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IMPLEMENTATION OF THE INTER-AMERICAN  
CONVENTION AGAINST CORRUPTION  
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SAINT KITTS AND NEVIS

FINAL REPORT

(Adopted at the March 14, 2019 plenary session)

## SUMMARY

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

The provisions selected for review in the Second Round are those provided in paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption, which refers, respectively, to systems of government hiring and procurement of goods and services and for the protection of public servants and private citizens who, in good faith, report acts of corruption, and acts of corruption (Article VI).

The provisions selected for review in the Fifth Round are those contained in paragraphs 3 and 12 of Article III regarding, respectively, measures to establish, maintain, and strengthen instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, and the study of preventive measures that take into account the relationship between equitable compensation and probity in public service.

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

The review was carried out taking into account the Response received from Saint Kitts and Nevis to the Questionnaire, the information compiled by the Technical Secretariat, and a new and important source of information, namely the on-site visit conducted between October 16-18, 2018 by the preliminary review subgroup for Saint Kitts and Nevis, composed of The Bahamas and Ecuador, with the support of the Technical Secretariat. During that visit, the information furnished by Saint Kitts and Nevis was clarified and expanded and the opinions of civil society organizations were heard. This provided the Committee with objective and complete information on those topics.

With regard to the implementation in Saint Kitts and Nevis of the provisions of the Inter-American Convention against Corruption selected for the Second Round, based on the methodology for the Fifth Round and bearing in mind the information provided by Saint Kitts and Nevis in the Response to the Questionnaire and during the on-site visit, the Committee formulated recommendations such as those contained in the following:

With respect to the systems of government hiring, some of the recommendations formulated to Saint Kitts and Nevis were formulated, among others: consider establishing clearly stages for the process of selection and appointment of public servants; adopt a standardized job description manual for all public service positions in St. Kitts and Nevis and ensure that it is public; and adopt provisions to ensure that appointments under contract cannot access internal vacancies within the public service in St. Kitts and Nevis and can only participate in external vacancies.

Regarding the systems of public procurement of goods and services, the following recommendations were formulated, among others: consider regulating the Procurement and Contract (Administration Act) of 2012; adopt a legal instrument that stipulates minimum thresholds for selecting each type of procurement contract, pursuant to section 10 of the Procurement and Contract (Administration Act) of 2012; and appoint as soon as possible the members of the Procurement Board and provide them with the necessary human and financial resources needed to be able to fulfill their attributions.

With respect to the systems for the protection of public servants and private citizens who, in good faith, report acts of corruption, the following recommendations were formulated, among others: consider adopting a comprehensive regulatory and legal framework governing the protection of public officials and private citizens who, in good faith, report acts of corruption through both administratively and criminally; adopt mechanisms for the protection of all whistleblowers and their families, not only in relation to their physical integrity, but also in relation to their working conditions, especially when the person is a public official and when acts of corruption may involve their hierarchical superior or his co-workers; and establish a simplified and easily accessible process for filing requests for protection measures for whistleblowers and witnesses of acts of corruption.

In regards to acts of corruption, the following recommendations were formulated, among others: consider expanding the concept of “public officer” in the Organised Crime (Prevention and Control) Act for criminal purposes to cover persons who manage public funds in any way or form; consider amending the Procurement and Contract (Administration) Act of 2012, to expand for criminal purposes the penalization of corruption to include penalties for persons who perform public functions; and prepare detailed, annual statistical data on proceedings initiated by both the Public Prosecutor's Office on acts of corruption, and on judicial matters related to corruption.

For the review of the first provisions selected for the Fifth Round that refer to instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as set out under Article III, paragraph 3 of the Convention, in keeping with the methodology for this Round, the country under review chose the personnel of the Human Resource Management Department.

This review was focused on determining, with respect to the selected personnel, if the country under review has adopted provisions and/or measures which ensure the proper understanding of their responsibilities and the ethical rules governing their activities; the manner or occasions in which personnel are provided instructions; the programs in place for them; the bodies responsible for them; as well as the objective results obtained on the implementation of said provisions and/or measures, taking into account any difficulties and/or weaknesses to achieve the purpose of this provision of the Convention. At the same time, it took note of any difficulties and/or shortcomings in accomplishing the object of that provision of the Convention.

Some of the recommendations formulated to Saint Kitts and Nevis, for its consideration, with respect to this topic, are noted as follows: Establish a formal training program for the personnel of the Human Resource Management Department, in order to ensure their obligatory participation in the training and induction programs for newly hired public servants, including the courses offered and a calendar, either on-site or on-line, so that all employees understand their duties and the functions they are expected to perform and instructions on the ethical rules governing their activities, including evaluations at the conclusion of the training, for the personnel of the Department of Human Resource Management at the conclusion of the formal training; and establish a body responsible for defining, directing, guiding, advising, or supporting the ways in which the personnel of the Human Resource Management Department are to be informed of their responsibilities or duties and ethical rules governing their activities, and for ensuring that this is done in full, and measures or actions that the body can take to ensure compliance with the provisions and/or measures governing this matter.

In accordance with the aforementioned methodology, the review of the second provision selected for the Fifth Round, as set out under Article III, paragraph 12 of the Convention, sought to determine whether Saint Kitts and Nevis has studied preventive measures that take into account the relationship between equitable compensation and probity in public service and whether it has established objective and transparent guidelines for determining civil servant remunerations. On that basis, it was recommended that Saint Kitts

and Nevis create a Human Resources and Administration Department website and publish the salary scales (Annual Estimates) used for the remuneration of public servants.

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

**FINAL REPORT ON FOLLOW-UP ON IMPLEMENTATION IN SAINT KITTS AND NEVIS  
OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW WITHIN THE  
FRAMEWORK OF THE SECOND AND FIFTH ROUNDS<sup>1</sup>**

## INTRODUCTION

### 1. Content of the Report

[1] This Report begins with a comprehensive review of the implementation, in Saint Kitts and Nevis, of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the Second Round of Review. The provisions selected for the Second Round are those provided in Article III, paragraph 5 (Systems of government hiring and Procurement of goods and services); Article III paragraph 8 (Systems for protecting public servants and private citizens who, in good faith, report acts of corruption); and Article VI (Acts of corruption).<sup>2</sup>

[2] Second, the Report presents a review of the implementation of the provision of the Inter-American Convention against Corruption selected by the Committee of Experts of the MESICIC for the Fifth Round of Review. Those provisions are contained in paragraphs 3 and 12 of Article III regarding, respectively, measures to establish, maintain, and strengthen “instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities”, and “the study of preventive measures that take into account the relationship between equitable compensation and probity in public service.”

### 2. Ratification of the Convention and adherence to the Mechanism

[3] According to official records of the OAS General Secretariat, Saint Kitts and Nevis ratified the Inter-American Convention against Corruption on August 4, 2004.

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

## I. SUMMARY OF INFORMATION RECEIVED

### 1. Response of Saint Kitts and Nevis

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<sup>1</sup> Bearing in mind that Saint Kitts and Nevis was not a party to the MESICIC when the Second Round of MESICIC was conducted, the present draft preliminary report was prepared in accordance with articles 23 (a) and 28 of the Committee’s Rules of Procedure (document SG/MESICIC/doc.438/15 rev. 1), and according to the Methodology for Follow-Up on the Recommendations Formulated and Provisions Reviewed in the Second Round and for the Analysis of the Convention Provisions Selected for the Fifth Round (document SG/MESICIC doc. 291/11 rev. 2) and the Format of the country reports (document SG/MESICIC/doc.439/15 rev. 1); the last two of these documents were adopted by the Committee at its Twenty-Fifth Meeting, held at OAS Headquarters in Washington D.C., United States of America, from March 16-20, 2015.

<sup>2</sup> Chapter XII of the [Methodology](#) provides that “*The methodology adopted by the Committee for the Second Round of Review shall apply to States that were not party to the Mechanism when that Round was conducted, in respect of review of the provisions of the Convention selected for that round. The foregoing notwithstanding, the review will also take note, with regard to the provisions selected for the Second Round, of any difficulties in their implementation and of the technical cooperation needs of those States.*”

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from Saint Kitts and Nevis, in particular from the Attorney General's Office, Ministry of Justice, Legal Affairs & Communications, which was evidenced, inter alia, in its Response to the Questionnaire, in the constant willingness to clarify or complete its contents, and in the support for the execution of the on-site visit referred to below. Together with its Response, Saint Kitts and Nevis sent the provisions and documents it considered pertinent.<sup>3</sup>

[6]The Committee also notes that Saint Kitts and Nevis gave its consent for the *on-site visit*, in accordance with provision 5 of the *Methodology for Conducting On-site Visits*.<sup>4</sup> That visit was conducted from October 16-18, 2018 by the representatives of The Bahamas and Ecuador, in their capacity as members of the review subgroup, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this Report, and the agenda of meetings is attached hereto, in keeping with provision 34 of the above-mentioned *Methodology*.

[7]For its review, the Committee took into account the information provided by Saint Kitts and Nevis up to October 18, 2018, as well as that furnished to and requested by the Technical Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure;<sup>5</sup> the Methodology for Follow-up on the Implementation of the Recommendations Formulated and Provisions reviewed in the Second Round and for Analysis of the Convention Provisions Selected for the Fifth Round;<sup>6</sup> and the Methodology for Conducting On-Site Visits.

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

[8] The Committee did not receive documents from civil society organizations within the time frame established in the schedule for the Fifth Round, as envisaged by Article 34(b) of the Committee's Rules of Procedure.

[9] Nonetheless, during the on-site visit, information was gathered from other civil society organizations, private sector organizations and academics invited to participate in meetings to that end, in keeping with the provisions contained in provision 27 of the *Methodology for Conducting On-site Visits*. A list of those persons is included in the agenda for that visit, which is appended hereto. Pertinent parts of this information are reflected in the appropriate sections of this Report.

## **II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY SAINT KITTS AND NEVIS OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND**

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

#### **1.1. SYSTEMS FOR HIRING GOVERNMENT OFFICIALS**

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

<sup>3</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/paises-rondas.html?c=San Kitts y Nevis&r=1](http://www.oas.org/es/sla/dlc/mesicic/paises-rondas.html?c=San+Kitts+y+Nevis&r=1)

<sup>4</sup> Available at: [http://www.oas.org/juridico/english/met\\_onsite.pdf](http://www.oas.org/juridico/english/met_onsite.pdf)

<sup>5</sup> Available at: [http://www.oas.org/juridico/PDFs/mesicic4\\_rules\\_en.pdf](http://www.oas.org/juridico/PDFs/mesicic4_rules_en.pdf)

<sup>6</sup> Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_metodologia\\_en.pdf](http://www.oas.org/juridico/PDFs/mesicic5_metodologia_en.pdf)

[10] Saint Kitts and Nevis has a set of provisions related to the hiring of public servants, among which the following provisions related to the principal systems should be noted:

[11] Constitutional provisions,<sup>7</sup> such as those set out in section 77, establish the Public Service Commission as an independent body with members appointed by the Governor-General, with a Chairperson and no more than three other members appointed by the Governor General in accordance with the advice of the Prime Minister. According to section 78(1) of the Constitution, this Commission is empowered to make recommendations in relation to the appointment of persons to hold or act in offices in the public service (including the power to confirm appointments), exercise of disciplinary control over persons holding or acting in such offices and removal of such persons from office to the Governor General who act in accordance with the recommendation of the Public Service Commission. Section 78(2) further provides that the Governor-General, acting in accordance with the recommendation of the Commission, may, by directions in writing and subject to such conditions as he or she thinks fit, delegate any of his or her powers under subsection (1) to any one or more members of the Commission or, with the consent of the Prime Minister, to any public officer.

[12] Constitutional provisions, such as section 80(2), which provides that the power to appoint a person to hold or act in the office of Attorney-General when a public officer shall vest in the Governor-General, acting in accordance with the recommendation of the Public Service Commission: Provided that before the Public Service Commission makes any recommendation under this subsection it shall consult the Prime Minister and the Judicial and Legal Services Commission<sup>8</sup>. In turn, section 81(1) provides that the Director of Public Prosecutions shall be appointed by the Governor-General, acting in accordance with the recommendation of the Judicial and Legal Services Commission. In addition, article 83 applies to the offices of magistrate, registrar of the High Court and assistant registrar of the High Court and to any public office in the department of the Attorney-General (other than the public office of Attorney-General) or the department of the Director of Public Prosecutions (other than the office of Director) for appointment to which persons are required to hold one or other of the specified qualifications. This article provides that the power to appoint persons to hold or act in offices to which this section applies (including the power to confirm appointments) shall vest in the Governor-General, acting in accordance with the recommendation of the Public Service Commission: Provided that before making any recommendation as to the exercise of the powers conferred by this section in any case the Public Service Commission shall consult the Judicial and Legal Services Commission. The power to exercise disciplinary control over such officers and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the recommendation of the Judicial and Legal Services Commission.

[13] Statutory provisions, such as the Public Service Commission Regulations,<sup>9</sup> which is found in Schedule 8 to the Constitution outlines the procedure for selection for appointments to the Public Service, Section 9(1) provides that 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

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<sup>7</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_constitution\\_annex1.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_constitution_annex1.pdf)

<sup>8</sup> The Judicial and Legal Services Commission was established under section 18 of the Eastern Caribbean Supreme Court Order No. 223 of 1967. The Eastern Caribbean Supreme Court is the highest judicial tribunal in the country under review, whose jurisdiction covers not only Saint Kitts and Nevis, but also five other independent States (Antigua and Barbuda, Dominica, Grenada, Saint Lucia and Saint Vincent and the Grenadines) and three British Overseas Territories (Anguilla, British Virgin Islands, and Montserrat), since they are not independent states that can become a party to the Convention. The Court came into operation in 1967, replacing the West Indies Associated States Supreme Court and is composed of 9 members presided over by the Chief Justice. Judicial appointments, except that of the Chief Justice, who is appointed by Her Majesty, are made by the Judicial and Legal Services Commission, established pursuant to the aforementioned section 18. The Eastern Caribbean Supreme Court has two divisions: the High Court of Justice and the Court of Appeal. The High Court of Justice has competence in all civil and criminal matters over which the Magistrate's Courts do not have jurisdiction. The court of last resort is the Judicial Committee of Her Majesty's Privy Council in London.

<sup>9</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_constitution\\_annex1.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_constitution_annex1.pdf)

claims of all public officers eligible for appointment or promotion and those of suitably qualified local candidates. Section 9(2) provides that 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 recognized 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. In addition, Section 9(3) provides that 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; and (f) any previous employment of the candidate in the public service or elsewhere.

[14] With respect to appointments on contract, (Regulation 10) of the Public Service Commission Regulations provides that (1) Where it becomes necessary to recruit a candidate from a territory other than St. Kitts and Nevis or where it is desirable to fill a vacancy for a limited period, the Commission may recommend that the appointment be made on contract for a specified time. (2) Every candidate whom it is proposed to appoint on contract will be required to enter into an appropriate agreement if called upon to do so and to satisfy the Commission that he or she is likely to give regular and effective service for the period of years concerned.

[15] With respect to temporary appointments, (Regulation 11) of the Public Service Commission Regulations provides that the Commission may recommend that a temporary appointment be made whenever it is satisfied that, by reason of a shortage of qualified candidates, the admission of a candidate in a temporary capacity is justified by the needs of the public service and the candidate undertakes to do all he or she can to become qualified within a reasonable time.

[16] With respect to acting appointments, (Regulation 12) of the Public Service Commission Regulations provides that (1) When an acting appointment falls to be made otherwise than as a prelude to a substantive appointment, the Commission may, as a general rule, recommend the senior officer in the Ministry or Department eligible for that acting appointment but whoever is recommended will be required to assume and discharge the duties and responsibilities of the post to which he or she is appointed to act. (2) Where an acting appointment falls to be made as a prelude to a substantive appointment the Commission shall, as a general rule, follow the same principles and procedure applicable to selection for promotion as stated in (Regulation 13).

[17] Statutory provisions, such as the Public Service Act, 2011,<sup>10</sup> that provides in section 17 that the procedure for appointment of public officers outlined in Division I, that is, sections 18-20 of the PSA shall not apply to any office specified in subsection (3) of section 78 of the Constitution, that is to say, (a) any office to which section 79 of the Constitution applies; (b) the office of Attorney General; (c) the office of Director of Public Prosecutions; (d) the office of Director of Audit; (e) any office to which section 83 of the Constitution applies; and (f) any office in the Police Force”.

[18] Section 18 of the Public Service Act (PSA) provides that subject to section 17, appointments to offices specified in section 78 of the Constitution shall be made in accordance with the provisions of that section, this Act, the Public Service Commission Regulations, and the Public Service Recruitment and Employment Code.

[19] In addition, Section 19 of the PSA also provides that the Chief Personnel Officer, shall, where a vacancy arises or is expected to arise in the Public Service in an office to which section 18 of this Act applies, (a) notify the Commission accordingly by delivering to the Commission a copy of the advertisement of the vacancy and a job description for the public office; and (b) constitute a selection panel, in accordance with the Public Service Recruitment and Employment Code made under section 53(3) of this

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<sup>10</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_publicservact\\_annex14.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_publicservact_annex14.pdf)



Act, for the purpose of selecting a suitable candidate to fill the vacant public office, and shall inform the Commission accordingly.

[20] Furthermore, Section 20 of the PSA outlines the Commission's recommendation procedure to the Governor General to make appointments to offices upon the selection of a candidate by the selection panel to fill a vacancy in an office to which section 18 applies.

[21] Section 21 of the PSA provides that appointments to offices specified in section 79 of the Constitution, that is to say, (a) the office of Secretary to the Cabinet; (b) the office of Permanent Secretary of a Ministry or Department; (c) the office of Head or Deputy Head of a Department; (d) any office for the time being designated by the Commission as an office of a chief professional advisor to a Department of Government; and (e) any office for the time being designated by the Commission, after consultation with the Prime Minister, as an office the holders of which are required to reside outside Saint Christopher and Nevis or whose functions relate to external affairs; shall be made in accordance with the provisions of that section and this Act.

[22] Additionally, Section 22 provides that the Head of the Public Service shall, where a vacancy arises or is expected to arise in the Public Service in an office to which section 21 of this Act applies: (a) notify the Commission accordingly by delivering to the Commission a copy of the advertisement of the vacancy and a job description for the public office; and (b) constitute a selection panel, in accordance with the Public Service Recruitment and Employment Code made under section 53(3) of this Act, for the purpose of selecting a suitable candidate to fill the vacant public office, and shall inform the Commission accordingly.

[23] Likewise, Section 23 of the PSA outlines the Commission's recommendation procedure to the Governor General to make appointments to offices upon the selection of a candidate by the selection panel to fill a vacancy in an office to which section 21 applies.

[24] Moreover, Section 24 provides that appointments to offices specified in section 79(2) of the Constitution, that is to say, (a) where a person is being appointed to hold or act in an office of Permanent Secretary on transfer from another office carrying the same salary; (b) any office of Ambassador, High Commissioner or other principal representative of Saint Kitts and Nevis in any other country or accredited to any international organization; shall be made in accordance with the provisions of that section and this Act.

[25] Furthermore, section 25 of the PSA provides that the Head of the Public Service shall, where a vacancy arises or is expected to arise in the Public Service in an office to which section 24 of this Act applies, (a) notify the Prime Minister accordingly; and (b) constitute a selection panel, in accordance with the Public Service Recruitment and Employment Code made under section 53(3) of this Act, for the purpose of selecting a suitable candidate to fill, hold or act in that office, and shall, in writing, inform the Prime Minister accordingly.

[26] Section 26 of the PSA provides for appointments to offices specified in section 24 by the Governor General on advice of the Prime Minister. In this regard, (1) the Head of the Public Service, upon the selection of a candidate by the selection panel to fill a vacancy in an office to which section 24 of this Act applies shall submit to the Prime Minister the name of the candidate for the purpose of the Prime Minister tendering advice to the Governor General on the proposed appointment of the candidate to fill the vacancy, and the Governor-General shall, acting on the advice of the Prime Minister, appoint the candidate, and (2) The Candidate referred to in subsection (1) shall be given notice, in writing, of his or her appointment".

[27] Additionally, Section 27 of the PSA provides that appointments to offices specified in section 83 of the Constitution to which persons are required to hold one or other of the specified qualifications, that is to say, (a) the offices of Magistrates; (b) Registrar of the High Court; (c) the office of Head or Deputy Head

of a Department; (d) any public office in the Department of the Attorney-General (other than the public office of the Attorney-General) or the Department of the Director of the Public Prosecutions) (other than the office of Director); shall be made in accordance with the provisions of that section, this Act, the Public Service Commission Regulations, and the Public Service Recruitment and Employment Code made under this Act.

[28] Moreover, section 28 of the PSA provides that the Head of the Public Service shall, where a vacancy arises or is expected to arise in the Public Service in an office to which section 27 of this Act applies, (a) notify the Commission and the Judicial and Legal Services Commission with a copy of the advertisement of the vacancy; and (b) constitute a selection panel, in accordance with the Public Service Recruitment and Employment Code made under section 53(3) of this Act, for the purpose of selecting a suitable candidate to fill the vacant public office, and shall, in writing, inform the Public Service Commission and the Judicial and Legal and Services Commission, accordingly.

[29] Finally, Section 29 of the PSA outlines the Commission's recommendation procedure to the Governor General to make appointments to offices, upon the selection of a candidate by the selection panel to fill a vacancy in an office to which section 27 of this Act applies.

[30] Statutory provisions, such as the Public Service (Recruitment and Appointment of Officers) Code, 2014,<sup>11</sup> which provides that merit is to 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; and (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 2 (4)).

[31] In addition, the purpose of the Code seeks to, among other things, govern the methods to be used in the recruitment and promotion of officers in the Public Service; 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; 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 based on their reliability as indicators of future performance, provided that no psychological tests shall be administered or interpreted by persons who are not professionally trained; 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; 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; and 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 3).

[32] The Code also seeks to ensure that recruitment and appointments to the Public Service are made based on merit, impartiality and the highest standards of integrity, and to ensure that consideration is also given to seniority and experience where the nature of work so requires (Section 4).

[33] Likewise, the Code provides that the appointment on recruitment of an individual to a public office shall be made based on 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 (Section 7).

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<sup>11</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_publicservrecruit\\_annex13.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_publicservrecruit_annex13.pdf)

[34] With respect to vacancies, Section 8 of the Code provides that vacancies within the Public Service shall first be advertised or published within the Public Service in Saint Kitts and Nevis for a period of two weeks, and then subsequently may be advertised within the Federation of Saint Kitts and Nevis for a period of two weeks. Thereafter, it may be advertised outside of Saint Kitts and Nevis.

[35] It further notes that all relevant information in respect of the vacancy shall be accessible to prospective applicants and the advertisement or publication shall include: (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.

[36] Section 9 of the Code provides the eligibility for appointment to the Public Service: (a) a person shall not be less than sixteen years or more than fifty-two years; (b) possess such educational qualifications as may be prescribed, (c) be certified by a District Medical Officer to be in sound health and mentally fit for employment, and (d) produce two certificates of good character. Likewise, a person who is over the age of fifty-two years may be appointed on contract for specialized work. Additionally, Section 11 of the Code provides that the selection of persons to be appointed to an office in the Public Service shall be selected on merit, except that where the nature of the work so requires, consideration shall be given to seniority and experience.

[37] Furthermore, the Code provides that an appointment on recruitment or promotion shall not be made, unless (a) the vacancy in the public service, or a vacancy in an office with the same duties, was advertised in a Public Service Official Circular within the last year as open to any citizen of Saint Kitts and Nevis or CARICOM Nationals; (b) an assessment is made of the relative suitability of the candidates for the duties, after an interview or using another competitive selection process; (c) the assessment is based on the relationship between the candidate's work-related qualities and the work-related qualities genuinely required for the duties; (d) the assessment focused on the relative capacity of the candidates to perform the duties (Section 10).

[38] Additionally, Section 11 of the Code provides that a person to be appointed to an office in the Public Service shall be selected on merit, except where the nature of the work so requires, consideration shall be given to seniority and experience. The method of selection of candidates shall be governed by objectivity, impartiality and transparency. Also the Code provides the criteria of work related qualities that 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.

[39] Finally, the Code provides that a person who has been serving on contract in the public service may, upon application, be appointed to an office in the Public Service on permanent terms (Section 16 (2) and that a person should only be given a temporary appointment where the Governor General acting on the recommendation of the Public Service Commission is satisfied that: (a) the employment is necessary for the efficient operation of the Department and that assistance in temporarily performing the duties cannot be given by another Department and (b) the person should not be appointed to an office in the Public Service because of (i) physical or mental incapacity; or (ii) a medical condition (Section 17 (2)(b)).

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

[40] With respect to the constitutional and legal provisions that refer to the systems of government hiring that the Committee has examined, based on the information available to it, they constitute, as a whole, a body of measures relevant to promoting the purposes of the Convention.

[41] Nonetheless, the Committee considers it appropriate to formulate certain observations regarding the advisability of developing, strengthening, and perfecting certain legal provisions that refer to the aforementioned standards and mechanisms.

[42] As noted in the section above, the Committee detects an absence of sufficient provisions for carrying out the different stages that make up the procedure for selecting and appointing personnel. In the Committee's view, that absence could undermine the objectivity, effectiveness, and transparency of public servant hiring systems. It therefore underscores that it is important for the country under review to consider defining, through the relevant legal and administrative procedures, the different stages that make up the public servant selection and appointment process, and adopting clearly defined provisions and criteria that ensure access to public service through systems based on the principles of openness, equity, and efficiency set forth in the Convention. The Committee will make a recommendation in this regard. (See Recommendation 1.1.4.1 in section 1.1.4 of Chapter II of this Report)

[43] During the on-site visit, the representatives of the Human Resource Management Department stated that, at present, there was no job description manual covering all public service positions in Saint Kitts and Nevis; they did, however, report that a process to standardize job descriptions was currently under way. The Committee notes the importance of the country under review considering preparing a job description manual and making it available online, for it to list the functions and requirements of the different positions that make up the public service, at the levels of directors, advisors, professionals, technicians, and assistants, and for it to be governed by the principles of openness, equity, and efficiency, as set forth in the Convention. The Committee will make a recommendation in this regard. (See Recommendation 1.1.4.2 in section 1.1.4 of Chapter II of this Report)

[44] The Committee also notes that the Public Service (Recruitment and Appointment of Officers) Code, 2014 (Rule 8), requires the publication, both internally and externally, of vacancies existing within the public service. The Committee notes, however, that there are no other provisions that establish clearly defined criteria for the publication of hiring opportunities in the public service, or of vacancies or open positions, including the contents and form of such notices, the dates on which selection processes are to commence, and the procedures to be followed to participate in the process. The Committee also notes that the country under review should consider making use of the mass media (for example, newspapers and web pages) to announce external public service vacancies. The Committee will make a recommendation in this regard. (See Recommendation 1.1.4.3 in section 1.1.4 of Chapter II of this Report)

[45] Regarding the existence of provisions for challenging substantive issues within Public Service Commission<sup>12</sup> hiring processes, the Committee notes that the country under review does not have rules to

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<sup>12</sup> In its comments to the draft preliminary report, the country under review noted the following: "The country under review adverts the Committee's attention to section 20 subsections 4 and 5 which provide that a candidate may request a review of the Commission's recommendation against his or her appointment. The country under review considers that this is a mechanism which is available to public servants and private citizens and asks that this be included in paragraph 45. The text is set out below: (4) Where the Commission, acting in accordance with the provisions of sections 78.(5) or 78.(6) of the Constitution, recommends against the appointment of a candidate to fill a vacancy in the Public Service under this section, (a) the Commission or other person shall inform the Governor-General and the Chief Personnel Officer, in writing, accordingly, giving reasons for not recommending the candidate, and shall submit copies of documents on which it or he or she relies to the Governor-General and the Chief Personnel Officer; (b) the candidate shall be informed, in writing, that his or her application was not successful.

(6) A candidate may make representations to the Commission for a review of the Commission's recommendation referred to in subsection (2) or (4), and the representations shall be made within fourteen days from the date of receipt of the notice under any of those subsections by the candidate or within such longer period as the Commission may allow".

establish appropriate control mechanisms with clearly defined criteria for challenging substantive issues in hiring processes. Similarly, the Committee notes that the Public Service Board of Appeals, which, under section 87 of the Constitution, is only available to public officials, only has authority over disciplinary matters and not over challenges relating to selection mechanisms. In addition, a private citizen can only challenge a decision adopted in a selection process by applying for judicial review with the High Courts.<sup>13</sup> The Committee therefore suggests the adoption of provisions to regulate mechanisms for lodging challenges, guaranteeing that they are processed in a timely, objective, impartial, and effective way, in consideration of the principle of due process and legality, and ensuring that they can be pursued through administrative channels. These mechanisms must ensure openness, equity, and efficiency in the process. The Committee will make a recommendation in that regard. (See Recommendation 1.1.4.4 in section 1.1.4 of Chapter II of this Report)

[46] The Committee notes that, during the on-site visit, the representatives of the Public Service Commission, as the lead authority for the public hiring system in Saint Kitts and Nevis, commented that it would be useful to continue strengthening that body, in order to ensure that it has the necessary human and financial resources and functional independence to oversee the hiring system with objectivity and impartiality and to exercise its authority objectively, within available resources. The Committee underscores the importance of Saint Kitts and Nevis considering adopting, by means of applicable legal and administrative procedures, further provisions to establish appropriate control mechanisms to ensure strict compliance with the rules for personnel selection within the public service. (See Recommendations 1.1.4.5 and 1.1.4.6 in section 1.1.4 of Chapter II of this Report)

[47] Regarding appointments on contract, the Public Service (Recruitment and Appointment of Officers) Code, 2014 (section 16), states that a person who has been serving on contract in the public service may, upon application, be appointed to an office in the Public Service on permanent terms. The Committee notes the absence of regulations for the adoption of provisions that clearly establish that persons in such appointments cannot enter competitions for vacancies and internal public service competitions, since entry into the public service must be based on the principles of merit (through exams and interviews) and may only compete for external vacancies in processes that are open to the general public of Saint Kitts and Nevis, in order to ensure openness, equity, and efficiency in the public hiring system. (See Recommendation 1.1.4.7 in section 1.1.4 of Chapter II of this Report)

[48] Also, regarding temporary appointments, the Public Service (Recruitment and Appointment of Officers) Code, 2014 (section 17), provides that such appointments apply when a person should not be appointed to an office in the Public Service because of (i) physical or mental incapacity, or (ii) a medical condition. The Committee notes the absence of regulations for the adoption of provisions that clearly establish that persons in such appointments cannot enter competitions for vacancies and internal public service competitions, since entry into the public service should be based on the principles of merit (through exams and interviews) and may only compete for external vacancies in processes that are open to the general public of Saint Kitts and Nevis, in order to adequately ensure openness, equity, and efficiency in the public hiring system (See Recommendation 1.1.4.8 in section 1.1.4 of Chapter II of this Report)

[49] The Committee notes that, during the on-site visit, the representatives of the Human Resource Management Department, informed the Committee of the need to acquire a comprehensive human resource management system, to record hiring of public servants, since the Human Resource Management Department does not at present have such a comprehensive system for its employees. Since such a system would help the Human Resource Management Department to provide a more efficient service in the public

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<sup>13</sup> See Response of Saint Kitts and Nevis to the questionnaire for the Fifth Round of Review, pg. 11, [http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic5\\_skn\\_Response.pdf](http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic5_skn_Response.pdf)

service, The Committee will make a recommendation in that regard in this regard for the country under review. (See Recommendation 1.1.4.9 in section 1.1.4 of Chapter II of this Report)

[50] Furthermore, during the on-site visit, the representatives of the Human Resource Management Department informed the Committee of the need to develop and publish web pages for all government agencies in Saint Kitts and Nevis, which would be of use in publicizing procedures for the hiring of public officials. The Committee will make a recommendation in this regard for the country under review. (See Recommendation 1.1.4.10 in section 1.1.4 of Chapter II of this Report)

[51] Finally, the Committee notes that it would be inappropriate for the Committee to comment on the system for government hiring within the judiciary of the country under review, since the appointment of those officials is the responsibility of the Judicial and Legal Service Commission, a supranational body created under section 18 of Order No. 1967 of the Eastern Caribbean Supreme Court, the jurisdiction of which covers, in addition to Grenada, five additional independent states (Antigua and Barbuda, Dominica, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines) and three British Overseas Territories (Anguilla, British Virgin Islands, and Montserrat).

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

[52] The country under review provided no information on results relating to the hiring of public servants either in its Response to the Questionnaire or during the on-site visit. In addition, during the on-site visit, the representatives of the Human Resource Management Department said that no results were kept, given that they were not easily available or compiled in a single document and that records were kept in physical form only and there was no comprehensive electronic system for the Public Service.

[53] Other than emphasizing the importance of providing a comprehensive response to the results-related questions in the Questionnaire, the Committee has no information that would enable it to offer a complete evaluation of the results in this area. To this end, the Committee believes that the country under review should consider keeping statistics on the number of hiring opportunities or vacancies offered annually for each of these forms of entry into public service; how many were completed or abandoned; how many people applied for each position; and the number of persons entering public service in any given year. The lack of information makes it difficult for the Committee to determine the efficiency and transparency of the current hiring system. The Committee will make a recommendation in that regard. (See Recommendation 1.1.4.11 in section 1.1.4 of Chapter II of this Report)

### **1.1.4. Recommendations**

**[54] Saint Kitts and Nevis has considered and adopted certain measures intended to establish, maintain and strengthen the systems of government hiring, as discussed in Section 1.1 of Chapter II of this Report.**

[55] In light of the observations formulated in sections 1.1.2 and 1.1.3 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

1.1.4.1 Consider defining, through the relevant legal and/or administrative procedures, the different stages that make up the public servant selection and appointment procedure, adopting clearly defined provisions and criteria that guarantee access to public service through systems based on the principles of openness, equity, and efficiency set forth in the Convention. (see paragraph 42 in Section 1.1.2 of Chapter II of this Report)

1.1.4.2 Consider adopting, through the relevant legal and/or administrative procedures, a standardized job description manual for all public service positions in Saint Kitts and Nevis and ensure that

- it is published on official web pages to guarantee observance of the principles of openness, equity, and efficiency set out in the Convention. (see paragraph 43 in Section 1.1.2 of Chapter II of this Report)
- 1.1.4.3 Consider adopting, through the relevant legal and/or administrative procedures, mechanisms that establish clearly defined criteria for the publication of hiring opportunities for vacancies in the public service, and ensuring that the mass media (for example, newspapers and web pages) are used to publish external vacancies in the public service. (see paragraph 44 in Section 1.1.2 of Chapter II of this Report)
  - 1.1.4.4 Consider adopting, through the relevant legal and/or administrative procedures, provisions to establish suitable control mechanisms that offer clearly defined criteria for challenging substantive issues in selection processes, when it has been determined that an appointment process was, *inter alia*, irregular, inadequate, or carried out by means of a fraudulent competition. (see paragraph 45 in Section 1.1.2 of Chapter II of this Report)
  - 1.1.4.5 Strengthen the Public Service Commission, in order to ensure that it has the necessary human and financial resources and functional independence to oversee the hiring system with objectivity and impartiality and to exercise its authority objectively, within available resources. (see paragraph 46 in Section 1.1.2 of Chapter II of this Report)
  - 1.1.4.6 Consider adopting, through the relevant legal and/or administrative procedures, further provisions to establish appropriate control mechanisms to ensure strict compliance with the rules for personnel selection in the public service. (see paragraph 46 in Section 1.1.2 of Chapter II of this Report)
  - 1.1.4.7 Consider adopting, through the relevant legal and/or administrative procedures, provisions to ensure that persons on contract appointments cannot access internal vacancies within the public service in Saint Kitts and Nevis and can only contend for external vacancies in merit-based processes open to the general public. (see paragraph 47 in Section 1.1.2 of Chapter II of this Report)
  - 1.1.4.8 Consider adopting, through the relevant legal and/or administrative procedures, provisions to ensure that persons on temporary appointments cannot access internal vacancies within the public service in Saint Kitts and Nevis and can only contend for external vacancies in merit-based processes open to the general public. (see paragraph 48 in Section 1.1.2 of Chapter II of this Report)
  - 1.1.4.9 Provide the Public Service Commission with the resources necessary to acquire a comprehensive human resource management system to record the hiring of public officials, taking into account the availability of resources. (see paragraph 49 in Section 1.1.2 of Chapter II of this Report)
  - 1.1.4.10 Adopt, through the relevant authority, the measures necessary to develop and publish webpages for all government agencies, in order, *inter alia*, to publicize procedures related to the hiring of public servants, taking into account the availability of resources. (see paragraph 50 in Section 1.1.2 of Chapter II of this Report)
  - 1.1.4.11 Compile detailed annual statistics on the number and percentage of employees in the public service hired through internal and external competitions, compared to appointments on contract and temporary appointments; on confirmations of probation appointments, together with the

number of hiring opportunities or vacancies made available in a given year in each of those categories or under other forms of contracts; how many competitions were completed or abandoned; how many people entered those competitions; how many people entered the public service in a given year; and, finally, the number of remedies brought against resolutions adopted in selection processes and the results thereof, in order to identify challenges and, if necessary, recommend corrective measures. (see paragraph 53 in Section 1.1.2 of Chapter II of this Report)

## 1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

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

[56] Saint Kitts and Nevis has a set of provisions related to the procurement of goods and services, among which the following provisions related to the principal systems should be noted:

[57] Legal provisions, such as those in the Procurement and Contract (Administration) Act, 2012,<sup>14</sup> among which the following should be noted:

[58] Section 3, which defines public procurement in Saint Kitts and Nevis as all activities that pertain to a solicitation; 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 where the context permits, includes the actual construction, purchase, lease, rental or acquisition of goods or services procured.

[59] Section 4, which states that the objectives of the Act are to simplify, clarify, modernize and make transparent procurement by the Government and more particularly to require public competition in the procurement process except to the extent that the circumstances or size of the procurement make it impracticable; foster and encourage broad participation in the procurement process by persons in Saint Kitts and Nevis and, when required under international agreement, to persons outside the Federation; also provide for increased public confidence in the Government Procurement process by maintaining safeguards to ensure its integrity, fairness, accountability, transparency and good governance; furthermore ensure fair and equitable treatment of all persons who participate in the procurement process; and finally provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of the money of the Government.

[60] Section 5, which addresses procurement that is exempt from the provisions of Procurement and Contract (Administration) Act of 2012, such as a procurement made under a co-operative procurement agreement; 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; a procurement for *bona fide* hospitality and promotional expenditure that does not exceed a maximum amount to be prescribed by the Minister; and books and magazine subscriptions.

[61] Section 3 of the Procurement and Contract (Administration) (Amendment) Act, 2013,<sup>15</sup> provides for the Manager of Procurement in the Ministry of Finance to be responsible for procurement of all goods except those designated there and those which fall under responsibility of the Director of Public Works.

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<sup>14</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_procurementact\\_annex10.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_procurementact_annex10.pdf)

<sup>15</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_procurementactammend\\_annex11.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_procurementactammend_annex11.pdf)



[62] Section 8, which establishes the duties and powers of the procurement officer, who shall perform the duties and exercise the powers conferred on him or her under this Act and the regulations; shall monitor the quantity and type of goods procured to be held in inventory; may enter into contracts or arrangements with statutory bodies or other entities to procure goods or services on their behalf and shall perform any other duties assigned to him or her by the Minister.

[63] Section 10, which stipulates the following procurement methods: procurement by tender either by competitive sealed bids or by competitive sealed proposals; sole source procurement; emergency procurement and by competitive quotations.

[64] Section 11, which establishes financial ceilings for government procurement solicitations, which provide that before commencing a solicitation, the procurement officer shall ensure that an accurate estimate of the amount of the contract award for the procurement has been prepared. A solicitation 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. The Minister may establish a separate threshold for the Government's centralised purchasing unit. Where the estimated amount of the contract award for a procurement is less than the threshold prescribed by the Minister, the procurement may be solicited as a competitive quotation. A sole source procurement may be made when the goods, services or works required may only reasonably be had from a single source. Also, 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 the procurement officer, in the case of a procurement that is less than the threshold. Additionally, an emergency procurement may be made only 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 as determined by the Procurement Board, in the case of a procurement that is equal to or exceeds the threshold; or the Financial Secretary, in the case of a procurement that is less than the prescribed amount for emergency procurements”.

[65] Section 12, which stipulates that no procurement shall be artificially divided so as to cause it to fall below the threshold and thus qualify it as a competitive quotation.

[66] Section 13, which establishes that the procurement officer shall ensure that notice of a solicitation for a procurement by tender; or an invitation to pre-qualify for a procurement by tender, is given 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 to prequalify for a procurement by tender.

[67] Section 14, which provides that the submission and content of all bids, proposals and quotations shall be in accordance with such terms and conditions as shall be prescribed by the Minister in regulations.

[68] Section 15(1), which establishes that all competitive sealed bids and competitive sealed proposals submitted by tender shall be opened publicly by the procurement officer or his or her delegate; on the day and at the time and place specified in the invitation to bid or the request for proposals and in the presence of (i) at least one member of the Procurement Board or his or her designate, (ii) any person submitting a competitive sealed bid or a competitive sealed proposal who wishes to be present, and (iii) any member of the public.

[69] Section 15(2), which stipulates that, subject to any further conditions the Minister may prescribe in regulations, in the case of tenders that are submitted, the procurement officer or his or her delegate shall read aloud in the case of competitive sealed bids (i) the name and address of each bidder, and (ii) the amount of his or her bid or, when there is more than one amount in the bid, each amount bid.

[70] Section 15(3), which stipulates that in the case of competitive sealed proposals that are submitted, the procurement officer or his or her delegate shall read aloud the name and address of each offeror, and keep confidential any amount proposed and any other information contained in the proposal.

[71] Section 16 provides an exception to provisions of sections 13 and 15, and states that such exemption applies in two cases: (a) a procurement that involves national security when, in the written opinion of the Minister responsible for national security, confidentiality is necessary to preserve the national interest; or (b) a designated procurement where, in the written opinion of the procurement officer, circumstances require the maintenance of confidentiality. Where these situations exist, no person shall disclose any information or document about such procurement to any public officer inside Government except to a person who needs to have that information or documentation to perform his or her functions; or outside government except where required to do so under an Act or by the written authorisation of the Minister responsible for national security.

[72] Section 17, which establishes that a contract for a procurement that is awarded following a solicitation by tender shall be awarded to the qualified bidder or offeror who submits the best responsive evaluated tender in accordance with such terms as are prescribed in the regulations.

[73] Section 18, which provides that every person submitting a tender shall be accorded fair and equal treatment with respect to any opportunity for discussions, revision of any terms in the tender and submission of best and final offers. Also no person conducting or privy to discussions with any person submitting a tender, shall disclose any information related to the tender, to any other person submitting a tender, or in any other manner to prejudice or compromise the tender being made by or on behalf of the person submitting the tender and any person acting in contravention commits an offence and shall be liable, on summary conviction, to a fine not exceeding thirty thousand dollars.

[74] Section 19, which regulates the awarding of a sole source procurement contract. 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.

[75] Section 20, which establishes the terms and conditions for awarding an emergency procurement contract. 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.

[76] Section 21, which establishes the terms and conditions for awarding a competitive quotations contract. 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.

[77] Section 22, which establishes that, except for competitive quotations, each contract to be awarded shall be subject to the approval of the Procurement Board. In the case of competitive quotations, the award of a contract for procurement or refusal to award such a contract shall be determined by the procurement officer and the award of a contract for procurement shall be evidenced in writing under the hand of the procurement officer.

[78] Section 23, which requires the establishment of the *Procurement Board* comprising the following *ex officio* members (i) the Financial Secretary; (ii) the Accounting officer of the Ministry responsible for public works; (iii) the Accountant General, and two other members who are public officers appointed by the Minister of Finance.

[79] The duties and powers assigned by Section 30 of the Act to the Procurement Board include the authority to 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. The Board has the authority to determine whether a procurement should qualify as a sole source procurement; determine whether there exists a threat to public health, welfare or safety by reason of an emergency and whether a procurement should qualify as emergency procurement. Also the Board has the authority to suspend or debar a person from participating in solicitations or from entering into contracts for procurement; 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 exercise the powers in respect of contract administration and any associated matters assigned to it under the regulations.

[80] Section 31, which provides that the Procurement Board shall annually, do an assessment of procurement and contract administration under this Act and regulations, having regard to (i) the issues and problems that have arisen or are likely to arise, including those identified in the Report of the Director of Audit for the previous financial year, and (ii) the cost and other measures necessary to address those issues and problems; and prepare a report setting out its findings and its recommendations to address the issues and problems identified in the assessment, including a summary of the steps that need to be taken, and by whom.

[81] Section 32, which establishes that for the purposes of that Part, entitled Review, the term “procurement authority” means the Procurement Officer or the Procurement Board who has the power to award a contract in relation to a procurement. Any bidder, offeror, supplier or contractor, that claims to have suffered, or that 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 review in accordance with sections 33, 34, 35, 36 and 38. The following shall not be subject to the review (a) the determination made by the Minister under section 16(1)(a) (*Procurement that involves national security*) or by the procurement officer under paragraph 16(1)(b) (*Procurement officer require the maintenance of confidentiality*); the selection of a solicitation procedure pursuant to sections 10 (*Methods of Procurement*) and 11(*Financial limits on solicitations*); and a decision of a procurement authority to reject all bids, proposals, offers or quotations.

[82] Section 33, which stipulates that unless the procurement contract has already entered into force, a complaint shall, in the first instance, be submitted in writing to the head of the procurement authority. The section also outlines the circumstances in which the procurement authority can refuse to entertain a complaint. The head of the procurement authority shall not entertain a complaint, unless it was submitted within twenty days of when the bidder, offeror, supplier or contractor submitting it became aware of the circumstances giving rise to the complaint or of when that supplier or contractor should have become aware of those circumstances, whichever is earlier. The head of the procurement authority need not entertain a complaint, or continue to entertain a complaint, after the procurement contract has entered into force. If the head of the procurement authority does not issue a decision within thirty days, the bidder, offeror, supplier or contractor submitting the complaint shall be entitled immediately thereafter to institute proceedings under section 34 (Administrative Review). The decision of the head of the procurement authority shall be final unless proceedings are instituted under section 34 (Administrative review) or section 38 (Judicial Review).

[83] Section 34(1), which establishes the procedure whereby 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, may submit a complaint to an Administrative Review Board. Section 34(3) likewise establishes that 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 and (g) order that the procurement proceedings be terminated. In addition, Section 34(8) states that The Administrative Review Board shall within 30 days issue a written decision concerning the complaint, stating the reasons for the decision and the remedies granted, if any. Finally, Section 34(9) [states that] the decision shall be final unless an action is commenced under section 38 (Judicial Review).

[84] Section 35 establishes the Administrative Review Board that, upon being notified of the intention to submit a complaint, the Minister shall, within fourteen days of receipt of the notification, cause an *ad hoc* Administrative Review Board to be constituted. The intention to submit a complaint accompanied by a copy of the complaint shall be transmitted to the Administrative Review Board upon its constitution. The Administrative Review Board shall consist of three members appointed by the Minister.

[85] Section 36 stipulates that after the submission of a complaint under section 33 or 34, the head of the procurement authority, or the Administrative Review Board, as the case may be, shall notify all bidders, offerors, suppliers or contractors participating in the procurement proceedings to which the complaint relates, of the submission of the complaint and of its substance. Any such bidder, offeror, supplier or contractor or any governmental authority whose interests are or could be affected by the review proceedings has a right to participate in the review proceedings. A bidder, offeror, supplier or contractor that fails to participate in the review proceedings shall be barred from subsequently making the same type of claim. A copy of the decision of the head of the procurement authority, or of the Administrative Review Board, as the case may be, shall be furnished within ten days after the issuance of the decision to the bidder, offeror, supplier or contractor submitting the complaint, to the procurement authority and to any other bidder, offeror, supplier or contractor or governmental authority that has participated in the review proceedings. Where the decision has been issued, both the complaint and the decision shall be promptly made available for inspection by the general public, provided, however, that no information shall be disclosed if its disclosure would (a) be contrary to law; (b) impede law enforcement; (c) not be in the public interest, (d) prejudice legitimate commercial interests of the parties; or (e) would inhibit fair competition.

[86] Section 38 stipulates that 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 thirty days application may be made to the High Court by the aggrieved person for judicial review of the actions of the Administrative Review Board.

[87] Section 39 establishes the sanctions to be imposed on public servants who violate any provision of this Act.

[88] Section 41 establishes that the accounting officer shall forthwith report the circumstances of these cases to the Public Service Commission through the appropriate Minister: (a) artificial division of a procurement so as to be procured as a small procurement; (b) failure to take all necessary steps to keep all bids or proposals received from being opened or tampered with until the date and time for the opening of bids or proposals; (c) disclosing any information derived from a proposal or discussions with an offeror to another offeror while conducting or privy to discussions with an offeror; (d) accepting or obtaining, agreeing to accept or attempting to obtain any payment, offer of employment, gratuity or other reward in connection with a procurement; (e) giving or agreeing to give confidential information in relation to a procurement for the purpose of giving an advantage over other persons who submit or might reasonably be

expected to submit a bid, proposal, quotation or offer in relation to an emergency procurement. A copy of the report shall be transmitted to the Financial Secretary. Notwithstanding anything in this Part, whenever a case comes or is brought to the notice of the Financial Secretary, the Financial Secretary shall forthwith report the circumstances of the case to the Public Service Commission through the appropriate authority. Finally, the Committee deems that the country under review should consider the possibility that the communication that the accounting officer shall forthwith report to the Public Service Commission regarding the matters outlined in Section 41 of the Procurement and Contract (Administration) Act of 2012, which are detected in the procurement process, should also be sent to the Attorney General. The Committee will make a recommendation in that regard. (See Recommendation 1.2.4.1 of Section 1.2.4 of Chapter II of this Report)

[89] Section 42 provides that the Minister may make regulations for the purpose of giving effect to the purposes of this Act. The Minister may make regulations in regards to any matters stated or required by this Act to be prescribed; respecting the procurements by tender, as sole source, as emergency procurement, and by competitive quotations, including (i) defining or determining the meaning of qualified, responsive, and evaluated in relation to tenders and solicitations for designated procurements; and (ii) further defining “emergency condition; respecting the award and execution of contracts; respecting the confidentiality of solicitations, awards of contract and contract performance; respecting the course of action to be taken when no contract can be awarded after a solicitation, including a further solicitation in accordance with section 10 or the waiver of those solicitation procedures and the negotiation of a contract; respecting the grounds for suspension and debarment; and respecting contract administration and the role of the Board therein. Regulations made under this section shall be published in the *Gazette* and shall be subject to negative resolution of the National Assembly.

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

[90] With respect to the legal provisions governing public procurement systems, the Committee notes that, based on the information available to it, they may be said to constitute a set of measures that are relevant for promoting the purposes of the Convention.

[91] The Committee nevertheless deems it appropriate to express some comments for the country under review to consider in supplementing, developing or adapting the legal framework and the government procurement measures now in force, in light of the following:

[92] The Committee wishes to underscore the fact that the Procurement and Contract (Administration) Act entered into force on September 14, 2012 and that it represents a major step toward ensuring openness, equity, and efficiency in the public sector goods and services procurement system in Saint Kitts and Nevis. The Committee notes that, although that Act entered into force six years ago, enabling regulations have still not been issued. In this respect, Section 42 of said Act establishes a non-exhaustive list of matters in respect of which the Minister of Finance can set rules, which include such important areas as procurements by tender, sole source, emergency procurement, and competitive quotations. Regarding this matter, during the on-site visit, the representatives of the *Centralised Purchasing Unit*,<sup>16</sup> of the Ministry of Finance, reported that at the start of the recent Budget Estimates Committee Meetings the Prime Minister had indicated that the Procurement Act would be fully operationalized in 2019. The Committee deems it worth recommending that Saint Kitts and Nevis consider adopting rules of procedure to complete implementation of the Procurement and Contract (Administration) Act of 2012 and thereby guarantee observance of the principles of openness, equity, and efficiency provided for in the Convention. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.2 in Section 1.2.4 of Chapter II of this report)

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<sup>16</sup> See the presentation by the Centralised Purchasing Unit, slide 9, [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_centralisedpurchasingunit\\_annex47.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_centralisedpurchasingunit_annex47.pdf)

[93] The Committee further notes that current legislation does not establish specific value thresholds for the use of each type of contract. The Procurement and Contract (Administration) Act of 2012 and the Procurement and Contract (Administration) (Amendment) Act of 2013 does not specify such amounts. That being so, the Committee deems it worth recommending that Saint Kitts and Nevis consider establishing, through appropriate legislative or administrative procedures, a legal instrument setting minimum thresholds to serve as a basis for selecting each type of contract in accordance with Section 11 of that Act so as to guarantee observance of the principles of openness, equity, and efficiency provided for in the Convention. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.3 in Section 1.2.4 of Chapter II of this report)

[94] With respect to the different types of government procurement, in its Response to the Questionnaire Saint Kitts and Nevis pointed out that 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<sup>17</sup>. Nevertheless, the legislation does not include appropriate procedures for performing each of these public procurement processes in Saint Kitts and Nevis. There should be a more comprehensive legal provisions regarding the factors and/or criteria to be used to select each one of the types of public procurement stipulated in Section 10 of the Procurement and Contract (Administration) Act of 2012. That makes it difficult to determine whether existing rules for these procurement processes are transparent and objective. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.4 in Section 1.2.4 of Chapter II of this report)

[95] The Committee also observes that current legislation does not include provisions regarding the establishment of transparent contract execution oversight mechanisms requiring selection of an individual or body responsible for auditing, inspecting, and supervising the procurement system and for monitoring compliance with the rules governing the procurement of all supplies, works, and services required by the Government; or provisions aimed at ensuring that those bodies have the human and financial resources they need, subject to the availability of such resources, as well as the functional independence needed to exercise the powers vested in them, without improper interference or pressure. It is also important to mention that current legislation does not envisage such spheres of competence for the Procurement Board. If it did, Saint Kitts and Nevis could have a fully operational and functional internal and external oversight system. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.5 in Section 1.2.4 of Chapter II of this report)

[96] The Committee likewise perceives a lack of provisions establishing sanctions for contractors who fail to comply with, or violate, the provisions governing procurement processes. It therefore urges the country under review to consider developing and, through the appropriate authority, imposing a set of sanctions on contractors contravening public procurement principles and duties. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.6 in Section 1.2.4 of Chapter II of this report)

[97] The Committee further observes that, without prejudice to Section 23 of the Procurement and Contract (Administration) Act of 2012, (*Procurement Board established*), members of it have still to be appointed. In addition, during the on-site visit, the representatives of the Centralised Purchasing Unit of the Ministry of Finance announced that the Procurement Board would be fully constituted by the end of 2018.<sup>18</sup> Finally, the Committee considers that the country under review should consider the importance of strengthening the Procurement Board by endowing it with the human and financial resources it needs not only to appoint said members but also to carry on and perform its functions appropriately, with the resources available, ensuring

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<sup>17</sup> See Response of Saint Kitts and Nevis to the questionnaire for the Fifth Round of Review, pg. 11, [http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic5\\_skn\\_Response.pdf](http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic5_skn_Response.pdf)

<sup>18</sup> See the presentation by the Centralised Purchasing Unit, slide 9, [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_centralisedpurchasingunit\\_annex47.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_centralisedpurchasingunit_annex47.pdf)

equity and transparency in public procurement and exercising the powers vested in it by Section 30 of the aforementioned Act. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.7 in Section 1.2.4 of Chapter II of this report)

[98] The Committee likewise notes that, during the on-site visit, the representatives of the Public Works Department showed it the existing Application form for Contractor Registration,<sup>19</sup> a document provided only in hard copy, as it is not available on the Internet. The Committee therefore urges Saint Kitts and Nevis to consider establishing a national public registry of suppliers using I.T. technology, for instance, to create and update it and to enable access to it. That registry could contain records of contractors' good or bad performance; their particular field or specialty; technical and financial capacity; and other information deemed relevant. Government institutions should be required to use the Registry, which would be geared to promoting the principles of openness, equity, and efficiency upheld in the Convention. It should also be possible to punish some contractors, when circumstances so warrant, and exclude them for a time from the proposed Registry, as stipulated in Section 30(d) of the Procurement and Contract (Administration) Act of 2012: "*suspend or debar a person from participating in solicitations or from entering into contracts for procurement*". The Procurement Board does currently have that authority. However, there is no established register of persons debarred and/or sanctioned, so that the proposed Registry could include a list of debarred and/or punished contractors and information regarding the reasons for their debarment and/or punishment. (see recommendation 1.2.4.8 in Section 1.2.4 of Chapter II of this report)

[99] Regarding the use of electronic media and information systems for government procurement, the Committee urges the country under review to consider the possibility of adopting provisions aimed at establishing an e-procurement system. During the on-site visit, the representatives of the "*Centralised Purchasing Unit (CPU)*" of the Ministry of Finance<sup>20</sup> told the Committee "*that given the many millions of transactions carried out in Saint Kitts, the Quick Books software currently in use is unfortunately inadequate for inventory management purposes. Nor does it furnish management with information for decision-making.*" The representatives likewise told the Committee that they were currently actively searching for software that can be tailored to e-procurement. They also told the Committee that they also use the ITMS (*Intelligent Transportation Management System*), to record transactions, issue payment orders, and authorize payments. The Committee believes it is important for the country under review to consider strengthening the Ministry of Finance by allocating it the resources it needs not only to develop a government e-procurement system but also to maintain it, within the limitations of available resources, so as to ensure transparency, openness, equity, and efficiency in systems for the procurement of goods and services, as called for in the Convention. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.9 in Section 1.2.4 of Chapter II of this report)

[100] The Committee also notes a lack of provisions for identifying clear and objective criteria for selecting contractors, for each type of procurement contract, and clearly establishing the importance that will be accorded to each factor to be taken into account when awarding the contract, such as price, quality, and technical qualification. The Committee will therefore make a recommendation in that regard. (see recommendation 1.2.4.10 in Section 1.2.4 of Chapter II of this report)

[101] The Committee also notes a lack of rules in the current legal framework regarding the criteria to be used in evaluating bids. There appear to be no guidelines for evaluations, specifying objective selection factors or criteria. During the on-site visit, the representatives of the Public Works Department<sup>21</sup> did provide

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<sup>19</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_applicationcontractorreg\\_annex24.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_applicationcontractorreg_annex24.pdf)

<sup>20</sup> See the presentation by the [Centralised Purchasing Unit](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_centralisedpurchasingunit_annex47.pdf), slide 8, [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_centralisedpurchasingunit\\_annex47.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_centralisedpurchasingunit_annex47.pdf)

<sup>21</sup> See the presentation by the Department of Public Works, slide 14, [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_publicworksdep\\_annex48.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_publicworksdep_annex48.pdf)

the Committee the following Table regarding the selection criteria for awarding contracts. Although the table provides a selection criteria, this is not governed by law:

Selection criteria for the award of contracts

Criteria	Wt. (%)	Evaluation Matrix						Weighted Score
		Not relevant			Most relevant			
		0	20	40	60	80	100	
1. Price	40							
2. Methodology	20							
3. Experience Record	20							
4. Schedule	10							
5. Project Team	10							
<b>Total</b>	<b>100</b>	<b>Total Weighted Score</b>						

[102] Therefore, to maintain impartiality, transparency, and equal opportunity, the Committee considers that Saint Kitts and Nevis should consider adopting objective criteria for evaluating bids, incorporating them into legislation or adopted as administrative policy. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.11 in Section 1.2.4 of Chapter II of this report)

[103] The Committee observes that Section 17(3) of the Procurement and Contract (Administration) Act of 2012 establishes the 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. In addition, Section 17(4) of the Act provides that the submission and content of all bids, proposals and quotations shall be in accordance with such terms and conditions as shall be prescribed by the Minister in regulations. Nevertheless, the Act does not include a requirement that the outcome of the evaluation of the bids be clearly and precisely substantiated. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.12 in Section 1.2.4 of Chapter II of this report)

[104] Likewise, even though Section 13 of the Procurement and Contract (Administration) Act of 2012 provides that the procurement officer shall ensure that notice of a solicitation for a procurement by tender; or an invitation to pre-qualify for a procurement by tender, is given 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 to prequalify for a procurement by tender, the Committee observes that existing legislation does not include provisions about advertising on websites and/or institutional portals regarding government procurement processes. Here, the Committee notes that the use of electronic media and information systems in government procurement processes helps keep the public abreast of procurement opportunities and ensures openness. In the Committee's opinion, Saint Kitts and Nevis could consider stepping up its use of electronic media to provide procurement information, including information regarding the status of bids



and awards, as well as progress with major projects. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.13 in Section 1.2.4 of Chapter II of this report)

[105] The Committee also notices that current legislation does not include any provision regarding publication of awards in an announcement containing sufficient justification, including aspects relating to the selection decision, in such a way that anyone can fully grasp the core reasons for the selection of a particular bid; the idea being to ensure that the tendering process is objective, transparent, and open. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.14 in Section 1.2.4 of Chapter II of this report)

[106] The Committee further perceives an absence of instructions and criteria in the Act that provide for analysis of whether the start of a procurement process requires prior planning well in advance, such as the preparation of studies, designs, and technical assessments, or an assessment of the suitability and timeliness of the procurement. During the on-site visit, the representatives of the “*Public Works Department*”<sup>22</sup> informed the Committee that:

[107] “*All Capital Projects which are implemented through contracts go through the typical Project Management Cycle: Planning: Feasibility Study (a project profile is submitted to the Ministry of Sustainable Development); Designs and cost estimates are prepared; Projects are prioritized and then funding is allocated in the annual budget. Implementation: Solicitation; Award; Monitoring; close out*”.

[108] The Committee deems it advisable for the country under review to consider adopting measures establishing directives or criteria for conducting an analysis, above all when prior planning is required, to ensure openness, equity, and efficiency in the current goods and services procurement system. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.15 in Section 1.2.4 of Chapter II of this report)

[109] The Committee also notes the absence of provisions regarding implementation of oversight systems for each specific public works contract that, after taking its size into account, provide for inspection or direct supervision of contract execution by the contracting entity or a body designated by it; allow social accountability or citizen oversight activities; establish the duty to report at regular intervals on the status of contract execution (accountability); or make it possible to determine whether the expected cost-benefit ratio was in fact achieved and whether the quality of the works matched the stipulations agreed upon. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.16 in Section 1.2.4 of Chapter II of this report)

[110] During the on-site visit, the representatives of the Public Works Department<sup>23</sup> told the Committee that potential suppliers under the “*Competitive Sealed Bids*” type of contract have to pay a non-reimbursable administrative fee of EC\$750.00<sup>24</sup>(US\$277.52) to receive the bid package<sup>25</sup>. which includes: i) Bill of Quantities (BOQ), ii) Specifications, iii) Drawings, iv) Scope of Works and v) Instructions to Tenderers. In light of the above, the Committee suggests that the country under review consider eliminating that practice in order to encourage more extensive participation by suppliers in bidding processes and thereby promote

<sup>22</sup> See the presentation by the Department of Public Works, slide 16

[http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_publicworksdep\\_annex48.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_publicworksdep_annex48.pdf)

<sup>23</sup> See the presentation by the Department of Public Works, slide 4,

[http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_publicworksdep\\_annex48.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_publicworksdep_annex48.pdf)

<sup>24</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_invitationtenderers\\_annex23.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_invitationtenderers_annex23.pdf)

<sup>25</sup> In its comments to the draft preliminary report, the country under review noted the following: “The Government would like to point out that the fee charged for Bidding Packages is only applied in the case of large contracts, and in practice is not applied to contracts of less than EC\$2M (Approx. US\$740,000). The fee covers the cost of printing and advertising and also acts as a deterrent to frivolous requests for Bid Packages”.

the principles of openness, equity, and efficiency called for in the Convention. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.17 in Section 1.2.4 of Chapter II of this Report)

[111] The Committee observes that Section 15(3) of the Procurement and Contract (Administration) Act of 2012 stipulates that in the case of competitive sealed proposals that are submitted, the procurement officer or his or her delegate shall read aloud the name and address of each offeror and keep confidential any amount proposed and any other information contained in the proposal. In light of the above, the Committee suggests that the country under review consider eliminating the confidentiality of the amount proposed by suppliers under this type of procurement and thereby promote the principles of openness, equity, and efficiency called for in the Convention. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.18 in Section 1.2.4 of Chapter II of this Report)

[112] The Committee also observes that current legislation does not include any provision for recusal of persons pertaining to the procuring institution or who participate directly in determining needs or specifications, in assessment of bids, the selection of alternatives, or the approval of purchases or payments and have ties with the bidders or potential contractors, be they family, political, commercial, or any other kind of ties. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.19 in Section 1.2.4 of Chapter II of this Report)

[113] Finally, during the on-site visit, the representatives of the Centralised Purchasing Unit<sup>26</sup> of the Ministry of Finance told the Committee that the Unit's personnel needed training in procurement processes. In light of the above, the Committee wishes to underscore the importance of the country under review considering establishing training programs for the personnel responsible for dealing with and managing goods and services procurement processes in the Centralised Purchasing Unit, the Ministry of Finance and the Public Works Department. The Committee further notes that the training programs should be provided in general for all public servants, so that they can be trained in implementation of the Procurement and Contract (Administration) Act of 2012 and its enabling regulations. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.20 in Section 1.2.4 of Chapter II of this Report)

### **1.2.3. Results**

[114] The Committee notes that, in its Response to the Questionnaire, Saint Kitts and Nevis did not provide any information regarding results.

[115] The Committee also notes that, in response to a request made after the on-site visit, the country under review did provide the following information regarding Public Works Department projects for fiscal years 2016 and 2017:

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<sup>26</sup> See the presentation by the Centralised Purchasing Unit, slide 8, [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_centralisedpurchasingunit\\_annex47.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_centralisedpurchasingunit_annex47.pdf)

**CAPITAL PROJECTS Undertaken by PWD in 2016**

CD No.	Project	Ministry	Orig. Contract Amt.	Variation	Final Contract Amt	Procurement Method	Start Date	End Date
CD 01/16	Renovation Works to Clico Bldg.	Justice & Legal, et al	\$65,971.85	\$48,393.06	\$114,364.91	CSB	6th Jan. 2016	6th Feb. 2016
CD 02/16	Remedial Works - Mary Charles Hospital	Min of Health	\$324,102.90	\$160,000.00	\$484,102.90	CSB	1st Feb. 2016	31st Mar. 2016
CD 03/16	Installation of Lighting- Sandy Point Playfield	Min. of Sports, et al	\$678,399.06		\$678,399.06	SSP	2nd Feb. 2016	27th Feb 2016
CD 04/16	Repair to Pelican Mall Roof	Min of Tourism	\$0.00	\$0.00	\$0.00	CSB		
CD 05/16	Repair to Eye Car Roof -Pelican Mall Roof	Min of Tourism	\$0.00	\$0.00	\$0.00	CSB		
CD 06/16	Grassing of Trinity/Boyds Playfield	Min. of Sports, et al	\$160,000.00	\$8,000.00	\$168,000.00	SSP	15th Feb. 2016	14th July 2016
CD 07/16	Painting to Berkeley Memorial Clock, Basseterre	Min of Tourism	\$4,900.00		\$4,900.00	SSP	5th Aug. 2016	20th Sept. 2016
CD 08/16	Const. Internal & External Car Park & Instal. Elec. Gates - New Horizon	Min. of Social Development, et al	\$111,199.00		\$111,199.00	CSB	4th July 2016	25th July 2016
CD 09/16	Additional Renovations to Government House	Governor General	\$1,499,419.78	\$340,957.98	\$1,840,377.76		18th July 2016	28th Nov. 2016
CD	Clearing & Fencing - National Heroes Park, Conaree	OPM	\$78,000.00		\$78,000.00	CSB	15th Aug.	2nd Sept.

10/16							2016	2016
CD 11/16	Painting to Bathrooms - Ferry Terminal	Min of Tourism	\$7,000.00		\$7,000.00	CSB	28th Sept. 2016	27th Oct. 2016
CD 12/16	Const. of Kiosks, Port Zante	Min of Tourism	\$24,618.36		\$24,618.36	CSB	10th Oct 2016	4th Nov. 2016
CD 13/16	Lee L. Moore Judicial Complex	Justice & Legal Affairs	\$338,254.00	\$0.00	\$338,254.00	SSP	10th Oct 2016	10th Nov. 2016
CD 14/16	Renovation to Saddlers Home for Elderly	Ministry of Social Development, et al	\$259,227.18	\$0.00	\$259,227.18	CSB	17th Oct 2016	17th Dec. 2016
CD 15/16	Addition to Aggro Processing Unit	Min. of Agriculture	\$236,580.21	\$0.00	\$236,580.21	CSB	24th Oct. 2016	23rd Jan. 2017
CD 16/16	Const. of Commercial Grade Galvalume Arch - Warner Park	Min. of Sports, et al	\$227,283.25	\$0.00	\$227,283.25	CSB	26th Oct 2016	1st Mar. 2017
CD 17/16	Conaree Football Field Seeding & Grassing	Min. of Sports, et al	\$117,250.00	\$0.00	\$117,250.00	SSP	17th Oct 2016	28th Nov. 2016
CD 18/16	Repair Works to Police Training Complex	Min. of National Security	\$77,055.00	\$0.00	\$77,055.00	SSP	8th Nov. 2016	27th Nov. 2016
CD 19/16	Minor Repairs - Ferry Terminal	Min of Tourism	\$73,682.00	\$0.00	\$73,682.00	CSB	14th Nov. 2016	20th Dec. 2016
CD 20/16	Retrofitting to Gem - New Horizon	Department of Social Development	\$0.00	\$0.00	\$0.00			
CD 21/16	Lighting of Tennis Court - Warner Park	Min. of Sports, et al	\$44,200.00	\$13,548.30	\$57,748.30	SSP	10th Nov. 2016	21st Nov. 2016
	Roof Repairs - Football Stadium,							

CD 22/16	Warner Park	Min. of Sports, et al	\$94,702.64	\$0.00	\$94,702.64	CSB	14th Nov. 2016	17th Feb. 2017
CD 23/16	Const. of Bathrooms at Central Forest Reserve National Park	Min. of Environment et al	\$120,814.52	\$0.00	\$120,814.52	CSB	28th Nov. 2016	25th Feb. 2017
CD 24/16	Const. of Roads & Drains- Ottleys Vill. Ext Ph. 2	PWD	\$839,456.14	\$0.00	\$839,456.14	CSB	21st Nov. 2016	31st Dec. 2017
CD 25/16	Const. of Roads & Drains- The Grange Rd., Ottleys Vill.	PWD	\$1,206,160.00	\$0.00	\$1,206,160.00	CSB	21st Nov. 2016	31st Dec. 2017
CD 26/16	Const. of Roads & Drains- Lodge Village	PWD	\$810,049.00	\$0.00	\$810,049.00	CSB	2nd Dec. 2016	28th Feb. 2017
CD 27/16	Painting to Boots at Ferry Terminal	Min of Tourism	\$16,480.00	\$0.00	\$16,480.00	CSB	2nd Dec. 2016	28th Feb. 2017
N/A	The Strip - Phase 1	Min of Tourism	\$1,600,495.00	\$0.00	\$1,600,495.00	SSP	14th Nov. 2016	15th Dec. 2016
			<b>\$9,015,299.89</b>					

SSP - Sole Source  
Procurement

CSB - Competitive Sealed  
Bids

Note: Contract #s not included were below \$100,000.00

**CAPITAL PROJECTS Undertaken by PWD in 2017**

CD No.	Project	Ministry	Orig. Contract Amt.	Variation	Final Contract Amt	Procurement Method	Start Date	End Date
CD 01/17	Old Road Fisheries Complex	Ministry of Agriculture	\$1,346,809.10		\$1,346,809.10	SSP		
CD 03/17	Installation of Lighting to Cayon Playfield	Ministry of Sports etal	\$670,243.00		\$670,243.00	CSB	April '17	June '17
CD 04/17	Installation of Lighting-Tabernacle Playfield	Ministry of Sports etal	\$1,157,180.00		\$1,157,180.00	CSB	February '17	May '17
CD 05/17	Demolition and Clean Up of Former SSMC Mechanic Shop for the relocation of the PWD Vehicle Maintenance Division	Ministry of Public Infrastructure etal	\$234,570.00	\$0.00	\$234,570.00	CSB	February '17	April '17
CD09/17 & CD10/17	Construction of five (5) Vendors Booth at Black Rocks	Min of Tourism	\$250,000.00	\$0.00	\$250,000.00	CSB	March'17	May '17
CD 11/17	Installation of Cameras at the General Post Office Basseterre	Min. of Public Infrastructure etal	\$54,999.56		\$54,999.56	CSB	April '17	May '17
CD 12/17	Construction of Gabion Basket Wall at Boyds Playfield	Min of Sports etal	\$63,117.00		\$63,117.00	SSP	June	August '17
CD13/17	Construction of Coast Guard Barracks - General	Min of National	\$222,910.00		\$222,910.00	SSP	June	ongoing

	Contractor (Labor only)	Security						
CD14/17	Construction of Coast Guard Barracks - Electrical sub-contractor (Labor only)	Min of National Security	\$45,000.00		\$45,000.00	SSP	June	ongoing
CD15/17	Construction of Coast Guard Barracks - Plumbing sub-contractor (Labor only)	Min. of National Security	\$21,720.00		\$21,720.00	SSP	June	ongoing
CD16/17	Installation of Air Condition units at GPO	Min. of Public Infrastructure etal	\$229,216.25		\$229,216.25	CSB	August	September
CD18/17	Renovations to the Industrial Site Daycare Centre	Min of Education	\$1,489,388.13		\$1,489,388.13	CSB	October '17	March '18
CD 19/17 & 20/17	Renovations to Cayon and Dieppe Bay Police Stations	Min of National Security	\$267,938.40	\$0.00	\$267,938.40	CSB	October '17	January '18
CD21/17	Construction of Tabernacle Health Centre	Min of Health	\$2,432,066.86	\$0.00	\$2,432,066.86	CSB	October '17	ongoing
CD22/17	Construction of Access Road to Park Hyatt	Min of Public Infrastructure etal	\$718,095.00	\$0.00	\$718,095.00	SSP	November '17	December '17
CD23/17 & 30/17	Construction of five Vendor Booth at Black Rocks (Additional)	Min of Tourism	\$250,000.00	\$0.00	\$250,000.00	CSB	December '17	February '18
CD24/17	Renovation of St. Peters Community Centre	Min of Community Development etal		\$0.00	\$0.00	CSB	November '17	March '18
CD25/17	Roof Replacement - Police Training School (damaged by Hurricane Maria)	Min. of National Security	\$232,611.00	\$0.00	\$232,611.00	EP	November '17	December '17

CD27/17	Renovations to Government House - Repair Dining Room and Convert Garage to Office	Government House	\$636,463.52	\$0.00	\$636,463.52	SSP	November '17	January '18
CD28/17	Renovation to Frigate Bay Corporation Bldg(damaged by Hurricane Maria)	Min of National Security	\$293,567.00	\$0.00	\$293,567.00	EP	November '17	December '17
CD29/17	Roof Repairs to JNF Hospital	Min of Health	\$1,463,929.24		\$1,463,929.24	SSP	27th November '17	4th March '18
CD31/17	Construction of Prefab Steel Bldg at former SSMC Compound to facilitate Relocation of PWD Vehicle Maintenance Division	Min of Public Infrastructure et al	\$546,125.93	\$0.00	\$546,125.93	CSB	November '17	March '18
CD32/17	Installation of Emergency Water Storage Tanks to Community Centres used as Hurricane Shelters	Min of Community Development et al	\$39,805.85	\$0.00	\$39,805.85	CSB	December '17	18th February '18
CD 33/17	Renovations to Cayon Pavilion	Min of Sports	\$839,456.14	\$0.00	\$839,456.14	CSB	21st Nov. 2016	31st Dec. 2017
			<b>\$13,505,211.98</b>					



SSP - Sole Source Procurement

CSB - Competitive Sealed Bids

EP - Emergency Procurement

**Contract #s not included are less than \$100,000.00**

[116] In addition, during the on-site visit, the representatives of the Public Works Department<sup>27</sup> reported the following, with respect to results:

[117] *“The results of contracts awarded are not usually compiled. However, seven (7) copies of each contract are prepared and circulated to the: 1) Line Ministry; 2) Accountant General; 3) Ministry of Finance; 4) Auditor General; 5) PWD; 6) Ministry of Public Infrastructure and 7) Contractor”.*

[118] At the same time, it is important to point out that in 2016, 27 procurement processes were carried out by the Public Works Department for a total value amount of EC\$9,586,199.23 (US\$ 3,550,440.61), including 18 processes involving Competitive Sealed Bids, 8 Sole Source Procurement processes, and one process for which no procurement method was specified. The Committee observes price changes totalling EC\$570,899.34 (US\$211,443.99) in five of the procurement processes. The Committee further notes that current legislation contains no provisions requiring written justification when changes are made to prices in government procurement contracts. The Committee therefore suggests that the country under review consider incorporating provisions requiring that any alteration of prices be duly justified in writing. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.21 in Section 1.2.4 of Chapter II of this Report)

[119] Moreover, the Committee would like to highlight that in 2017, 24 procurement processes were carried out by the Public Works Department for a total value amount of EC\$13,505,211.98 (US\$ 5,001,925.36 ), including 14 processes involving Competitive Sealed Bids, 8 Sole Source Procurement processes, and two Emergency Procurement processes. In that year the Committee notes that there were no price changes in procurement processes.

[120] Bearing in mind that the country under review presented information on government procurement-related results for 2016 and 2017 after the on-site visit and that it did not receive information on results relating to the *Centralised Purchasing Unit* of the Ministry of Finance, the Committee considers that, for the purposes of identifying challenges and, if necessary, recommending corrective measures, it would be useful for the country under review to consider compiling detailed annual statistics on the results of those procurement processes, covering such aspects as the procurement procedures used, the number and value amount of contracts awarded over the past five years using competitive and non-competitive means, and sanctions imposed for infringements of procurement rules. Those statistics could, for instance, include the percentage of contracts awarded through competitive sealed bids or by competitive sealed proposals; sole source procurement; emergency procurement and by competitive quotations. The Committee will make a recommendation in that regard. (see recommendation 1.2.4.22 in Section 1.2.4 of Chapter II of this Report)

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<sup>27</sup> See the presentation by the Department of Public Works, slide 18,  
[http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_publicworksdep\\_annex48.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_publicworksdep_annex48.pdf)

#### 1.2.4. Recommendations

[121] **Saint Kitts and Nevis has considered and adopted measures intended to establish, maintain and strengthen the systems for government procurement of goods and services, as discussed in Section 1.2 of Chapter II of this Report.**

[122] In light of the comments made in Sections 1.2.2 and 1.2.3 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 1.2.4.1 Consider adopting the necessary measures that the communication that the accounting officer shall forthwith report to the Public Service Commission regarding the matters outlined in Section 41 of the Procurement and Contract (Administration) Act of 2012, which are detected in the procurement process,
- 1.2.4.2 should also be sent to the Attorney General. (see paragraph 88 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.3 Consider promulgating a legal instrument regulating the Procurement and Contract (Administration) Act of 2012, as such enabling regulations are needed to safeguard the principles of openness, equity, and efficiency upheld in the Convention. (see paragraph 92 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.4 Consider adopting, through appropriate legislative or administrative procedures, a legal instrument explicitly stipulating minimum thresholds for selecting each type of procurement contract, pursuant to Section 11 of the Procurement and Contract (Administration) Act of 2012, so as to safeguard the principles of openness, equity, and efficiency upheld in the Convention. (see paragraph 93 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.5 Consider adopting more comprehensive provisions establishing clear procedures for selecting each of the government procurement methods stipulated in Section 10 of the Procurement and Contract (Administration) Act of 2012. (see paragraph 94 of Section 1.2.2 of Chapter II of this Report).
- 1.2.4.6 Consider developing provisions establishing transparent mechanisms for overseeing contract execution and monitoring compliance with the rules governing the State's procurement of goods and services, while ensuring that, within the resources available, the entities responsible for such oversight and monitoring have the human and financial resources they need, as well as the functional independence needed to go about their work objectively without undue interference or pressure; thereby guaranteeing a fully operational and functional, internal and external controls system. (see paragraph 95 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.7 Consider developing and implementing, through the appropriate authority, a set of sanctions to be imposed on contractors contravening government procurement principles and duties. (see paragraph 96 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.8 Appoint the members of the Procurement Board and endow it with the human and financial resources needed, within those available, to ensure equity and transparency in government procurement processes and thereby comply with the powers vested in it by

Section 30 of the Procurement and Contract (Administration) Act of 2012. (see paragraph 97 of Section 1.2.2 of Chapter II of this Report)

- 1.2.4.9 Establish a national public registry of contractors for works, goods, and services, of mandatory use for all state agencies and institutions, and consider the possibility of including a list of contractors who have been sanctioned in that registry, in order to promote the principles of openness, equity, and efficiency enshrined in the Convention. (see paragraph 98 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.10 Make all necessary arrangements to secure the human and financial resources needed to create a new e-Procurement system and maintain it so that it can perform its functions appropriately, subject to the availability of funding. (see paragraph 99 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.11 Consider developing provisions that establish clear and objective criteria for selecting contractors and draw attention to the importance to be attached to each of the factors to be considered in awarding contracts, such as price, quality, and technical qualification. (see paragraph 100 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.12 Consider adopting provisions establishing objective selection factors or criteria for evaluating bids, including those for public works. (see paragraph 102 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.13 Consider adopting provisions requiring clear and precise substantiation of the results of bid evaluations, wherever applicable. (see paragraph 103 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.14 Strengthen and extend the use of electronic forms of communication, such as the Internet, in order to publicize tenders, the status of bids and contract awards, and progress made with major projects. (see paragraph 104 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.15 Consider establishing provisions requiring the publication of contract awards in an announcement containing sufficient justification. (see paragraph 105 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.16 Consider establishing instructions and criteria in the Act that provide for analysis of whether the start of a procurement process requires prior planning well in advance, such as the preparation of studies, designs, and technical assessments, or an assessment of the suitability and timeliness of the procurement. (see paragraph 108 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.17 Consider developing provisions which regulate the contracting of public works, including the implementation of appropriate control systems for each public works contract which, due to its size, requires monitoring or direct supervision over the execution of the contract by the contracting entity or another agency designated by the contracting entity; allow citizen watchdogs or civic oversight activities to be carried out; require that periodic reports be provided with respect to contract progress; and

make it possible to determine whether the expected cost-benefit ratio was obtained and whether the quality of the work meets what was agreed to. (see paragraph 109 of Section 1.2.2 of Chapter II of this Report)

- 1.2.4.18 Eliminate the payment of a non-reimbursable fee currently required in competitive sealed bids, processes in order to encourage broader participation by suppliers in bidding processes and thereby promote the principles of openness, equity, and efficiency called for in the Convention. (see paragraph 110 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.19 Consider eliminating confidentiality of the value amount proposed by suppliers in competitive sealed proposals so as to promote the principles of openness, equity, and efficiency called for in the Convention. (see paragraph 111 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.20 Consider implementing provisions for the recusal of persons pertaining to the procuring institution or who participate directly in determining needs or specifications, in assessment of bids, the selection of alternatives, or the approval of purchases or payments and have ties with the bidders or potential contractors, be they family, political, commercial, or any other kind of ties. (see paragraph 112 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.21 Provide training programs for personnel in the Centralised Purchasing Unit of the Ministry of Finance and Public Works Department responsible for government procurement processes in Saint Kitts and Nevis. Increase training programs for all public servants, so that they can be trained in implementation of the Procurement and Contract (Administration) Act of 2012 and its enabling regulations. (see paragraph 113 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.22 Consider incorporating provisions requiring written justification in the event of changes to the prices in government procurement contracts, such that a comprehensive evaluation can be made of the results of bidding processes, in order to identify challenges and, if necessary, recommend corrective measures. (see paragraph 118 of Section 1.2.2 of Chapter II of this Report)
- 1.2.4.23 Compile detailed annual statistics on the results of public procurement systems, in terms, for instance, of sanctions imposed for infringing procurement rules, the procurement procedures used, indicating, for instance, the number of contracts awarded via public bidding processes, restricted tendering, requests for price quotations, and single source procurement, in such a way as to permit a comprehensive assessment of results in this area, so as to identify challenges and recommend corrective measures, where necessary. (see paragraph 120 of Section 1.2.2 of Chapter II of this Report)

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

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

[123] Saint Kitts and Nevis has certain provisions related to systems for protecting public servants and private citizens, who, in good faith, report acts of corruption, among which the following provisions referred to in its Response, should be noted:

[124] The Justice Protection Act, of 2012<sup>28</sup> is an Act to provide for the establishment of a program for the protection of certain witnesses and certain other persons and for related matters. Furthermore, section 5 and paragraph 12 of the First Schedule to the Act, stipulates that corruption is one of the offences which may give rise to protection under the Justice Protection Programme. 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 Centers 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, protect participants and persons accorded provisional entry to the Programme, relocate participants when it is absolutely necessary to do so and carry out periodic reviews of threat and risk assessments.

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

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

[126] Nevertheless, the Committee believes it would be useful for Saint Kitts and Nevis to consider supplementing, developing, or adapting the existing provisions through the applicable legislative and administrative procedures and in accordance with its Constitution and the basic principles of its legal system that govern the protection of public servants and private citizens who, in good faith, report acts of corruption, and bearing in mind the criteria established in the Model Law approved by the Committee for Facilitating and Encouraging the Reporting of Acts of Corruption and Protecting Whistleblowers and Witnesses.<sup>29</sup> Thus, the country under review could give consideration to the following:

[127] First, the Committee notes that in general, the country under review does not have a comprehensive legal framework to protect public officials and private citizens who, in good faith, report acts of corruption through either administrative or criminal channels. The Committee will formulate recommendations in this regard. (see recommendations 2.4.1 and 2.4.2 in section 2.4 of Chapter II of this Report)

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<sup>28</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_justiceprotection\\_annex6.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_justiceprotection_annex6.pdf)

<sup>29</sup> Available at: [http://www.oas.org/juridico/PDFs/ley\\_modelo\\_proteccion.pdf](http://www.oas.org/juridico/PDFs/ley_modelo_proteccion.pdf).

[128] Second, the Committee notes that the current legislation does not contain sufficient provisions establishing protection mechanisms for people who report acts of corruption that are under investigation in specific administrative and judicial proceedings. The Committee will formulate recommendations in this regard. (see recommendations 2.4.3 and 2.4.4 in section 2.4 of Chapter II of this Report)

[129] Third, the Committee notes that the protection mechanisms must cover both the physical integrity and working conditions of all whistleblowers and their families, in particular when the persons in question are civil servants and when the acts of corruption may involve their superiors or workmates. The Committee will make a recommendation in this regard. (see recommendation 2.4.5 in section 2.4 of Chapter II of this Report)

[130] Fourth, the Committee notes that the current legislation, as contained in sections 20 - 25 of the Evidence Act of 2011<sup>30</sup>, stipulates the measures that exist for a court to ensure witness anonymity in a criminal trial by means of a “witness anonymity order.” Nevertheless, the Committee notes that there are no mechanisms for anonymous complaints and, as a result, it believes it is important for the country under review to consider adopting a mechanism for anonymous complaints including anonymous complaints that do not require a court order and ensures the protection of the whistleblower’s identity, in order to protect the personal security and keep confidential the identity of public officials and private citizens who, in good faith, report acts of corruption in criminal proceedings. The Committee will make a recommendation in this regard. (see recommendation 2.4.6 in section 2.4 of Chapter II of this Report)

[131] Fifth, the Committee notes that the country under review has not established or identified an independent body to which whistleblowers may report any threats or reprisals they may face and has not indicated the authorities responsible for processing protection requests and the agencies responsible for providing such protection. The Committee will make a recommendation in this regard. (see recommendation 2.4.7 in section 2.4 of Chapter II of this Report)

[132] Sixth, the Committee notes that the current legal framework establishes no mechanisms for the protection of people who witness of acts of corruption that would offer them the same guarantees as are enjoyed by public officials and private citizens.

[133] Seventh, the Committee notes that the country under review does not have mechanisms to facilitate, when appropriate, international cooperation on protection for public officials and private citizens who, in good faith, report acts of corruption, including the technical assistance and mutual cooperation provided for in the Convention, along with exchanges of experiences, training, and mutual assistance; accordingly, the Committee will formulate a recommendation in this regard for the country under review. (see recommendation 2.4.8 in section 2.4 of Chapter II of this Report)

[134] Eighth, the Committee notes that the country under review does not have provisions that establish a simplified and easily accessible procedure for lodging requests for protective measures for whistleblowers and witnesses of acts of corruption; accordingly, the Committee will formulate a recommendation in this regard for the country under review. (see recommendation 2.4.9 in section 2.4 of Chapter II of this Report)

[135] Finally, the Committee notes that any current legal framework should consider including provisions for administrative sanctions for noncompliance with the protection rules and/or obligations;

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<sup>30</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_evidenceact\\_annex50.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_evidenceact_annex50.pdf)

accordingly, the Committee will formulate a recommendation in this regard for the country under review. (see recommendation 2.4.10 in section 2.4 of Chapter II of this Report)

### 2.3 Results

[136] The Committee notes that neither in its Response to the Questionnaire nor during the on-site visit did the country under review provide any information about objective results in relation to systems for protecting public servants and private citizens who in good faith report acts of corruption.

[137] In addition to highlighting the importance of providing a comprehensive response with respect to results in the Questionnaire, the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic. In this regard, it will formulate a recommendation. (see recommendation 2.4.11 in section 2.4 of Chapter II of this re Report)

### 2.4 Recommendations

[138] **Saint Kitts and Nevis has considered and adopted certain measures intended to establish, maintain and strengthen systems for protecting public servants and private citizens who in good faith report acts of corruption, as discussed in Section 2 of Chapter II of this Report.**

[139] In light of the comments made in Section 2.2 and 2.3 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 2.4.1 Consider adopting a comprehensive regulatory and legal framework governing the protection of public officials and private citizens who, in good faith, report acts of corruption through administrative channels, including the protection of their identities, in accordance with the Constitution and the basic principles of the domestic legal order, bearing in mind the criteria outlined in the Model Law, approved by the Committee, to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses. (see paragraph 127 in section 2.2 of Chapter II of this Report)
- 2.4.2 Consider adopting a comprehensive regulatory and legal framework governing the protection of public officials and private citizens who, in good faith, report acts of corruption through criminal channels, including the protection of their identities, in accordance with the Constitution and the basic principles of the domestic legal order, bearing in mind the criteria outlined in the Model Law, approved by the Committee, to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses. (see paragraph 127 in section 2.2 of Chapter II of this Report)
- 2.4.3 Establish protection mechanisms for people who report acts of corruption that are under investigation in administrative proceedings. (see paragraph 128 in section 2.2 of Chapter II of this Report)
- 2.4.4 Establish protection mechanisms for people who report acts of corruption that are under investigation in judicial proceedings. (see paragraph 128 in section 2.2 of Chapter II of this Report)
- 2.4.5 Consider adopting, through the relevant legislative and/or administrative procedures, mechanisms for the protection of both the physical integrity and working conditions of all

whistleblowers and their families, in particular when the persons in question are civil servants and when the acts of corruption may involve their superiors or workmates. (see paragraph 129 in section 2.2 of Chapter II of this Report)

- 2.4.6 Consider adopting a mechanism for anonymous complaints without the need for a court order to ensure identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption in criminal proceedings. (see paragraph 130 in section 2.2 of Chapter II of this Report)
- 2.4.7 Establish or identify an independent body to which whistleblowers may report any threats or reprisals they may face and indicate the authorities responsible for processing protection requests and the agencies responsible for providing such protection. (see paragraph 131 in section 2.2 of Chapter II of this Report)
- 2.4.8 Adopt mechanisms to facilitate, when appropriate, international cooperation on protection for public officials and private citizens who, in good faith, report acts of corruption, including the technical assistance and mutual cooperation provided for in the Convention, along with exchanges of experiences, training, and mutual assistance. (see paragraph 133 in section 2.2 of Chapter II of this Report)
- 2.4.9 Consider establishing a simplified and easily accessible procedure for lodging requests for protective measures for whistleblowers and witnesses of acts of corruption. (see paragraph 134 in section 2.2 of Chapter II of this Report)
- 2.4.10 Consider adopting, through the relevant legislative and/or administrative procedures, provisions for the punishment, through administrative channels, of noncompliance with the protection rules and/or obligations, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection. (see paragraph 135 in section 2.2 of Chapter II of this Report)
- 2.4.11 Provide results on the number of protective measures carried out under the Justice Protection Programme, broken down by acts of corruption and, based on the results thereof, identify and consider specific measures for ensuring their effective enforcement. (see paragraph 137 in section 2.2 of Chapter II of this Report)

### **3. ACTS OF CORRUPTION (ARTICLE VI, PARAGRAPH 1 OF THE CONVENTION)**

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

[140] Saint Kitts and Nevis has a set of provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention, among which the following should be noted:

[141] Regarding paragraph (a) of Article VI.1:

[142] Section 2 of the Organised Crime (Prevention and Control) Act,<sup>31</sup> which provides, inter-alia, that:

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<sup>31</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_orgcrimeact\\_annex49.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_orgcrimeact_annex49.pdf)



[143] - “Public office” means any office of employment in the public service or any person or body performing a public duty; “Public officer” means the holder of any public office and includes any person appointed to act in any such office’.

[144] Section 4(b) of the Organised Crime (Prevention and Control) Act, which provides, inter-alia, that:

[145] - ” A person engages in corruption where 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”.

[146] Section 9 of the Organised Crime (Prevention and Control) Act, which provides, inter-alia, that:

[147] - ” (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. ”

[148] Section 39(2)(a) of the Procurement and Contract (Administration) Act of 2012<sup>32</sup>, which provides, inter-alia, that:

[149] - ” A person who, 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”.

[150] Regarding paragraph (b) of Article VI.1:

[151] Section 4(a) of the Organised Crime (Prevention and Control) Act<sup>33</sup>, which provides, inter-alia, that:

[152] – ” A person engages in corruption where the person directly or indirectly promises, offers or gives to a public officer a benefit, in order to act or refrain from acting in his or her official capacity. ”

[153] Section 39(2)(b) of the Procurement and Contract (Administration) Act of 2012, which provides, inter-alia, that:

[154] - ” A person who, 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. ”

[155] Regarding paragraph (c) of Article VI.1:

[156] Section 27 of The Integrity in Public Life Act, of 2013<sup>34</sup>, which provides, inter-alia, that:

[157] - “(1) A public official commits an offence of abuse of office if he or she (a) seeks or accepts personal or private benefit for himself or herself or a member of his or her family or a person

<sup>32</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_procurementact\\_annex10.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_procurementact_annex10.pdf)

<sup>33</sup> Ibid., note 27 *supra*.

<sup>34</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_integritypublilifeact\\_annex51.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_integritypublilifeact_annex51.pdf)

*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 persons. (g) induces or encourages another public official to act contrary to the relevant Code of Conduct.”*

[158] Section 28 of The Integrity in Public Life Act, of 2013<sup>35</sup>, which provides, inter-alia, that:

[159] -” *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.”*

[160] Regarding paragraph (d) of Article VI.1:

[161] Section 4 of The Proceeds of Crime Act,<sup>36</sup> which provides, inter-alia, that:

[162] -”*(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)”.*

[163] Section 2 of the Proceeds of Crime Act, which provides, inter-alia, that:

[164] –” *Proceeds of crime means (a) proceeds of a serious offence. Serious offence means any offence triable on indictment or a hybrid offences that attracts a penalty of imprisonment for more than one year.”*

[165] Regarding paragraph (e) of Article VI.1:

[166] Section 2 of the Accessories and Abettors Act<sup>37</sup>, which provides, inter-alia, that:

[167] -” *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.”*

[168] Section 3 of the Accessories and Abettors Act, which provides, inter-alia, that:

[169] -”*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*

<sup>35</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_integritypublilifeact\\_annex51.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_integritypublilifeact_annex51.pdf)

<sup>36</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_proceedscrimeact\\_annex9.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_proceedscrimeact_annex9.pdf)

<sup>37</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_accessories\\_annex2.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_accessories_annex2.pdf)

*the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony”.*

[170] Section 4 of the Accessories and Abettors Act, which provides, inter-alia, that:

[171] - *“A person who becomes an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any enactment, may be indicted and convicted, either as an accessory after 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 whether the principal felon shall, or shall not, have been previously convicted, or shall, or shall not, be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished.*

[172] Section 4(2)(c)(ii) of the Proceeds of Crime Act<sup>38</sup>, which provides, inter-alia, that:

[173] - *“A person engages in the offence of money laundering where attempts, incites another, aids, abets, counsels, facilitates or procures the commission of any of the activities in paragraphs (a) the person engages, directly or indirectly, in a transaction that involves money or other property that is proceeds of crime; and (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.”*

[174] Section 34 of the Criminal Procedure Act<sup>39</sup>, which provides, inter-alia, that:

[175] - *“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”.*

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

[176] With respect to the provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention that have been examined by the Committee, based on the information available to it, the Committee observes that they may be said to constitute, as a whole, a set of provisions relevant for promoting the purposes of the Convention.

[177] The Committee notes that although Section 2 of the Organised Crime (Prevention and Control) Act contains a definition of “public officer,” this definition, in terms of the enforcement of that Act, does not cover persons who manage public funds in any way or form. The Committee will make a recommendation in this regard. (see Recommendation 3.4.1 in Section 3.4 of Chapter II of this Report)

[178] The Committee also notes that Section 39(2)(a) of the Procurement and Contract (Administration) Act of 2012 only establishes punishments for corruption when a public officer corruptly (i) accepts or obtains; (ii) agrees to accept; or (iii) attempts to obtain; any payment, offer of

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<sup>38</sup> Ibid., note 35 *supra*.

<sup>39</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_criminalprocedureact\\_annex3.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_criminalprocedureact_annex3.pdf)

employment, gratuity or other reward for himself or herself another person in connection with a procurement, but does not cover instances in which persons perform public functions. The Committee will make a recommendation in this regard. (see Recommendation 3.4.2 in Section 3.4 of Chapter II of this Report)

[179] Regarding Section 4(a) of the Organised Crime (Prevention and Control) Act in connection with the enforcement of paragraph (b) of Article VI.1 of the Convention, the Committee believes that this provision could be amended to better reflect the elements of the crime as established in the Convention. Although those provisions address cases in which a person, either directly or indirectly, promises, offers, or gives a gratification to a civil servant, persons performing public functions are not penalized. The Committee will make a recommendation in this regard. (see Recommendation 3.4.3 in Section 3.4 of Chapter II of this Report)

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

[180] The Committee notes that in its Response to the Questionnaire,<sup>40</sup> Saint Kitts and Nevis provided no information regarding the results in this area. Nevertheless, following the on-site visit, the representatives of the Office of the Director of Public Prosecutions provided the following information:

[181] - " *The Office of Director of Public Prosecutions reported that between 2017- 2018 there were 4 corruption related matters where persons were charged. These included misconduct in office and cases where the certain public officers misused monies entrusted to them.* "

[182] Other than emphasizing the importance of providing a comprehensive response to the Questionnaire with respect to results, the Committee has no information further to that given above that would enable it to offer a full evaluation of the results in this regard. The Committee will formulate recommendations on that regard. (see Recommendations 3.4.4 and 3.4.5 in Section 3.4 of Chapter II of this Report)

### **3.4. Recommendations**

[183] **Saint Kitts and Nevis has adopted measures aimed at criminalizing the acts of corruption provided for by Article VI(1) of the Convention, as discussed in Section 3 of Chapter II of this Report.**

[184] In light of the observations formulated in sections 3.2 and 3.3 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 3.4.1 Consider the possibility of amending the Organised Crime (Prevention and Control) Act, to expand the concept of "public officer" for criminal purposes to cover those persons who perform public functions or who manage public funds in any way or form. (see paragraph 177 in section 3.2 of Chapter II of this Report)
- 3.4.2 Consider the possibility of amending the Procurement and Contract (Administration) Act of 2012, to expand for criminal purposes the penalization of corruption to include penalties for

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<sup>40</sup> See response of Saint Kitts and Nevis to the Fifth Round Questionnaire, pg. 30, [http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic5\\_skn\\_Response.pdf](http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic5_skn_Response.pdf)

persons who perform public functions. (see paragraph 178 in section 3.2 of Chapter II of this Report)

- 3.4.3 Consider the possibility of amending the current legislation, in particular the Organised Crime (Prevention and Control) Act, to expand for criminal purposes the rule that punishes only persons who, either directly or indirectly, promise, offer, or give a gratification to a public officer, making it also apply to persons who directly or indirectly promise, offer, or give gratifications to persons performing public functions. (see paragraph 179 in section 3.2 of Chapter II of this Report)
- 3.4.4 Prepare detailed, annual statistical data on proceedings brought by the Director of Public Prosecution for acts of corruption, in how many statutory limitations have been triggered, how many have been discontinued, how many are being processed, and how many have been referred to the competent authority for resolution, in order to identify challenges and, if necessary, recommend corrective measures. (see paragraph 182 in section 3.3 of Chapter II of this Report)
- 3.4.5 Prepare detailed, annual statistical data on the judicial proceedings related to acts of corruption, indicating how many are ongoing, expired under statutory limitations, discontinued without a decision having been taken, ready for a decision to be adopted, or already covered by a decision on the merits with an acquittal or conviction, in order to identify challenges and, if necessary, recommend corrective measures. (see paragraph 182 in section 3.3 of Chapter II of this Report)

#### **4. GENERAL RECOMMENDATIONS**

[185] Based on the review and comments made throughout this Report, the Committee suggests that Saint Kitts and Nevis consider the following recommendations:

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

### **III. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY SAINT KITTS AND NEVIS OF THE CONVENTION PROVISIONS SELECTED FOR THE FIFTH ROUND**

#### **1. 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)**

[186] In accordance with the Methodology adopted by the Committee for the Fifth Round regarding the implementation of Article III, paragraph 3 of the Convention, which refer to measures that are intended to establish, maintain and strengthen “*instruction[s] to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities,*” the

country under review selected the Human Resource Management Department, based on their competencies and the fact that their personnel would be the most appropriate for the review.<sup>41</sup>

[187] The following paragraph gives a brief description of the aforesaid public entity, which is to be reviewed in this section as regards its activities related to the Convention provision identified in the preceding paragraph.

[188] The Human Resources Management Department of the Government is responsible for the management, development and governance of human resource for the government sector and is also responsible for providing and coordinating training for government personnel. This is carried out by the Training Unit of the Department.

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

[189] The Committee notes that, during the on-site visit, the country under review provided information regarding provisions and/or measures that provide instructions to government personnel that fall under the purview of the Human Resource Management Department, among which the following should be noted:

[190] In its Response to the Questionnaire, the country under review<sup>42</sup> reported that Chapter VII of the Public Service Act of 2011<sup>43</sup> addresses human resource development and the management of training, and that Section 47 of the Act provides for the establishment of a training policy. It further states that the Minister shall, in writing, state the policy of Government with respect to (a) the goals and objectives of training; and (b) the management of training and human resource development in the Public Service. It also indicates that the Minister may on the advice of the Training Committee make regulations to give effect to this policy of training.

[191] Section 48 of the Act establishes the responsibilities of the Training Committee which shall advise the Minister on training requirements and study leave in the Public Service Commission. This Committee shall also advise the Commission in respect of officers to be granted study leave and determine the terms and conditions under which officers shall be granted training and study leave.

[192] Section 49 of the Act contains provisions on the composition and procedure of the Committee, indicating that the Training Committee shall consist of the following: (a) Head of the Public Service; (b) Chief Personnel Officer; (c) Training Manager; (d) Financial Secretary, Ministry of Finance; (e) Permanent Secretary, Ministry responsible for sustainable development; and (f) Permanent Secretary, Ministry of Education. Similarly, it provides that the Head of the Public Service shall be the Chairperson of the Training Committee, and may, at any time, summon a meeting of the Committee. Four members of the Training Committee shall form a quorum, and, subject to this Act and the regulations made under the Act, the Committee may regulate its procedure.

[193] Section 50 of the Act establishes the Public Service Training Fund which shall be paid moneys provided by Parliament for payment into the Training Fund for training purposes and moneys that represent the payment of the proceeds of the forfeiture carried out in respect of any bond that secured an award made out of the Training Fund. It also states that the Minister may, subject to such terms and

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<sup>41</sup> See Response of Saint Kitts and Nevis to the Questionnaire for the Fifth Round of Review, pg. 31, [http://www.oas.org/juridico/PDFs/mesicic5\\_bhs\\_resp2.pdf](http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf)

<sup>42</sup> Ibid, pg. 34

<sup>43</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_publicservat\\_annex14.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_publicservat_annex14.pdf)

conditions as may be prescribed, award scholarships for training purposes, out of the Training Fund and that the Training Fund shall be under the control and management of the Minister.

[194] Finally, Section 51 of the Act provides that the Minister shall, not later than four months after the end of each financial year, cause to be laid before Parliament a report on the Training Fund showing the number of awards made and in force, the amount of each award and the state of the Training Fund.

[195] Section 4 of the Public Service Standing Orders of 2014<sup>44</sup>, provides that the Head of Department or Permanent Secretary shall ensure that enough copies of these Orders are readily available for consultation by all public officers within the Department and to meet the needs of the Department.

[196] Section 6 of these Orders provides that a public officer shall acquaint himself or herself with all Government Notices and Orders whether published in the Official Gazette or conveyed by circular or other means of communication. Similarly, Permanent Secretaries as well as Heads of Department shall be responsible for the circulation of the notices and Orders to the public officers under their direction and control.

[197] Section 48 of the Standing Orders provides for study leave, stipulating that study leave may be granted to a public officer who (a) has been appointed to the service for a period of five years; (b) is nominated by the Government to attend a course of study; (c) attends a course of study at his or her own request, with the approval of the Government; or (d) is personally granted a bursary or other award to follow a Government approved course of study. It also provides that where a public officer is nominated by the Government to attend a course of study the following conditions shall apply: (a) a Government approved course of study is a course for which Government has specifically chosen a public officer, but not a course of training which a public officer selects of his or her own volition even if the course was advertised by Government and the public officer approved; (b) a Government approved course should be of not more than two years duration (Certificate, Diploma, Attachment) and only in exceptional cases should they provide for training at degree level; (c) a public officer should not forfeit part of his or her vacation leave towards study leave if he or she is on a Government approved course as he or she is regarded as being on duty; (d) a public officer on study leave should not earn vacation for any period in excess of one year's leave entitlement; (e) a public officer may be permitted at the conclusion of a course of study overseas to spend his or her earned leave abroad; (f) a public officer who is selected by the Government for a Government approved course of study and considered to be on duty shall receive full pay. Additionally, a public officer who receives a bursary or other award to attend a course of study or is otherwise accepted for admission to a course but is not nominated by the Government to attend the course, shall apply for approval of his or her attendance, at the course. If approval for attendance at a course is given, the following conditions shall apply: (a) a public officer who has been confirmed in a pensionable office shall be granted study leave without pay for the full period of the course; (b) a public officer who has not been confirmed in his or her appointment shall resign his or her appointment if he or she wishes to attend the course, provided that in either case, a public officer may be granted the full amount of leave for which he or she is eligible.

[198] Section 50 of the Standing Orders provides for assistance when granted leave to attend course of training or study. In exceptional cases, a public officer who is granted study leave on half pay or no pay to attend a course of training or study abroad may be granted financial assistance in the form of a

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<sup>44</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_publicservstanding\\_annex17.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_publicservstanding_annex17.pdf)

loan in addition to any leave salary payable, at a rate determined in the light of the prevailing circumstances.

[199] Finally, section 62 of the Standing Orders provides for subsistence allowance when on duty outside Saint Kitts and Nevis. It stipulates that a public officer who is required to travel on duty outside Saint Christopher and Nevis to attend conferences, meetings, official functions or on training shall receive subsistence allowance at the prescribed rates.

[200] As regards the way in which the personnel of the Human Resource Management Department are informed of their responsibilities and duties in order to ensure the proper understanding of their functions, in its Response to the Questionnaire the country under review<sup>45</sup> indicated the following:

[201] - *“Government personnel are informed of their responsibilities and functions by way of a job description<sup>46</sup> 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 file. 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”.*

[202] As regards the occasions on which personnel are informed of their responsibilities and duties, in its Response to the Questionnaire the country under review<sup>47</sup> indicated the following:

[203] - *“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”.*

[204] Regarding the existence of induction, training, and instruction programs and courses for personnel on how to properly discharge their responsibilities and duties and, in particular, to raise their awareness about the risks of corruption inherent therein, in its Response to the Questionnaire the country under review<sup>48</sup> indicated the following:

[205] - *“The Human Resource Management 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*

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<sup>45</sup> See Response of Saint Kitts and Nevis to the Questionnaire for the Fifth Round of Review, pg. 32, [http://www.oas.org/juridico/PDFs/mesicic5\\_bhs\\_resp2.pdf](http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf)

<sup>46</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_samplejobdescription\\_annex26.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_samplejobdescription_annex26.pdf), [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_samplejobdescwater\\_annex28.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_samplejobdescwater_annex28.pdf)

<sup>47</sup> See Response of Saint Kitts and Nevis to the Questionnaire for the Fifth Round of Review, pg. 32, [http://www.oas.org/juridico/PDFs/mesicic5\\_bhs\\_resp2.pdf](http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf)

<sup>48</sup> Ibid, pg. 33.



*from May 14 – June 25, 2018<sup>49</sup>. Government personnel receive specific instructions in relation to their responsibilities from their respective Ministries and/or departments. Government personnel may also receive training through seminars, courses and scholarships offered by external international agencies”.*

[206] Regarding the use of modern communications technologies for informing personnel about their responsibilities and duties and for guiding them in the correct performance thereof, in its Response to the Questionnaire the country under review<sup>50</sup> indicated the following:

[207] - *“The Human Resource Department encourages the use of modern technologies. Some presentations are carried out by way of power point presentations”.*

[208] As to whether there are agencies available to personnel for obtaining information or resolving issues about the proper performance of their responsibilities and duties, in its Response to the Questionnaire the country under review<sup>51</sup> indicated the following:

[209] - *“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”.*

[210] Regarding 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 their responsibilities or duties and for ensuring that this is done completely, and measures or actions that those bodies can take to ensure compliance with the provisions and/or measures governing this matter, in its Response to the Questionnaire the country under review<sup>52</sup> indicated the following:

[211] - *“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. Specialized training related to government personnel’s responsibilities and duties are also*

<sup>49</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_pcmtrainingprog\\_annex55.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_pcmtrainingprog_annex55.pdf)

<sup>50</sup> See Response of Saint Kitts and Nevis to the Questionnaire for the Fifth Round of Review, pg. 33, [http://www.oas.org/juridico/PDFs/mesicic5\\_bhs\\_resp2.pdf](http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf)

<sup>51</sup> Ibid. pg. 33.

<sup>52</sup> Ibid. pgs. 33-34

*provided by their respective Ministries and by external international agencies via the Ministry of Foreign Affairs or the Human Resource Department”.*

[212] Regarding the way in which personnel are informed about the ethical rules governing their activities, and whether that is done orally or in writing and whether records are kept of those instructions, in its Response to the Questionnaire the country under review<sup>53</sup> indicated the following:

[213] - *“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”.*

[214] Regarding the occasions when personnel are informed about the ethical rules governing their activities, and whether that is done at the start of employment or at another time, when a change in their duties implies a different set of applicable ethics rules, or only when those rules are modified, in its Response to the Questionnaire the country under review<sup>54</sup> indicated the following:

[215] - *“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”.*

[216] As regards the existence of induction, training, or instruction programs and courses for personnel on the ethical rules governing their activities and, in particular, on the consequences of noncompliance for the public service and for those in breach thereof, in its Response to the Questionnaire the country under review<sup>55</sup> indicated the following:

[217] - *“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”.*

[218] As regards the use of modern communications technologies for informing personnel of the ethical rules governing their activities and for providing them with guidance about their scope and interpretation, in its Response to the Questionnaire the country under review<sup>56</sup> indicated the following:

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<sup>53</sup> Ibid. Pg. 34

<sup>54</sup> See Response of Saint Kitts and Nevis to the Questionnaire for the Fifth Round of Review, pg. 35, [http://www.oas.org/juridico/PDFs/mesicic5\\_bhs\\_resp2.pdf](http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf)

<sup>55</sup> Ibid. Pg. 35

<sup>56</sup> See Response of Saint Kitts and Nevis to the Questionnaire for the Fifth Round of Review, pg. 35, [http://www.oas.org/juridico/PDFs/mesicic5\\_bhs\\_resp2.pdf](http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf)

[219] - *“Power point presentations are used to deliver presentations”*.

[220] As regards the existence of agencies to which personnel can resort for obtaining information or resolving issues about the scope or interpretation of the ethical rules governing their activities, in its Response to the Questionnaire the country under review<sup>57</sup> indicated the following:

[221] - *“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”*.

[222] Finally, regarding the existence of a governing organ, authority, or agency responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their responsibilities and for ensuring that this is done completely, and measures or actions that those bodies can take to ensure compliance with the provisions and/or measures governing this matter, the country under review<sup>58</sup> reported that:

[223] - *“Public Service Commission, Human Resource Department, Training Committee, Permanent Secretaries and Heads of Departments”*.

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

[224] With respect to the statutory and other legal provisions reviewed by the Committee on the measures intended to provide instructions to government personnel under the purview of the Human Resource Management Department that ensure proper understanding of their responsibilities and the ethical rules governing their activities, they may be said to be pertinent for promoting the purposes of the Convention.

[225] Nevertheless, the Committee consider it appropriate to set forth some observations with respect to these provisions and/or other measures:

[226] The Committee notes that Saint Kitts and Nevis does not have a legal instrument stipulating training for the personnel of the Department of Human Resource Management to ensure they correctly understand their responsibilities and the ethical rules that govern their activities should be obligatory. Accordingly, the Committee will formulate recommendations in this regard for the country under review. (see Recommendations 1.4.1 and 1.4.2 in Section 1.4 of Chapter III of this Report)

[227] The Committee notes that although Saint Kitts and Nevis has the Public Service Act of 2011 and the Public Service Standing Orders of 2014, which contain provisions that refer to training, there are no rules and/or measures for giving instructions to the personnel of the Department of Human Resource Management to ensure that they correctly understand their responsibilities; the Committee will therefore formulate a recommendation in this regard for the country under review. (see Recommendation 1.4.3 in Section 1.4 of Chapter III of this Report)

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<sup>57</sup> Ibid. Pgs. 35-36

<sup>58</sup> Ibid. pg. 36

[228] In addition, the Committee notes that Saint Kitts and Nevis has no provisions and/or measures for instructing the personnel of the Department of Human Resource Management to ensure they properly understand the ethical rules governing their activities; accordingly, the Committee will formulate a recommendation in this regard for the country under review. (see Recommendation 1.4.4 in Section 1.4 of Chapter III of this Report)

[229] The Committee notes that the training for the personnel of the Department of Human Resource Management is not formalized to ensure their obligatory participation in training and induction programs for newly hired public servants. The Committee believes it would be useful for the country under review to consider including the courses offered and a calendar to ensure that they are indeed taught, either on-site or on-line, to ensure that all employees understand their obligations and the duties they are expected to perform, including evaluations at the conclusion of the training. The Committee will formulate a recommendation in this regard for the country under review. (see Recommendation 1.4.5 in Section 1.4 of Chapter III of this Report)

[230] In addition, the Committee notes that the country under review does not have a formal training program to offer instructions on the ethical rules governing the activities of the personnel of the Department of Human Resource Management. Accordingly, it believes it would be useful for the country under review to consider establishing a formal training program that provides instructions on the ethical rules governing the activities of the personnel of the Department of Human Resource Management, including the courses offered and a calendar to ensure that they are indeed taught when they commence employment, when their duties change, when a different set of ethical rules applies, or when those rules are amended, and including evaluations at the conclusion of the training. The Committee will formulate a recommendation in this regard for the country under review. (see Recommendation 1.4.6 in Section 1.4 of Chapter III of this Report)

[231] The Committee further notes that the country under review does not have induction, training, and instruction programs or courses for personnel of the Department of Human Resource Management on how to properly discharge their responsibilities and duties and, in particular, to raise their awareness about the risks of corruption inherent therein. It therefore believes it would be useful for the country under review to consider including, in its training programs, modules on awareness of the risks of corruption inherent in the performance of their duties and on the consequences and punishments applicable to those involved in acts of corruption. The Committee will formulate a recommendation in this regard for the country under review. (see Recommendation 1.4.7 in Section 1.4 of Chapter III of this Report)

[232] In addition, the Committee notes that the legislation and documents reviewed does not clearly identify a responsible body/persons within the Human Resource Management Department available to personnel for obtaining information or resolving issues related to the correct performance of their responsibilities and duties. Consequently, it believes it is necessary for the country under review to consider identifying a responsible body/persons within the Department of Human Resource Management<sup>59</sup> available to its personnel for obtaining information or resolving issues related to the proper performance of their responsibilities and duties. The Committee will formulate a

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<sup>59</sup> In its comments to the draft preliminary report, the country under review noted the following: “The CPO who is the head of the Human Resource Management Department is the normally the government official to whom such issues are brought and it is the CPO who is charged with resolving the issue or seeking the appropriate advice etc. that is needed to resolve the issue”.

recommendation in this regard for the country under review. (see recommendation 1.4.8 in Section 1.4 of Chapter III of this Report)

[233] Similarly, the Committee notes that the country under review does not have bodies within the Human Resource Management Department available to personnel for obtaining information or resolving issues related to the ethical rules governing their activities. Consequently, it believes it would be useful for the country under review to consider establishing responsible bodies within the Human Resource Management Department available to its personnel for obtaining information or resolving issues related to the ethical rules governing their activities. The Committee will formulate a recommendation in this regard for the country under review. (see recommendation 1.4.9 in Section 1.4 of Chapter III of this Report)

[234] In addition, the Committee notes that the country under review does not have a governing body within the Department of Human Resource Management responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of their responsibilities or duties and for ensuring that this is done completely, and measures or actions that those bodies can take to ensure compliance with the provisions and/or measures governing this matter. It therefore believes it would be useful for the country under review to consider establishing a governing organ within the Department of Human Resource Management responsible for defining, steering, giving guidance on, or supporting the manner in which the personnel of the Department of Human Resource Management are to be informed of their responsibilities or duties and for ensuring that this is done completely, and measures or actions that those bodies can take to ensure compliance with the provisions and/or measures governing this matter. The Committee will formulate a recommendation in this regard for the country under review. (see recommendation 1.4.10 in Section 1.4 of Chapter III of this Report)

[235] Furthermore, the Committee notes that the country under review does not have a governing body within the Department of Human Resource Management 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 ensuring that this is done completely, and measures or actions that those bodies can take to ensure compliance with the provisions and/or measures governing this matter. It therefore believes it would be useful for the country under review to consider establishing a governing organ within the Department of Human Resource Management responsible for defining, steering, giving guidance on, or supporting the manner in which the personnel of the Department of Human Resource Management are informed of the ethical rules governing their activities and for ensuring that this is done completely, and measures or actions that those bodies can take to ensure compliance with the provisions and/or measures governing this matter. The Committee will formulate a recommendation in this regard for the country under review. (see recommendation 1.4.11 in Section 1.4 of Chapter III of this Report)

[236] Finally, both in its Response to the Questionnaire<sup>60</sup> and during the on-site visit, the country under review highlighted the following challenge:

[237] - *“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”*.

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<sup>60</sup> See Response of Saint Kitts and Nevis to the Questionnaire for the Fifth Round of Review, pg. 37, [http://www.oas.org/juridico/PDFs/mesicic5\\_bhs\\_resp2.pdf](http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf)

[238] Bearing this in mind, along with the remarks made by the representatives of the Country under review both in the Response to the Questionnaire and during the on-site visit regarding the challenges faced by the Department of Human Resource Management regarding the lack of dedicated venues for conducting training activities, the Committee believes it would be useful for the country under review to consider strengthening the Department of Human Resource Management, ensuring that the budgetary, technological, and human resources needed are available, taking into account the availability of resources, so that it can provide training programs to ensure that its personnel properly understand their duties and the ethical rules governing their activities, using either on-site or on-line means. Accordingly, the Committee will formulate a recommendation in this regard for the country under review. (see recommendation 1.4.12 in section 1.4 of Chapter III of this Report)

### 1.3. Results

[239] In its Response to the Questionnaire,<sup>61</sup> the country under review presented the following information on the results of the training given to the personnel of the Human Resource Management Department:

[240] - *“The Human Resource Department usually conducts two training sessions per month. The training sessions are usually attended by approximately 25-30 person”.*

[241] In addition, during the on-site visit, the representatives of the country under review provided the following Tentative Training Plan for 2017<sup>62</sup> and 2018<sup>63</sup>, showing the courses scheduled by the Department of Human Resource Management in general, and not only those planned for its personnel. The frequency of the courses can also be seen, with courses scheduled to take place twice a month:

[242] Similarly, during the on-site visit, the representatives of the Human Resource Management Department submitted the Human Resource Management Department Training Reports for 2016<sup>64</sup> and 2017,<sup>65</sup> which include the course topics, the speakers, the purpose of the training, and the number of participants, as well as indicating whether it was also available online. The Committee notes that the Department organized training courses during 2016 and 2017, but not necessarily for its own personnel. Bearing in mind the importance of establishing a formal training program for the personnel of the Department of Human Resource Management, including a training plan and a calendar, the Committee will formulate a recommendation in this regard for the country under review. (see Recommendation 1.4.13 in Section 1.4 of Chapter II of this Report)

[243] During the on-site visit, the representatives of the Department of Human Resource Management presented the following information: Overseas Courses Attended for the month of November<sup>66</sup> 2017, which shows the agencies (ministries) that attended the courses, the name of the course, and where it was taught.

[244] Likewise, in its Response to the Questionnaire,<sup>67</sup> the country under review provided information on the results of the training given to the personnel of the Department of Human Resource

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<sup>61</sup> Ibid. pg. 36

<sup>62</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_hrmdtrainingplan2017\\_annex32.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_hrmdtrainingplan2017_annex32.pdf)

<sup>63</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_hrmdtrainingplan2018\\_annex33.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_hrmdtrainingplan2018_annex33.pdf)

<sup>64</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_hrmdtrainingreport2016\\_annex34.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_hrmdtrainingreport2016_annex34.pdf)

<sup>65</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_hrmdsessions2017\\_annex35.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_hrmdsessions2017_annex35.pdf)

<sup>66</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_overseascourses\\_annex31.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_overseascourses_annex31.pdf)

<sup>67</sup> See Response of Saint Kitts and Nevis to the Questionnaire for the Fifth Round of Review, pg. 37, [http://www.oas.org/juridico/PDFs/mesicic5\\_bhs\\_resp2.pdf](http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf)

Management to ensure they properly understand the ethical provisions governing their activities. From this information, the Committee notes the following:

[245] - *“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”.*

[246] In addition, during the on-site visit, the representatives of the Department of Human Resource Management furnished a presentation<sup>68</sup> on workplace ethics, intended to instruct personnel about the values expected of public servants in their professional endeavors.

[247] Finally, the country under review did not provide, either in the Response to the Questionnaire or during the on-site visit, any information about the specific results of instructions given to the personnel of the Department of Human Resource Management to ensure the proper understanding of their responsibilities and the ethical rules governing their activities. Bearing this in mind, the Committee will formulate recommendations in this regard for the country under review. (see Recommendations 1.4.15 and 1.4.16 in Section 1.4 of Chapter III of this Report)

#### 1.4. Recommendations

[248] **Saint Kitts and Nevis has considered and adopted some measures intended to establish, maintain and strengthen the instructions provided to government personnel by the bodies selected that ensure proper understanding of their responsibilities and the ethical rules governing their activities, as described in Chapter III, Section 1 of this Report.**

[249] Based on the review conducted regarding the implementation by Saint Kitts and Nevis of Article III, paragraph 3 of the Convention, the Committee suggests that the country under review consider the following recommendations:

- 1.4.1 Consider adopting, through the relevant legislative or administrative procedures, a legal instrument that explicitly establish obligatory training for the personnel of the Department of Human Resource Management to ensure that they properly understand their duties. (see paragraph 224 in section 1.2 of Chapter III of this Report)
- 1.4.2 Consider adopting, through the relevant legislative or administrative procedures, a legal instrument explicitly establishing obligatory training for the personnel of the Department of Human Resource Management to ensure that they correctly understand the ethical rules governing their activities. (see paragraph 224 in section 1.2 of Chapter III of this Report)
- 1.4.3 Take the steps necessary to ensure that the personnel of the Department of Human Resource Management properly understand their duties and, in addition, to provide copies thereof or to indicate links to the web pages where they can be consulted. (see paragraph 225 in section 1.2 of Chapter III of this Report)
- 1.4.4 Take the steps necessary to ensure that the personnel of the Department of Human Resource Management properly understand the ethical rules governing their activities and, in addition,

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<sup>68</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_workethics\\_annex26.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_workethics_annex26.pdf)

to provide copies thereof or to indicate links to the web pages where they can be consulted. (see paragraph 226 in section 1.2 of Chapter III of this Report)

- 1.4.5 Establish a formal training program for the personnel of the Department of Human Resource Management, in order to ensure their obligatory participation in the training and induction programs for newly hired public servants, including the courses offered and a calendar, either on-site or on-line, so that all employees understand their duties and the functions they are expected to perform, including evaluations for the personnel of the Department of Human Resource Management at the conclusion of the formal training. (see paragraph 227 in section 1.2 of Chapter III of this Report)
- 1.4.6 Establish a formal training program to provide the personnel of the Department of Human Resource Management with instructions on the ethical rules governing their activities, including the courses offered and a calendar to ensure the courses are taught at the start of their employment, when their duties change, when a different set of ethical rules apply, or when changes are made to those rules, including evaluations for the personnel of the Department of Human Resource Management at the conclusion of the formal training. (see paragraph 228 in section 1.2 of Chapter III of this Report)
- 1.4.7 Include, in the training programs given to personnel under the authority of the Department of Human Resource Management, modules on awareness of the risks of corruption inherent in the performance of their duties and on the consequences and punishments applicable to those involved in acts of corruption. (see paragraph 229 in section 1.2 of Chapter III of this Report)
- 1.4.8 Establish bodies within the Department of Human Resource Management to which personnel can resort to obtain information or resolve issues regarding the correct performance of their duties and functions. (see paragraph 230 in section 1.2 of Chapter III of this Report)
- 1.4.9 Establish bodies within the Department of Human Resource Management to which personnel can resort to obtain information or resolve issues regarding the ethical rules governing their activities. (see paragraph 231 in section 1.2 of Chapter III of this Report)
- 1.4.10 Establish a governing body responsible for defining, steering, giving guidance on, or supporting the manner in which the personnel of the Department of Human Resource Management are to be informed of their responsibilities or duties and for ensuring that this is done in full, and measures or actions that the body can take to ensure compliance with the provisions and/or measures governing this matter. (see paragraph 232 in section 1.2 of Chapter III of this Report)
- 1.4.11 Establish a governing body responsible for defining, steering, giving guidance on, or supporting the manner in which the personnel of the Department of Human Resource Management are to be informed of the ethical rules governing their activities and for ensuring that this is done in full, and measures or actions that the body can take to ensure compliance with the provisions and/or measures governing this matter. (see paragraph 233 in section 1.2 of Chapter III of this Report)
- 1.4.12 Provide the Department of Human Resource Management with the budgetary, technological, and human resources needed, taking into account the availability of resources, so it can provide training programs to ensure that its personnel properly understand their duties and the ethical



rules governing their activities, using either on-site or on-line means. (see paragraph 236 in section 1.2 of Chapter III of this Report)

- 1.4.13 Establish a formal training program for the personnel of the Department of Human Resource Management, including a training plan and a calendar, detailing the activities to be carried out, the exact number of beneficiaries, results of the course, and feedback on it. (see paragraph 240 in section 1.2 of Chapter III of this Report)
- 1.4.14 Prepare detailed annual statistical data on the results obtained in connection with the instructions given to the personnel of the Department of Human Resource Management to ensure they correctly understand their duties, covering such aspects as the number of induction, training, or instruction programs and courses for that purpose; the frequency with which they are taught and the number of public servants covered; the number of guides prepared to advise public servants on the correct performance of their responsibilities and to alert them on the risks of corruption inherent in the performance of their duties; the number of inquiries made by public servants regarding the proper performance of their responsibilities and the use of modern communications technologies for that purpose; the number of activities carried out to verify that they have indeed understood their responsibilities; and the number of measures or actions taken by the authorities or responsible agencies to ensure that the instructions for this purpose are communicated in full and to ensure the provisions and/or measures adopted for this matter are complied with, in order to identify challenges and, if necessary, recommend corrective measures. (see paragraph 245 in section 1.2 of Chapter III of this Report)
- 1.4.15 Prepare detailed annual statistical data on the results obtained in connection with the instructions given to the personnel of the Department of Human Resource Management to ensure they correctly understand the ethical rules governing their activities, covering such aspects as the number of induction, training, or instruction programs and courses for that purpose; the frequency with which they are taught and the number of public servants covered; the number of guides prepared to advise public servants on the applicable ethical rules and to alert them on the risks of corruption inherent in the performance of their duties; the number of ethical rule inquiries made by public servants resolved, and the use of modern communications technologies for that purpose; the number of activities carried out to verify that they have indeed understood the ethical rules; and the number of measures or actions taken by the authorities or responsible agencies to ensure that the instructions for this purpose are communicated in full and to ensure the provisions and/or measures adopted for this matter are complied with, in order to identify challenges and, if necessary, recommend corrective measures. (see paragraph 245 in section 1.2 of Chapter III of this Report)

## **2. STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE (ARTICLE 11, PARAGRAPH 12 OF THE CONVENTION)**

### **2.1. STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE**

[250] In its Response to the Questionnaire,<sup>69</sup> the country under review indicates that no studies have been conducted into preventive measures that take into account the relationship between equitable remuneration and probity in public service.

## **2.2. ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT CRITERIA FOR DETERMINING THE COMPENSATION OF PUBLIC SERVANTS**

### **2.2.1. Existence of a legal framework and/or other measures.**

[251] Saint Kitts and Nevis has a set of provisions intended to establish objective and transparent criteria for determining the compensation of public servants, such as the following:

[252] - The Constitution of Saint Kitts and Nevis, section 74 of which, on the remuneration of certain officers, provides that there shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed by or under a law enacted by Parliament. It also indicates that the salaries and allowances shall be a charge on the Consolidated Fund. In the same way the salary in respect of the holder of an office and his or her other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his or her service in that office) shall not be altered to his or her disadvantage after his or her appointment. When a person's salary or other terms of service depend upon his or her option, the salary or terms for which he or she opts shall be deemed to be more advantageous to him or her than any others for which he or she might have opted. It also indicates that this section applies to the offices of the Governor-General, member of the Public Service Commission, member of the Police Service Commission, member of the Public Service Board of Appeal, the Director of Public Prosecutions and the Director of Audit.

[253] The Salaries Review Commission Act,<sup>70</sup> Part II Section 3 indicates that there is established a Commission to be known as the Salaries Review Commission, which Commission shall consist of a Chairperson and four other members. The members of the Commission shall be appointed by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition, and in making the appointments consideration shall be given to the members' experience in government (whether legislative or executive), the private sector, the trade union movement and the law.

[254] Section 4 of the Act states that the Commission shall every three years, with the approval of the Governor-General, review the salaries and other conditions of service of the Governor-General, members of Parliament, including the Speaker of the House, the Deputy Speaker of the House, Prime Minister, Attorney General, Ministers of Government, and Parliamentary Secretaries also referred to as Minister of State, the leader of the Opposition, and the holders of such offices as may be prescribed and make recommendations to the Government accordingly. The Report of the Commission concerning any review of salaries or other conditions of service, or both, shall be submitted to the Governor-General who shall forward a copy of the Report to the Prime Minister for presentation to the Cabinet and for laying, as soon as possible after presentation to the Cabinet, on the table of the National Assembly.

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<sup>69</sup> See Response of Saint Kitts and Nevis to the Questionnaire for the Fifth Round of Review, pg. 37,

[http://www.oas.org/juridico/PDFs/mesicic5\\_bhs\\_resp2.pdf](http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf)

<sup>70</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_salariesreviewact\\_annex58.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_salariesreviewact_annex58.pdf)

[255] – The Public Service Standing Orders of 2014, Section 8 of which establishes that the scales of salary attached to public officers shall be those provided for in the Government’s Annual Estimates of Expenditure, and as approved by Parliament.<sup>71</sup>

[256] Section 9 of the Standing Orders refers to the incremental salary scale, and also establishes that subject to the provisions of these Standing Orders, where the salary attached to any post is in an incremental scale, it shall be normal for a public officer appointed on a permanent basis to be paid initially the minimum salary of the scale, and in accordance with the provisions of the Recruitment and Employment Code, annual increments at the rates provided until the maximum of the scale is reached.

[257] Section 10 of the Standing Orders states that salaries shall normally be paid monthly in respect of the calendar month and that a public officer shall receive the salary of his or her post from the date upon which he or she assumes duties of the post. A public officer shall not be paid a salary in respect of any period during which the public officer has been absent from duty without the approval of a Permanent Secretary or Head of Department unless the Governor-General, acting in accordance with the recommendation of the Commission, directs otherwise. It also provides that a public officer who is proceeding on leave outside of Saint Kitts and Nevis may receive, prior to embarkation, his or her salary for the whole of the month in which he or she leaves Saint Kitts and Nevis

[258] In addition, following the on-site visit, the country under review furnished the document “*Positions and Relevant Scales*,”<sup>72</sup> which contains the salary scales for public officials in Saint Kitts and Nevis. The Committee also notes that these salary scales are available at the Ministry of Finance online portal<sup>73</sup> and, consequently, it believes the country under review should consider the possibility of publishing this information at the website of the Human Resource and Administration Department, in order to further promote transparency and accountability within the public service. Accordingly, it will formulate a recommendation in this regard. (see recommendation 2.2.3.1 in section 2.1 of Chapter III of this Report)

### **2.2.2. Adequacy of the legal framework and/or other measures**

[259] With respect to the provisions referring to the establishment of objective and transparent criteria for determining the compensation of public servants, the Committee notes there is a comprehensive system for establishing objective and transparent criteria for determining the remuneration of public servants.

### **2.2.3. Conclusions and Recommendations**

[260] Based on the review conducted in the above sections regarding the implementation by Saint Kitts and Nevis of Article III (12) of the Convention, the Committee offers the following conclusion and recommendation:

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<sup>71</sup> St. Kitts and Nevis Estimates for the Year 2018: <http://www.mof.gov.kn/wp-content/uploads/2017/12/Estimates-2018-Volume-II-Final-Website.pdf>

<sup>72</sup> Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_skn\\_salarymatrix\\_annex59.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_skn_salarymatrix_annex59.pdf)

<sup>73</sup> Available at: <http://www.mof.govt.kn/publications-2>

- 2.2.3.1 Create a Human Resource and Administration Department website and publish the salary scales (Annual Estimates) used for the remuneration of public servants. (see paragraph 258 in section 2.2 of Chapter III of this Report)

#### **IV. BEST PRACTICES**

[261] The country under review did not present best practices related to the Convention provisions selected for the Second and Fifth Rounds of Review.

## ANNEX

**AGENDA FOR THE ON-SITE VISIT TO SAINT KITTS AND NEVIS**

<b><u>Monday October 15, 2018</u></b>	
15:00 hrs. – 15:30 hrs. <i>Marriot Hotel</i> 858 Frigate Bay Road Frigate Bay, St. Kitts & Nevis	<b>Coordination meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat</b>
15:30 hrs. – 16:00 hrs. <i>Marriot Hotel</i>	<b>Coordination meeting between the representatives of the member states of the subgroup and the Technical Secretariat</b>
<b><u>Tuesday October 16, 2018</u></b>	
9:00 hrs. – 12:30 hrs. <i>Ocean Terrace Inn</i> P.O. Box 65 Wigley Avenue Fortlands, Basseterre, St. Kitts & Nevis	<b>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers</b>
9:00 hrs. – 10:00 hrs.	<b><u>Session 1</u></b> Topics of the Second Round of Review: <ul style="list-style-type: none"><li>• <b>Systems of government hiring</b></li></ul>

	<p><u>Participants:</u></p> <p><i>Saint Kitts and Nevis Chamber of Commerce</i></p> <p>Carol Boddie, Treasurer</p> <p><i>United Workers Union</i></p> <p>Alwali Mohammed -Chairman</p> <p><i>-Saint Kitts and Nevis Bar Association</i></p> <p>Dahlia Joseph-Rowe – President of the St. Kitts Nevis Bar Association</p> <p><i>-The St. Kitts Nevis Trades and Labour Union</i></p> <p>Joseph O'Flaherty - Chairman</p> <p><i>-National Youth Parliament</i></p> <p>Fitzroy Edinborough – President – SKN National Youth Parliament</p> <p>Merv-Ann Thompson, Member - SKN National Youth Parliament</p>
10:15 hrs. – 11:30 hrs.	<p><b><u>Session 2</u></b></p> <p>Topics of the Second Round of Review:</p> <ul style="list-style-type: none"> <li>• <b>Systems of government procurement of goods and services</b></li> </ul> <p><u>Participants:</u></p> <p><i>Saint Kitts and Nevis Chamber of Commerce</i></p> <p>Carol Boddie, Treasurer</p> <p><i>The St. Kitts Nevis Trades and Labour Union</i></p> <p>Joseph O'Flaherty - Chairman</p> <p><i>Saint Kitts and Nevis Bar Association</i></p> <p>Dahlia Joseph -Rowe – President of the St. Kitts Nevis Bar Association</p> <p><i>National Youth Parliament</i></p> <p>Fitzroy Edinborough – President – National Youth Parliament</p> <p>Merv-Ann Thompson, Member - SKN National Youth Parliament</p>
11:30 hrs. – 12:30 hrs.	<p><b><u>Session 3</u></b></p> <p>Topics of the Second Round of Review:</p> <ul style="list-style-type: none"> <li>• <b>Protection for whistleblowers of acts of corruption</b></li> <li>• <b>Acts of Corruption</b></li> </ul> <p><u>Participant:</u></p> <p><i>Saint Kitts and Nevis Bar Association</i></p>

	Dahlia Joseph -Rowe – President of the St. Kitts Nevis Bar Association
12:30 hrs. – 14:00 hrs.	<b>Lunch</b>
14:00 hrs. – 17:30 hrs. <i>Ocean Terrace Inn</i>	<b>Meetings with public authorities on the provisions selected for analysis in the Second Round of Review</b>
14:00 hrs. – 17:30 hrs.	<b>Panel 1: Systems of Government Hiring</b>
	<ul style="list-style-type: none"> <li>- Merit in the Recruitment Process</li> <li>- Temporary appointments</li> <li>- Job descriptions</li> <li>- Mechanisms for Advertisement of Hiring Opportunities</li> <li>- Publication of vacancies in the Judiciary</li> <li>- Publication of vacancies in both houses of Parliament</li> <li>- Mechanisms for administrative and judicial appeals</li> <li>- Results</li> <li>- Challenges</li> </ul>
	<p><u>Participants<sup>74</sup>:</u></p> <p><i>Public Service Commission</i></p> <p>Dr. Patrick Welcome - Chairman</p> <p><i>Human Resource Management Department</i></p> <p>Torfrida Rochester - Chief Personnel Officer</p> <p>Sheridane Warner - Deputy Chief Personnel Officer</p> <p><i>Attorney General's Chambers</i></p> <p>Rivi Lake, Crown Counsel</p> <p>Violet Williams, Crown Counsel</p> <p>Simone Bullen Thompson, Solicitor General</p>
17:30 hrs. – 18:00 hrs.	<b>Informal meeting</b> between the representatives of the member states of the subgroup and the Technical Secretariat.

<sup>74</sup> It is to be noted that, in its Response to the Questionnaire, the country under review included the Police Service Commission, given that the Second Round reviewed the principal systems for hiring public servants, without including the armed forces. This will be brought to the attention of the country under review during the on-site visit, so as to ensure that the Police Service Commission is not included, pursuant to the principle of equality upheld in the review methodology adopted for the Second Round of Review.

<b>Wednesday, October 17, 2018</b>	
9:00 hrs. – 12:30 hrs. <i>Ocean Terrace Inn</i>	<b>Panel 2: Systems of Procurement of Goods and Services</b>
	<ul style="list-style-type: none"> <li>- Procurement methods</li> <li>- Authorities and oversight mechanisms</li> <li>- Electronic procurement and communication systems</li> <li>- Selection criteria for contractors</li> <li>- Publication of Tender Opportunities and Pre-Bidding Terms and Conditions</li> <li>- Preparation of a Procurement Plan</li> <li>- Citizen Oversight mechanisms</li> <li>- Challenges</li> <li>- Results</li> </ul>
	<p><u>Participants:</u></p> <p><i>Central Purchasing Unit, Ministry of Finance</i></p> <p>Calvin Edwards - Deputy Financial Secretary          Petrona Thomas - Supervisor, Central Purchasing Unit, Ministry of Finance          Mr. Howard Richardson - Adviser, Ministry of Finance with responsibility for Central Purchasing Unit          Ms. Mellicia Phillip, Accountant General, Ministry of Finance          Ms. Levi Bradshaw, Accountant General, Ministry of Finance</p> <p><i>Public Works Department</i></p> <p>Cromwell Williams - Director of Public Works          George Gilbert, Chief Engineer          Livingston Pemberton, Engineer</p> <p><i>Attorney General's Chambers</i></p> <p>Tashna Powell Williams - Senior Crown Counsel</p>
12:30 hrs. – 14:00 hrs.	<b>Lunch</b>
14:00 hrs. – 15:30 hrs. <i>Ocean Terrace Inn</i>	<b>Panel 3: Acts of Corruption</b>



	<ul style="list-style-type: none"> <li>- Legal Framework: <u>Organised Crime; Procurement and Contract Act; Integrity of Public Life Act; Proceeds of Crime Act and Accessories and Abettors Act.</u></li> <li>- Resources</li> <li>- Results</li> </ul>
	<p><u>Participants:</u></p> <p><i>Office of the Director of Public Prosecutions</i> Valston Graham, Director of Public Prosecutions</p> <p><i>Attorney General's Chambers</i> Karen Hughes, Parliamentary Counsel Allison Isaac, Parliamentary Counsel</p>
15:30 hrs. – 16:30 hrs.	<b>Panel 4: Systems for Protecting Public Servants and Private Citizens who in Good Faith Report Acts of Corruption</b>
	<ul style="list-style-type: none"> <li>- Mechanisms for Reporting Acts of Corruption; Anonymous Reporting</li> <li>- Mechanisms for reporting threats or reprisals</li> <li>- Whistleblower protection</li> <li>- Resources</li> <li>- Results</li> </ul>
	<p><u>Participants:</u></p> <p><i>Office of the Director of Public Prosecutions</i> Valston Graham, Director of Public Prosecutions</p> <p><i>Attorney General's Chambers</i> Karen Hughes, Parliamentary Counsel Allison Isaac, Parliamentary Counsel</p>
17:30 hrs. – 18:00 hrs.	<b>Informal meeting</b> between the representatives of the member states of the subgroup and the Technical Secretariat.
<b><u>Thursday, October 18, 2018</u></b>	
9:00hrs. – 12:30 hrs. <i>Ocean Terrace Inn</i>	<b>Meetings with public authorities on the provisions selected for analysis in the Fifth Round of Review</b>

09:00 hrs. – 11:00 hrs.	<b>Panel 5: Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities</b>
	<ul style="list-style-type: none"> <li>- Legal Framework</li> <li>- The manner in which personnel are informed of their <u>responsibilities and functions</u></li> <li>- Introductory, training or instructional programs and courses</li> <li>- Use of modern communication technologies</li> <li>- Body responsible for defining, steering advising, or supporting the manner in which personnel are to be informed of their <u>responsibilities and functions</u></li> <li>- Results</li> <li>- Challenges</li> <li>- The manner in which personnel are informed of their <u>ethical rules governing their activities</u></li> <li>- Introductory, training or instructional programs and courses</li> <li>- Use of modern communication technologies</li> <li>- Body responsible for defining, steering advising, or supporting the manner in which personnel are to be informed of their <u>ethical rules governing their activities</u> Results</li> <li>- Results</li> <li>- Challenges</li> </ul> <p><u>Participants:</u></p> <p><i>Human Resource Management Department</i>  Sheridane Warner - Deputy Chief Personnel Officer  Olleen Knight-Warner – HR Assistant  Simone Bullen Thompson, Solicitor General</p>
11:00 hrs. – 12:30 hrs.	<b>Panel 6: Equitable Compensation and Probity in the Public Service</b>
	<ul style="list-style-type: none"> <li>- Objective and transparent criteria for setting public servants’ grades and corresponding salary scales</li> <li>- Criteria currently used to determine pay for government workers under the modality of service contracts</li> <li>- Criteria currently used to determine payment for personnel under the jurisdiction of the Judicial and Legal Services Commission and the Parliament of Saint Kitts and Nevis.</li> <li>- Difficulties encountered and technical cooperation needs</li> <li>- Results</li> </ul>

	<p><u>Participants:</u></p> <p><i>Human Resource Management Department</i>  Sheridane Warner - Deputy Chief Personnel Officer  Olleen Knight-Warner – HR Assistant  <i>Ministry of Finance</i>  Calvin Edwards - Deputy Financial Secretary</p>
12:30 hrs. – 14:00 hrs.	<b>Lunch</b>
14:00 hrs. – 14:30 hrs.	<b>Informal meeting</b> between the representatives of the member states of the subgroup and the Technical Secretariat.
14:30 hrs. – 15:00 hrs.	<b>Final meeting</b> between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat.

**OFFICIALS WHO ACTED AS CONTACTS IN THE COUNTRY UNDER REVIEW IN  
COORDINATING THE ON-SITE VISIT, AS WELL AS REPRESENTATIVES OF THE  
MEMBER STATES OF THE SUBGROUP AND OF THE MESICIC TECHNICAL  
SECRETARIAT WHO TOOK PART IN THE VISIT**

**COUNTRY UNDER REVIEW:**

**SAINT KITTS AND NEVIS**

Simone Bullen Thompson

Solicitor General, Attorney-General's Office, Ministry of Justice, Legal Affairs & Communications

**MEMBER STATES OF THE REVIEW SUBGROUP:**

**THE BAHAMAS**

Franklyn Williams

Deputy Directors of Public Prosecutions, Office of the Attorney General and Lead Expert of the  
Committee of Experts of the MESICIC

**ECUADOR**

Santiago Santander

International Instruments Specialist for the Fight against Corruption  
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