

**QUESTIONNAIRE
ON IMPLEMENTATION OF THE PROVISIONS OF THE CONVENTION SELECTED FOR
THE SECOND AND FIFTH ROUNDS OF THE MESICIC FOR STATES NOT PARTIES TO
THE MECHANISM IN THE SECOND ROUND**

INTRODUCTION

The Report of Buenos Aires^{1/} and the Rules of Procedure and Other Provisions^{2/} of the Committee of Experts on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption (hereinafter, as applicable, *Report of Buenos Aires, Rules, Committee, Mechanism, and Convention*) provide that the Committee shall adopt a questionnaire on the selected provisions to be reviewed in each round.

At its eighth meeting, held on September 26-30, 2005, the Committee decided that during the second round it would review implementation by States Parties of the following provisions of the Convention: Article III, paragraphs 5 and 8, referring, respectively, to systems of government hiring and procurement of goods and services, and to the protection of persons who report acts of corruption; as well as Article VI, related to acts of corruption.

In the framework of its Twenty-Fourth Meeting, held on September 8 to 12, 2014, the Committee chose, as topics for review during the Fifth Round, those relating to Article III, paragraphs 3 and 12 of the Convention, which refer, respectively, to “instruction[s] to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities” and to “the study of further preventive measures that take into account the relationship between equitable compensation and probity in public service.”

At the above-cited meeting, as set forth in section XII of the review methodology adopted therein, the Committee additionally provided that it will take note of any difficulties encountered by the States that were not parties to the MESICIC in the Second Round in their implementation of the provisions selected for the Second Round, and of the technical cooperation those States requested. To this end, the Technical Secretariat will include questions related to those aspects in the questionnaire on the Second Round of Review, to which those States must respond pursuant to Article 28 of the *Rules of Procedure*. It will also include an optional question that the respective State may answer regarding whether it wishes to refer to up to a maximum of four best practices related to the provisions of the Convention selected for the Second and Fifth Rounds that it wishes to voluntarily share with the rest of the States Parties to the MESICIC.

1. The Report of Buenos Aires (document AG/RES. 1784 (XXXI-O/01)) is available at: www.oas.org/juridico/english/doc_buenos_aires_en.pdf

2. The Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC (document SG/MESICIC/doc.9/04 rev. 5, is available at: www.oas.org/juridico/english/mesicic_rules.pdf

In view of the above, this document contains the questions that comprise the questionnaires adopted by the Committee with respect to the provisions of the Convention selected for the Second and Fifth Rounds of the MESICIC, as well as those concerning the aspects mentioned in the above paragraph.

In addition, by virtue of section XII of the review methodology approved by the Committee at its Twenty-Fourth Meeting, the responses to this questionnaire regarding the provisions of the Convention selected for the Second Round of the MESICIC will be reviewed in accordance with the methodology approved by the Committee for that Round, which is published on the *Anti-Corruption Portal of the Americas*, available at: <http://www.oas.org/juridico/english/FightCur.html>, and the responses to this questionnaire referring to the provisions of the Convention selected for the Fifth Round of the MESICIC will be reviewed according to the methodology adopted by the Committee for that Round, which is also published on the Portal at the same aforementioned web address.

Pursuant to Article 21 of the Rules, the State Party is to forward its responses to the Questionnaire through its Permanent Mission to the OAS, in electronic format, together with all the supporting documents, within the time period set by the Committee.

To this effect, the OAS General Secretariat's e-mail, to which the response to the questionnaire should be sent and to which inquiries may be addressed in order to clarify any doubts that arise, is the following: LegalCooperation@oas.org

SECTION I

QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND

CHAPTER ONE

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

1. Government hiring systems

- a) *Are there laws and/or measures in your country establishing government hiring systems? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.*

Relevant Acts

The Constitution of St. Kitts and Nevis

The Public Service Act No. 19 of 2011

Public Service Commission Regulations Schedule 8 to the Constitution of St. Kitts and Nevis

The Public Service (Recruitment and Appointment of Officers) Code No. 8 of 2014
The Police Act Chapter 19:07
Public Service Board of Appeal Regulations – Schedule 9 to the Constitution of St. Kitts and Nevis

(i) Governing or administrating authorities of the systems and control mechanisms

The foundation of the Government's hiring system in St. Kitts and Nevis is embedded within its *Constitution*. Section 77 and 84 of the Constitution creates bodies designed to ensure an effective mechanism for hiring public servants.

The Public Service Commission

The Public Service Commission (PSC) established under section 77 of the Constitution is an independent body which governs all public servants save for police officers and persons hired under the Police Act Cap 19:07 and the St. Christopher and Nevis Defence Force Act Cap 19:14. The full text of section 77 of the Constitution is set out below:

(1) There shall be for Saint Christopher and Nevis a Public Service Commission (hereinafter in this section referred to as the Commission) which shall consist of a chairperson and not less than two nor more than four other members who shall be appointed as follows:

- (a) the chairperson and not more than three other members shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister; and***
- (b) one member shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister, from among persons selected by the appropriate representative body or, if there is no such body, by the Governor-General, acting in his or her own deliberate judgment:***

Provided that, for the purposes of discharging its functions in relation to public offices on the staff of the Nevis Island Administration, the Commission shall consist of:

- (i) the chairperson who has been appointed as aforesaid;***
- (ii) such one of the members appointed as aforesaid as may be designated in that behalf by the chairperson; and***
- (iii) two members appointed specifically in relation to the island of Nevis by the Governor-General, acting in accordance with the advice of the Prime Minister after the Prime Minister has consulted the Premier.***

(2) A person shall not be qualified to be appointed as a member of the Commission

- (a) unless he or she is a Commonwealth citizen ordinarily resident in Saint Christopher and Nevis; or***
- (b) if he or she is a member of the National Assembly or the Nevis Island Assembly or a public officer.***

(3) *Subject to the provisions of this section, the office of a member of the Commission shall become vacant*

- (a) *at the expiration of such period (not being less than two years nor more than five years from the date of his or her appointment) as may be specified by the Governor-General, acting in accordance with the advice of the Prime Minister, at the time of his or her appointment; or*
- (b) *if any circumstances arise that, if he or she were not a member of the Commission, would cause him or her to be disqualified to be appointed as such under subsection (2).*

(4) *A member of the Commission may be removed from office only for inability to exercise the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.*

(5) *A member of the Commission shall be removed from office by the Governor-General if the question of his or her removal from office has been referred to a tribunal appointed under subsection (6) and the tribunal has recommended to the Governor-General that he or she ought to be removed from office for inability as aforesaid or for misbehaviour.*

(6) *If the Prime Minister represents to the Governor-General that the question of removing a member of the Commission under this section ought to be investigated then*

- (a) *the Governor-General shall appoint a tribunal which shall consist of a chairperson and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and*
- (b) *the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him or her whether the member ought to be removed under this section.*

(7) *If the question of removing a member of the Commission has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Prime Minister, may suspend that member from the exercise of the functions of his or her office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that that member should not be removed.*

(8) *If the office of chairperson of the Commission is vacant or if the holder of that office is for any reason unable to exercise the functions of this office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such other member of the Commission as may for the time being be designated by the Governor-General, acting in accordance with the advice of the Prime Minister.*

(9) *If at any time there are less than two members of the Commission beside the chairperson or if any such member is acting as chairperson or is for any reason unable to exercise the functions of his or her office, the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint a person who is qualified to be appointed as a member of the Commission to act as a member, and any person so appointed shall, subject to subsection (4), continue to act until the office in which he or she is acting has been filled or, as the case may be,*

until the holder thereof has resumed his or her functions or until his or her appointment to act has been revoked by the Governor-General, acting in accordance with the advice of the Prime Minister.

(10) A member of the Commission shall not enter upon the duties of his or her office until he or she has taken and subscribed the oath of allegiance and the oath of office.

(11) The Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(12) The Commission may by regulation or otherwise regulate its own procedure, and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the exercise of its functions.

(13) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

The provisions of the Constitution seek to ensure the independence of the PSC by specific provisions governing the appointment, tenure and removal from office of members of the Commission. The PSC is comprised of a Chairperson and not less than two or more than four other members. Subsection 1 of section 77 sets out the method of appointment of the members of the PSC. The Chairperson and not more than three other members are appointed by the Governor General acting in accordance with the advice of the Prime Minister. One member should be selected from the appropriate representative body or by the Governor General acting in his own deliberate judgment where there is no representative body. In practice, one member is usually appointed by the Governor General acting in his own deliberate judgment as there is no representative body. Special provisions are outlined for the composition of the members of the PSC in relation to the island of Nevis. In the case of public offices of the Nevis Island Administration, the PSC is comprised of the Chairperson, a member of the PSC appointed by the PSC and two members appointed specifically in relation to the island of Nevis by the Governor-General, acting in accordance with the advice of the Prime Minister after the Prime Minister has consulted the Premier. The tenure of the Chairperson and members of the PSC is for a period of not less than two years and not more than five years.

A member of the PSC may be removed for inability to perform the functions of his/her office or for misbehaviour. The matter of the removal of the member has to be referred to a Tribunal appointed in accordance with the provisions of section 77(6) of the Constitution. The member can only be removed if the Tribunal makes a recommendation to the Governor General that the member be removed.

The PSC is entitled to regulate its own procedure and in the exercise of its functions it is not subject to the direction, control or authority of anyone. The PSC is entitled to act in its own deliberate judgment in relation to matters which are brought before the Commission. The PSC is supported in its work by the Human Resource Department. The Human Resource Department is responsible for the administrative functions related to the hiring process, for example, advertising of vacancies and scheduling of interviews of candidates who have applied to fill vacancies which exist within the Public Service. The Human Resource Department is discussed in detail in Section II of this questionnaire.

The PSC and the Human Resource Department are guided in the exercise of their functions by the provisions of the Constitution, the Public Service Act (PSA) and the regulations made pursuant to section 53 of the PSA. The PSA provides for the structure, organisation and management of the Public Service; for matters relating to the Public Service Commission; for the appointment, discipline and removal of public officers; and for related or incidental matters.

The PSC's role in hiring public officers is set out in section 78 (1) of the Constitution which provides:

“Subject to section 87, the power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), and the power to exercise disciplinary control over persons holding or acting in such offices 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 (hereinafter in this section referred to as the Commission).”

Thus, the PSC is the body responsible for making recommendations to the Governor General in relation to the hiring of persons in the public service.

Section 9 of the Public Service Commission Regulations which is found in Schedule 9 to the Constitution outlines the procedure for selection for appointments to the Public Service. The section states:

(1) For the purpose of exercising its functions in relation to appointments whether substantive or acting, the Commission shall (without prejudice to its right subject to section 78 of the Constitution to consider the application of every person whether or not in the public service) consider the claims of all public officers eligible for appointment or promotion and those of suitably qualified local candidates.

(2) The Commission may interview candidates or set up Selection Boards subject to the approval of the Prime Minister in accordance with section 77(12) of the Constitution to advise on the acceptability of candidates or may receive reports from recognised Selection Boards on potential candidates for the public service, but the Commission shall not be bound to act in accordance with any advice or recommendation contained in the Reports submitted by these Boards.

(3) The Commission shall, in respect of each candidate for first appointment, consider amongst others, the following matters:

- (a) age**
- (b) character**
- (c) general fitness**
- (d) nationality**
- (e) qualifications**
- (f) any previous employment of the candidate in the public service or elsewhere.**

Similar provisions are found in the Public Service (Recruitment and Appointment of Officers) Code. Section 9 of the Code provides conditions governing the eligibility for appointment to the Public Service.

(1) To be eligible for appointment in the Public Service a person shall

- (a) not, subject to subsection (2), be less than sixteen years or more than fifty – two years;**
- (b) possess such educational qualifications as may be prescribed, from time to time;**
- (c) be certified by a District Medical Officer to be in sound health and mentally fit for employment;**
- (d) produce two recent certificates of good character, of which one, if the candidate**
 - (i) has not previously been in employment, should be from the Head of the School or College he or she last attended;**
 - (ii) has been previously employed, from his or her last employer.**

(2) Notwithstanding the provisions of subsection (1)(a), a person who is over the age of fifty-two years may be appointed on contract for specialised work.

Also, section 11 of the Code outlines the criteria to be utilized in the selection of candidates:

- (1) Subject to subsection (3), a person to be appointed to an office in the Public Service shall be selected on merit, except that where the nature of work so requires, consideration shall be given to seniority and experience.**
- (2) The method of selection of candidates shall be governed by objectivity, impartiality and transparency.**
- (3) For the purposes of section 7 of this Code, the following criteria of work related qualities shall be taken into account in making an assessment:**
 - (a) skills and abilities;**
 - (b) qualifications, training and competencies;**
 - (c) standard of work performance;**
 - (d) capacity to perform at the level required;**
 - (e) demonstrated potential for further development;**
 - (f) ability to contribute to team performance; and**
 - (g) seniority and experience.**

(ii) Access to the public service through a merit-based system

The Public Service (Recruitment and Appointment of Officers) Code SR&O 8 of 2014 governs the procedure for hiring in the Public Service. The purpose of the Code as set out in section 3 is:

(1) This Code seeks to

- (a) govern the methods to be used in the recruitment and promotion of officers in the Public Service;*
- (b) supplement the provisions of the
 - (i) Constitution;*
 - (ii) Public Service Act; and*
 - (iii) Public Service Commission Regulations;**
- (c) ensure that the selection of candidates at each stage is such that it can be demonstrated that there has been absolute fairness without any form of discrimination or the introduction of any irrelevant considerations;*
- (d) ensure that where the selection process includes the specific testing of the skills and aptitudes of candidates, then all such tests must have been previously proven to be acceptable on the basis of their reliability as indicators of future performance, provided that no psychological tests shall be administered or interpreted by persons who are not professionally trained;*
- (e) ensure that the selection procedure is so ordered that the decision on which candidates should progress from one stage to the next is determined solely by considerations of the individual merits of those candidates;*
- (f) ensure that at the conclusion of the selection process all those candidates who are deemed to possess the requisite qualifications, skills and competencies for appointment should be ranked in order of merit, and appointments shall be offered in accordance with that rank order, unless it is possible to appoint all applicants immediately;*
- (g) ensure that the principles set out in this Code are adhered to in all cases except those permitted by the Code itself;*
- (h) set a criteria for the purpose of differentiating on a consistent and objective basis between candidates at each stage of the selection process, which criteria shall be relevant to the job.*

Section 4 of the Code outlines the recruitment principles as recruitment based on merit, impartiality and integrity. The section states as follows:

The Code seeks to ensure that recruitment and appointments to the Public Service are made on the basis of merit, impartiality and the highest standards of integrity, and in addition the code seeks to ensure that consideration is also given to seniority and experience where the nature of work so requires.

Section 1(4) of the Code indicates that merit should be interpreted so as to ensure that: ***“(a) persons are not appointed to offices unless they are competent to perform the duties of those offices; (b) in circumstances where more than one person satisfies the criteria for appointment, the office should be offered to the person who is considered to be best capable of performing the duties.”***

Section 7 of the Code expands on the recruitment principles stated in section 4 as follows:

(1) Subject to subsection (3), the appointment on recruitment or promotion of an individual to a public office shall be made on the basis of the following principles, that is to say:-

(a) the principle of merit (after an open competitive selection process);

(b) the principle of impartiality; and

(c) the principle of taking into consideration the highest standards of integrity, seniority, and experience where the nature of work so requires.

(2) The principles referred to in subsection (1) shall apply to appointments to public offices by recruitment or promotion to established offices and to public offices that have not been established under an enactment including where the offices are filled on contract.

(3) The principles referred to in subsection (1) shall not apply in the following circumstances, that is to say,

(a) when filling short-term vacancies of up to no more than three months, and only when such vacancies are being filled from within the Department; or

(b) when employing a physically or mentally challenged person.

The Code also provides that merit must be paramount throughout the hiring process. This is evident in that it provides that:

(i) the selection procedure must be ordered so that the that the merit of each person is given equal consideration throughout the entire procedure and the decision on which candidates should progress from one stage to the next is determined solely by considerations of the individual merits of those candidates; (Section 3(1)(e), section 13)

(ii) Ranking of candidates in order of merit at the end of the selection process;

(iii) Selection for and offering of appointments in accordance with rank merit (Section 3(1)(e), section 11(1)).

The principles outlined in the Code contemplates a process in which there is high emphasis on merit and impartiality. This is intended to secure openness and equity in the hiring process and efficiency in the public service.

(iii) Advertisement for the selection of public servants, indicating the qualifications for selection

Section 8 of the Code promotes openness in the hiring process by providing for the advertisement of vacancies with Public Service as follows:

- (1) Vacancies within the Public Service shall first be advertised or published within the Public Service in Saint Christopher and Nevis for a period of two weeks.*
- (2) After the provisions of subsection (1) are complied with, vacancies may be advertised within the Federation of Saint Christopher and Nevis for a period of two weeks, and thereafter may be advertised outside of Saint Christopher and Nevis.*
- (3) All relevant information in respect of the vacancy shall be accessible to prospective applicants.*
- (4) The advertisement or publication referred to in subsections (1) and (2) shall include the following information:*
 - (a) the statutory qualifications required;*
 - (b) the duties, functions and responsibilities of the office;*
 - (c) the major terms and conditions of service applicable to the office;*
 - (d) a description of the skills, competencies, experience and personal qualities required; and*
 - (e) the nature of the procedure of the selection process which shall be based on relevant criteria that is applied to all candidates.*

In practice, the advertising of vacancies, short listing of candidates, and scheduling of interviews are done by the Human Resource Department. Interviews are carried out by a Selection Panel. Section 12 of the Code provides that a Selection Panel shall be comprised of persons who are impartial and who are trained in or experienced in the process of interviewing and have knowledge. The PSC is usually represented on the panel by a member of the PSC. After the interviews are completed, the documents in relation to the applicant who receives the highest ranking are sent to the Public Service Commission for its consideration as to whether a recommendation should be made to the Governor General that the applicant be appointed to the public service on contract or to the pensionable establishment.

(iv) Ways to challenge a decision made in the selection system

Section 86 of the Constitution establishes the Public Service Board of Appeal (the Board) which consists of three members: a Chairperson appointed by the Governor General, one member appointed by the Governor General acting in accordance with the advice of the Prime Minister and one member appointed by the Governor-General, who shall, when there is an appropriate representative body, act in accordance with the recommendation of that

body. A member of the Board may only be removed for inability to perform his or her function or for misbehavior. The matter of the removal of a member has to be referred to a Tribunal appointed in accordance with the provisions of section 86(6) of the Constitution. A member can only be removed if the Tribunal makes a recommendation to the Governor General that the member be removed.

Section 52 of the Public Service Act provides for appeals by public officers. The section states:

A public officer in respect of whom a decision is made by the Governor-General in accordance with the provisions of this Act may, if the officer is aggrieved by the decision, appeal against the decision of the Governor-General, and the appeal shall lie to the Public Service Appeals Board in accordance with the provisions of section 87 of the Constitution.

The procedure for appeals to the Board is only available to a public officer, that is, someone who already holds an office in the Public Service and is therefore an appropriate method for someone within the public service to challenge a decision made in the selection system.

Further, a decision made in the selection system may be challenged by way of an application for judicial review in the High Courts. Judicial review is a procedure by which the High Court can review administrative action by a public body. In such a review, the legal challenge is to the procedure employed in arriving at the decision and not to the decision itself. The procedure is usually subject to challenge on the grounds of illegality, irrationality/unreasonableness, procedural impropriety and legitimate expectation.

(v) Relevant Exceptions

Pursuant to section 3, the Public Service Act does not apply: -

(a) to a member of Saint Christopher and Nevis Defence Force, and any civilian working in the Defence Force pursuant to the provisions of the Saint Christopher and Nevis Defence Force Act, Cap. 19.14; and

(b) to a member of the Royal Saint Christopher and Nevis Police Force, other than

(i) a Commissioned Police Officer; and

(ii) a civilian person working in the Police Force in accordance with the provisions of the Police Act.

The Royal St. Christopher and Nevis Police Force

Section 84 of the Constitution of St. Kitts and Nevis establishes a Police Service Commission as follows:

(1) There shall be for Saint Christopher and Nevis a Police Service Commission (hereinafter in this section referred to as the Commission) which shall consist of:

- (a) the chairperson and the members of the Public Service Commission appointed under paragraph (a) of section 77(1); and*
- (b) one member appointed by the Governor-General, acting in accordance with the advice of the Prime Minister, who shall, if persons have been selected in that behalf by the appropriate representative body, be so appointed from among those persons.*

(2) The provisions of sections 77(2), 77(3), 77(4), 77(5), 77(6), 77(7) and 77(10) shall apply in relation to a member of the Commission appointed under paragraph (b) of subsection (1) as they apply in relation to a member of the Public Service Commission.

(3) The member of the Public Service Commission for the time being performing the functions of the chairperson of that Commission shall perform the functions of the chairperson of the Commission.

(6) The Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(7) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the exercise of its functions.

The provisions of the Constitution seek to ensure the independence of the Police Service Commission by providing that the provisions contained in section 77(3), 77(4), 77(5) and 77(6) of the Constitution as it relates to tenure and removal from office of members of the PSC shall apply to members of the Police Service Commission. The matter of the removal of a member has to be referred to a Tribunal appointed in accordance with the provisions of section 77(6) of the Constitution. A member can only be removed if the Tribunal makes a recommendation to the Governor General that the member be removed.

The Police Service Commission makes recommendations to the Governor General in relation to the appointment of Police Officers. Section 85 of the Constitution provides as follows:

(1) Subject to section 87, the power to appoint persons to hold or act in offices in the Police Force (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the recommendation of the Police Service Commission:

Provided that before the Commission makes any recommendation to the Governor-General with respect to the appointment of any person to hold the office of Chief of Police or deputy Chief of Police the Commission shall consult with the Prime Minister and if the Prime Minister signifies his or her objection to the appointment of any person to the office the Commission shall not recommend the Governor-General to appoint that person.

(3) Before the Police Service Commission recommends to the Governor-General under subsection (1), or any other person or authority exercises any power delegated to him or her under subsection (2), to appoint to or to act in any office in the Police Force any person who holds or is acting in any office to which section 83 applies the Commission shall consult with the Judicial and Legal Services Commission.

(4) An officer of the Police Force shall not be removed from office or subjected to any other punishment under this section on the grounds of any act done or omitted by him or her in the exercise of a judicial function conferred on him or her unless the Judicial and Legal Services Commission concurs therein.

Similar provisions are also found in sections 11, 12 and 13 of the Police Act Cap 19:07 which provides that appointment to the position of Chief of Police, Deputy Chief of Police and Assistant Commissioner of Police; Superintendent, Assistant Superintendent and Inspector; and subordinate officers respectively shall be made by the Governor General acting on the recommendation of the Police Service Commission. In the case of the Chief of Police and the Deputy Chief of Police the Commission is required to consult with the Prime Minister and if the Prime Minister signifies his objection to the appointment of any person the Governor General shall not recommend to the Governor General the appointment of that person.

Section 17 of the Act outlines the criteria of appointment to the Police Force:

- (1) No person shall be appointed to the Police Force unless that person*
- (a) has attained the age of eighteen years and has not reached the age of thirty-five years, except that a person who has attained the age of thirty-five years may, with the approval of the Governor-General, be appointed;*
 - (b) is, according to the standards fixed by the Governor-General, from time to time, of the required height and chest measurement;*
 - (c) passes a medical examination;*
 - (d) produces satisfactory proof of his or her good character; and*
 - (e) has the required educational qualifications.*

An applicant is also required to successfully complete a period of training prior to admission to the Police Force.

Section 18 of the Police Force Act states the procedure for application fill posts in the Police Force:-

An application for a post in the Police Force shall be submitted to the Police Force Personnel Officer who shall forward the application to the Commission in accordance with the procedure prescribed by the Governor-General by regulations.

The Police Regulations contained in the Fourth Schedule of the Police Act provide for Application form on which applications to fill vacancies within the Police Force should be made. The Police Act contemplates fairness and equity in the process. It indicates in section 30 that one of the roles of the Police Force Personnel Officer is to ensure the fair treatment of applicants to the Police Force and of police officers.

Decisions made by the Police Service Commission may be challenged by way of appeal to the Public Service Board of Appeal.

- b) In relation to question a), state the objective results obtained, including any available statistical data. No statistical data available at this time
- c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government hiring systems, in accordance with Article III (5) of the Convention. Not Applicable
- d) Briefly describe any difficulties and/or shortcomings related to the implementation of the provision of the Convention that refers to government hiring systems, and, if appropriate, identify specific technical cooperation needs. No difficulties encountered

2. Government systems for procurement of goods and services

- a) *Are there laws and/or measures in your country establishing government systems for procurement of goods and services? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.*

Relevant Law

Procurement and Contract (Administration) Act, 28 of 2012

Procurement and Contract (Administration) (Amendment) Act, 14 of 2013

(i) Procurement systems with a public tender and without a public tender.

Procurement of goods and services by the Government is governed by the Procurement and Contract (Administration) Act, 28 of 2012 and the Procurement and Contract (Administration) (Amendment) Act, 14 of 2013. The provisions of the Act are aimed at ensuring openness, equity and efficiency in the procurement processes. The purposes of the Procurement and Contract (Administration) Act, 28 of 2012 as outlined in section 4 are to simplify, clarify, modernize and make transparent procurement by the Government, and to:

- (a) require public competition in the procurement process except to the extent that the circumstances or size of the procurement make it impracticable;*
- (b) foster and encourage broad participation in the procurement process by persons in St. Christopher and Nevis and, when required under international agreement, to persons outside the Federation;*
- (c) provide for increased public confidence in the Government procurement process by maintaining safeguards to ensure its integrity, fairness, accountability, transparency and good governance;*
- (d) ensure fair and equitable treatment of all persons who participate in the procurement process; and*
- (e) provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of the money of the Government.*

Section 6 of the Act provides that all procurements are to be made in accordance with the provisions of the Act. Procurements are defined in section 3 of the Act as:

- (a) all activities that pertain to a solicitation,*
- (b) all activities from the decision to award or not to award or to discontinue the procurement and includes the execution of a contract and other activities related to the finalisation or failure to finalise a contract; and*
- (c) where the context permits, includes the actual construction, purchase, lease, rental or acquisition of goods or services procured.*

Notwithstanding the provisions of section 6, section 5 of the Act provides for procurements which are exempted from the provisions of the Act. The exempt procurements are as follows:

- (a) a procurement made under a co-operative procurement agreement, that is, an agreement or arrangement under which the Government agrees with one or more Governments or statutory bodies or public authorities inside or outside of St. Kitts and Nevis to purchase goods or services through a central organization, or a regional organization using the procurement procedures of the central organization.*
- (b) a procurement the funding for which, or part of the funding for which, is furnished to the Government by an international or regional agency, whether the funding is by loan,*

- donation or otherwise, on the condition or on the understanding that the procurement procedures of the international or regional agency, or procurement procedures approved or agreed to, by the international or regional agency will be used
- (c) a procurement for bona fide hospitality and promotional expenditure that does not exceed a maximum amount to be prescribed by the Minister;
 - (d) books and magazine subscriptions.

Methods of Procurement

Section 10 of the Procurement and Contract (Administration) Act, provides for four types of procurement, that is, tender by competitive sealed bids or by competitive sealed proposals, sole source procurement, emergency procurement and by competitive quotations.

Section 11(2) of the Act provides that solicitation for procurement shall be made by way of tender where the estimated amount of the contract award in question is equivalent to or exceeds an amount prescribed by the Minister as a threshold. Section 13 requires the procurement officer to give notice in at least two newspapers of general circulation in the Federation no less than six weeks before the day and time for the close of bids or proposals or invitations of a solicitation for a procurement by tender or an invitation to pre-qualify for a procurement by tender. Pursuant to section 15, all competitive sealed bids and competitive sealed proposals submitted by tender are to be opened publicly on the day and at the time and place specified in the invitation to bid or the request for proposals, by the procurement officer or his designate in the presence of a member of the Procurement Board or its designate, any person who has submitted a competitive sealed bid or competitive proposal and any member of the public who desires to be present. On the opening of a competitive sealed bid the procurement officer is required to read aloud the name and address of each bidder and the amount of his bid. In the case of competitive sealed proposals the procurement officer is required to read aloud the name and address of each offeror, and to keep confidential any amount proposed and any other information contained in the proposal. By virtue of section 16 of the Act, the provisions of section 13 and 15 of the Act do not apply to a procurement involving national security where in the written opinion of the Minister of National Security confidentiality is necessary to preserve the national interest and in the case of a designated procurement where in the opinion of the procurement officer confidentiality is required.

Section 10(2) and 11(5) of the Act permits the negotiation of a sole source procurement by the procurement officer when the goods, services or works required may only reasonably be had from a single source. The decision to use a sole source procurement shall be determined either by the Board, where the amount of the contract award is equal to or exceeds the threshold or by the procurement officer, where the procurement is less than the threshold.

A solicitation for an emergency procurement as contemplated by section 11(7) of the Act may only be made when there exists a threat to public health, welfare or safety by reason of an emergency situation and the procurement is for the purpose of eliminating or mitigating the threat. Whether an emergency procurement is required is determined by the Procurement Board, in the case of a procurement that is equal to or exceeds the threshold and by the Financial Secretary, in the case of a procurement that is less than the prescribed amount for emergency procurements. Section 10(3) requires that a solicitation for an emergency procurement be made with such competition as is practicable in the circumstances.

Solicitation of procurement by competitive quotations is to be made by request for quotations.

Of the methods of procurement outlined tender by competitive sealed bids or by competitive sealed proposals is the most public, given the requirement for the placement of advertisements in the papers and the manner of opening the competitive bids and competitive proposals. This allows for openness and equity in the procurement process.

It should be noted that the Act gives recognition to the principle of fairness in section 18 which provides that everyone who submits a tender should be accorded fair and equal treatment with respect to opportunities for discussions, revision of any terms in the tender and submission of best and final offers. Subsection 2 of section 18 provides for non-disclosure of discussions with or information about any person who submits a tender and prohibits a person from prejudicing or compromising a tender. A person who breaches section 18(2) commits an offence and is liable to a fine not exceeding thirty thousand dollars on summary conviction.

(ii) Governing or administering authorities of the systems and control mechanisms

The Act provides for the appointment of Procurement Officers and the establishment of a Procurement Board.

By section 7 of the Act, the Director of Public Works is appointed the procurement officer for works, heavy equipment and tools and architectural, engineering and land-surveying services. Procurement of the works and services referred to above is carried out through the Public Works Department of the Ministry of Public Infrastructure. The Public Works Department is headed by the Director of Public Works.

The Financial Secretary is the procurement officer for all other goods other than designated procurements as stated in section r of the Procurement and Contract Amendment Act. In practice public procurement of goods on behalf of the Government is carried out by the Central Purchasing Unit (CPU), which is a department of the Ministry of Finance, which is under the management of the Financial Secretary. CPU is responsible for procuring goods such as stationary, furniture, toiletries, cleaning agents, computers, printers and electronics (house hold type) on behalf of the Government.

The duties of the Procurement Officer as stated in section 8 are he/she:

- (a) shall perform the duties and exercise the powers conferred on him or her under this Act and the regulations;*
- (b) shall monitor the quantity and type of goods procured to be held in inventory.*
- (c) may enter into contracts or arrangements with statutory bodies or other entities to procure goods or services on their behalf; and*
- (b) shall perform any other duties assigned to him or her by the Minister.*

A Procurement Board is also established under section 23 of the Act. The Board consists of the Financial Secretary, the Accountant General and the Accounting Officer of the Ministry responsible for public works and two public officers appointed by the Minister of Finance. The Board is chaired by the Financial Secretary. The Minister designates the Deputy Chairperson. (Sections 23-25 of the Act.) Section 30 of the Act provides that in addition to the duties and powers assigned under this Act the Board has the authority to:

- (a) determine, for the purposes of section 11(5), whether a procurement should qualify as a sole source procurement where the estimated amount is equal to or exceeds the prescribed threshold;*
- (b) determine, for the purposes of section 11(7), whether there exists a threat to public health, welfare or safety by reason of an emergency situation and whether a procurement, of which the estimated amount is of the prescribed amount or more in respect of emergency procurements, will eliminate or mitigate the threat;*
- (c) grant or refuse its consent to the award of a contract based on whether it is satisfied that the procedure for the award of the contract was commenced in good faith;*
- (d) suspend or debar a person from participating in solicitations or from entering into contracts for procurement;*
- (e) determine, in consultation with the Attorney-General and subject to the rights of the person who furnished a performance security, the course of action to be taken in the event of a breach of a contract awarded by the Board; and*
- (f) exercise the powers in respect of contract administration and any associated matters assigned to it under the regulations.*

The Act also provides for an Administrative Review Board which is responsible for hearing complaints submitted by any bidder, offeror, supplier or contractor who claims to have suffered injury or loss due to a breach of duty imposed on the procurement authority.

(iii) Register of pre-approved contractors

Section 13 of the Act outlines the requirement for publication of notice of invitation to pre-qualify for a procurement by tender. This provision seems to contemplate pre-qualification of contractors on a case by case basis.

(iv) Electronic methods and information systems for government procurement

Government Ministries and Departments use the Intelligent Treasury Management System (ITMS) for the procurement of goods. The System provides an electronic connection between various Government Ministries and Departments, the Ministry of Finance, the Government Treasury and the Central Purchasing Unit (CPU). Designated Ministry officials are given access via passwords to the system at various levels, for example, some officers are only able to access the System to make requisitions for goods while officers at another level of authority are allowed access for the purpose of approving requisitions.

The System accepts orders for purchases from CPU and from entities outside of Government. Order/Requisitions are put into the system by the relevant Government Ministry/Department, CPU would then review the order and indicate whether it can satisfy the order. If CPU has the item then a purchase order is entered in the system, approved by the Head of Department and then processed. CPU will accept the order and send the goods to the Ministry/Department. If an order/requisition is inputted into the system for an entity outside of Government and CPU has the item, CPU will pull the order so the at the Ministry/Department will have to purchase the item from CPU. Where an item has to be purchased from an entity outside of Government then it is inputted into the system, the requisite approvals made, the requisition printed and taken to the relevant entity from which the item is to be purchased.

(v) Public works contracts.

All services for public works on Government owned buildings are procured via the Public Works Department of the Ministry of Public Infrastructure. The Director of Public Works, the designated procurement officer for works pursuant to the Act is responsible for procuring such services.

Sections 17 to 22 of the Act governs the award of contracts. Section 22 provides that all contracts save competitive quotations shall be awarded by the Procurement Board. In the case of competitive quotations, the award of a contract for procurement or refusal to award a contract is to be determined by the procurement officer.

Sections 17, 19, 20 and 21 of the Act outlines the selection criteria for award of contracts depending on the method of procurement. Section 17 provides that the award of contract following solicitation by tender shall be awarded to the qualified bidder or offeror who submits the best responsive evaluated tender. The term “responsive” is defined as meaning compliant in all material respects with the requirements of the invitation to tender, and “evaluated” is defined as meaning evaluated in accordance with objective evaluation criteria set out in the form of the tender to determine if the goods, services or works meet the description of what is being procured and having regard to the relative importance of quality, availability, capability and price. Section 19 provides that a **“contract for a procurement that is awarded following a solicitation as sole source procurement shall be on the best terms that can be negotiated in the circumstances”**. Section 20 provides that **“a contract for a procurement that is awarded following a solicitation as an emergency procurement shall be awarded to the qualified person who, in the opinion of the procurement officer, is best able to eliminate or mitigate the threat to public health, welfare or safety arising from the emergency condition”**. Section 21 provides that a **“contract for a procurement that is awarded following a solicitation for competitive quotations shall be awarded to the qualified person who submits the best evaluated quotation”**.

The Procurement Board and the Director of Public Works are required to comply with the procedure and criteria in relation to the award of public works contracts.

(vi) Identification of the selection criteria for contractors (e.g. price, quality and expertise)

Apart from the stipulations set out in sections 17 – 22 of the Act, the criteria for selection for contractors is usually set out in the solicitation document. For example, in the case of solicitation involving public tender the tender documents would include the criteria in relation to price, quality and expertise.

(vii) Ways to challenge a selection.

Section 32 of the Act provides that any bidder, offeror, supplier or contractor, that claims to have suffered, or that he/she may suffer, loss or injury due to a breach of a duty imposed on the procurement authority by this Act or the regulations may seek a review of the decision and/or actions of the procurement authority. Procurement authority refers to the procurement

officer and the Procurement Board who have the power to award a contract in relation to a procurement.

If the procurement contract has not entered into force a complaint must first be submitted to the procurement officer who shall, unless the complaint is resolved by mutual agreement within thirty days after the submission of the complaint issue a statement of the reasons for decision and in the event that the complaint is upheld in whole or in part, an indication of the corrective measures to be taken. The decision of the procurement authority shall be final unless proceedings are instituted for an Administrative Review before the Administrative Review Board. (Section 33)

Any bidder, offeror, supplier or contractor, that claims to have suffered, or that he/she may suffer, loss or injury due to a breach of a duty imposed on the procurement authority by this Act or the regulations may submit a complaint to an Administrative Review Board in circumstances outlined by section 34 of the Act. Section 35 of the Act provides for the appointment of an Administrative Review Board by the Minister. Section 34(3) outlines the power of the Administrative Review in relation to complaints brought before it as follows:

(3) The Administrative Review Board, after making or causing to be made such investigation as it thinks necessary, may grant one or more of the following remedies, unless it dismisses the complaint:

(a) make a declaration on the legal rules or principles governing the subject matter of the complaint;

(b) prohibit the procurement authority from acting or deciding unlawfully or from following an unlawful procedure;

(c) require the procurement authority that has acted or proceeded in an unlawful manner, or that has reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;

(d) annul in whole or in part an unlawful act or decision of the procurement authority, other than any act or decision bringing the procurement contract into force;

(e) revise an unlawful decision by the procurement authority or substitute its own decision for such a decision, other than any decision bringing the procurement contract into force;

(f) require the payment of compensation for any reasonable costs incurred by the bidder, offeror, supplier or contractor submitting the complaint in connection with the procurement proceedings as a result of an unlawful act or decision of, or procedure followed by, the procurement authority;

(g) order that the procurement proceedings be terminated

Additionally, section 38 of the Act outlines the right to apply to the High Court for Judicial Review where a person is dissatisfied with the decision of the Administrative Review Board or the Administrative Review Board has failed to make a decision within the prescribed time-limit, that is thirty days.

- b) In relation to question a), state the objective results obtained, including any available statistical data (e.g. percentage of contracts awarded through public tender; sanctions imposed on contractors). No Statistics available at this time
- c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government systems for procurement of goods and services, in accordance with Article III (5) of the Convention.
- d) Briefly describe any difficulties and/or shortcomings related to the implementation of the provision of the Convention that refers to systems for government procurement of goods and services, and, if appropriate, identify specific technical cooperation needs. NIL

CHAPTER TWO

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

- a) *Are there laws and/or measures in your country establishing systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities? If so, briefly describe them and list and attach a copy of the related provisions and documents. YES*

Relevant Law

Freedom of Information Act No. 6 of 2018

Section 48 of the Freedom of Information Act No. 6 of 2018 provides that:

- (1) *A person may disclose information to the Commissioner or to any other authority on the wrong-doing by a public authority concerning*

(e) Corruption, dishonesty or serious maladministration;

and that person shall not be liable in any legal proceedings or to any sanction relating to his or her employment if the information was disclosed in good faith and in the reasonable belief that it was true.

- (2) *A person who, pursuant to subsection (1), discloses information maliciously or without reasonable belief of the truthfulness of that information commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both.*

Reports made in relation to acts of corruption are covered by the provisions of the foregoing section.

i. Mechanisms for reporting (e.g. anonymous reporting, protection of identity reporting)

In St. Kitts and Nevis there are programs which facilitate anonymous reporting of crimes including corruption crimes. These programs include:

- a. Crime Stoppers was launched in St. Kitts and Nevis in 2015. This program facilitates the reporting of crimes by telephone. Crime Stoppers allows the general public to dial a toll-freehotline,1-800-8477(TIPS), and anonymously access the Crime Stoppers Canada-based call center where they can report any information on any criminal activity. The hotline is encrypted so that information about the call cannot be tracked, and therefore, persons providing information will always remain anonymous.
- b. Crime Reporter Application (App) – Through the Government of St. Kitts and Nevis’ “E” Government Initiatives, the Government in February 2017 launched the Crime Reporter Application (App). The Crime Reporter App is available for free download from the Apple and Android stores and can be downloaded to smart phone. The App allows members of the public to anonymously report information in relation to crimes which have been committed, crimes that are in progress and plans to commit crimes. Persons reporting criminal activity are also able to send photographs and other data. The App is configured so that the information of the person provided is not stored and the person remains anonymous.
- c. Reports may also be made with requests that the source of the report not be provided. In practice the prosecuting authorities which includes the Police do not disclose their sources

ii. Mechanisms for reporting threats or reprisals

Threats and reprisals can be reported to the Police. Reports may also be made to the Director of Public Prosecutions.

A public officer may also use the mechanisms provided by the Public Service Regulations to report threats and reprisals. Public Servants are required to report evidence of any criminal or unlawful activity and instances of breach of the Code. The report is to be made to the head of the officer’s department. In the event that that matter involves the Head of Department the

matter is to be reported to the Head of the Public Service. Section 56 of the *Public Service (Conduct and Ethics of Officers)* Code provides 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. Section 57 of the *Public Service (Conduct and Ethics of Officers)* Code states that any case of misconduct for which provision is not made in the code shall be reported to the Chief Personnel Officer, who shall deal with the misconduct in a manner approved by the Commission. Note that where a report of criminal conduct is made the official to whom it is reported may make a report to the Police. Further, conduct which constitute threats or reprisals may amount to an offence for which a public officer can be disciplined. Pursuant to section 2 of the Public Service Code of discipline threatening a fellow officer amounts to misconduct of serious nature for which an officer may be dismissed if found guilty.

iii. Witness protection mechanisms

Part IV of the Evidence Act, No. 30 of 2011 section 20 -25 provides for witness anonymity. Section 20 of the Act provides that the High Court may on application make an order that specified measures as the court considers appropriate be taken to ensure that the identity of a witness is not disclosed in or in connection with criminal proceedings. The Court is authorized to make the order if the conditions outlined in section 22 of the Act are satisfied, that is, that the measures in the order are: (i) necessary to protect the safety of the witness or another person or to prevent any serious damage to property; (ii) necessary to prevent real harm to the public interest; (iii) consistent with the defendant receiving a fair trial; and (iv) necessary to ensure that the witness testify and the witness' evidence is important. The court is also required to take into consideration the witness' fear that he/she or another person would suffer death or injury, or that there would be serious damage to property, if the witness was identified.

Section 20(2) as outlines the measures which the Court may order to include the following:

- (a) that the witness's name and other identifying details may be***
 - (i) withheld;***
 - (ii) removed from materials disclosed to any party to the proceedings;***
- (b) that the witness may use a pseudonym;***
- (c) that the witness is not asked questions of any specified description that might lead to the identification of the witness;***
- (d) that the witness is screened to any specified extent;***
- (e) that the witness's voice is subjected to modulation to any specified extent.***

The Justice Protection Act No. 32 of 2012 is an Act to provide for the establishment of a programme for the protection of certain witnesses and certain other persons and for related matters. This Act provides for the establishment of a Justice Program and three agencies for the purpose of administering the Program: an Administrative Centre, an Investigative Agency and a Protective Agency. The Administrative Centre is responsible for developing, managing and maintaining the Justice Protection Programme and determining whether a prospective participant is to be afforded protection or assistance. In the performance of its functions, the Centre is required to liaise with other approved authorities and Administrative Centres of other Contracting Parties and develop guidelines for the effective operation of the Program. The Investigative Agency is required to conduct investigations in relation to prospective participants in the Program. The investigation includes an assessment of the application for inclusion into the program, a threat assessment including a prison report where the prospective participant is in prison and a risk assessment. The purpose of the Protective Agency as outlined in section 10 of the Act is to report to the Centre on the suitability of a prospective participant for entry into the Justice Protection Programme, relocate participants when it is absolutely necessary to do so and carry out periodic reviews of threat and risk assessments.

Steps which may be taken to protect a witness include changing identities and providing protection during court attendances. (Part V of the Act)

In practice St. Kitts and Nevis has a functioning witness protection program. The details in relation to same are withheld given the confidential nature of the program.

- b) In relation to question a), state the objective results obtained, including any available statistical data. No data available at this time
- c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen systems for protecting public servants and private citizens who, in good faith, report acts of corruption, in accordance with Article III (8) of the Convention. Not applicable
- d) Briefly describe any difficulties and/or shortcomings related to the implementation of the provision of the Convention that refers to systems for protecting public servants and private citizens who, in good faith, report acts of corruption, and, if appropriate, identify specific technical cooperation needs.

The challenge is as a result of our geographical size and close family connections, a witness identity may become known and as such defeat the purpose of the program.

CHAPTER THREE

ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

1. Criminalization of acts of corruption provided for in Article VI (1) of the Convention

a) *Does your country criminalize the acts of corruption provided for in Article VI (1) of the Convention transcribed in this chapter of the questionnaire? If so, describe briefly the laws and/or measures regarding them, indicating to which of the particular aforesaid acts of corruption they refer, including sanctions, and attach a copy of them. YES*

Relevant Laws

Organised Crime (Prevention and Control) Act Chapter 4.22

Procurement and Contract (Administration) Act No. 28 of 2012

Integrity of Public Life Act No. 18 of 2013

Proceeds of Crime Act Cap 4.28

Accessories and Abettors Act Cap 4:03

St. Kitts and Nevis has taken steps to criminalise acts of corruption provided for in Article VI(1) of the Convention. The relevant laws in this regard are the Organised Crime (Prevention and Control) Act Chapter 4.22, The Integrity of Public Life Act No. 18 of 2013 which came into force on July 11, 2018 and The Public Service (Conduct and Ethics of Officers) Code No. 9 of 2014

i. *The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions.*

ii. *The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions.*

iii. *Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party.*

(iv) Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party.

Section 4 and 9 of the Organised Crime (Prevention and Control) Act Chapter 4.22 criminalises the provisions of the Convention as outlined in i to iv above. Section 4 defines corruption as follows:

A person engages in corruption where

- (a) the person directly or indirectly promises, offers or gives to a public officer a benefit;***
- (b) the person, being a public officer, solicits or accepts whether directly or indirectly a benefit for himself or herself or another;***

in order to act or refrain from acting in his or her official capacity.

Section 9 of the Act criminalises corruption as follows:

- (1) A person who engages in corruption commits an offence.***
- (2) A person who is found guilty of an offence under subsection (1) is liable,***
 - (a) on summary conviction, to a fine of one hundred and fifty thousand dollars or imprisonment for five years or both; and***
 - (b) on conviction on indictment, to a fine of one hundred and fifty thousand dollars or imprisonment for fifteen years or both.***

Section 39 (2) of the Procurement and Contract (Administration) Act No. 28 of 2012 also criminalises corruption. The section states as follows:

- (2) A person who,***
 - (a) being a public officer, corruptly***
 - (i) accepts or obtains;***
 - (ii) agrees to accept; or***
 - (iii) attempts to obtain;***
 - any payment, offer of employment, gratuity or other reward for himself or herself another person in connection with a procurement; or***
 - (b) gives or offers, corruptly, to a person referred to in paragraph (a) any payment, offer of employment, gratuity or other reward in connection with a procurement; commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding three years.***

Further, the Integrity in Public Life Act also creates the offences of Abuse of Office and Misconduct and Neglect of Office. Section 27 of the Act provides that:

A public official commits an offence of abuse of office

- (a) seeks or accepts personal or private benefit for himself or herself or a member of his or her family or a person associated with him or her whether the benefit places him or her under an obligation to the person giving or offering the benefit.*
- (c) fails to act impartiality, or gives undue preferential treatment to a person or group of person.*
- (g) induces or encourages another public official to act contrary to the relevant Code of Conduct.*

Section 28 creates the offences of misconduct and neglect of duty as follows:

A public official who misconducts himself or herself or neglects to perform his or her duties to such a degree as to amount to an abuse of public trust in the office holder, commits an offence, and shall be liable on conviction, to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years.

- (v) The fraudulent use or concealment of property derived from any of the acts referred to in this article.*

The Proceeds of Crime Act Cap 4:28 criminalises the concealment of property derived from the proceeds of crime. Concealment of property derived from the proceeds of crime is classified as money laundering pursuant to section 4 of the Act which provides:

(1) A person who engages in money laundering commits an indictable offence and shall be liable, on conviction,

- (a) in the case of a natural person, to a fine not exceeding two hundred and fifty thousand dollars, or to imprisonment for a term not exceeding twenty years, or both;*
- (b) in the case of a corporate body, to a fine not exceeding seven hundred thousand dollars.*

(2) A person engages in money laundering where

- (a) the person engages, directly or indirectly, in a transaction that involves money or other property that is proceeds of crime;*
- (b) the person receives, possesses, disguises, conceals, disposes of, or brings into, or transfers from Saint Christopher and Nevis, any money or other property that is proceeds of crime;*
- (c) the person*
 - (i) conspires to commit; or*
 - (ii) attempts, incites another, aids, abets, counsels, facilitates or procures the commission of any of the activities in paragraphs (a) and (b)".*

Section 2 of the Proceeds of Crime Act defines proceeds of crime as proceeds of a serious crime. Serious offence means any offence triable on indictment or a hybrid offence that

attracts a penalty of imprisonment for more than one year. The offence of corruption pursuant to the Organised Crime (Prevention and Control) Act is an offence that is triable summarily or on indictment and attracts a penalty of more than one year if the person charged is found guilty. It is a serious offence which attracts the provisions of the Proceeds of Crime Act so that an individual alleged to have concealed the proceeds of corruption can be charged with money laundering pursuant to the Proceeds of Crime Act.

(vi) Participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.

The laws of St. Kitts and Nevis contains provisions to address the manner in which the law deals with parties to criminal offences. Section 2 of the Accessories and Abettors Act Cap 4:03 provides that a person who becomes an accessory before the fact to any felony, whether the same be a felony at common law or by virtue of any enactment, may be indicted, tried, convicted, and punished, in all respects, as if he or she were a principal felon. Section 3 provides that a person who “...*counsels, procures, or commands any other person to commit any felony, whether the same be a felony at common law or by virtue of any enactment, commits a felony, and may be indicted and convicted, either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony...*”. Section 4 of the Act provides for the indictment of an accessory after the fact either as an accessory after the fact or as a principal. These provisions allow for persons, not being the principals in the first degree to the commission of a corruption offence to be charged either as principals or as accessories. Further, as it relates to concealment of proceeds of crime, it should be noted that section 4 (1)(c) of the Proceeds of Crime Act specifically provides that a person engages in the offence of money laundering when/she incites another, aids, abets, counsels, facilitates or procures the concealment of proceeds of crime.

At common law an attempt to commit an offence is a criminal offence for which a person can be charged. Further, it should be noted that section 34 of the Criminal Law Procedure Act Cap 4:06 provides that if, “*on the trial of any person charged with a felony or misdemeanour, it appears to the jury, upon the evidence that the defendant did not complete the offence charged, but that he or she was guilty only of an attempt to commit the same, that person shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return, as their verdict, that the defendant is not guilty of the felony or misdemeanour charged, but is guilty of an attempt to commit the same; and thereupon that person shall be liable to be punished in the same manner as if he or she had been*

convicted on an indictment for attempting to commit the particular felony or misdemeanour charged in the indictment”.

It should be noted that section 4 (1)(c) of the Proceeds of Crime Act specifically provides that a person engages in the offence of money laundering when/she incites attempts to conceal the proceeds of crime.

Conspiracy is an offence at common law. A person alleged to have conspired to commit an offence can be charged for conspiracy.

- b) Briefly state the objective results that have been obtained in enforcing the above provisions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years. **NO STATISTICS AVAILABLE**
- c) If the aforementioned acts of corruption are not criminalized, what steps is your country taking to criminalize these acts. **NOT APPLICABLE**
- d) Briefly describe any difficulties and/or shortcomings related to the implementation of the provision of the Convention that refers to establishing as criminal offenses under domestic law the previously described acts of corruption, and, if appropriate, identify specific technical cooperation needs.

2. Application of the Convention to acts of corruption not described therein, in accordance with Article VI (2)

*a) Has your State entered into any agreements with other States Parties to apply the Convention to any act of corruption not described therein, in accordance with Article VI (2)? If so, briefly describe the respective agreements or conventions and attach a copy of the related documents. **NO***

*b) If the above answer was in the affirmative, briefly state the objective results that have been obtained in the application of the respective agreements or conventions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years. **NA***

SECTION II

QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE FIFTH ROUND

CHAPTER ONE

INSTRUCTIONS TO GOVERNMENT PERSONNEL TO ENSURE PROPER UNDERSTANDING OF THEIR RESPONSIBILITIES AND THE ETHICAL RULES GOVERNING THEIR ACTIVITIES (ARTICLE III, PARAGRAPH 3 OF THE CONVENTION)

- a) *Select up to a maximum of three groups of government personnel from your country's branches of government or public institutions, at the national/federal level, that, due to them being a majority or based on the importance of their functions, are considered principal groups that merit review for the purpose set out in Article III, paragraph 3, of the Convention, which refers to giving instructions to government personnel for the proper understanding of their responsibilities and the ethical rules governing their activities.*

HUMAN RESOURCE DEPARTMENT

- b) *Indicate why your country believes the personnel group(s) selected under the previous question merit review.*

In conjunction with the Public Service Commission, the Human Resource Department of the Government is responsible for the management, development and governance of human resource for the government sector. The Human Resource Department is responsible for providing and coordinating training for government personnel. This is carried out by the Training Unit of the Department.

Indicate whether there are provisions and/or measures in your country for providing instructions to the selected government personnel group(s) which ensure proper understanding of their responsibilities and the ethical rules governing their activities, and attach a copy of them or provide links to the web pages where they can be consulted.

Public Service Act No. 19 of 2011

Public Service (Recruitment and Appointment of Officers) Code SR&O No. 8 of 2014

Public Service (Conduct and Ethics of Officers) Code SR&O No. 9 of 2014

Public Service Code of Discipline SR&O No. 10 of 2014

Public Service Standing Orders SR&O No. 11 of 2014

The Public Service Act and the regulations made pursuant to that Act contain principles and guidelines which outline the ethical rules governing government personnel activities. In practice, each department of Government should keep a copy of the Public Service Act and Regulations for its use.

Various legislative instruments governing specific subject areas provide guidance and instructions to government personnel in relation to their responsibilities for example, the Finance Administration Act outlines the responsibilities of accounting officers and the Procurement and Contract Act which gives instructions to procurement officers of the way in which they should carry out their responsibilities.

Refer to the following aspects relating to the aforementioned instructions, with respect to the selected government personnel group(s), attaching copies of the provisions and/or measures on which the answers are based or indicating links to the web pages where they may be consulted:

- i. The manner in which personnel are informed of their responsibilities and functions, indicating whether this is done verbally or in writing and whether records are kept of those instructions.*

Government personnel are informed of their responsibilities and functions by way of a job description outlining their duties. A job description is normally provided at the time the individual is seeking employment in the Public Service and is usually provided at the time of employment. The job description is normally kept in the individual's Human Resource Department personnel files. Government Ministries and/or Departments also keep a copy of the job description. Further and more detailed instructions in relation to the official's functions and responsibilities are normally provided by the department within which the official is employed.

- ii. The occasion(s) when personnel are informed of their responsibilities and functions, indicating whether this is done when they begin performing them or at a later point; when those functions change; or when functions change due to a change of post.*

Government personnel are informed of their responsibilities and functions when they enter the public service. Ministries or Departments usually have a period of orientation where the head of department or a senior member of staff will instruct new staff joining the department in relation to their responsibilities and functions. When personnel function and/or duties change he/she is advised of the changes and given instructions in relation to same. Instructions in relation to personnel functions and responsibilities are also provided from time to time through training courses held in the St. Kitts and Nevis and abroad. Employees are required to

attend courses that are offered.

- iii. *The existence of introductory, training or instructional programs and courses for personnel on how to perform their responsibilities and functions properly and, particularly, for making them aware of the risks of corruption inherent in the performance of those functions.*

The Human Resource Department offers courses in general areas such as time management and conflict resolution. These courses are open to all government personnel. From time to time different courses will be offered in the Public Service and government personnel are invited and encouraged to attend. An example of this is the Public Policy Analysis and Management and Project Cycle Management (PCM) Training Program Face to Face Training which was conducted from May 14 – June 25, 2018.

Government personnel receive specific instructions in relation to their responsibilities from their respective Ministries and/or departments as stated above at (ii). Government personnel may also receive training through seminars, courses and scholarships offered by external international agencies.

- iv. *The use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly.*

The Human Resource Department encourages the use of modern technologies. Some presentations are carried out by way of power point presentations.

- v. *The existence of bodies to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly.*

When there is a need to resolve doubts about how to perform responsibilities and duties properly, the employee may consult with and obtain direction from the Permanent Secretary, Head of Department, Human Resource Department or the Public Service Commission.

- vi. *The existence of a governing organ, authority or body responsible for defining, steering, advising, or supporting the manner in which personnel are to be informed of their responsibilities and functions, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or measures in force in this regard.*

Public Service Commission, Human Resource Department, Training Committee, Permanent Secretaries and Heads of Departments

Part VII of the Public Service Act outlines provisions in relation to Human Resource Development and Management Training. Section 47 of the Act requires the Minister to outline the Government's policy in relation to training. Determination of the policy requires consideration of the Public Service, the national goals of St. Kitts and Nevis and the areas of management and technical skills at both national and international levels necessary to attain those goals. Section 48 provides for a Training Committee which is responsible for advising the Minister on training requirements in the Public Service. Section 49 provides for the composition of the training committee. Section 50 provides for the establishment of a training fund. The Training Committee is functional and meets regularly in relation to its functions.

The Human Resource Department of the Government of St. Kitts and Nevis provides training opportunities to government officials in matters such as Customer Service, Record Keeping, Leadership, Team building, time management, conflict resolution, Public Service Rules and Regulations and ethics and professionalism. The training activities undertaken by the Human Resource Department are done after consultation with the Permanent Secretaries and Heads of Department of the various departments in relation to the training needs.

Specialised training related to government personnel's responsibilities and duties are also provided by their respective Ministries and by external international agencies via the Ministry of Foreign Affairs or the Human Resource Department.

- vii. *The way in which personnel are informed of the ethical rules governing their activities, indicating whether this is done verbally or in writing and whether records are kept of those instructions.*

All new employees within the Public Service are required to attend a mandatory orientation session. This orientation session, which is delivered mainly by oral presentation, provides information on the Public Service, including the ethics of the Public Service and the manner in which public servants are expected to conduct themselves. The Human Resource Department also from time to time (outside of the orientation sessions), conduct training on ethics and professionalism. The Human Resource Department, in particular the officer responsible for training, keeps a record of all training carried out and is required to compile a report of the training initiatives undertaken in each year.

- viii. *The occasion(s) when personnel are informed of ethical rules governing their activities, indicating whether this is done when they begin performing them or at some later point; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules.*

Personnel are informed of the ethical rules governing their activities by way of the mandatory orientation program at the time he/she joins the public service and a program on ethics and professionalism which is held by the Human Resource Department from time to time. The Human Resource Department has also used Circulars addressed to the Ministries and Departments to advise government personnel of the ethical rules and guidelines. Permanent Secretaries and Heads of Department may also from time to time provide instructions in relation to ethical rules applicable to Government personnel's responsibilities.

- ix. *The existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities and, particularly, on the consequences of failure to abide by them for public institutions and for wrongdoers.*

Personnel are informed of the ethical rules governing their activities by way of the mandatory orientation program at the time an individual joins the public service and a program on ethics and professionalism which is held by the Human Resource Department from time to time. Instructions are also provided on the Public Service Rules and Regulations and the consequences of breach of same within the framework of the orientation program and the program on ethics and professionalism.

- x. *The use of modern communication technologies to apprise personnel of the ethical rules governing their activities and to provide guidance as to their scope or interpretation.*

Power point presentations are used to deliver presentations

- xi. *The existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of the ethical rules governing their activities.*

When there is a need to resolve doubts about the scope and interpretation of ethical rules, advice can be sought from the Attorney General's Chambers. This is usually done at the instance of the Chief Personnel Officer or the relevant Permanent Secretary or the Head of Department. Also, the relevant Permanent Secretary or Head of Department, the Human Resource Department or the Public Service Commission may be consulted for assistance in resolving doubts about

the scope and interpretation of the ethical rules.

- xii. *The existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or measures in force in this regard.*

Public Service Commission, Human Resource Department, Training Committee,
Permanent Secretaries and Heads of Departments

- c) *Summarize the results obtained in the application of the provisions and/or measures relating to the instructions given to the selected government personnel group(s) to ensure that they have an appropriate understanding of their responsibilities and functions, providing the relevant information available in your country,^{3/} and making reference, to the extent that is possible, to issues such as the following: the holding of introductory, training or instructional programs and courses to that end, the periodicity or frequency with which they have been held, and the number of public servants covered by them; implementation of programs for the same purpose; preparation of guidelines to counsel public servants on the proper performance of their functions and to alert them to the risks of corruption inherent in the performance of their responsibilities; responses to inquiries by public servants on the correct performance of their functions and the use of modern communication technologies for that purpose; activities undertaken to ascertain whether the objective of ensuring that responsibilities or functions are understood was in fact achieved; and measures or actions developed by the authorities or bodies responsible for ensuring that instructions to that end are fully provided and with ensuring the enforcement of provisions and/or measures in force.*

The Human Resource Department usually conducts two training sessions per month. The training sessions are usually attended by approximately 25-30 persons.

- d) *Summarize the results obtained in the application of the provisions and/or measures relating to the instructions given to the selected personnel group(s) to ensure that they have an appropriate understanding of the ethical rules governing their activities, providing the relevant information available in your country,^{4/} and making reference, to the extent that is possible, to issues such as the following: the holding of introductory, training or instructional programs and courses to that end, the periodicity or frequency with which they have been held, and the number of public servants covered by them; implementation of programs for the same purpose; preparation of guidelines to counsel public servants on the scope and interpretation of those ethical rules and about the consequences of failure to abide by them for public institutions and the wrongdoers; responses to inquiries by public servants to that same end and the use of modern communication technologies for that purpose; activities undertaken to ascertain whether*

3. If possible, referring to the past five years.

4. If possible, referring to the past five years.

the objective of ensuring that the ethical rules are understood was in fact achieved; and actions undertaken by the authorities or bodies responsible for ensuring that instructions to that end are fully imparted and with ensuring the enforcement of provisions and/or measures in force.

The orientation program conducted by the Human Resource Department is carried out once every quarter. Presentations on ethics and professionalism are conducted within the framework of monthly training held by the Department.

- e) For each of the selected personnel group(s), briefly report on difficulties and/or weaknesses related to instructions for ensuring an adequate understanding of their responsibilities and functions and, if applicable, identify specific technical cooperation needs.*
- f) For each of the personnel group(s) selected for review, briefly report on difficulties and/or weaknesses related to instructions for ensuring an adequate understanding of the ethical rules governing their activities and, if applicable, identify specific technical cooperation needs.*

In relation to (f) and (g) above, the challenge faced by the Human Resource Department is the lack of a dedicated room/space for the conduct of training activities. At times it is challenging to find appropriate available facilities to conduct training.

CHAPTER TWO

THE STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE (ARTICLE III, PARAGRAPH 12 OF THE CONVENTION)

- a) Indicate whether your country has studied prevention measures that take into account the relationship between equitable compensation and probity in public service. If so, please describe the study or studies carried out and either enclose copies thereof or indicate the web pages where they may be consulted. NO STUDIES UNDERTAKEN
- b) Indicate whether your country has established objective and transparent criteria for determining the compensation of public servants. If so, please describe those criteria and enclose copies of the documents, provisions, and/or measures containing those criteria or indicate the web pages where they can be consulted. NO STUDIES UNDERTAKEN

SECTION III

BEST PRACTICES

OPTIONAL: Report on a maximum of four best practices related to the Convention provisions selected for the Second and Fifth Rounds that your country would like to share with the other MESICIC member countries, using the standard form attached to this questionnaire for that purpose (Annex II).

SECTION IV

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

Please provide the following information:

(a) State Party: St. Kitts & Nevis

(b) The official to be consulted regarding the responses to the questionnaire is:

Ms: Simone Bullen Thompson

Title/position: Solicitor General

Agency/office: Attorney General's Chambers

Address: Government Headquarters, Church Street, Basseterre, St. Kitts

E-mail address: attorneygeneral@gov.kn

Telephone number: 1-869-467-1013

Fax number: 1-869-465-5040