the mechanisms to enforce them examined by the Committee, based on the information provided by Saint Kitts and Nevis in its Response to the Questionnaire and during the on-site visit, they constitute, as a whole, a body of measures relevant for promoting the purposes of the Convention. Nonetheless, the Committee believes it would be appropriate to formulate certain comments in connection therewith:

[29] First, based on the Response to the Questionnaire by the country under review and on the information gathered during the on-site visit, the Committee notes the relatively recent adoption of the 2011 Public Service Act, which, along with the Public Service (Recruitment and Appointment of Officers) Code, the Public Service (Conduct and Ethics of Officers) Code, the Public Service Code of Discipline, and the Public Service Standing Orders, all of which were adopted in 2014, replaced the General Orders that had been in force since 1956. During the on-site visit, however, it was stated that on account of its recent adoption, the public service was somewhat unfamiliar with this new legal framework. As a result, among other things, this could lead to the former framework, as provided for in the General Orders of 1956, being involuntarily followed in certain cases.

[30] For the Committee, it is of paramount importance for the officials and authorities, responsible for overseeing compliance with the framework set out in the previous section, to be made aware of the existence of these new rules governing the exercise of public functions in Saint Kitts and Nevis, and it will therefore formulate recommendations in this regard. (See recommendations a) and b) in section 1.1.4 of Chapter II (A) of this report)

[31] Second, although the Committee notes the existence of provisions that address a person's suitability for public service, it also observes, in the current framework, an absence of preventive mechanisms applicable to public servants as a whole for detecting and, if required, adopting the relevant corrective measures in connection with any conflict of interest that might arise in the exercise of public duties. Further the Committee did not detect any mechanisms for determining, in specific cases, whether a public officer is in a conflict of interest and, at the same time, for the timely adoption of measures necessary to protect the public interest. This suggests that such mechanisms should be created or strengthened to assist the competent agencies – such as the Public Service Commission and/or the Integrity Commission (when it is established in accordance with the terms of 2013 Integrity in Public Life Act) – in discharging their preventive duties and effectively ensuring that no appointments are made in contravention of the regime of disqualifications and incompatibilities in force for the public service in the country under review.

[32] The Committee believes that these considerations, which are of the utmost importance, could be resolved by taking into account the terms of section 5 of the 2013 Integrity in Public Life Act, which provides that “... a person who, on or after the coming into force of this Act, is a public official shall, within a period to be prescribed by Order, complete and file a declaration with the Commission [Integrity Commission] of his or her... private interest, and thereafter the public official shall in each succeeding year that he or she continues to be a public official file further declarations of his or her... private interest,” together with the provisions of sections 12 to 20 of the Code of Conduct provided for in the Second Schedule of that Act.

[33] However, as indicated in the previous section, the Integrity in Public Life Act, although approved by the National Assembly of the country under review, is not yet in force. This is chiefly because, according to the information gathered during the on-site visit, the Integrity Commission referred to in section 11 of the Act – an oversight agency responsible for enforcing and overseeing the observance of its provisions – has not been created or formed, given the failure to clarify the matters related to the budget and provision of resources that are to cover the operations of the Commission in part because the competent authorities are in the process of identifying the funds needed to cover the Commission’s structure and operations in the national budget.

[34] Accordingly, and emphasizing the importance of the functions and responsibilities that the Integrity in Public Life Act assigns to the Integrity Commission for the strict observance of its provisions, including those intended to prevent conflicts of interest for the correct, honorable, and proper fulfillment of public functions, as set out in paragraph 1 of Article III of the Convention, the Committee will formulate a recommendation for the country under review to consider taking the steps necessary for the prompt enforcement of the provisions of the Integrity in Public Life Act and for the creation of the Integrity Commission referred to in section 11 of that Act. (See recommendation c) in section 1.1.4 of Chapter II (A) of this report)

[35] Third, based on the information gathered during the on-site visit and that provided by Saint Kitts and Nevis in its Response to the Questionnaire, and taking into account that the provisions of the Integrity in Public Life Act are still to be implemented, the Committee notes the absence of provisions that expressly prevent conflicts of interest following the conclusion of public service, such as prohibitions on former public servants intervening in official matters in which they were involved during their time in public employment, dealing with institutions with which they recently had ties, and, in general, other situations that could lead to an improper advantage as a result of their status as former public servants. Given the foregoing, the Committee will make a recommendation. (See recommendation d) in section 1.1.4 of Chapter II (A) of this report)

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

[36] Given the relatively recent adoption of the 2011 Public Service Act, its Code of Conduct and Ethics of Public Officers of 2014, and the pending implementation of the Integrity in Public Life Act of 2013, legal norms that as a whole provide rules and mechanisms for preventing conflicts of interest, the country under review provided no information on results in this regard.

[37] Nevertheless, the Committee will formulate the corresponding recommendations so it can review, in due course, the objective results regarding the enforcement of standards of conduct and the mechanisms for preventing conflicts of interest in Saint Kitts and Nevis, based on the “Possible indicators to be taken into consideration in connection with the implementation of the Convention provisions selected for analysis in the First Round,” prepared by the MESICIC Technical Secretariat and available on the Anticorruption Portal of the Americas.^{12/} In addition, the Committee takes into account that the Public Service Commission – the agency responsible for enforcing and overseeing the observance of those rules – is not being reviewed as one of the oversight bodies addressed in Chapter II (B) of this report. (See recommendation e) in section 1.1.4 and recommendations a) and b) of the General Recommendations of Chapter II (A) of this report)

12. Available at: http://www.oas.org/juridico/english/mec_ind.pdf

1.1.4. Conclusions and recommendations

[38] Saint Kitts and Nevis has considered and adopted measures to establish, maintain and strengthen standards of conduct aimed at preventing conflicts of interest and mechanisms to enforce them, as described in section 1.1 of Chapter II (A) of this report.

[39] In light of the comments made in that section, the Committee suggests that Saint Kitts and Nevis consider the following recommendations:

- a) Design and implement a comprehensive training program for the public servants and authorities that oversee compliance with the framework set out in the 2011 Public Service Act, its Codes, and the Public Service Standing Orders of 2014, in order to ensure their proper dissemination, management, and application. (See section 1.1.2 of Chapter II (A) of this report)
- b) Design and implement outreach campaigns, targeting all public servants, on the existence, nature, and scope of the Public Service Act 2011, its Codes, and the 2014 Public Service Standing Orders, emphasizing the provisions to be observed by public servants in the performance of their duties and the sanctions applicable to them in the event of noncompliance. (See section 1.1.2 of Chapter II (A) of this report)
- c) Take the necessary steps for the implementation of the provisions of the Integrity in Public Life Act of 2013 and, at the same time, create and set up the Integrity Commission referred to in section 11 of that statute and, to the extent that is possible, implement a public policy of broad application in this area for enforcing and following up on these measures. (See section 1.1.2 of Chapter II (A) of this report)
- d) Establish suitable restrictions for persons who leave public service, such as prohibitions on participation as a representative of a private interest in ongoing, specific matters in which they had participated in an official capacity, or for a reasonable time, restrictions on dealing with former government body in which they served. (See section 1.1.2 of Chapter II (A) of this report)
- e) Prepare statistical data on the objective results obtained by enforcing the standards of conduct and mechanisms for preventing conflicts of interest, indicating, *inter alia*, the number of cases in which background analyses served to prevent access to public positions by disqualified candidates; the conflicts of interest detected during or following public employment and measures adopted to protect official interests; and the penalties imposed for breaches of those rules, in order to identify challenges and, if appropriate, adopt corrective measures. (See section 1.1.3 of Chapter II (A) of this report)

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

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

[40] Saint Kitts and Nevis has a set of provisions concerning these standards, among which the following should be noted:

[41] – Statutory provisions, such as those contained in the Finance Administration Act,^{13/} section 10 of which provides that a public officer, other than an accounting officer or a public officer referred to in section 9, who in the discharge of his or her responsibilities as a public officer comes into the possession or control of (a) public money that he or she knows or has reason to believe is intended to be paid to or received by the Government; or (b) stamps or securities that are Government property and that are intended to be placed on deposit with or entrusted to the Government, shall without delay deliver the money, stamps or securities into the possession of an accounting officer or delegate of an accounting officer concerned in or responsible for them or to the Accountant General. This section also states that a public officer or an accounting officer or delegate of an accounting officer previously referred to shall be accountable for discharging his or her responsibilities under that subsection with diligence and honesty and shall be subject to discipline under the applicable law for failing to do so.

[42] – Legal provisions, such as those contained in the Public Service (Conduct and Ethics of Officers) Code, which provides standards to ensure the proper conservation and use of resources entrusted to government officials. Specifically, section 9 of the Code indicates that officers shall endeavor to ensure the proper, effective and efficient use of public funds, and that officers shall be accountable in this regard in accordance with the Finance Administration Act and any regulations made under that Act.

[43] Also, section 27 of the Code provides that public officers shall be accountable for any equipment, tool or other property of the Government that is entrusted to them or may come under their control in the course of duty, and shall immediately report any malfunction, damage or loss of any equipment. Officers may be liable for any loss of any equipment, tool or other property.

[44] Saint Kitts and Nevis also has mechanisms by which to enforce compliance with those standards of conduct, notably the following:

[45] – Section 82 of the Constitution, which establishes a Director of Audit who, in accordance with section 76, shall satisfy himself that all moneys that have been appropriated by Parliament and disbursed have been applied to the purposes to which they were so appropriated and that the expenditure conforms to the authority that governs. The Director of Audit also has the duty at least once in every year to audit and report on the public accounts of the Government, the accounts of all officers and authorities of the Government, the accounts of all courts of law in Saint Kitts and Nevis (including any accounts of the Supreme Court maintained in its territory), the accounts of every Commission and Board established by the Constitution and the accounts of the Clerk of the National Assembly.

13. Available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_fin_adm_act_06.pdf

[46] – Statutory provisions, such as those contained in the Audit Act,^{14/} section 7 of which provides that the Director of Audit is charged with the responsibility of submitting an annual report to the Minister of Finance for onward transmission to the National Assembly. Among the matters which the Director of Audit is charged with reporting on are: (i) the results of his or her examination of the annual accounts; (ii) whether accounts and essential records have not been properly maintained or public monies have not been fully accounted for or paid, where so required by law, into the Consolidated Fund^{15/}; (iii) whether the rules and procedures applied have been insufficient to safeguard public monies or property, or to effectively check the assessment, collection and proper allocation of revenue, or to ensure that expenditure was only made as so appropriated and conform to the governing authority; (iv) whether money has been spent without due regard to value for money; whether resources have been acquired or utilized without sufficient regard for economy and efficiency; whether satisfactory procedures have not been established to measure and report on effectiveness of government activities.

[47] – Statutory provisions, such as those contained in the Finance Administration Act, section 6 of which provides the responsibilities and powers of the Financial Secretary, who is responsible for the supervision of the Finance Department and for overseeing the preparation of the annual and supplementary estimates on behalf of the Minister of Finance. The Financial Secretary has a supervisory role over all Government ministries in that he or she has at all times access to all ministries, departments or places where accounting for services takes place or accounting records are kept and may require a public officer to furnish any information and provide access to any documents that he or she considers necessary.

[48] Also, section 7 of the same Act establishes the responsibilities and powers of the Accountant General, who is charged with maintaining the central accounts of the Government. The functions of the Accountant General include maintaining a system for the examination of payments to ensure that they are made in accordance with the Finance Administration Act or the regulations thereunder and ensuring that a proper system of accounts is established in every ministry, department and service, and that all money received and paid by the Government is brought promptly and properly to account.

[49] Furthermore, section 8 of the Finance Administration Act provides the designation and responsibilities of the Accounting Officers, whom are appointed by the National Assembly and are responsible for the control of, and accurate accounting and disbursement of, public money, other than money for public purposes, received by the ministry, department or service for which he or she is Accounting Officer.

[50] – Legal provisions, such as those contained in the Public Service Code of Discipline^{16/} adopted in 2014 pursuant section 53(3)(c) of the Public Service Act, which provides standards of conduct laid down in the Act, in any regulations made under the Act or in the Public Service (Conduct and Ethics of Officers) Code are observed. Under the Public Service Code of Discipline misappropriation of public funds and major loss of or damage to property is considered as constituting misconduct of a serious nature, which may warrant dismissal in the event that the public officer is found guilty. Loss or damage of property other than that which is considered as major loss or damage is considered as misconduct of a minor nature.

14. Available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_aud_act_20.01.pdf

15. See Section 69 of the Constitution of Saint Kitts and Nevis, *supra* note 5.

16. Available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_pub_serv_so_9_2014.pdf

[51] The Committee also notes that section 27 of the Integrity in Public Life Act, which has not yet entered into force, provides that a public officer commits an offence of abuse of office if he or she, *inter alia*, uses public funds or resources for private purposes, including party political purposes, and if he or she is convicted shall be liable, on conviction, to a fine or to imprisonment.

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

[52] With respect to the constitutional and legal provisions addressing standards and mechanisms for conservation and proper use of public resources examined by the Committee, based on the information provided by Saint Kitts and Nevis in its Response to the Questionnaire and during the on-site visit, they constitute, as a whole, a body of measures relevant for promoting the purposes of the Convention.

[53] Nevertheless, the Committee believes it is appropriate to reiterate the considerations expressed in section 1.1.2 of Chapter II (A) of this report, regarding the usefulness of the country under review considering the design and implementation of outreach campaigns targeting all public servants, on the existence, nature, and scope, in this particular case, of the provisions contained in the aforementioned Codes of Conduct and Ethics and the Code of Discipline, regarding their obligations in ensuring the conservation and proper use of the resources assigned to them in carrying out their duties. In addition, the Committee also considers the importance of stepping up its efforts for the prompt implementation of the 2013 Integrity in Public Life Act and the institutionalization of the Integrity Commission referred to in that Act.

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

[54] Regarding the review of the results in this area, the Committee again notes the relatively recent adoption of the 2011 Public Service Act, of the 2014 Codes of Conduct and Ethics and Discipline, and the pending implementation of the 2013 Integrity in Public Life Act. These norms, as previously noted, establish standards of conduct and mechanisms for enforcing them regarding the proper conservation and use of the resources assigned to public servants in carrying out their duties.

[55] Nevertheless, Committee will formulate the corresponding recommendations so it can review, in due course, the objective results of the enforcement of those standards and mechanisms, based on the “Possible indicators to be taken into consideration in connection with the implementation of the Convention provisions selected for analysis in the First Round,”^{17/} prepared by the Technical Secretariat of the MESICIC and available on the Anticorruption Portal of the Americas. In addition, the Committee takes into account that the Public Service Commission – the agency responsible for enforcing and overseeing the observance of those rules – is not being reviewed as one of the oversight bodies addressed in Chapter II (B) of this report. (See recommendation a) in section 1.2.4 and recommendations b) and c) of the General Recommendations of Chapter II (A) of this report)

[56] In addition, regarding the functions and responsibilities of the Director of Audit as described in section 1.2.1 of Chapter II (A) of this report, the Committee was unable to identify the way in which that oversight body publishes and makes accessible its audit reports that, by constitutional and legal mandate, must be presented annually to the National Assembly. Therefore, in order to strengthen transparency and accountability on the manner public resources are managed in the country under

17. See *supra* note 11.

review, the Committee will formulate a recommendation, bearing in mind, in addition, that the Director of Audit will not to be reviewed as one of the oversight bodies referred to in Chapter II (B) of this report. (See recommendation b) and c) in section 1.2.4 of Chapter II (A) of this report)

1.2.4. Conclusions and recommendations

[57] Saint Kitts and Nevis has considered and adopted measures to establish, maintain, and strengthen standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and mechanisms to enforce them, as described in section 1.2 of Chapter II (A) of this report.

[58] In light of the comments made in that section, the Committee suggests that Saint Kitts and Nevis consider the following recommendations:

- a) Prepare statistical data on the objective results obtained on the enforcement of standards of conduct and mechanisms that ensure the proper conservation and use of resources assigned to public servants in carrying out their duties, in order to determine, *inter alia*, the number of cases in which a violation of the rules was detected, the number and type of penalties imposed, the measures adopted to secure redress for the harm caused to the public coffers, and the results of those measures in terms of the redress paid or amounts effectively recovered, in order to identify challenges and, if appropriate, adopt corrective measures. (See section 1.2.3 of Chapter II (A) of this report)
- b) Prepare statistical data on the results obtained on the functions and responsibilities of the Director of Audit, through the different types of audits that the office performs, in order to determine, in addition to the number of audits concluded, how many remain ongoing, how many have been suspended for whatever reason, and how many have been referred to a competent authority for the relevant decision to be adopted, in order to identify challenges and, if appropriate, adopt corrective measures. (See section 1.2.3 of Chapter II (A) of this report)
- c) Develop materials or contents using simple language, targeted at public servants, in order to disseminate and explain the regulations governing the conservation and proper use of public resources, to assist with compliance therewith. (See section 1.2.3 of Chapter II (A) of this report)

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

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

[59] Saint Kitts and Nevis has a set of provisions concerning these standards, among which the following should be noted:

[60] – Legal provisions, such as those contained in the Public Service (Conduct and Ethics of Officers) Code of 2014, adopted pursuant section 53(3)(c) of the Public Service Act of 2011. Section 55(1) of this Code provides that where an officer believes that he or she is being required to act in a

way that: is illegal, improper or unethical; is in breach of an accepted convention or professional code; may involve possible maladministration; is otherwise inconsistent with the Code, the officer is required to report the matter in accordance with the procedures laid down in the appropriate guidelines or rules of conduct for that officer's Ministry or Department or in accordance with the provisions of the relevant law. Also, section 55(2) of the Code requires that an officer shall report to his or her Head of Department or where the matters involve the Head of Department, the Head of the Public Service, evidence of any criminal or unlawful activity by others, in accordance with the relevant procedures; or instances of breaches of the Code of which he or she becomes aware.

[61] In addition, section 56 of the Code establishes that if the officer having reported the matter is of the view that the response does not represent a reasonable response to the concerns raised, the officer may make a written report directly to the Public Service Commission. Furthermore, section 57 states that any case of misconduct for which no provision is otherwise made by the Code shall be reported to the Chief Personnel Officer (Permanent Secretary of the Human Resources Department), who shall deal with the misconduct in a manner approved by the Public Service Commission.

[62] Saint Kitts and Nevis also has mechanisms by which to enforce compliance with those standards of conduct, notably the following:

[63] – The Public Service Commission, established under section 77 of the Constitution, which, as indicated in section 1.1.1 of Chapter II (A) of this report, is responsible for enforcing and overseeing compliance with the framework described in the Public Service Act 2011 and the Regulations made under the Act, such as the aforementioned Public Service (Conduct and Ethics of Officers) Code.

[64] In particular, section 60(2) of the Public Service (Conduct and Ethics of Officers) Code provides that a person who fails to comply with the provision of the aforementioned section 55(2), commits a misconduct which is regarded as a "misconduct of a serious nature" under section 2 of the Public Service Code of Discipline, and shall be liable to the sanction for the misconduct, as set out in the Public Service Code of Discipline.

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

[65] With respect to the constitutional and legal provisions addressing measures requiring public servants to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, that the Committee has examined based on the information provided by Saint Kitts and Nevis in its Response to the Questionnaire and during the on-site visit, they constitute, as a whole, a body of measures relevant for promoting the purposes of the Convention.

[66] Nevertheless, the Committee believes it is appropriate to reiterate the considerations expressed in sections 1.1.2 and 1.2.2 of Chapter II (A) of this report, regarding the usefulness of the country under review giving consideration to the design and implementation of outreach campaigns targeting all public servants regarding the existence, nature, and scope, in this particular case, of the provisions contained in the Code of Conduct and Ethics related to the obligation of public officials to inform the competent authorities about acts of corruption of which they are aware.

[67] In addition, and in order to enhance the effectiveness of the regime governing that obligation, the Committee believes it would be useful to strengthen it by including measures to facilitate compliance through the use of forms, computers and communications technologies to encourage

public servants to lodge such complaints, together with the adoption of measures offering whistleblowers guarantees against the threats, retaliations, or reprisals they may face as a result of observing this duty. The Committee will formulate recommendations in this regard. (See recommendations a), b) and c) in section 1.3.4 of Chapter II (A) of this report)

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

[68] Regarding the review of results in this area, the Committee again notes the relatively recent adoption of the 2011 Public Service Act and of the Codes of Conduct and Ethics and Discipline of 2014, statutes that, as already stated, contain rules requiring public officials to report to the competent authorities any acts of corruption in public service of which they are aware.

[69] Nevertheless, the Committee will formulate the corresponding recommendations to enable it to analyze, in due course, the objective results obtained in the use of those measures based on the “Possible indicators to be taken into consideration in connection with the implementation of the Convention provisions selected for analysis in the First Round”^{18/}, prepared by the Technical Secretariat of the MESICIC and available on the Anticorruption Portal of the Americas, In addition, the Committee takes into account that the Public Service Commission – the agency responsible for enforcing and overseeing the observance of those rules – is not being reviewed as one of the oversight bodies addressed in Chapter II (B) of this report. (See recommendation d) and e) in section 1.2.4 and recommendations b) and c) in the General Recommendations of Chapter II (A) of this report)

1.3.4. Conclusions and recommendations

[70] **Saint Kitts and Nevis has considered and adopted measures to establish, maintain, and strengthen standards of conduct and mechanisms concerning measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, as described in section 1.3 of Chapter II (A) of this report.**

[71] In light of the comments made in that section, the Committee suggests that Saint Kitts and Nevis consider the following recommendations:

- a) Adopt the measures necessary to facilitate compliance with the reporting obligation through the use of forms, computers and communications technologies, which will serve to encourage public employees to file complaints and simplify the presentation thereof. (See section 1.3.2 of Chapter II (A) of this report)
- b) Adopt the measures necessary to ensure protection for public officials who report acts of corruption against threats or reprisals they may face as a result of fulfilling this duty. (See section 1.3.2 of Chapter II (A) of this report)
- c) Adopt the measures necessary to ensure the appropriate confidentiality of the information generated by the presentation of complaints and allegations related to alleged acts of corruption, in order to safeguard the identity of whistleblowers and protect personal data. (See section 1.3.2 of Chapter II (A) of this report)

18. See *supra* note 11.

- d) Prepare statistical data on the objective results obtained by virtue of the implementation of the standards of conduct, measures, and systems requiring public officials to report, to the appropriate authorities, acts of corruption in the performance of public functions of which they are aware, enabling the determination, *inter alia*, of the number of corruption cases reported by public officials; the channels used by those officials to lodge their complaints, such as in writing, electronic communications, or by telephone; the measures adopted for their protection; and the sanctions imposed on those who fail to observe the reporting obligation, in order to identify challenges and, if appropriate, adopt corrective measures. (See section 1.3.3 of Chapter II (A) of this report)
- e) Implement outreach campaigns, within government institutions and for the general population, on the different mechanisms and channels that exist for the presentation of complaints and allegations related to alleged acts of corruption, favoring the use of electronic media and standardized forms. (See section 1.3.3 of Chapter II (A) of this report)

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

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

[72] Saint Kitts and Nevis has a set of provisions concerning these systems, among which the following should be noted:

[73] – Statutory provisions, such as those contained in sections 5 and 6(1) of the Integrity in Public Life Act 2013, not yet in force, which provides that a person who is a public official, on or after the coming into force of this Act,^{19/} shall within a period to be prescribed by Order, complete and file a declaration in the Form set out in the Fourth Schedule with the Integrity Commission, which has not yet been established. The person is to provide information in relation to his or her income, assets, liabilities, private interests and gifts in cash or kind which are received by himself/herself his or her spouse or his or her dependent children, and thereafter shall in each succeeding year that he or she continues to be a public official file further declarations.

[74] In accordance with section 6(2), where a public official holds money or other property in trust for or jointly with another person, he or she shall so state in his or her declaration, but shall not be required to disclose the terms of the trust. Also, pursuant to section 6(4), where a public official discloses an income which is insufficient to support the accreditation on value of the net assets disclosed so as to raise an inference that there must have been other income to account for the extent of the acquisition of such assets, the public official shall be deemed to have been in possession of such income which has not been disclosed and the onus shall be on the public official to establish the source of that further income.

[75] Section 7 of the Integrity in Public Life Act allows a person in public life to place his or her assets or part of his or her assets in a blind trust. Where the assets are placed in a blind trust only the amount and description of the assets need be stated.

19. "Public official" means an official specified in the First Schedule of the Integrity in Public Life Act 2013.

[76] The declarations filed with the Integrity Commission and the records of the Commission in respect of those declarations are secret and confidential and shall not be made public unless a particular declaration or record is required to be produced for the purpose of, or in connection with any court proceedings against, or inquiry in respect of a declarant under the Integrity in Public Life Act, the Commission of Inquiry Act or perjury under the Perjury Act.^{20/}

[77] Section 8 charges the Integrity Commission with the task of examining every declaration furnished to it and it may request any information or explanation relevant to a declaration within one month or any longer period as specified by any such request from the Commission.^{21/} Where upon an examination the Integrity Commission is satisfied that a declaration has been fully made, it shall publish a certificate in the *Gazette* in the form set out in the Fifth Schedule.

[78] In accordance with section 23, in pursuance of its duty to make enquiries where necessary into declarations, the Commission may appoint one or more of its staff to investigate the matter. The person or persons employed to investigate the matter may require the public officer or any person possessed of information to attend before the investigator and give such information and documents as may be necessary. Where an investigator has reasonable cause to believe that there has been a breach of the Act or that there are reasonable grounds to believe that a public official is in possession of property disproportionate to his or her present or past known sources of income or assets and for which there is no reasonable explanation the Commission shall report same to the Director of Public Prosecutions for further actions.

[79] Pursuant to section 25, if the Director of Public Prosecutions has reasonable grounds to believe that an investigation into the assets and income of the public official is necessary, he or she, on behalf of the Commission may apply to a Judge in Chambers for the issuing of an investigation direction.

[80] Finally, the Integrity in Public Life Act establishes sanctions for those who fail to comply with its provisions on declarations of assets, income and liabilities. Pursuant to section 29 a public official or any other person who obstructs or fails to assist the Commission to carry out the powers conferred to it under sections 23(2) and 24; or gives false or misleading information to the Commission, commits an offence and shall be liable, on conviction, to a fine not exceeding EC \$15,000^{22/} or to a term of imprisonment not exceeding two years. On the other hand, section 30 provides, *inter alia*, as regards failure to furnish information, that a person who fails, without reasonable cause, to furnish to the Integrity Commission a declaration or further particulars thereof which he or she is required to furnish in accordance with the Act, commits an offence, and shall be liable, on conviction, to a fine not exceeding EC \$30,000^{23/} or to a term of imprisonment not exceeding five years.

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

[81] Based on the information that it has examined, the Committee believes that Saint Kitts and Nevis has provisions that, although they are pending implementation, are intended to create, maintain, and strengthen systems for public servants to register income, assets, and liabilities. Once they are implemented, they can be considered relevant for promoting the purposes of the Convention.

20. See Section 40 of the Integrity in Public Life Act 2013.

21. See Section 9 of the Integrity in Public Life Act 2013.

22. See *supra* note 10.

23. See *supra* note 10.

[82] Consequently, the Committee insists on the importance and significance for the country under review to redouble its efforts for the adoption of the legal, administrative, and budgetary measures it deems necessary for the prompt implementation of the provisions contained in the Integrity in Public Life Act of 2013, and for the prompt creation and establishment of the Integrity Commission referred to in section 11 of that statute, bearing in mind, above all, the substantial powers granted by the Act to that Commission for the prevention, detection, and punishment of corrupt acts. The Committee therefore reiterates recommendation c) in section 1.4.1 of Chapter II (A) of this report.

[83] In addition and regardless of the foregoing, the Committee believes it would be appropriate to offer the following comments with a view to strengthening the current legislative framework in place:

[84] First, the Committee believes it is necessary for the country under review to consider, in accordance with the basic principles of its domestic law, regulating the conditions, procedures, and other relevant aspects regarding the publication of the declarations of income, assets, and liabilities filed by public servants. The Committee will formulate a recommendation in this regard, bearing in mind that the Convention expressly refers to the publication of those declarations “*where appropriate.*” (See recommendation a) in section 2.4 of Chapter II (A) of this report)

[85] Second, although the system for the presentation of statements of net worth has not yet been implemented, the Committee notes that, according to the information in the previous section that such declarations are to be made by means of printed forms. In this regard and in order to facilitate the submission as well as the work of the Integrity Commission in reviewing the contents of these declarations, the Committee believes that Saint Kitts and Nevis should consider using electronic means for completing the declaration as well as for submission to the Integrity Commission. (See recommendation b) in section 2.4 of Chapter II (A) of this report)

[86] Third, as indicated in the previous section, the Integrity in Public Life Act sets out the obligation of public officials to file declarations of net worth upon entry to public service and on a yearly basis for as long as that person is a public official. However, based on the information available to it, the Committee was unable to identify any provisions indicating reasonable timetables and circumstances requiring those same public servants to present declarations of income, assets, and liabilities upon leaving public service. The Committee will formulate a recommendation in this regard. (See recommendation c) in section 2.4 of Chapter II (A) of this report)

[87] Finally, the Committee notes that the only penalty prescribed by law for those who fail to comply with the obligation to file their asset declaration is a criminal penalty. The Committee believes it is important for Saint Kitts and Nevis to consider imposing administrative sanctions on those who fail to comply with the obligation to declare their assets, income and liabilities, as well as to those who fail to provide the Integrity Commission with further information within a specified period, when so requested. These might include the withholding of salary and other benefits, for those who have left public service, fines and the disqualification from any public office so long as the final asset declaration has not been filed. (See recommendation d) in section 2.4 of Chapter II (A) of this report)

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

[88] Given the pending implementation of the Integrity in Public Life Act of 2013, which contains the provisions governing declarations of income, assets, and liabilities to be filed by holders of public positions, the country under review provided no information on results in this regard.

[89] Accordingly, the Committee will formulate the corresponding recommendation so it can review, in due course, the objective results obtained in the enforcement of those provisions based on the “Possible indicators to be taken into consideration in connection with the implementation of the Convention provisions selected for analysis in the First Round”^{24/}, prepared by the Technical Secretariat of the MESICIC and available on the Anticorruption Portal of the Americas. (See recommendation e) in section 2.4 and recommendations b) and c) in the General Recommendations of Chapter II (A) of this report)

2.4. Conclusions and recommendations

[90] Saint Kitts and Nevis has considered and is in the process of implementing measures to establish, maintain, and strengthen systems for registering income, assets, and liabilities of persons who perform public functions in certain posts that the law specifies, as noted in described in section 2 of Chapter II (A) of this report.

[91] In light of the comments made in that section, the Committee suggests that Saint Kitts and Nevis consider the following recommendations:

- a) Consider amending the Integrity in Public Life Act 2013, with a view to regulating the conditions, procedures and other relevant aspects with regard to the publication of declarations of asset, income and liabilities, in accordance with the fundamental principles of the legal system of Saint Kitts and Nevis. (See section 2.2 of Chapter II (A) of this report).
- b) Develop and make available to public officials the electronic means or systems necessary to facilitate the presentation and submission of declarations of assets, income and liabilities to the Integrity Commission. (See section 2.2 of Chapter II (A) of this report).
- c) Consider adopting provisions that include reasonable timetables and circumstances requiring public officials to present declarations of income, assets, and liabilities at the conclusion of their public service. (See section 2.2 of Chapter II (A) of this report)
- d) Consider establishing administrative sanctions for those who fail to comply with the obligation to file a declaration of income, assets and liabilities; or those who report incomplete, inaccurate or false information; as well as for those who fail to provide the Integrity Commission with further information within a specified period, when so requested; these sanctions might include the withholding of salary and, for those who have left public service, fines and the disqualification from any public office until such time as the final asset declaration has been filed. (See section 2.2 of Chapter II (A) of this report).
- e) Prepare statistical data on the objective results obtained by the enforcement of the rules governing declarations of income, assets, and liabilities presented by public servants, in order to determine, *inter alia*, the number of cases in which the verification, evaluation, or review of the information set out in a declaration allowed acts of corruption involving public servants to be detected, the steps taken in connection therewith and the results thereof, and the penalties imposed on those failing to abide by the rules by, for example, failing to lodge a declaration or presenting one that is late, inaccurate, and/or incomplete. (See section 2.3 of Chapter II (A) of this report)

24. See *supra* note 11.

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

3.1. GENERAL PARTICIPATION MECHANISMS

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

[92] Saint Kitts and Nevis has a set of constitutional provisions that uphold principles and individual rights and guarantees that enable, facilitate and protect participation of civil society and nongovernmental organizations in efforts to combat corruption, such as sections 12 and 13 of the Constitution, which expressly protect freedom of expression and the freedom of assembly, respectively.

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

[93] Based on the information available to it, the Committee notes that Saint Kitts and Nevis has constitutional provisions that protect and promote the fundamental freedoms and rights of persons, which is an important foundation that enables civil society and nongovernmental organizations to operate freely and independently, thereby helping to prevent corruption.

[94] However, the Committee, in accordance with what is noted by the country under review in its Response to the Questionnaire^{25/} and to the information gathered during the on-site visit, observes the absence of a legal framework intended to encourage that participation, notwithstanding the existence of certain statutes and government policies that do provide for some form of consultation mechanisms for specific persons or groups (stakeholders) who could contribute to the fight against corruption.

[95] Accordingly, and bearing in mind the categories to which the method for examining Convention Article III, paragraph 11 refers,^{26/} in each of the corresponding sections the Committee will have some observations and will make a number of specific recommendations on the subject.

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

[96] Because the country under review did not provide information on results in this area, a comprehensive evaluation cannot be carried out.

3.2. MECHANISMS FOR ACCESS TO INFORMATION

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

[97] In its Response to the Questionnaire, the country under review indicates “*There is no general legislation governing access to information. Information is normally made available in accordance*”

25. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 14, *supra* note 4.

26. See Chapter V of the “*Methodology for the Review of the Implementation of the Provisions of the Convention Selected within the Framework of the First Round.*” (document SG/MESICIC/doc.21/02) available at:

http://www.oas.org/juridico/english/followup_method.htm

with the specific policy of the respective government department. Where there is difficulty in accessing information the assistance of the Ombudsman can be sought to obtain same.^{27/}

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

[98] Based on the comments made in the previous section, the Committee will formulate a series of recommendations for the country under review, such as considering the establishment of provisions and mechanisms to promote, regulate, and facilitate access to information held or controlled by public institutions, bearing in mind that the ability to obtain such information is, among other things, an essential condition for civil society and nongovernmental organizations to be able to participate in efforts to prevent corruption. (See recommendations a), b) and c) in section 3.2.4 of Chapter II (A) of this report)

[99] Irrespective of the foregoing and based on the information provided by the representatives of the country under review and by the civil society organizations and private sector during the on-site visit, the Committee acknowledges the existence^{28/} of policies that, in certain ministries, departments, and public offices, ensure that citizens are provided with the information and documents they request. However, on that same occasion, the representatives of the country under review indicated that the absence of computer systems and equipment for document management hinders the efficient and timely handing over of information. Accordingly, and in order to strengthen the mechanisms for access to public information available in Saint Kitts and Nevis, the Committee will formulate a recommendation. (See recommendations d) and e) in section 3.2.4 of Chapter II (A) of this report)

[100] Finally, the Committee would like to acknowledge the willingness of the country under review to make progress with the implementation of mechanisms for access to information, as noted during the on-site visit with the presentation of the draft Freedom of Information Act of 2006, the prompt adoption and enactment of which is one of the priorities of the Government.

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

[101] The country under review provided no information on results in this area; consequently, a comprehensive evaluation cannot be carried out. As a result, the Committee will formulate the corresponding recommendations. (See recommendations b) and c) in the General Recommendations, of Chapter II (A) of this report)

3.2.4. Conclusions and recommendations

[102] Saint Kitts and Nevis has not yet considered and adopted measures intended to establish, maintain and strengthen mechanisms for access to information, as described in section 3.2 of Chapter II (A) of this report.

[103] In light of the comments made in that section, the Committee suggests that Saint Kitts and Nevis consider the following recommendations:

27. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 14, *supra* note 4.

28. On March 13, 2015, the country under review provided the National Records and Archives Act Cap 23:19 which set out the policy and responsibility in relation to public documents. This Act is available at:

http://www.oas.org/juridico/english/mesicic4_kna.htm

- a) Consider developing legal norms to promote, regulate, and facilitate access to information held or controlled by public institutions, with the exceptions prescribed by law; and norms that give every person the right to request information, to consult documents that are in the possession of or under the control of public institutions and that concern official measures, and the right to request a copy of them, with the exception of the cases protected by law. (See section 3.2.2 of Chapter II (A) of this report).
- b) Consider developing instruments that establish rules, actions, and procedures to guarantee the right of access to public information held by government organs and entities by members of the public, providing for the following: guarantor agency, obligated entities, procedure for requesting information, response times, and possible sanctions for refusals to furnish information. (See section 3.2.2 of Chapter II (A) of this report).
- c) Implement training and dissemination programs about the mechanisms for access to information and the importance of the exercise of this right, in order to make it easier for public servants and citizens to understand those mechanisms. (See section 3.2.2 of Chapter II (A) of this report).
- d) Consider developing instruments that establish rules, actions, and procedures to be applied by all, for the administration, organization, and preservation of information and documents held or controlled by public institutions. (See section 3.2.2 of Chapter II (A) of this report)
- e) Promote the use of the available technology to facilitate access to public information and to strengthen transparency in different areas of government activities, in a proactive fashion. (See section 3.2.2 of Chapter II (A) of this report).

3.3. MECHANISMS FOR CONSULTATION

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

[104] In its Response to the Questionnaire,^{29/} Saint Kitts and Nevis states that: *“There is no general legislation governing consultation with civil society and non-governmental organisations. Specific legislation may contain provisions requiring the public authority or public official to consult.”*

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

[105] Based on the information available to it and that gathered during the on-site visit, and given that the country under review does not have a legal framework that allows public servants to request and receive feedback from civil society and nongovernmental organizations, the Committee will formulate the corresponding recommendations. (See recommendations a) and b) in section 3.3.4 of Chapter II (A) of this report)

29. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 15, *supra* note 4.

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

[106] The country under review provided no information on the results in this area; consequently, a comprehensive evaluation cannot be carried out. As a result, the Committee will formulate the corresponding recommendations. (See recommendations b) and C) in the General Recommendations of Chapter II (A) of this report)

3.3.4. Conclusions and recommendations

[107] **Saint Kitts and Nevis has not yet considered and adopted measures intended to establish, maintain and strengthen mechanisms for consultation, as described in section 3.3 of Chapter II (A) of this report.**

[108] In light of the comments made in that section, the Committee suggests that Saint Kitts and Nevis consider the following recommendations:

- a) Create mechanisms for consultation to allow civil society and nongovernmental organizations to issue opinions and proposals that can be taken into account in preventing, detecting, investigating, and punishing corruption or in improving decision-making in the resolution of public problems. (See section 3.3.2 of Chapter II (A) of this report).
- b) Design and put into practice programs to publicize the consultation mechanisms and the training needed for those mechanisms to be implemented effectively. (See section 3.3.2 of Chapter II (A) of this report).

3.4. MECHANISMS TO ENCOURAGE PARTICIPATION IN PUBLIC ADMINISTRATION

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

[109] In its Response to the Questionnaire,^{30/} Saint Kitts and Nevis states that: *“There is no formal mechanism for active participation by civil society and non-governmental organizations in the process of public policy making and decision making in order to meet the purposes of preventing, detecting punishing and eradicating acts of public corruption. However, it is the policy of the government to consult stakeholders in the legislative process. Relevant civil society organizations and non- governmental organizations are given the opportunity to review and provide comments on legislation.”*

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

[110] Based on the information available to it and that gathered during the on-site visit, and given that the country under review does not have a legal framework that encourages the active participation of civil society and nongovernmental organizations in the adoption of public policies and decisions, the Committee will formulate the corresponding recommendations. (See recommendations a) and b) in section 3.4.4 of Chapter II (A) of this report)

30. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 15, *supra* note 4.

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

[111] The country under review provided no information on the results in this area; consequently, a comprehensive evaluation cannot be carried out. As a result, the Committee will formulate the corresponding recommendations. (See recommendations b) and c) in the General Recommendations of Chapter II (A) of this report)

3.4.4. Conclusions and recommendations

[112] **Saint Kitts and Nevis has not yet considered and adopted measures intended to establish, maintain and strengthen mechanisms to encourage participation by civil society and nongovernmental organizations in public administration, as described in section 3.4 of Chapter II (A) of this report.**

[113] In light of the comments made in that section, the Committee suggests that Saint Kitts and Nevis consider the following recommendations:

- a) Develop, taking into account its domestic legal system, standards and procedures that establish, maintain and strengthen mechanisms to encourage the participation by civil society and nongovernmental organizations in the processes of adopting public policies and decisions, as part of the effort to prevent corruption. (See section 3.4.2 of Chapter II (A) of this report).
- b) Design and put into place specific programs to publicize the mechanisms available to encourage civil society and non-governmental organizations to participate in public administration. (See section 3.4.2 of Chapter II (A) of this report).

3.5. MECHANISMS FOR PARTICIPATION IN THE FOLLOW-UP OF PUBLIC ADMINISTRATION

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

[114] In its Response to the Questionnaire,^{31/} Saint Kitts and Nevis states that: *“There is no formal mechanism in place.”*

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

[115] Based on the information available to it and that gathered during the on-site visit, and given that the country under review does not have a legal framework that allows the participation of civil society and nongovernmental organizations in following up the public administration with a view to preventing, detecting, punishing, and eradicating acts of corruption, the Committee will formulate the corresponding recommendations. (See recommendations a) and b) in section 3.5.4 of Chapter II (A) of this report)

31. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, pp. 15 and 16, *supra* note 4.

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

[116] The country under review provided no information on the results in this area; consequently, a comprehensive evaluation cannot be carried out. As a result, the Committee will formulate the corresponding recommendations. (See recommendations b) and c) in the General Recommendations of Chapter II (A) of this report)

3.5.4. Conclusions and recommendations

[117] **Saint Kitts and Nevis has not yet considered and adopted measures intended to establish, maintain and strengthen mechanisms for consultation, as described in section 3.5 of Chapter II (A) of this report.**

[118] In light of the comments made in that section, the Committee suggests that Saint Kitts and Nevis consider the following recommendations:

- a) Develop, taking into account its own domestic legal system, standards and procedures that establish, maintain and strengthen mechanisms to encourage civil society and non-governmental organizations to participate in the follow-up of public administration, as part of the efforts to prevent corruption by promoting new forms of citizenry oversight, such as community oversight committees to follow up on public activities or works. (See section 3.5.2 of Chapter II (A) of this report).
- b) Design and implement specific programs to publicize the mechanisms for encouraging civil society participation in the follow-up of public administration (see section 3.5.2 of Chapter II (A) of this report).

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

4.1. MUTUAL ASSISTANCE

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

[119] – Saint Kitts and Nevis has a set of provisions and measures related to the above-referenced mechanisms, notably the Mutual Assistance in Criminal Matters Act Cap. 4:19.^{32/} This Act makes “...*provision with respect to the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth and to facilitate its operation in Saint Christopher and Nevis; and to make provision concerning Mutual Assistance in Criminal Matters between Saint Christopher and Nevis and other countries other than Commonwealth countries.*”

[120] The type of assistance that can be provided under the Act includes assistance in obtaining evidence, identifying and locating witnesses, serving documents, transfer of prisoners and assistance in relation to restraint, forfeiture and confiscation orders.

32. Available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_mla_act_2002.pdf

[121] Part IV of the Act makes provision for the Act to extend to countries other than Commonwealth countries. Sections 28 and 29 provides as follows: “29. *Definition for purposes of Part IV. In this Part, “country” means a country other than one included in the definition of “Commonwealth country” in section 2(1); “Treaty” includes a convention, protocol, agreement or arrangement. 30. Implementation of treaty. (1) The regulations may make provision to give effect to a treaty, set out in the regulations, for bilateral mutual assistance in criminal matters between Saint Christopher and Nevis and a country specified in the regulations. (2) For that purpose, the regulations may, in particular, (a) direct that this Act shall apply in relation to the country so specified as if it were a Commonwealth country, subject to such limitations, conditions, exceptions or qualifications (if any) as may be prescribed; or (b) extend, as provided in section 35(2), the application of any other Act, in relation to the country so specified; and this Act or, as the case may be, the other Act shall apply accordingly.”*

[122] In its Response to the Questionnaire,^{33/} Saint Kitts and Nevis also states that “*where the issue of money laundering is raised in relation to corruption section 59 of the Proceeds of Crime Act Cap 4:28^{34/} provides that that the Financial Intelligence Unit and the Director of Public Prosecutions shall within the limits of that State’s legal system, cooperate with the competent authority of another State in matters relating to money laundering offences. Such cooperation includes obtaining testimony, service of documents, executing searches and seizure and providing information and evidentiary items.”*

[123] – Saint Kitts and Nevis also has in place a mutual legal assistance treaty^{35/} with the United States, which provides for mutual assistance in connection with the investigation, prosecution and prevention of criminal offences and in proceedings related to criminal matters.

[124] – It should be noted that in April 2008, the country under review also signed a Memorandum of Understanding^{36/} with the OAS General Secretariat to participate in the Hemispheric Network for Legal Cooperation on Criminal Matters (the OAS/REMJA Criminal Matters Network).^{37/}

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

[125] The provisions cited in the preceding section can help achieve the Convention’s purposes of promoting and facilitating mutual assistance among the States Parties, and can serve the specific ends of the Convention that pertain to the investigation and prosecution of acts of corruption, provided they are used for that purpose.

[126] In its Response to the Questionnaire and during the on-site visit, the country under review reported that it has received only one request for mutual assistance under the Convention, which it has been processing since August 2013. Accordingly,^{38/} the Committee underscores the importance of the provisions that exist for mutual assistance in Saint Kitts and Nevis, together with the Convention itself, being applied to specific cases of acts of corruption, which presupposes an adequate understanding of its provisions by those responsible for its enforcement. This applies not only when it

33. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 17, *supra* note 4.

34. Available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_proceeds_of_crime_act_cap_%204_28.pdf

35. Available at: https://www.oas.org/juridico/MLA/en/traites/en_traites-mla-usa-kna.pdf

36. Available at: <http://www.oas.org/dil/AgreementsPDF/155-2008.PDF>

37. See: <http://www.oas.org/juridico/MLA>

38. On March 13, 2015 Saint Kitts and Nevis states that “...one request was received in 2013 which is still being processed having regard to the nature of the matter. Because our matters are not recorded based on the legal basis for the request we are not able to say if any other requests were received under the Act.”

is the state on which the request is served, but also and, most particularly, as a state requesting mutual assistance in criminal matters from other states. Taking this into account, the Committee will make a recommendation. (See recommendation a) in section 4.1.4 of Chapter II (A) of this report)

[127] Furthermore, the Committee believes that Saint Kitts and Nevis should consider ratifying the Inter-American Convention on Mutual Assistance in Criminal Matters^{39/} and participate actively in the Meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas (REMJA) and its Working Group on Legal Cooperation in Criminal Matters. (See recommendation b) in section 4.1.4 of Chapter II (A) of this report)

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

[128] The country under review provided no information on the results in this area; consequently, a comprehensive evaluation cannot be carried out. As a result, the Committee will formulate the corresponding recommendations. (See recommendations b) and c) in the General Recommendations, of Chapter II (A) of this report)

[129] In addition, it believes it is important for Saint Kitts and Nevis to design and implement an information program to allow its authorities to conduct permanent follow-up on requests for mutual assistance involving acts of corruption and, in particular, those set out in the Convention. (See recommendation c) in section of Chapter II (A) of this report)

4.1.4. Conclusions and recommendations

[130] **Saint Kitts and Nevis has considered and adopted certain measures related to mutual assistance, in accordance with the provision contained in Article XIV of the Convention and as described and reviewed in section 4.1 of Chapter II (A) of this report.**

[131] In light of the comments made in that section, the Committee suggests that Saint Kitts and Nevis consider the following recommendations:

- a) Design and implement a comprehensive training and dissemination program for the authorities, so that they are made aware of and equipped to apply the provisions contained in the Convention and in other treaties that Saint Kitts and Nevis is a Party to that concern mutual assistance in the investigation or prosecution of acts of corruption. (See section 4.1.2 of Chapter II (A) of this report).
- b) Consider the possibility of ratifying the Inter-American Convention on Mutual Assistance in Criminal Matters and participate actively in the Meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas (REMJA) and its Working Group on Legal Cooperation in Criminal Matters (see section 4.1.2 of Chapter II (A) of this report).
- c) Design and implement an information program that enables authorities of Saint Kitts and Nevis to constantly follow up on requests for mutual assistance that concern acts of corruption, in particular, those contemplated in the Convention. (See section 4.1.2 of Chapter II (A) of this report).

39. Available at: <http://www.oas.org/juridico/english/treaties/a-55.html>

4.2. MUTUAL TECHNICAL COOPERATION

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

[132] In its Response to the Questionnaire^{40/} on this subject, Saint Kitts and Nevis observes that it “...normally enters into arrangements for technical cooperation on a bilateral basis. The Federation intends to pursue mutual technical cooperation by this means in the fight against corruption.”

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

[133] Based on the information available to it as well as the Response to the Questionnaire by the country under review^{41/} indicating that the government has neither issued or received from other States Parties applications for mutual technical cooperation as referred to in the Convention, the Committee will formulate a recommendation for Saint Kitts and Nevis to consider identifying and prioritizing specific areas in which it believes it needs technical cooperation from other States Parties to strengthen its ability to prevent, detect, investigate, and punish acts of corruption. It also urges other States Parties to redouble their efforts to exchange technical cooperation with Saint Kitts and Nevis on the most effective ways and methods to accomplish the purposes of the Convention. (See recommendation a) in section 4.2.4 of Chapter II (A) of this report)

[134] Similarly, and with the same goal of strengthening the capacity of the country under review for preventing, detecting, investigating, and punishing corruption, the Committee believes it would be useful for Saint Kitts and Nevis to consider developing, with the support of cooperation agencies or international organizations, technical cooperation programs and/or projects on the matters addressed by the Convention and, to that end, it will formulate a recommendation. (See recommendation b) in section 4.2.4 of Chapter II (A) of this report)

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

[135] Taking into account the observations made in the two previous sections, the country under review provided no information on the results in this area; consequently, a comprehensive evaluation cannot be carried out. As a result, the Committee will formulate the corresponding recommendations. (See recommendations b) and c) in the General Recommendations of Chapter II (A) of this report)

4.2.4. Conclusions and recommendations

[136] **Saint Kitts and Nevis has considered certain measures related to mutual technical cooperation, in accordance with the provision contained in Article XIV of the Convention and as described and reviewed in section 4.2 of Chapter II (A) of this report.**

[137] In light of the comments made in that section, the Committee suggests that Saint Kitts and Nevis consider the following recommendations:

40. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 18, *supra* note 4.

41. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 18, *supra* note 4.

- a) Determine and prioritize the specific areas in which Saint Kitts and Nevis considers that it needs technical cooperation from other States Parties in order to strengthen its ability to prevent, detect, investigate, and punish corrupt acts. (See section 4.2.2 of Chapter II (A) of this report)
- b) Develop, with the support of cooperation agencies or international organizations, technical cooperation programs and/or projects on the matters addressed by the Convention. (See section 4.2.2 of Chapter II (A) of this report)

5. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

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

[138] In its Response to the Questionnaire,^{42/} Saint Kitts and Nevis indicates that it has not designated a Central Authority specifically for the purposes of channeling requests for mutual assistance as provided under the Convention. However, it is able to process requests for mutual legal assistance by virtue of the Mutual Assistance in Criminal Matters Act through the Attorney General, who is the Competent Authority under the Act.

[139] Also, in the same Response, the country under review states that there is no specific legislation designating a Central Authority for the purposes of channeling requests for mutual technical cooperation as provided under the Convention. Such requests can be channeled through the Ministry of Foreign Affairs.

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

[140] Although, as described by the country under review in its Response, the Attorney General and the Ministry of Foreign Affairs can respectively perform the Convention's functions in the areas of mutual assistance and mutual technical cooperation, the Committee will formulate a recommendation for the express designation of the central authority or authorities for those purposes, and for that designation to be reported formally to the OAS General Secretariat, which would facilitate communications and coordination with the central authorities of other States Parties for those purposes. (See recommendations a) and b) in section 5.4 of Chapter II (A) of this report)

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

[141] Taking into account the observations made in the two previous sections, the country under review provided no information on the results in this area; consequently, a comprehensive evaluation cannot be carried out. As a result, the Committee will formulate the corresponding recommendations. (See recommendations b) and c) in the General Recommendations of Chapter II (A) of this report)

5.4. Conclusions and Recommendations

[142] **Saint Kitts and Nevis has considered and adopted certain measures relating to the designation of the Central Authorities referred to in Article XVIII of the Convention, as described and reviewed in section 5 of Chapter II (A) of this report.**

42. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 18, *supra* note 4.

[143] In light of the comments made in that section, the Committee suggests that Saint Kitts and Nevis consider the following recommendations:

- a) Designate, through the procedures established for the purpose, the central authority or authorities for the functions of international assistance and cooperation provided for in the Convention. (See section 5.2 of Chapter II (A) of this report)
- b) Inform^{43/} the OAS General Secretariat of the designation of the authority or authorities referred to in the previous item, in accordance with the formalities established for that purpose. (See section 5.2 of Chapter II (A) of this report)

6. GENERAL RECOMMENDATIONS

[144] Based on the review and the observations made in Chapter II (A) of this report, the Committee suggests that Saint Kitts and Nevis consider the following general recommendations:

- a) Design and implement, where appropriate, training programs for public servants responsible for application of the systems, standards, measures, and mechanisms included in Chapter II (A) of this report, in order to ensure that they are adequately understood, managed and implemented.
- b) Select and develop procedures and indicators, as appropriate, for verifying follow-up of the recommendations contained in Chapter II (A) of this report, and notify the Committee accordingly through the Technical Secretariat. For said purposes, Saint Kitts and Nevis could take into account the list of broader indicators applicable to the inter-American system that were available for selection, as necessary, by the country under review, and which have been published by the Technical Secretariat of the Committee on the OAS Internet web site. The country under review could also take into account any information arising from the review of mechanisms developed pursuant to recommendation 6(c) below.
- c) Develop, as appropriate and where none exists, procedures to review the mechanisms mentioned in Chapter II (A) of this report and the recommendations contained herein.

7. FOLLOW-UP

[145] The Committee will consider the periodic reports from Saint Kitts and Nevis on its progress in implementing the above recommendations in the framework of the Committee's plenary meetings, as prescribed in Article 29 of the Rules of Procedure.

[146] The Committee will also review the progress made in the implementation of the recommendations made in the present report, as prescribed in Articles 31 and, as necessary, 32 of the Rules of Procedure.

43. The form for the Designation of Central Authorities for Inter-American Conventions is available at: http://www.oas.org/dil/OAS_form_designation_central_authorities.doc

**B) REVIEW OF THE IMPLEMENTATION OF THE CONVENTION PROVISION
SELECTED FOR THE FOURTH ROUND**

**OVERSIGHT BODIES, WITH A VIEW TO IMPLEMENTING MODERN MECHANISMS
FOR PREVENTING, DETECTING, PUNISHING, AND ERADICATING CORRUPT ACTS
(ARTICLE III (9) OF THE CONVENTION)**

[147] Saint Kitts and Nevis has a set of oversight bodies^{44/} with a view to developing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, among which the following are highlighted: the Royal Saint Christopher and Nevis Police Force, the Attorney General's Chambers; the Office of Director of Public Prosecutions; the Director of Audit; the Magistrate's Department; the Ombudsman; the Accountant General; and the Ministry of Finance.

[148] The following is a brief description of the purposes and functions of the four bodies selected by Saint Kitts and Nevis for review in the present report.

[149] – The Office of the Director of Public Prosecutions (DPP) is a Public Office and is constitutionally provided for by Articles 65 and 81 of the Constitution. The objectives of the DPP is to present criminal cases before the courts in a timely manner; to provide the citizens with a prosecutorial service for both victims and the accused persons; and to collaborate with law enforcement officers in facilitating the collection, processing and presentation of evidence for presentation in the courts.

[150] – The Magistrate's Department is the administrative body of the Magistrates Court. The Court's jurisdiction is limited by statute and it is responsible for resolving the majority of cases involving criminal, civil, youth, and family matters.

[151] – The Ombudsman is a Public Office established by the Ombudsman Act 2009 for the purpose of protecting and enforcing the rights of citizens of Saint Kitts and Nevis and to contribute towards the development of a public service culture characterized by fairness, dedication, commitment, openness, accountability and the promotion of the right to good public administration.

[152] – The Royal Saint Christopher and Nevis Police Force (RPF) is the country's only police force, whose functions include, *inter alia*, crime prevention, detection, and investigation; and the maintenance of law and order.

44. The Methodology approved for the Fourth Round (document SG/MESICIC/doc.289/11 rev.2) states the following in Section IV, in reference to Article III, paragraph 9 of the Convention which concerns oversight bodies: "*With respect to the foregoing provision, the review shall consider if the measures adopted by the States Parties in this respect are designed "to create, maintain and strengthen" oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, as provided in Article III (9) of the Convention. - To that end, first, note will be made of the oversight bodies in the country concerned that would be relevant for the purposes of the above provision of the Convention, that is, for preventing, detecting, punishing, and eradicating corrupt acts. - Second, bearing in mind that in the States Parties to the MESICIC there are numerous oversight bodies that have been assigned the aforementioned purposes, each country will select four or five such bodies, taking into account their institutional importance and that their assigned functions encompass one or more of the purposes of preventing, detecting, punishing, and eradicating corrupt acts that trigger disciplinary; administrative; financial or civil, and criminal responsibility.*"

1. THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

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

[153] The DPP has a set of provisions in its legal framework, as well as other measures concerning, among others, the following:

[154] The DPP is an autonomous, independent and public office and is constitutionally provided for by sections 65 and 81 of the Constitution to effectively represent the Crown in all criminal procedures, whether by way of litigation or otherwise.

[155] With respect to its objectives and functions, section 65(2) of the Constitution establishes that the DPP shall have power in any case in which he or she considers it desirable so to do to institute and undertake criminal proceedings against any person before any court of law (other than a court-martial) in respect of any offence alleged to have been committed by that person; to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

[156] According to section 65(4) of the Constitution, the powers of taking over and continuing or discontinuing any criminal proceedings that may have been instituted by any other person or authority are vested in the DPP to the exclusion of any other person or authority. Section 64(5) further provides that criminal proceedings include any appeal from any determination of any court in criminal proceedings, while section 64(3) states that the powers of the DPP may be exercised by him or her in person or through other persons acting under and in accordance with his or her general or special instructions.

[157] With respect to its independence, section 65(6) of the Constitution states that in the exercise of the powers vested in him by sections 65(2) and 26(6) of the Constitution, the DPP shall not be subject to the direction or control of any other person or authority.

[158] Regarding the way in which the DPP's decisions are adopted, as an annex to its Response to the Questionnaire, the country under review provided a copy of the Code for Prosecutors of Saint Kitts and Nevis,^{45/} Chapter 6 of which sets out the decision-making process, principally as regards the initiation of criminal proceedings.

[159] As for the manner in which the DPP is selected, section 81(1) of the Constitution provides that the DPP is appointed by the Governor-General, acting in accordance with the recommendation of the Judicial and Legal Service Commission. Section 81(3) of the Constitution provides that a person shall not be qualified to be appointed to hold the office of DPP unless he or she holds one of specified qualifications and has held one or other of those qualifications for a total period of not less than five years. Subject to the provisions of sections 81(5) and 81(10) the DPP shall vacate his office when he attains fifty-five years, which may be extended to sixty years by the Governor-General. Sections 81(6) and 81(7) further provide that the DPP may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause whatsoever) or for misbehavior. The details of the removal procedures are established in sections 81(8) and 81(9) of the Constitution.

45. Available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_code_pros.pdf

[160] As regards the way in which the human resources needed for the DPP office's operations are identified, the office of the DPP has two categories of personnel, (a) Crown Counsels (Legal Officers)) and (b) administrative staff. Regarding the legal staff, under section 83 of the Constitution their appointment, exercise of disciplinary control and removal shall vest in the Governor-General, acting in accordance with the advice of the Judicial and Legal Services Commission pursuant to the applicable provisions of the Judicial and Legal Service Commission Regulations.

[161] With respect to the administrative staff of the office of the DPP, in accordance with section 78 of the Constitution, the Public Service Commission is responsible for appointments, promotions, transfers and confirmation of appointments, as well as for the removal and exercise of disciplinary control over them pursuant to the applicable provisions of the Public Service Act 2011 and the Regulations made under the Act.

[162] With regard to training, during the on-site visit, the representatives of the DPP indicated that in May 2014, with the support of the Government of the United Kingdom, along with the Anticrime Unit and the office of the Prime Minister of Saint Kitts and Nevis, a training program for prosecutors and law enforcement officials called the "Practical Prosecuting and Proactive Law Enforcement Training Programme" was launched, with its implementation planned to start in January 2015. Also on that occasion, the DPP's representatives reported that, unfortunately, the training currently available for its staff is not consistent and ranges across a range of topics. For that reason, the DPP is designing a comprehensive training program on case management, involving both prosecutors and police prosecutors. This is in addition to the mechanism of round tables that are regularly organized within the DPP to offer specific kinds of training to its personnel.

[163] Regarding this same point, the DPP's representatives also remarked that given the inadequate funding assigned to this issue in its budget, it is unable to pay for its officers to attend workshops or other training events offered abroad by other states and/or international organizations.

[164] Regarding the existence of documented procedures for performing their tasks, or of manuals or guides dealing with those duties, the country under review provided, along with its Response, a copy of the Criminal Procedure Act,^{46/} sections 12 to 18 of which deal with the DPP's powers during the pre-trial investigation stage. In addition, Saint Kitts and Nevis has a Manual of Conduct for Prosecutors, to which their actions are subject.

[165] In connection with the implementation of modern systems or technologies to facilitate its work, during the on-site visit the DPP's representatives said that although they had modern computer equipment, they lacked any kind of systems and technologies suitable to the duties they carry out.

[166] Regarding the way in which the public are provided with information about its objectives, functions, and the procedures established for the performance of its functions, and are given guidance about how to pursue formalities with the Office, in its Response the country under review said that "*most of the information about the DPP's office comes from the media. Many times media persons attend court and report to the general public what has taken place by publishing the contents of the trial on their respective websites which are accessible to the general public. The media may also attend special functions and report what has transpired to the general public for example the opening of the Law Term or Training Sessions within the Office.*"^{47/} In addition, during the on-site visit, the

46. Available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_crim_proc_act.pdf

47. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 24, *supra* note 4.

DPP's representatives stated that because of the inadequate budget, they had been unable to develop mechanisms to promote their work and the results attained in discharging their functions.

[167] As regards internal control mechanisms, the DPP is an autonomous agency with its own accounting mechanisms, but it does not have an internal auditing unit. Similarly, as regards potential claims, complaints, or allegations that could be made in connection with the legal personnel in its employ, the DPP's representatives spoke of the disciplinary proceedings that could be brought before the Public Service Commission and the Judicial and Legal Services Commission and explained, in addition, that all complaints or allegations against any DPP officer must first be referred to the Director of Public Prosecutions.

[168] Regarding the manner in which the budgetary resources necessary for its operations are ensured, the budget consultations take place in September. The Budget Planning Committee would allow the DPP every year to give an estimate of the total funds that would be needed by his office. This information is then included into the budget of the Ministry of Justice and Legal Affairs. The Budget is then approved by Cabinet and debated in the House of Assembly, by the terms of Chapter VI of the Constitution and the corresponding annual appropriation bills.

[169] With respect to the coordination mechanisms, the DPP is supported by various agencies in order to ensure that its functions are effectively carried out. The two main agencies are the Ministry of Justice and Legal Affairs and the Royal Saint Christopher and Nevis Police Force (RPF). The Ministry of Justice and Legal Affairs assists the DPP in an administrative capacity ensuring, for example, that DPP has sufficient staff members, particularly Crown Counsel, and sufficient funds to ensure that operations run smoothly. The RPF also assists the DPP in ensuring that crimes are properly investigated before criminal proceedings are commenced. In addition, during the on-site visit, the DPP's representatives reported the signing of a memorandum of understanding between the DPP and the Royal Police Force as part of the National Prosecution Service; one of the functions of this document is to set guidelines for the DPP's provision of legal advice and oversight to police prosecutors to ensure that crimes are prosecuted appropriately.

[170] In exercising its functions, the DPP, in addition to dealing with civil society on matters of common interest, also does so with other public bodies, such as the Defence Force, Customs, the Ministry of Finance and other financial agencies, such as the Eastern Caribbean Central Bank.

[171] Finally, as regards accountability mechanisms applicable to the performance of their duties, during the on-site visit the DPP's representatives stated that no such mechanisms existed, and said that the closest to such a mechanism were the monthly management reports that the Director of Public Prosecutions submits to the Minister of Justice and Legal Affairs, together with the administrative reports that are presented to the Permanent Secretary of the Ministry of Justice.

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

[172] The DPP has a set of provisions and/or other measures that are relevant for the purposes of the Convention, some of which were briefly described above in section 1.1 of this report. Nonetheless, the Committee believes it would be appropriate to formulate certain comments in connection therewith:

[173] First, regarding the way in which its senior authorities are appointed, the Committee notes that under section 81(1) of the Constitution, the Director of Public Prosecutions is appointed by the Governor-General in accordance with the recommendation of the Judicial and Legal Services Commission and may only be removed from office pursuant to the provisions of sections 81(6) and 81(7), following the procedure described in sections 81(8) and 81(9) of the Constitution. However, during the on-site visit, the Director of Public Prosecutions indicated that the position he currently holds is governed by a *full-time contract*, signed for a period of two years with the Ministry of Justice and Legal Affairs, following a public invitation for candidacies.

[174] In the Committee's view, the fact that the position of Director of Public Prosecutions is governed by a time-limited *contract*, even though it was awarded by means of a public competition and may be renewed, fails to offer, *inter alia*, security of tenure for the person holding that office or the due process provided for in the Constitution, on any proceedings for liability for his actions and tenure as Director of Public Prosecutions. The Committee believes that this situation could affect the institution's impartiality, objectivity, and continuity in discharging the powers and responsibilities given to it by constitutional and legal mandate. Accordingly, it will formulate a recommendation for the country under review to abide by the constitutional provisions governing the appointment of the Director of Public Prosecutions.^{48/} (See recommendation 1.4.1 in section 1.4 of Chapter II (B) of this report)

[175] Second, as regards the way in which the human resources needed for its operations are identified and how its personnel is selected, during the on-site visit and independently of the regime described in the previous section, the DPP's representatives spoke of certain *informal* procedures and practices followed within the agency to fill vacancies and in which the Director of Public Prosecutions had the final decision regarding hiring.

[176] Regardless of the foregoing, there is a need for the country under review to consider strengthening, based on merit and the principles of openness, equity and efficiency as enshrined in the Convention, its systems and processes for the selection of public officials, in this case, those assigned to the DPP. At this juncture the Committee reserves the right to formulate recommendations, bearing in mind that the review of government hiring systems referred to in Article III(5) of the Convention, which were covered during the Second Round, will be conducted comprehensively with respect to Saint Kitts and Nevis in the Fifth Round, since at the time of the Second Round the country under review was not yet a party to the Mechanism.

[177] Third, although the country under review provided a copy of the Criminal Procedure Act along with its Response and spoke of the existence of a Prosecutors Code of Conduct Manual, the Committee believes that, based on the information available to it, these do not themselves constitute manuals or guides that describe the functions of the DPP's prosecutors in dealing with criminal proceedings for the commission of offenses, including corruption crimes, the Committee will formulate a recommendation. (See recommendation 1.4.2 in section 1.4 of Chapter II (B) of this report)

48. On March 13, 2015, in terms of the security of tenure of the DPP and the Magistrates, the country under review informed that the contracts normally sets out that the officer is subject to the rules and procedures of the public service. Case law has established that notwithstanding the existence of the employment contracts the officer is still entitled to the protections offered by the Constitution in particular as regards disciplinary action and removal. *Inniss v Attorney General* [2009] 2 LRC 546, *Fraser v Judicial and Legal Services Commission* [2008] UKPC 25, [2009] 2 LRC 26.

[178] Related to this is the fact that during the on-site visit, the DPP's representatives also underscored the need for resources so that both the agency's prosecutors and the police prosecutors – who are not legal practitioners – can be provided with regular, suitable training for the correct and effective prosecution of crimes, including those related to acts of corruption. The Committee will formulate a recommendation in this regard. (See recommendation 1.4.3 in section 1.4 of Chapter II (B) of this report)

[179] Fourth, the Committee took note of the statements made by the DPP's representatives during the on-site visit indicating that except for its computer equipment, the agency does not have modern systems and technologies to facilitate its tasks. For that reason, it would be useful for the country under review to consider redoubling its efforts to provide this oversight agency with the technological tools that will enable it to discharge its legal and constitutional duties with greater speed and efficiency, especially those related to the prosecution of corrupt acts giving rise to criminal responsibility. The Committee will formulate a recommendation. (See recommendation 1.4.4 in section 1.4 of Chapter II (B) of this report)

[180] In addition to the above, and based on the information gathered during the on-site visit, the Committee also notes the need for resources, highlighted by the DPP's representatives, in order to promote, among the public, information about its objectives, functions, and accomplishments. In addition, and recognizing the benefits that the internet currently offers to keep the public informed about the work of government institutions and to facilitate the consultation and accessibility of information of public interest, the Committee will formulate a recommendation for the country under review to consider taking the steps that it deems necessary to establish a web site and keep it updated, containing, *inter alia*, information about the DPP's objectives and functions, legal framework, and procedures for discharging its duties. (See recommendation 1.4.5 in section 1.4 of Chapter II (B) of this report)

[181] Fifth, as regards the resources necessary for its operations, during the on-site visit the DPP's representatives stated that the agency had an adequate budget allocation for discharging its duties, except in the areas of training, promotion, and technology, as referred to above. However, the representatives also underscored the need for two additional Crown Counsels (legal officers) to avoid possible delays in its functions. (See recommendation 1.4.6 in section 1.4 of Chapter II (B) of this report)

[182] Sixth, although the DPP's representatives stated that a memorandum of understanding had been signed with the RPF – establishing, *inter alia*, guidelines for the DPP to provide legal advice and supervision to police prosecutors to ensure that crimes are duly prosecuted – during the on-site visit the representatives highlighted the need for more and better coordination between the two agencies, chiefly on topics related to forensics, the chain of custody, preparing investigations, and safekeeping of evidence. In addition, the DPP's representatives spoke of the lack of coordination with other agencies of the State and the inadequate support received from them in discharging the DPP's functions. Accordingly, the Committee will formulate a recommendation for the strengthening of those ties through effective coordination mechanisms between the stakeholders involved in the prosecution and investigation of corrupt acts that trigger criminal responsibility, including the DPP, the RPF, the Director of Audit, the Financial Intelligence Unit, and others, in order to establish effective and timely procedures and/or guidelines for exchanges of information and legal advice for the correct presentation before the courts of criminal proceedings, chiefly those related to acts of corruption. (See recommendation 1.4.7 in section 1.4 of Chapter II (B) of this report)

[183] Finally, regarding accountability mechanisms applicable to the performance of its duties, the Committee takes note of the information gathered during the on-site visit. However, based on that information, the Committee believes it would be useful for the country under review to consider adopting such measures as it deems appropriate to establish, within the DPP, accountability mechanisms or the presentation of management reports on how it discharges its duties and the way to make those public. (See recommendation 1.4.8 in section 1.4 of Chapter II (B) of this report)

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

[184] In its Response to the Questionnaire, the country under review provided no information on the DPP's results in compliance with its functions and responsibilities, chiefly those related to the prosecution of corrupt acts that trigger criminal responsibility. This is because, as indicated by the oversight agency's representatives during the on-site visit, they have no statistical data on the performance of its duties and functions. With regard to corrupt acts, they were aware of only one case, which is currently being processed. Based on the foregoing, the Committee cannot offer a comprehensive evaluation of the results in this area and, as a result, will formulate the relevant recommendations. (See recommendations 1.4.9 to 1.4.12 in section 1.4 of Chapter II (B) of this report)

1.4. Conclusions and recommendations

[185] Based on the comprehensive review conducted with respect to the DPP in the foregoing sections, the Committee offers the following conclusions and recommendations:

[186] Saint Kitts and Nevis has considered and adopted measures for maintain and strengthen the DPP as an oversight body, as described in section 1 of Chapter II (B) of this report.

[187] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 1.4.1. Appoint the Director of Public Prosecutions to the public service in accordance with section 81 of the Constitution, instead through a contract. (See section 1.2 of Chapter II (B) of this report)
- 1.4.2. Develop manuals, and/or guides for directing prosecutors in effectively and correctly initiating and pursuing criminal proceedings for the commission of corrupt acts. (See section 1.2 of Chapter II (B) of this report)
- 1.4.3. Provide the DPP with the financial resources necessary to ensure the continuous training of prosecutors, in order to strengthen their knowledge and skills in the correct and effective prosecution of crimes, particularly those related to acts of corruption, bearing in mind the availability of resources. (See section 1.2 of Chapter II (B) of this report)
- 1.4.4. Obtain technological tools to assist the DPP in discharging its constitutional and legal obligations with greater efficiency and effectiveness, particularly as regards the prosecution of corrupt acts that trigger criminal responsibility. (See section 1.2 of Chapter II (B) of this report)

- 1.4.5. Develop and keep updated a web site, which could contain information about the DPP's objectives and functions, its legal framework, and procedures. (See section 1.2 of Chapter II (B) of this report)
- 1.4.6. Provide the DPP with the professional human resources necessary for it to correctly perform its functions, chiefly as regards the prosecution of corruption crimes, bearing in mind the availability of resources. (See section 1.2 of Chapter II (B) of this report)
- 1.4.7. Implement coordination mechanisms, as appropriate, between the DPP, the RFP, the Office of the Director of Audit, and the Financial Intelligence Unit, in order to establish effective and timely procedures and/or guidelines for exchanges of information and legal advice for the correct presentation before the courts of criminal proceedings, chiefly those related to acts of corruption. (See section 1.2 of Chapter II (B) of this report)
- 1.4.8. Establish, within the competences and powers of the DPP, accountability mechanisms or the presentation of management reports on how it discharges its duties and consider mechanisms to make them public. (See section 1.2 of Chapter II (B) of this report)
- 1.4.9. Prepare and publish statistical data on the prosecutions related to the acts of corruption defined in the Criminal Code and in the Convention, to indicate how many cases remain ongoing, how many cases have been discontinued, and in how many cases a decision was arrived at and any sanctions which were imposed as result of the decisions, in order to identify challenges and recommend any necessary corrective measure. (See section 1.3 of Chapter II (B) of this report)
- 1.4.10. Prepare and publish statistical data on the investigations into the acts of corruption defined in the Criminal Code and in the Convention carried out by the competent bodies and referred to the DPP, to indicate how many investigations remain ongoing, how many investigations have been discontinued for whatever reason, how many have been discontinued because of the expiration of the established deadlines, how many have been discontinued without a decision being reached on the merits in the case, how many are at a stage that allows a decision to be reached on the merits of the case, and how many have been referred to the competent authority for such a decision to be adopted, in order to identify challenges and recommend any necessary corrective measures. (See section 1.3 of Chapter II (B) of this report)
- 1.4.11. Prepare and publish statistical data on the judicial proceedings initiated for the acts of corruption defined in the Criminal Code and in the Convention, to indicate how many cases remain ongoing, have been discontinued, have been discontinued because of statutory limitations, have been discontinued without a decision being reached on the merits of the case, are ready for a decision to be adopted, or in which a resolution has been issued and how many received an acquittal or a conviction, in order to identify challenges and recommend any necessary corrective measures. (See section 1.3 of Chapter II (B) of this report)

- 1.4.12. Develop, within the DPP, a mechanism to follow up on the corruption cases brought before the courts, to indicate what steps are being taken with them and the results thereof, and to publicize them as necessary so that the public can appreciate its efforts in prosecuting acts of corruption and have additional elements for assessing its performance. (See section 1.3 of Chapter II (B) of this report)

2. THE MAGISTRATE'S DEPARTMENT

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

[188] The Magistrates Department, as the administrative body for the Magistrates Court, has a set of provisions in its legal framework, as well as other measures concerning, among others, the following:

[189] The Magistrates Court is the first-instance court of law in the country under review. Its jurisdiction is divided into three districts – two on the island of Saint Kitts (districts A and B) and one on the island of Nevis (district C) – each of which is headed by a District Magistrate.

[190] Pursuant to section 9 of the Magistrates Code of Procedure Act,^{49/} the District Magistrate shall have and possess all the powers and jurisdiction and shall perform all the duties which are now vested in or imposed upon District Magistrates or Justices of the Peace either at common law or by virtue of any enactment now in force, or which may hereafter be vested in or imposed upon such District Magistrates by virtue of any such enactment. Such functions, in accordance with the Response to the Questionnaire, include Magistrates hearing less serious criminal cases, such as minor theft, criminal damage, public disorder and traffic offences. They conduct preliminary inquiries and commit persons charged with serious offences such as rape and murder to the High Courts, consider bail applications and grant search warrants. Magistrates also have jurisdiction in civil matters and family matters.

[191] With specific reference to the crimes of corruption that constitute criminal offenses under the legal regime of the country under review, during the on-site visit the representatives of the Magistrates Department indicated that the magistrates serve as first-instance judicial courts in Saint Kitts and Nevis when the RPF arrests a suspect for the commission of one of those crimes.

[192] As regards their autonomy, the Magistrates are creatures of statutes. They are governed by the laws of Saint Kitts and Nevis, primarily by the Magistrates Code of Procedure Act. They are independent in the exercise of their functions and their decisions are subject to appeal to the Court Appeal and to review by the High Court. Also, the scope of the Magistrates function is determined by statute. The Magistrate only has jurisdiction where the common law or specific legislation gives him or her jurisdiction in the subject matter.

[193] With respect to the manner in which they adopt their decisions, each Magistrate makes his or her decisions in his or her own deliberate judgment by applying the law to the facts before them. In making a decision the Magistrate is guided by legislation and judgments given by superior courts of record having binding or persuasive authority. The remedies that can be brought against the decisions of a Magistrate adopted can be via an appeal to the Court of Appeal, an appeal to the Privy Council and by judicial reviews, in accordance with the applicable provisions of the Magistrate's Code of Procedure Act and other provisions. Pursuant to section 151 of the Magistrate's Code of Procedure

49. Available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_mag_cod_proc_act.pdf

Act a Magistrate can review his or her decision in a civil matter within one month after rendering a decision in the matter.

[194] In accordance with section 83 of the Constitution and section 5 of the Magistrate's Code of Procedure Act the Magistrates are appointed by the Governor-General acting in accordance with the recommendation of the Public Service Commission, which before making any recommendation shall consult the Judicial and Legal Services Commission. On this point, both the Response to the Questionnaire^{50/} and the information gathered during the on-site visit indicate that the Ministry of Justice and Legal Affairs is the agency responsible for determining the human resources necessary for the Magistrates Court to operate, and that magistrates are appointed under two-year contracts, with the Minister of Justice and Legal Affairs, through the Governor-General, empowered to determine whether or not those contracts may or may not be renewed for another similar duration.

[195] Regarding the requirements to serve as a magistrate, during the on-site visit the representatives of the Magistrates Department indicated that, while there were no specific regulations, there was a policy requiring any candidate to be a practicing attorney-at-law lawyer with five years of experience eligible to practice at the Bar in Saint Kitts and Nevis. It was also reported that vacancies for those positions were advertised in the local press of the country under review and that selections were made on the basis of the principle of merit.

[196] It should also be noted that within the structure of the Magistrates Court, its most senior figure is the Senior District Magistrate, a position held by the District Magistrate with the greatest length of service with the Court, whose functions include administrative matters and the supervision of the public officials in the Court's service.

[197] As indicated in the information furnished by the country under review in its Response to the Questionnaire and corroborated during the on-site visit, the Magistrates Court has embarked on a cooperative project with the Public Sector Reform Unit for drawing up and updating the job descriptions of its staff. The task of preparing those descriptions within the Department of Human Resources has already been ongoing for a number of years.

[198] In addition, it should be noted that training is provided at least once a year by the Judicial Education Institute of the Eastern Caribbean Supreme Court based in Saint Lucia, and that other training activities are offered from time to time by certain international agencies.

[199] As regards the existence of documented procedures for performing their tasks, or of manuals or guides dealing with those duties, in its Response the country under review referred to the provisions contained in the Magistrates Code of Procedure Act. During the on-site visit the representatives of the Magistrates Department also addressed this issue, referring to the clauses contained in the employment contracts of the Court's magistrates.

[200] Regarding computer systems or technologies for facilitating its work, the representatives of the Magistrates Department spoke of the recent training that the magistrates have received from the Eastern Caribbean Supreme Court in the use of the Judicial Enforcement Management System (JEMS), which enables magistrates to electronically create their own court schedules, make notes during court proceedings and enter judgments, and also reduces issues such as documents being misplaced or destroyed and assists with the efficient scheduling of matters.

50. See: Response of Saint Kitts and Nevis to the Fourth Round, Questionnaire, p. 27, *supra* note 4.

[201] Regarding the way in which the public are provided with information on the objectives and functions of the Magistrates Court, in its Response to the Questionnaire the country under review^{51/} indicated that such information may be obtained by personally visiting the seat of the Court in the country's capital. Similarly, in connection with this particular point, during the on-site visit the representatives of the Magistrates Department reported the dissemination of a certain selection of its information, which is published on the web site of the Eastern Caribbean Supreme Court.^{52/}

[202] Based on the information gathered during the on-site visit with respect to internal control mechanisms, the Magistrates Court, given its size and lack of budgetary autonomy, has no kind of internal auditing unit or office. Nevertheless, claims, complaints, or allegations related to the pursuit of its objectives and the performance of its staff may be lodged with the Minister of Justice and Legal Affairs, the Chief Justice, or the Senior District Magistrate. According to the explanation given by the representatives of Magistrates Department during the visit, it is the Senior District Magistrate who talks with the official involved; however, should the same official accumulate three repeat offenses, the claim is transferred to the Permanent Secretary of the Ministry of Justice and Legal Affairs for conveyance to and intervention by the Public Service Commission. Disciplinary proceedings against magistrates, however, only proceed on the decision of the Judicial and Legal Services Commission.

[203] Regarding the way in which the budgetary resources necessary for its operations are ensured, they are forecasted by Assistant Secretary attached to the Magistrates Court's on an annual basis and transmitted to the Permanent Secretary who then transmits same to the Ministry of Finance for approval based on the annual budget allotted to each Government Department, by the terms of Chapter VI of the Constitution and the corresponding annual appropriation bills.

[204] Regarding coordination mechanisms for bringing its functions into line with those of other oversight agencies or branches of government, based on the information furnished by the country under review in its Response to the Questionnaire,^{53/} the Magistrates Court has working relationships with the Ministry of Justice and Legal Affairs, the Probation Department, the RPF, the DPP the Environment Department, Social Security Board, and the members of the Bar who appear before the Court. Nevertheless, that same Response indicates, "*there are no formal coordination mechanisms. The conduct of the relationship depends on the issue involved.*"

[205] Finally, as regards accountability mechanisms, in its Response to the Questionnaire^{54/} Saint Kitts and Nevis refers to the appeal remedies available against decisions adopted by the magistrates, and to the *authority* of the Attorney General to ensure that the Magistrate functions in accordance with his or her contract and the Magistrate Code of Procedure Act.

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

[206] The Magistrates Department has a set of provisions and/or other measures that are relevant for the purposes of the Convention, some of which were briefly described above in section 2.1 of this report. Nonetheless, the Committee believes it would be appropriate to formulate certain comments in connection therewith:

51. See: Response of Saint Kitts and Nevis to the Fourth Round, Questionnaire, p. 28, *supra* note 4.

52. See: <http://www.eccourts.org>

53. See: Response of Saint Kitts and Nevis to the Fourth Round, Questionnaire, p. 29, *supra* note 4.

54. See: Response of Saint Kitts and Nevis to the Fourth Round, Questionnaire, pp. 29 and 30, *supra* note 4.

[207] First, as can be seen from the information set out in the previous section regarding the independence of the Magistrates Court, the Committee notes that the Ministry of Justice and Legal Affairs, through the Minister of Justice and Legal Affairs, who belongs to the executive branch, has a set of functions that it believes could affect the independence of this court. Those functions, among others, are chiefly related to the authority of the Ministry of Justice and Legal Affairs to decide on the appointment of the District Magistrates and the renewal of their contracts, to determine the human resources necessary for the Court's operations, and its powers of oversight over its personnel, in addition to the specific cases in which the Judicial and Legal Services Commission can intervene.

[208] On this point, during the on-site visit the representatives of the Magistrates Department stated that the current appointment system for magistrates, based on two-year contracts, did not afford them the security of tenure necessary for the proper performance of their functions, which could undermine the legally assigned independence of this court. For that reason, the representatives said that the Eastern Caribbean Supreme Court was promoting an initiative to standardize, *inter alia*, the magistrates' appointment regime with that of judges on the higher courts of the judicial branch in the country under review.^{55/}

[209] In addition, that initiative could be considered an appropriate measure for strengthening the independence of the District Magistrates and the system and processes used to appoint them. The Committee reserves the right to offer recommendations in this regard, since the review of government hiring systems, including those of the judiciary, was covered during the Second Round, and they will be reviewed comprehensively with respect to Saint Kitts and Nevis in the Fifth Round, given that at the time of the Second Round the country under review was not yet a party to the Mechanism.

[210] Notwithstanding, regarding the existence of manuals or other documents describing the functions of the officers assigned to the Magistrates Court, the Committee, based on the information gathered during the on-site visit, takes note of the cooperation project with the Public Sector Reform Unit for the preparation and updating of the job descriptions of the public servants in its employ. However, since the preparation of those descriptions by the Department of Human Resources of the Public Service Commission has already taken for a number of years and since the country under review indicates in its Response to the Questionnaire that "*no manual or other documents that describe the functions of the Magistrates exist with the exception to the Magistrates contracts of employment and the Magistrates Code of Procedure Act,*"^{56/} the Committee will formulate a recommendation for the country under review to adopt the measures it deems necessary to complete the process of preparing and updating the job descriptions of the Magistrates Court. (See recommendation 2.4.1 in section 2.4 of Chapter II (B) of this report)

[211] In addition, based on the information available to it, the Committee was unable to identify the existence of documented procedures for the performance of the tasks of the Magistrates Court, or of manuals or guides on the matter, and accordingly it will formulate a recommendation in this regard. (See recommendation 2.4.2 in section 2.4 of Chapter II (B) of this report)

[212] Second, as regards training, the Committee notes the information provided by the representatives of the Magistrates Department during the on-site visit indicating that, regardless of the temporary training programs offered by the Judicial Education Institute of the Eastern Caribbean Supreme Court and other international training events in which the magistrates and other Court officials participate, there is a need for suitable, permanent training for all its officers, including the

55. See *supra* note 47.

56. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 27, *supra* note 4.

magistrates, particularly on topics related to the correct prosecution of cases involving acts of corruption and on matters of ethics, integrity, and transparency in the administration of justice. The Committee will make a recommendation in this regard. (See recommendation 2.4.3 in section 2.4 of Chapter II (B) of this report)

[213] Third, and regardless of its recent incorporation into the Eastern Caribbean Supreme Court's JEMS data system, during the on-site visit the representatives of the Magistrates Department underscored the urgent need for modern computer equipment and technologies to facilitate its work. To cite just one example, the representatives indicated that at present, records or minutes of judicial hearings in which magistrates participate are taken by hand, which leads to considerable delays in registering and archiving them. That lack of technological resources, they claimed, means that the Court's workload is currently saturated, to the detriment of the prompt and efficient administration of justice. Accordingly, the Committee will formulate a recommendation for the country under review to redouble its efforts to provide the Magistrates Court with resources of this kind and thus contribute to a more transparent and streamlined administration of justice. (See recommendation 2.4.4 in section 2.4 of Chapter II (B) of this report)

[214] Fourth, as regards the dissemination of information on its objectives, functions, and results, during the on-site visit the Magistrates Court acknowledged that it had neither the means nor the resources necessary to provide the public with such information, excluding the publications on the web site of the Eastern Caribbean Supreme Court referred to in the previous section. In the interests of transparency and access to information, the Committee believes it is important for the country under review to consider adopting the measures it deems appropriate to allow the Magistrates Court to provide the public with that kind of information. One alternative that might be deemed suitable for the purpose would be the development of a web site on the internet, and consideration of the advantages offered by tools of that kind. (See recommendation 2.4.5 in section 2.4 of Chapter II (B) of this report)

[215] Similarly, and bearing in mind the information provided by the Magistrates Department's representatives during the on-site visit, the Committee believes that it would be beneficial for the country under review to consider developing awareness and/or guidance campaigns for the public, to inform them how to pursue formalities with this judicial agency. (See recommendation 2.4.6 in section 2.4 of Chapter II (B) of this report)

[216] Fifth, regarding the mechanisms for internal control and dealing with claims, complaints, or allegations related to the pursuit of its objectives and to the performance of its personnel, the Committee takes note of the initiative showcased by the representatives of the Magistrates Department during the on-site visit involving the implementation of a mailbox system where users can deposit their opinions on the Court's staff and services provided. The Committee will formulate a recommendation for the country under review to strengthen those mechanisms to allow the effective imposition of the corresponding sanctions on those who fail to abide by the disciplinary regulations governing the Court's personnel. (See recommendation 2.4.7 in section 2.4 of Chapter II (B) of this report)

[217] Sixth, as regards the way in which the budgetary resources necessary for its operations are provided, the Magistrates Department's representatives said that its budget had not been increased in more than 10 years, which has led to a reduction in the quality and capacity of its physical facilities and working tools, including its technological equipment as described above. Also in connection with this topic, the representatives of the Magistrates Department spoke of the lack of autonomy for

managing its resources, stating that in addition to having to ask, on a monthly basis, the Ministry of Finance for the resource allocation required to meet its financial and administrative responsibilities, with the exception of salary payments, they have a *limited* relationship with that ministry. As a result of this situation, they said, in some cases the Magistrates Court has been unable to provide the services that it is required by law to offer the public. The Committee will formulate recommendations in light of those comments. (See recommendations 2.4.8 and 2.4.9 in section 2.4 of Chapter II (B) of this report)

[218] Seventh, the Committee takes note of the information furnished by the country under review in its Response to the Questionnaire indicating that there are no formal coordination mechanisms for aligning the functions of the Magistrates Court with those of other oversight agencies or branches of government or for securing the support of other authorities and the public for the full performance of its functions; accordingly, it will formulate a recommendation in this regard. (See recommendation 2.4.10 in section 2.4 of Chapter II (B) of this report)

[219] Finally, regarding the accountability mechanisms applicable to the performance of its duties, the Committee takes note of the information provided by Saint Kitts and Nevis in its Response to the Questionnaire and that gathered during the on-site visit. Based on that information, however, the Committee believes it would be useful for the country under review to consider adopting such measures as it deems appropriate to establish, within the Magistrates Court, accountability mechanisms or the presentation of management reports on its pursuit of its duties and the way to make them public. (See recommendation 2.4.10 in section 2.4 of Chapter II (B) of this report)

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

[220] In its Response to the Questionnaire, the country under review provided no information on the Magistrates Court's results in compliance with its functions and responsibilities, chiefly those related to the imposition of sanctions on corrupt acts that trigger criminal responsibility. This is because, as indicated by the oversight agency's representatives during the on-site visit, they have no statistical data on the performance of its duties and functions and because, with reference to corrupt acts, they are solely aware of one case, for bribery, which was prosecuted more than 20 years ago. Based on the foregoing, the Committee cannot offer a comprehensive review of the results in this area and, as a result, will formulate the relevant recommendation. (See recommendation 2.4.11 in section 2.4 of Chapter II (B) of this report)

2.3. Conclusions and recommendations

[221] Based on the comprehensive review conducted with respect to the Magistrates Court in the foregoing sections, the Committee offers the following conclusions and recommendations:

[222] Saint Kitts and Nevis has considered and adopted certain measures intended to maintain and strengthen the Magistrates Court as an oversight body, as described in section 2 of Chapter II (B) of this report.

[223] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 2.4.1 Take the necessary steps to complete the process of drafting and updating the job descriptions of the staff of the Magistrates Court. (See section 2.2 of Chapter II (B) of this report)

- 2.4.2 Prepare manuals and procedures outlining the manner in which tasks in the Magistrates Department are to be performed. (See section 2.2 of Chapter II (B) of this report)
- 2.4.3 Provide the Magistrates Court with the financial resources necessary to ensure the permanent, appropriate training of all its officers, including the magistrates, paying particular attention to cases involving acts of corruption and ethics, integrity, and transparency in judicial functions, bearing in mind the availability of resources. (See section 2.2 of Chapter II (B) of this report)
- 2.4.4 Provide the Magistrates Court with computer equipment and systems and modern technologies that will enable it, *inter alia*, to provide a transparent, prompt, and expeditious administration of justice. (See section 2.2 of Chapter II (B) of this report)
- 2.4.5 Adopt suitable measures to enable the Magistrates Court to provide the public with information on its objectives, functions, and results, perhaps considering, as an alternative for this purpose, the development of a web site or page. (See section 2.2 of Chapter II (B) of this report)
- 2.4.6 Develop awareness and/or guidance campaigns to inform the public on how to pursue formalities with the Magistrates Court. (See section 2.2 of Chapter II (B) of this report)
- 2.4.7 Strengthen the internal control mechanisms including those used to deal with claims, complaints, or allegations related to the pursuit of its objectives and the performance of the Magistrates Court's officers, through the adoption of the measures necessary for the effective imposition of the applicable sanctions on those who fail to abide by the disciplinary regulations governing the Court's officers. (See section 2.2 of Chapter II (B) of this report)
- 2.4.8 Provide the Magistrates Court with the financial resources necessary for due compliance with its legal functions, chiefly those related to the punishment of corrupt acts that trigger criminal responsibility, bearing in mind the availability of resources. (See section 2.2 of Chapter II (B) of this report)
- 2.4.9 Take the appropriate steps so that the Magistrates Court has greater involvement and autonomy in determining and managing its budgetary resources. (See section 2.2 of Chapter II (B) of this report)
- 2.4.10 Implement coordination mechanisms, as appropriate, between the Magistrates Court, the RFP, the Ministry of Justice and Legal Affairs, the office of the Attorney General, the Financial Intelligence Unit, and other agencies, that ensure the establishment of effective and timely procedures and/or guidelines for the correct presentation of criminal proceedings related to acts of corruption. (See section 2.2 of Chapter II (B) of this report)

- 2.4.11 Adopt, in the area of competence of the Magistrates Court, appropriate measures to establish accountability mechanisms such as the presentation of management reports in the exercise of its functions, as well as procedures for the dissemination thereof to the public. (See section 2.2 of Chapter II (B) of this report)
- 2.4.12 Prepare statistical data on the judicial proceedings brought before the Magistrates Court in connection with acts of corruption, to indicate how many cases remain ongoing, the number of cases that have been discontinued, how many have been discontinued because of statutory limitations, how many have been discontinued without a decision being reached, how many are ready for a decision to be adopted, and how many are already covered by decision on the merits and whether that decision was an acquittal or a conviction, in order to identify challenges and recommend any necessary corrective measures. (See section 2.3 of Chapter II (B) of this report)

3. THE OMBUDSMAN

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

[224] The Ombudsman has a set of provisions in its legal framework, as well as other measures concerning, among others, the following:

[225] According to the comments made by the country under review in its Response to the Questionnaire,^{57/} the Ombudsman was established in Saint Kitts and Nevis for the purpose of protecting and enforcing the rights of citizens. Its objectives include contributing towards the development of a public service culture characterized by fairness, dedication, commitment, openness, accountability, and the promotion of the right to good public administration.

[226] As regards its functions, Part 2, section 9 of the Ombudsman Act,^{58/} in force since July 2008, establishes, *inter alia*, that the functions of the Ombudsman is to give assistance to persons who believe that they have suffered injustices by public officials as a result of maladministration. The functions also include the investigation of any administrative action of an authority for the purpose of deciding whether there is evidence of maladministration on the part of the authority. In addition, the Ombudsman has the power to make recommendations, to the authority concerning any administrative action that formed the subject of the investigation and, generally, about ways of improving its administrative practices and procedures; and to perform other such functions as may be conferred upon him under the Act.

[227] With respect to the scope of their functions, by virtue of same section 9 the role of the Ombudsman is largely limited to investigating complaints made against local authorities and making the necessary recommendations to ameliorate the problem complained of. However section 15 of the Ombudsman Act indicates that he or she may resort to mediation if he or she believes the circumstances warrants mediation. Also, the mechanism in place in accordance with section 9(4) of the Ombudsman Act for the resolution of any conflict of jurisdiction that may arise in his or her investigation of a case is that the Ombudsman or complainant may apply to the Court for an order declaratory of the Ombudsman's jurisdiction.

57. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 30, *supra* note 4.

58. Available at: http://www.oas.org/juridico/PDFs/mesicic4_kna_ombudsman_act.pdf

[228] As regards restrictions on its investigative jurisdiction, section 10 of the Act provides that where there is under any enactment a right of appeal or objection to a tribunal or a right to apply to a Court for a remedy in respect of an administrative action taken by an authority, the Ombudsman shall not investigate such action until after that right of appeal, objection or application has been exercised and determined, or until after the time for the exercise of that right of appeal, objection or application has expired. But, regardless of the foregoing, the Ombudsman may investigate any administrative action of an authority in circumstances where the complainant has or had such right or remedy, if he or she is satisfied that in the particular circumstances it is not reasonable to expect the person to resort or to have resorted to it.

[229] Also, the Ombudsman Act does not authorize the Ombudsman to undertake any investigation that relates to any action or matter specified in the First Schedule,^{59/} but the Governor-General may, by order subject to affirmative resolution, amend the First Schedule.

[230] As regards the way in which its decisions are adopted, based on the information furnished by the country under review in its Response to the Questionnaire^{60/} and on that gathered during the on-site visit, the Ombudsman must at all times act independently and impartially and not take sides in the investigation of any complaint, subject to the terms of sections 11 and 15 and other applicable provisions of the Ombudsman Act.

[231] As to how the position is filled, section 4 of the Act states that the Ombudsman shall be appointed by the Governor-General following consultations with the Prime Minister and the Leader of the Opposition and shall remain in the position until reaching the age of 70 years, pursuant to section 5(1) of the same act. Members of the National Assembly, persons referred to as undischarged bankrupts and persons who have been convicted of any offence involving dishonesty or moral turpitude are disqualified from serving as Ombudsman.

[232] Section 4 also provides that the Ombudsman may be removed from his or her office only for inability to discharge the functions of his or her office, whether arising from infirmity of body or mind or any other cause, or for misconduct and shall not be removed except in accordance with the provisions of this section, which also sets out the removal procedure to be followed.

[233] Part VI of the Ombudsman Act sets out the regime applicable to the human resources at the Ombudsman's service, stating that they are to be determined by the Ombudsman himself. Once the human resource needs are identified, the Human Resource Department of Saint Kitts and Nevis is responsible for employing them. Specifically, section 24 of the Act indicates that based on the human resources needs of the office of the Ombudsman the appointment of such number of public officers as may be required to assist the Ombudsman in the discharge of his or her functions is acceptable. The Act also indicates that the Ombudsman may, in addition, engage from time to time such technical or professional advisers as are necessary to assist in the discharge of his or her functions. Every person appointed under this section is subject to the Ombudsman's direction and control in the performance of functions.

59. The First Schedule states as actions not subject to investigation the following: (1) Administrative action which, by virtue of any provision of the Constitution, may not be inquired into by any court. (2) Any administrative action taken by Cabinet or by a Minister or a Junior Minister. (3) Administrative action taken for the purpose of investigating crime or protecting the security of Saint Christopher and Nevis. (4) The commencement or conduct of any proceedings, whether civil or criminal, before a court of law or tribunal in Saint Kitts and Nevis, including any decision whether or not to prosecute any person for an offence. (5) Any Administrative action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matter in relation to service in any office or employment in the public service or under any authority.

60. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 31, *supra* note 4.

[234] In connection with this, mention should be made of the fact that, as indicated in both the information furnished by the country under review in its Response to the Questionnaire and that gathered during the on-site visit, since the creation of the position in 2008, the Ombudsman is the only person employed in the office.

[235] Regarding the existence of manuals or other documents describing the functions of its personnel, and of documented procedures for the development of its tasks, or of manuals or guides related thereto, the Ombudsman has only the provisions set down in the Ombudsman Act.

[236] Despite being the only person employed in the office, the Ombudsman of Saint Kitts and Nevis is a member of the Caribbean Ombudsman Association (CAROA) and attends its conferences and training workshops. He has also attended a number of international forums, chiefly to receive training on human rights issues.

[237] Regarding the way in which the Ombudsman provides the public with information on the objectives and functions of the office, informs them about the procedures established for the fulfillment of its responsibilities, and provides them guidance about how to pursue formalities with it, in its Response to the Questionnaire the country under review indicates^{61/} that members of the public have *in the past* been invited to meetings hosted by the Ombudsman in an attempt to sensitize the public on the existence of the office and its functions and services offered to the public. Members of the public are free to visit the office of the Ombudsman to obtain information outlining pertinent information about the Ombudsman office and function.

[238] Finally, regarding the way in which the budgetary resources necessary for its operations are ensured, based on the information gathered during the on-site visit, they are forecasted by the Ombudsman on an annual basis and transmitted to the Permanent Secretary who then transmits same to the Ministry of Finance for approval based on the annual budget allotted to each Government Department, by the terms of Chapter VI of the Constitution and the corresponding annual appropriation.

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

[239] The Ombudsman has a set of provisions and/or other measures that are relevant for the purposes of the Convention, some of which were briefly described above in section 3.1 of this report. Nonetheless, the Committee believes it would be appropriate to formulate certain comments in connection therewith:

[240] First, the Committee is concerned that, as indicated in the information set out in the previous section, since its creation in 2008, the Office of the Ombudsman has only one employee, the Ombudsman himself, for discharging the broad range of functions and responsibilities assigned by law to this Office.

[241] This situation was addressed during the on-site visit, when it was explained that this was due to the country's foreign debt restructuring process, which requires, among other measures, no increases to the national budget. As a result, the Ombudsman's budgetary allocation has remained frozen for the past six years, preventing the hiring of personnel and the acquisition of other resources needed to discharge the duties of this Office.

61. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 33, *supra* note 4.

[242] Regardless of the foregoing, as well as that of the information indicated by the country under review in both its Response to the Questionnaire^{62/} and during the on-site visit regarding the political will and future plans of the Government of Saint Kitts and Nevis to strengthen this body, the Committee will formulate a recommendation for the prompt adoption of the measures necessary to increase and ensure the human and material resources needed for the Office of the Ombudsman to operate effectively. (See recommendation 3.4.1 in section 3.4 of Chapter II (B) of this report)

[243] Second, during the on-site visit, the Ombudsman shared information about the work and investigations carried out since the Office was created, and about the recommendations formulated as a result of those investigations. It was explained that although they are not binding on the ministries and other public agencies and officials subject to its oversight, they are usually complied with. However, bearing in mind the importance of the work carried out by the Ombudsman, in spite of the shortage of resources, the Committee suggests that the country under review consider the possibility of adopting the measures appropriate to ensure that the public agencies subject to its oversight effectively comply with the recommendations issued by the Office of the Ombudsman as a result of its investigations. (See recommendation 3.4.2 in section 3.4 of Chapter II (B) of this report)

[244] Third, the Committee notes that according to Part VI of the Ombudsman Act, referred to in the previous section which establishes the office's human resource regime, it appears that its staff is freely appointed and removed.

[245] On this point, and regardless of the fact that the review of the government hiring systems referred to in Article III(5) of the Convention, which were covered during the Second Round, will be carried out comprehensively for Saint Kitts and Nevis in the Fifth Round, since the country under review was not yet a part of the Mechanism during the Second Round, the Committee believes it is appropriate to suggest, as no personnel have been hired other than the Ombudsman since the office was created, that when it enforces the provisions contained in Part VI of the Ombudsman Act for the future hiring of the human resources necessary for it to operate, the country under review consider adopting the measures it deems necessary to guarantee that their hiring is based on merit and on the principles of openness, equity and efficiency as enshrined in the Convention. (See recommendation 3.4.3 in section 3.4 of Chapter II (B) of this report)

[246] Related to this, and in order to strengthen the proper performance of the functions assigned to the future personnel appointed the Ombudsman's office, the Committee believes it would be useful for the country under review to consider the possibility of developing manuals or other documents describing the functions and establishing measures to ensure that its personnel receives the necessary training related to the duties assigned to them. (See recommendations 3.4.4 and 3.4.5 in section 3.4 of Chapter II (B) of this report)

[247] Fourth, although the Ombudsman Act provides guidance for discharging its duties, the Committee also suggests that the country under review consider developing a manual of procedures or guides for the performance of the tasks of the Ombudsman and of the future personnel that may be appointed to that office, which would assist with the better and more efficient compliance with the tasks entrusted to them. (See recommendation 3.4.6 in section 3.4 of Chapter II (B) of this report)

[248] Fifth, although the creation of the Ombudsman's office is relatively recent, based on the information provided by Saint Kitts and Nevis in its Response to the Questionnaire indicating that "*... there are plans in place to offer institutional strengthening and quality improvement actions.*"

62. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 32, *supra* note 4.

However, to date these remain work in progress that the Ombudsman himself is trying to bring into fruition,^{63/} together with the needs identified by the Ombudsman during the on-site visit, the Committee believes it important for the country under review to consider redoubling its efforts toward developing and implementing effective institutional strengthening actions, including, *inter alia*, appropriate physical facilities for the personnel at the Ombudsman's service, with modern computer equipment to facilitate the development of its tasks. (See recommendation 3.4.7 in section 3.4 of Chapter II (B) of this report)

[249] Sixth, the Committee also suggests that in the interest of transparency and access to information, the country under review also redouble its efforts to ensure the Ombudsman's office has the resources and tools needed to disseminate and provide the public with information about its objectives and functions, to inform them about the procedures established for the fulfillment of its responsibilities, and to guide them in how to present complaints to it, bearing in mind above all that one of the Ombudsman's main responsibilities is to give assistance to persons who believe that they have suffered injustices by public officials as a result of maladministration. (See recommendation 3.4.8 in section 3.4 of Chapter II (B) of this report)

[250] Seventh, as indicated in the Response of Saint Kitts and Nevis to the Questionnaire, whereby *"the Ombudsman Act does not specifically outline any procedure for the making of complaints, claims or allegations against the Ombudsman or his staff..."*^{64/} the Committee will formulate a recommendation, notwithstanding of the standard procedure referred to in the Response. (See recommendation 3.4.9 in section 3.4 of Chapter II (B) of this report)

[251] Eighth, from both the Response to the Questionnaire and the information gathered during the on-site visit, the Committee notes the absence of any coordination mechanisms to harmonize the Ombudsman's functions with those of other oversight agencies or branches of government or to obtain the support of other authorities and the public in fully discharging its functions. Accordingly, it will formulate a recommendation in this regard. (See recommendation 3.4.10 in section 3.4 of Chapter II (B) of this report)

[252] Finally, as regards accountability mechanisms applicable to the performance of its duties, the Committee, bearing in mind that the Ombudsman Act makes no specific mention regarding who the Ombudsman is accountable to in the performance of his duties, believes it would be useful for the country under review to consider adopting such measures as it deems appropriate to establish, within the Ombudsman's office, accountability mechanisms or the presentation of management reports on how it discharges its duties and the way to make those public. (See recommendation 3.4.11 in section 3.4 of Chapter II (B) of this report)

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

[253] In its Response to the Questionnaire, the country under review provided no information on the Ombudsman's results in discharging its powers and responsibilities, chiefly those related to giving assistance to persons who believe that they have suffered injustices by public officials as a result of maladministration and on the investigations conducted of any administrative action of an authority for the purpose of deciding whether there is evidence of maladministration on the part of the authority. Based on the foregoing, the Committee cannot offer a comprehensive evaluation of the results in this

63. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 33, *supra* note 4.

64. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 34, *supra* note 4.

area and, as a result, will formulate the relevant recommendation. (See recommendation 3.4.12 in section 3.4 of Chapter II (B) of this report)

3.4. Conclusions and recommendations

[254] Based on the comprehensive review conducted with respect to the Ombudsman in the foregoing sections, the Committee offers the following conclusions and recommendations:

[255] Saint Kitts and Nevis has not considered or adopted measures for maintaining and strengthening the Ombudsman as an oversight body, as described in section 3 of Chapter II (B) of this report.

[256] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 3.4.1. Adopt, as promptly as possible, the relevant measures to provide the Ombudsman with the human and financial resources necessary for due compliance with its legal functions, bearing in mind the availability of resources. (See section 3.2 of Chapter II (B) of this report)
- 3.4.2. Establish mechanisms to ensure that the public agencies subject to the Ombudsman's oversight effectively comply with the recommendations made through its investigations. (See section 3.2 of Chapter II (B) of this report)
- 3.4.3. Adopt the appropriate measures to ensure that personnel hiring processes in the Ombudsman's office are conducted in accordance with the principles of merit, openness, equity and efficiency, as enshrined in the Convention. (See section 3.2 of Chapter II (B) of this report)
- 3.4.4. Develop manuals or other support documents describing the functions to be performed by the personnel in the Ombudsman's service. (See section 3.2 of Chapter II (B) of this report)
- 3.4.5. Adopt the appropriate measures to ensure that the personnel assigned to the Ombudsman's office receive regular training to strengthen their capabilities, knowledge, and skills. (See section 3.2 of Chapter II (B) of this report)
- 3.4.6. Develop documented procedures, manuals, or guides dealing with the development of the tasks of the Ombudsman and of the office's personnel. (See section 3.2 of Chapter II (B) of this report)
- 3.4.7. Develop and implement actions that favor institutional strengthening, including the improvement of physical facilities for the due performance of the personnel attached to the Ombudsman's office that guarantee the existence and operation of modern computer equipment for the performance of its tasks. (See section 3.2 of Chapter II (B) of this report)

- 3.4.8. Provide the Ombudsman's office with the resources and tools needed to disseminate and provide the public with information about its objectives, missions, and functions, to inform them about the procedures established for the fulfillment of its responsibilities, and to guide them in how to pursue formalities with it, bearing in mind the availability of resources. (See section 3.2 of Chapter II (B) of this report)
- 3.4.9. Develop mechanisms for internal control for dealing with claims, complaints, or allegations related to the pursuit of the powers assigned to the Ombudsman's objectives and to the performance of its personnel. (See section 3.2 of Chapter II (B) of this report)
- 3.4.10. Develop coordination mechanisms for harmonizing the Ombudsman's functions with those of other oversight agencies or public authorities and for securing the support of other authorities and the public for full compliance with its duties. (See section 3.2 of Chapter II (B) of this report)
- 3.4.11. Adopt the measures deemed appropriate to establish, within the Ombudsman's office, accountability mechanisms or the presentation of management reports on the performance of its functions and the way to make those reports public. (See section 3.2 of Chapter II (B) of this report)
- 3.4.12. Prepare statistical data on the results obtained on the complaints received by the Ombudsman from citizens who believe they have suffered an injustice from a public officials, indicating how many of those complaints were rejected and why, how many gave rise to an investigation process and the result of those investigations, whether as a result of said investigation any responsibility or sanction was imposed on the authority under investigation or whether a ruling for the acquittal of the officer or authority under investigation was issued, how many investigations have had an impact on the body under investigation for the adoption of the corresponding recommendation, and the number of recommendations that were actually implemented, in order to be able to determine the main challenges and, if applicable, adopt corrective measures.. (See section 3.3 of Chapter II (B) of this report)

4. THE ROYAL ST. CHRISTOPHER AND NEVIS POLICE FORCE (RPF)

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

[257] The RPF has a set of provisions in its legal framework, as well as other measures concerning, among others, the following:

[258] In accordance with the terms of section 5(1) of the Police Act^{65/} of 2003, the RPF's main purpose is to prevent and detect crime, and to maintain law and order in Saint Kitts and Nevis.

[259] Regarding the scope of its functions, section 5(2) of the Act provides that the RPF may apprehend or arrest persons found committing an offence; seize the goods of persons to assist in the detection of an offence under the law; stop, search and detain any vessel or person where they

65. Available at: http://www.oas.org/juridico/MLA/en/kna/en_kna-int-text-pa.pdf

reasonably believe that anything stolen, or unlawfully obtained may be found; summon any person accused of an offence to appear before the court and prosecute anyone found committing an offence or reasonably believed to have committed an offence. The RPF is also responsible for repressing internal disturbances, defending the State from external forces and keeping order in the vicinity of the court and the community at large. Section 6(1) of the Police Act outlines and provides instances where a police may exercise his or her power of arrest with or without a warrant.

[260] With respect to the manner in which they adopt their decisions to charge and carry out investigations, they do so in consultation with the DPP (*pre-charge advice*) in relation to some types of crimes. For example, in relation to High Court matters the Chief of Police and Assistant Chief of Police would give their opinions to the DPP on whether the charge should be instituted. In magisterial matters constables investigating the matter along with the Inspector of Police give their opinions to the DPP in relation to whether an offence should be prosecuted. In special circumstances, where the matter is of a sexual nature the Chief of Police and his or her Assistant may be involved. In addition, the DPP has the power to stop a prosecution commenced by a *police prosecutor* and take it over at any time.

[261] In relation to internal matters of the RPF, the decisions are made by its High Command, which comprises the Chief of Police, the Deputy Chief of Police, and the Assistant Commissioner.

[262] Regarding the appointment of these senior officers, and of the superintendents and other junior officers, section 10 of the Act, in line with section 85 of the Constitution, states that the Chief of Police, the Deputy Chief of Police and Assistant Commissioner of Police shall be appointed by the Governor-General according in accordance with the advice of the Police Service Commission⁶⁶ after consultation with the Prime Minister. Any appointment to the RPF of a person to the rank of Superintendent, Assistant Superintendent, Inspector, sergeant, corporal, constable or special constable shall be made by the Governor-General, acting in accordance with the recommendation of the Commission.

[263] As for the agencies with competence for imposing responsibility for their actions, section 23 of the Act provides that acting in accordance with the recommendations of the Commission, the Governor-General may, for inefficiency, reduce any Gazetted Police Officer to a lower Rank, except that before the Commission recommends to the Governor-General to reduce the Chief of Police, and Deputy Chief of Police to a lower rank it shall first consult the Prime Minister.

[264] Regarding the way in which the human resources necessary for its operations are determined and provided, during the on-site visit the representatives of the RPF stated that in addition to the continuous publication of vacancies on the web site sknpolice.com/jobs.html, any person with an interest in joining the RPF, even if no specific vacancy is available, may apply at any time to the RPF's Human Resource Manager. Once the application has been submitted, the individual is then contacted by the Sergeant within his or her district; the person is then expected to take an exam and is subject to a background check that takes around six months. Once the applicant has passed the exam and the background check he or she has to undergo a medical examination and, once accepted by the Commission, will undergo a training program depending on the area to which he or she is assigned, with an approximate duration of six months.

66. See Section 84 of the Constitution.

[265] It should be noted that only the RPF's Finance Department employs civilian personnel; the rest of the RPF's functions and responsibilities are discharged by police officers appointed by means of the procedure described above, who are subject to the regime of responsibility for their actions set out in Part VII of the Police Act and other applicable provisions of the Police Statutory Rules and Orders.

[266] Regarding the existence of manuals or other documents describing the functions of its personnel, and of documented procedures, manuals, or guides for the development of its tasks, based on the information furnished by the country under review in its Response to the Questionnaire,^{67/} the RPF discharges those duties in accordance with the Constitution, the Police Act, the Police Standing Orders and the Police Statutory Rules and Orders.

[267] In the area of training, in addition to the training courses given to newly hired officers, the RPF has a training institute that regularly provides its members with training courses on matters related to police work. In addition, based on the information furnished by the country under review and on that gathered during the on-site visit, members of the RPF also receive some training in specific areas, provided by the DPP and other police officers, agencies, and government officials, in addition to attending events convened by regional and international organizations. Similarly, during the on-site visit the representatives of the RPF spoke of the new training curriculum on the regional security system being developed in conjunction with the Organization of Eastern Caribbean States (OECS).

[268] As regards institutional strengthening or quality improvement actions the Force has implemented, the RPF's representatives spoke, *inter alia*, of the support they have been receiving in recent years from some OAS member states and others in improving their physical facilities and the provision of hardware, vehicles, materials, and police tools, as well as about the development of new computer systems to assist them in their work.

[269] As regards the way in which the public is provided with information on the RPF's objectives and functions, about the procedures established for the fulfillment of its responsibilities, and regarding how to pursue formalities with it, the RPF has, first of all, an official web site at www.sknpolice.com. In addition to providing general information on the Force, this web site also provides advice on crime prevention and on security in general. The web site also contains a link to the "*Crime Stoppers*" initiative, which aims to raise awareness among the public and to encourage them to report all forms of criminal activity.

[270] The RPF also has a profile on the Facebook social network^{68/} which provides up-to-date information on its actions in preventing and detecting crime. In addition, during the on-site visit, the representatives of the RPF spoke of its access to local radio and television, which allows it to provide the public with security-related information and advice. The RPF also holds community talks on crime prevention in the country under review, and it attends public events organized by schools and universities, etc.

[271] As regards its internal control mechanisms, the RPF has a Director of Internal Affairs to deal with claims, complaints or allegations related to the pursuit of the objectives and performance of the police. Disciplinary complaints are heard and determined in accordance with section 64 of the Act, which states that when complaints are made against a subordinate police officer constable and special

67. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 37, *supra* note 4.

68. See: <http://m.facebook.com/RoyalStChristopherAndNevisPoliceForce>

constables for breach of disciplinary regulations, the Police Service Commission can recommend to the Governor-General that the matter to be heard and the charge determined by a Gazetted officer. Complaints made against Sergeants can be determined by the Chief of Police on the instructions of the Governor General acting in accordance with recommendation of the Commission. If complaints are made against the Chief of Police or Deputy Chief of Police, the Commission shall not make any recommendation to the Governor General before it has consulted the Prime Minister.

[272] It should be noted that during the on-site visit, the RPF's representatives spoke about the campaign being carried out by the current Chief of Police to encourage members of the public to report their claims, complaints, or allegations related to the performance of the police to any police station. This is intended to encourage the public to go to the authorities without fear of reprisals for lodging complaints. Often citizens do not make complaints to the local authorities, because they fear the consequences; however, when they are able to report suspected irregularities to authorities other than those assigned to their area, a greater readiness to file complaints was noted.

[273] Regarding the way in which the budgetary resources necessary for its operations are ensured, as indicated in the State's Response to the Questionnaire,^{69/} there is a Finance Officer of the RPF that deals with the budgetary resources. Estimates are compiled of the funds needed after consultation with the High Command and Permanent Secretary of the Office of the Prime Minister. These estimates form part of the budget for the Office of the Prime Minister under the Anti-Crime Unit. The budgetary needs of the RPF are provided by the Government through Office of the Prime Minister under the Anti-Crime Unit. Additionally, as was reported during the on-site visit, the RPF also receives some funds from international cooperation agencies and other private enterprise bodies to support its work.

[274] Regarding coordination mechanisms for harmonizing its functions with those of other oversight agencies or public authorities and for securing the support of other authorities and the public for full compliance with its duties, the police role in relation to each department is circumscribed by law. In this regard the RPF works with many agencies in carrying out their duties – Customs, Fire Department, the Army, the ECSC, the Magistrate's Department, the DPP's office and the Anti-Crime Unit within the office of the Prime Minister. In addition, during the on-site visit the RPF's representatives spoke of the cooperation mechanisms that exist with private security agencies, which perform some tasks similar to those of the RPF.

[275] Finally, as regards accountability mechanisms applicable to the performance of its duties, the Statutory Rules and Orders make provision whereby police officers may be disciplined for not performing their duties. Additionally, the office of the Director of Internal Affairs ensures that these officers are accountable and information about this, in accordance with the response of Saint Kitts and Nevis to the questionnaire,^{70/} is accessible to the general public at the Police Headquarters.

[276] Together with this, during the on-site visit the representatives of the RPF also indicated that the Force presents an annual report on its management and investigations to the Prime Minister through the Anti-Crime Unit; that document, however, is confidential in nature.

69. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 37, *supra* note 4.

70. See: Response of Saint Kitts and Nevis to the Fourth Round Questionnaire, p. 39, *supra* note 4.

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

[277] The RPF has a set of provisions and/or other measures that are relevant for the purposes of the Convention, some of which were briefly described above in section 4.1 of this report. Nonetheless, the Committee believes it would be appropriate to formulate certain comments in connection therewith:

[278] First, although the country under review indicates in its Response that the RPF has documents that describe the functions of its personnel, including the Constitution, the Police Act, the Police Standing Orders and the Police Statutory Rules and Orders, mention was made during the on-site visit of the recent creation of a working group that, with the support of local police officers and other retired officers from Canada and the United States, will embark on revising and updating the Police Standing Orders and other internal operating rules that, along with the provisions indicated, regulate the RPF's actions.

[279] That notwithstanding, in that set of provisions, the Committee was unable to identify the existence of documented procedures, manuals, or guides dealing with the investigation of corruption; accordingly, it believes it would be useful for the country under review to consider taking the steps necessary to equip the RPF with such procedures, manuals, and/or guides, for which it could avail itself of the opportunity provided by the revision and updating of the Police Standing Orders and the other internal operating rules. (See recommendation 4.4.1 in section 4.4 of Chapter II.B of this report.)

[280] The Committee also believes it would be useful for Saint Kitts and Nevis to consider taking the steps necessary, if appropriate, for the documents proposed above, together with the rules that govern the RPF – including the Police Act, the Police Statutory Rules and Orders, the Police Standing Orders, and other internal operating rules – to be available for consultation on the RPF's official web site, thereby further facilitating public awareness of the institution's objectives and functions and of the procedures established for the fulfillment of its responsibilities. (See recommendation 4.4.2 in section 4.4 of Chapter II.B of this report.)

[281] Second, the Committee acknowledges the RPF's efforts in the training of its officers as described in the previous section. However, based on the information furnished by the country under review in its Response to the Questionnaire and on that gathered during the on-site visit, the Committee notes the absence of training for the RPF on proper and effective investigations of crimes of corruption and, accordingly, it will formulate a recommendation. (See recommendation 4.4.3 in section 4.4 of Chapter II.B of this report.)

[282] Similarly, the Committee suggests that in its training and induction programs for newly recruited officers, the RPF could also include workshops and/or training courses on the standards of conduct, ethical values, and disciplinary provisions that govern the Force's members. (See recommendation 4.4.4 in section 4.4 of Chapter II.B of this report.)

[283] Third, based on the information gathered during the on-site visit, the Committee takes note of the efforts underway by the RPF to secure, as promptly as possible, new computer systems and technologies to enable it, *inter alia*, to manage the case files of its investigations better and more efficiently, and to identify recidivists and other forensic issues. However, on that same occasion, the representatives of the RPF spoke of the importance of strengthening its technological resources and computer systems in order for it to be able to tackle with greater effectiveness, efficiency, and

timeliness the different manifestations of crime, including those related to acts of corruption and, accordingly, the Committee will formulate a recommendation. (See recommendation 4.4.5 in section 4.4 of Chapter II.B of this report.)

[284] Fourth, the Committee recognizes the actions described in the previous section regarding the outreach and awareness-raising initiatives being conducted by the RPF through its web site, social networks, and radio and television time, and at public events organized by itself or other institutions. Nevertheless, the Committee believes that those actions and initiatives could be strengthened with the inclusion of campaigns to prevent corrupt practices, to publicize the consequences thereof, and to raise awareness about the duty of respecting and protecting public property. (See recommendation 4.4.6 in section 4.4 of Chapter II.B of this report.)

[285] Fifth, although it is true that the RPF has an open-access policy whereby any person wishing to join the Force can submit an application without there necessarily being a specific vacancy, the Committee will formulate a recommendation on the basis of the statements made during the on-site visit by the RPF's representatives indicating that the number of police officers the Force currently has is below the international standards that recommend a certain number of officers for a given number of inhabitants. Together with this, the RPF's representatives also spoke of the need for more and better vehicles to afford it a greater presence throughout the country and enable it to report on time when required, bearing in mind that while Saint Kitts and Nevis is small in size, the distances and roads between its communities represent an obstacle to the RPF's timely intervention when it is required. Also, based on the information gathered during the on-site visit, the Committee notes that along with the increase in the number of vehicles that make up the police vehicle fleet, it is very important that the budget allocate sufficient funds to provide them with fuel and regular maintenance (See recommendation 4.4.7 in section 4.4 of Chapter II.B of this report.)

[286] Finally, as regards accountability mechanisms applicable to the performance of its duties, the Committee notes the information on that issue provided by the country under review in its Response to the Questionnaire and during the on-site visit. Based on that information, however, the Committee believes it would be useful for Saint Kitts and Nevis to consider adopting such measures as it deems appropriate to establish, within the RPF, accountability mechanisms or the presentation of management reports on the exercise of its functions and the way to make them public. (See recommendation 4.4.8 in section 4.4 of Chapter II.B of this report.)

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

[287] In its Response to the Questionnaire, Saint Kitts and Nevis provided no information on the RPF's results in discharging its functions and responsibilities, chiefly those related to the investigation of the corrupt acts criminalized by the legislation of the country under review, or on the results of the office of the RPF's Director of Internal Affairs in connection with the investigation and imposition of disciplinary sanctions in accordance with the functions assigned to it under the Police Act. Based on the foregoing, the Committee cannot offer a comprehensive review of the results in this area and, as a result, will formulate the relevant recommendations. (See recommendations 4.4.9 and 4.4.10 in section 4.4 of Chapter II.B of this report)

4.4. Conclusions and recommendations

[288] Based on the comprehensive review conducted with respect to the RPF in the foregoing sections, the Committee offers the following conclusions and recommendations:

[289] **Saint Kitts and Nevis has considered and adopted certain measures intended to maintain and strengthen the RPF as an oversight agency, as described in section 4 of Chapter II.B of this report.**

[290] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 4.4.1. Complement the documents that describe the functions of the RPF's personnel with documented procedures, manuals, or guides related to the functions of investigating corruption crimes and, if appropriate, make them available for consultation on the RPF's official web site. (See section 4.2 of Chapter II.B of this report.)
- 4.4.2. Take the appropriate steps so that the guidelines and standards and rules that govern the RPF – including the Police Act, the Police Statutory Rules and Orders, the Police Standing Orders and other internal operating rules – are available for consultation by the public on the RPF's official web site. (See section 4.2 of Chapter II.B of this report.)
- 4.4.3. Develop regular training programs for the RPF's on proper and effective investigations of corruption crimes. (See section 4.2 of Chapter II.B of this report.)
- 4.4.4. Complement the training and induction programs for newly recruited RPF officers with workshops and/or training courses on the standards of conduct, ethical values, and disciplinary provisions applicable to members of the Force. (See section 4.2 of Chapter II.B of this report.)
- 4.4.5. Provide the RPF with the technological resources and computer systems deemed necessary for it to be able to tackle with greater effectiveness, efficiency, and timeliness the different manifestations of crime, including those related to acts of corruption. (See section 4.2 of Chapter II.B of this report.)
- 4.4.6. Design and implement campaigns to prevent corrupt practices and to raise awareness among public officials about the importance about the duty of respecting and protecting public property. (See section 4.2 of Chapter II.B of this report.)
- 4.4.7. Adopt the appropriate measures to equip the RPF with the human and material resources necessary for due compliance with its duties, chiefly those related to the investigation of corruption offenses, bearing in mind the availability of resources. (See section 4.2 of Chapter II.B of this report.)
- 4.4.8. Adopt such measures as it deems appropriate to establish, within the RPF, accountability mechanisms or the presentation of management reports on the exercise of its functions, chiefly those related to the investigation of corruption offenses, and the way to make them public. (See section 4.2 of Chapter II.B of this report.)

- 4.4.9. Prepare statistical data on the investigations carried out by the RPF into the acts of corruption criminalized under the legislation of Saint Kitts and Nevis, to indicate how many inquiries remain ongoing and how many have been concluded by means of a judgment, in order to be able to identify challenges and, if applicable, adopt corrective or preventive measures. (See section 4.3 of Chapter II.B of this report.)
- 4.4.10. Prepare and, if appropriate, publish statistical data on the results of the disciplinary investigation proceedings carried out in the area of the RPF, indicating how many investigations have been opened and with respect to which public officials, how many remain ongoing, the number of decisions adopted and the sanctions thereof (admonishments, disqualifications, fines, sentences), the number of those decisions which established the responsibility of the public official under investigation or penalties imposed, and the number of those decisions in which no criminal charges were filed or acquittals were given, in order to identify challenges and, if applicable, adopt corrective measures. (See section 4.3 of Chapter II.B of this report.)

III. BEST PRACTICES

[291] In its Response to the Questionnaire, the country under review did not identify any best practices that it wishes to share with the other member countries of the MESICIC, pursuant to section V of the *Methodology for the review of the Implementation of the provision of the Convention selected in the Fourth Round* and the *Format* for country reports adopted by the Committee for that round. Nevertheless, during the on-site visit the country under review identified, as a best practice adopted by the Royal Saint Christopher and Nevis Police Force, the awareness events in schools and communities that this oversight body carries out on citizen security and prevention of delinquency.

ANNEX

AGENDA OF THE ON-SITE VISIT TO
SAINT KITTS AND NEVIS

<u>First day: Monday, October 6, 2014</u>	
8:30 am – 9:15 am <i>Hotel Marriott</i>	Coordination meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
9:15 am – 10:00 am <i>Hotel Marriott</i>	Coordination meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat.
10:00 am – 1:00 pm <i>Ministry of Finance Headquarters</i>	Meeting with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers.
10:00 am – 11:30 am	<u>First session:</u> <u>Topic:</u> <ul style="list-style-type: none">• Civil society and private sector views regarding the role of oversight bodies in efforts to combat corruption
	<u>Participants:</u> <ul style="list-style-type: none">- <i>Saint Kitts and Nevis Chamber of Commerce</i> Ms. Carol Boddie, Representative- <i>Christian Council</i> Mr. Valentine B. Hodge, Chairman- <i>National Youth Parliament</i> Mr. DeHaan A. Henry, President
11:30 am – 11:40 am	Break
11:40 am – 1:00 pm	<u>Second session:</u> Topics of the First Round: <ul style="list-style-type: none">• Standards of conduct.• Systems for declaring income, assets, and liabilities• Participation of civil society in the fight against corruption and access to public information.

	<p><u>Participants:</u></p> <p>- <i>Saint Kitts and Nevis Chamber of Commerce</i> Ms. Carol Boddie, Representative</p> <p>- <i>Christian Council</i> Mr. Valentine B. Hodge, Chairman</p> <p>- <i>National Youth Parliament</i> Mr. DeHaan A. Henry, President</p>
1:00 pm – 2:00 pm	Lunch
2:00 pm – 5:30 pm <i>Ministry of Finance Headquarters</i>	Ombudsman
2:00 pm – 4:00 pm	<p><u>Panel 1:</u></p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure. • Rules governing spheres of competence and inter-institutional coordination mechanisms. • Adoption of decisions. • Legal and administrative human resources regime and training activities. • In-house rules regarding fulfillment of responsibilities and institutional strengthening. • Dissemination of its objectives and functions.
	<p><u>Participant:</u></p> <p>Mr. Walford Gumbs, Ombudsman</p>
4:00 pm – 5:30 pm	<p><u>Panel 2:</u></p> <ul style="list-style-type: none"> • Internal control and accountability mechanisms • Budgetary regime • Results in relation to the fulfillment of its responsibilities and the dissemination of those findings • Difficulties with fulfilling obligations and needs for technical cooperation • Information regarding best practices

	<p><u>Participant:</u> Mr. Walford Gumbs, Ombudsman</p>
5:30 pm – 6:00 pm	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
<u>Second day: Tuesday, October 7, 2014</u>	
9:00 am – 12:30 pm <i>Attorney General's Headquarters</i>	Magistrate's Department
9:00 am – 10:30 am	<p><u>Panel 3:</u></p> <ul style="list-style-type: none"> • Brief presentation on the institution's objectives, functions and structure. • Rules governing spheres of competence and inter-institutional coordination mechanisms. • Adoption of decisions. • Legal and administrative human resources regime and training activities. • In-house rules regarding fulfillment of responsibilities and institutional strengthening. • Dissemination of its objectives and functions.
	<p><u>Participants:</u> Ms. Josephine Mallalieu, Senior Magistrate Ms. Chelsa Rawlins, Assistant Secretary</p>
10:30 am – 12:30 pm	<p><u>Panel 4:</u></p> <ul style="list-style-type: none"> • Internal control and accountability mechanisms • Budgetary regime • Results in relation to the fulfillment of its responsibilities and the dissemination of those findings • Difficulties with fulfilling obligations and needs for technical cooperation • Information regarding best practices

	<p><u>Participants:</u> Ms. Josephine Mallalieu, Senior Magistrate Ms. Chelesa Rawlins, Assistant Secretary</p>
12:30 pm – 2:00 pm	Lunch
3:30 pm – 6:30 pm <i>Attorney General's Headquarters</i>	Director of Public Prosecutions
3:30 pm – 5:00 pm	<p><u>Panel 5:</u></p> <ul style="list-style-type: none"> • Brief presentation on the institution's objectives, functions and structure. • Rules governing spheres of competence and inter-institutional coordination mechanisms. • Legal and administrative human resources regime and training activities. • In-house rules regarding fulfillment of responsibilities and institutional strengthening. • Dissemination of its objectives and functions.
	<p><u>Participant:</u> Mr. Travers S. Sinanan, Director of Public Prosecutions</p>
5:00 pm – 6:30 pm	<p><u>Panel 6:</u></p> <ul style="list-style-type: none"> • Internal control and accountability mechanisms • Budgetary regime • Results in relation to the fulfillment of its responsibilities and the dissemination of those findings • Difficulties with fulfilling obligations and needs for technical cooperation • Information regarding best practices
	<p><u>Participant:</u> Mr. Travers S. Sinanan, Director of Public Prosecutions</p>
5:30 pm – 6:00 pm	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.

<u>Third day: Wednesday, October 8, 2014</u>	
9:00 am – 12:30 pm <i>Attorney General's Headquarters</i>	Royal St. Christopher and Nevis Police Force
9:00 am – 10:30 am	<p><u>Panel 7:</u></p> <ul style="list-style-type: none"> • Brief presentation on the institution's objectives, functions and structure. • Rules governing spheres of competence and inter-institutional coordination mechanisms. • Adoption of decisions. • Legal and administrative human resources regime and training activities. • In-house rules regarding fulfillment of responsibilities and institutional strengthening. • Dissemination of its objectives and functions.
	<p><u>Participants:</u> Mr. Vaughan Henderson, Assistant Commissioner Mr. Cromwell Henry, Superintendent</p>
10:30 am – 12:30 pm	<p><u>Panel 8:</u></p> <ul style="list-style-type: none"> • Internal control and accountability mechanisms • Budgetary regime • Results in relation to the fulfillment of its responsibilities and the dissemination of those findings • Difficulties with fulfilling obligations and needs for technical cooperation • Information regarding best practices
	<p><u>Participants:</u> Mr. Vaughan Henderson, Assistant Commissioner Mr. Cromwell Henry, Superintendent</p>
12:30 pm – 2:00 pm	Lunch
2:00 pm – 5:00 pm <i>Attorney General's</i>	Topics of the First Round

<i>Headquarters</i>	
	<p><u>Panel 9:</u></p> <ul style="list-style-type: none">• Standards of conduct and mechanisms to enforce compliance• Systems for declaring income, assets, and liabilities• Mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption• Legal assistance and technical cooperation
	<p><u>Suggested participants:</u> Mr. Jason Hamilton, Attorney General Ms. Simone Bullen-Thompson, Solicitor General</p>
5:00 pm – 5:30 pm	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
5:30 pm – 6:00 pm	Final meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat.

**CONTACT AUTHORITY FROM THE COUNTRY UNDER REVIEW FOR
COORDINATION OF THE ON-SITE VISIT, AND REPRESENTATIVES OF THE
MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP AND THE
TECHNICAL SECRETARIAT OF THE MESICIC**

COUNTRY UNDER REVIEW:

SAINT KITTS AND NEVIS

Hon. Jason A. Hamilton

Lead Expert to the Committee of Experts of the MESICIC
Attorney General

Simone Bullen-Thompson

Alternate Expert to the Committee of Experts of the MESICIC
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TRINIDAD AND TOBAGO

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