

BELIZE

Progress Report

(Articles 31 and 32 of the Rules of Procedure and other Provisions of the Committee)

Since becoming a Party to the Inter-American Convention against Corruption (“the Convention”) in 2002 and joining the Mechanism for Follow-Up on the Implementation of the Convention (MESICIC) in 2003, Belize has been steadfast in its fight against corruption. It has repeatedly shown in no uncertain terms that it is committed to fight corruption domestically and to use its best efforts to assist its fellow countries to fight this plague, which has no regard for international boundaries.

In March 2008, the present Government of Belize was brought to power on a heavy campaign against corruption. Between June 2008 and December, 2010, the period covered by the present Report, the Government of Belize has undertaken a number of positive actions and measures to fight corruption in general, and to implement a number of Recommendations and Measures suggested by the Committee of Experts of the MESICIC during the first two Rounds of review. These include:

- Adoption/Amendment of *Legislation*:
 1. **Prevention of Corruption Act, 2007**, which, *inter alia*, makes provisions for strengthening measures to prevent and combat corruption and corrupt activities, provides for the offence of corruption and offences relating to corrupt activities, provides for investigative measures in respect of corruption and related corrupt activities, and provides measures for establishing probity, integrity and accountability in public life;
 2. **Belize Constitution (Sixth Amendment) Act, 2008**, which, *inter alia*, sought to enlarge the membership of the Senate to ensure that Senators nominated by the Opposition and non-governmental organizations together constitute the majority, sought to extend the powers and functions of the Senate to enable them to initiate and conduct public enquiries into mismanagement or corruption by persons in the central government of public statutory bodies, and provides for the expeditious submission of reports by the Auditor General to the National Assembly;
 3. **Freedom of Information (Amendment) Act, 2008**, which, *inter alia*, was passed to invalidate secrecy provisions in public contracts, to reduce the categories of exempt documents, to penalize unreasonable refusal or failure to provide access to public documents;
 4. **Finance and Audit (Reform) (Amendment) Act, 2010**. This amendment is presently a Bill. It seeks, *inter alia*, to enhance transparency in the tendering process for the Government procurement and sale contracts, and to restore the Financial Orders and Stores Orders to their original status of subsidiary legislation.
- Adoption and dissemination of a ***National Plan of Action for the implementation of the Recommendations of the MESICIC for Belize.***
- Providing the widest measure of ***legal assistance*** requested by other countries to assist them in their investigations and prosecution of acts of corruption.

SECTION I. PROGRESS IN THE IMPLEMENTATION OF THE RECOMMENDATIONS

A. FIRST ROUND OF REVIEW

RECOMMENDATION 1:

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

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

Recommendation 1.1:

Consider strengthening the implementation of the provisions on conflicts of interest, and ensure that the laws on this matter are applicable to all public officials and employees, so as to permit the practical and effective application of a public ethics system.

Measures suggested by the Committee:

(a) Establish a standard for addressing the conflicts that can occur between individual specific government matters in which those persons that perform public functions would be expected to act as part of their responsibilities and an official's or family member's financial interests or his outside activities or negotiations for future private employment arrangements. Such a standard could include recusal, request by the person that performs public functions for permission to continue to act, request by the official for a transfer of duties (if appropriate), or direction by an appropriate authority for divestiture/resignation when the conflict is pervasive.

(b) Establish suitable restrictions for persons who leave public service, such as prohibitions on participation as a representative of a private interest in ongoing specific matters in which they had participated in an official capacity, or for a reasonable time, restrictions on dealing with former government body in which they served.

Adopted Measures:

In seeking to follow the recommendation of the Committee of Experts, and in particular, Measures (a) and (b), Belize adopted the following measure:

- (1) adopted the ***Prevention of Corruption Act, 2007*** ("POCA 2007"), which came into force in February 2008. That piece of legislation repealed and replaced the Prevention of Corruption in Public Life Act and provides, *inter alia*, for strengthening measures to prevent and combat corruption and corrupt activities, for the offence of corruption and offences relating to corrupt activities, for investigative measures in respect of corruption and related corrupt activities, and for establishing probity, integrity and accountability in public life.

With respect to the measures suggested by the Committee, this Act establishes standards to address possible cases of conflict of interest that can occur between a public official's performance of his duties with his outside activities or future negotiations. It also creates the offence of corruption and provides that a person commits an act of corruption if, *inter alia*:

- (h) *he acquires, or becomes a partner, associate or shareholder in, or a director of a firm or company which has a contract with the Government or with the public body of which such person is a member or employee unless the person makes a disclosure of such partnership, association, shareholding or other interest to the Commission;*
- (i) *He illegally uses official influence in support of any scheme, or in furtherance of any contract or proposed contract or other matter in regard to which he has an interest;*¹

The Act contains a number of provisions that can be considered to address, *inter alia*, the issue of conflict of interest in the exercise of an officer's public functions. For example, s. 24 establishes offences in respect of corruption relating to contracts, which includes instances where any person accepts/agrees or offers to accept any advantage/benefit for himself or for the benefit of a third person in order to influence the procurement or execution of a contract with a public or private entity or any other organization. Additionally, s. 25 provides that every person who, subject to subsection (2)², acquires or holds a private interest in any contract, agreement or investment emanating from or connected with the public body in which he or she is employed or which is made on account of that conviction to a fine of not less than ten thousand dollars.

The POCA 2007 complements existing provisions on the required code of conduct of public officials, which is contained in the supreme law of Belize, the Belize Constitution Act³ and in the Public Service Regulations⁴, as well as in other pieces of legislation such as the Prevention of Corruption Act, Chapter 105 of the Laws of Belize, R.E. 2000 – 2003, and the Criminal Code⁵.

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

Recommendation 1.2:

Strengthen implementation of laws and regulatory systems on the proper conservation and use of public resources.

Adopted Measures:

Belize enacted the Finance and Audit (Reform) Act in 2005, which *inter alia*, conferred on the Financial Orders and Stores Orders the status of administrative guidelines and instructions for public officers for, *inter alia*, the collection, receipt, custody, issue,

¹ See s.22 of the Act and its corresponding s.1 of Part I of the Third Schedule.

² Sub-section (2) refers to the exemptions to the application of sub-section (1): Subsection (1) does not apply to a person: (a) who acquires or holds such interest as a shareholder of a listed company; (b) whose conditions of employment do not prohibit him or her from acquiring or holding such interest; or (c) in the case of a tender process, a public officer who acquires a contract, agreement or investment through a tender process and whose conditions of employment do not prohibit him from acquiring or holding such interest through an independent tender process; or (d) unless the person makes a disclosure of such interest to the relevant public body within thirty days of acquiring or holding such interest.

³ Chapter 4 of the Substantive Laws of Belize, R.E. 2000 – 2003.

⁴ Chapter 4 of the Subsidiary Laws of Belize, R.E. 2000 – 2003.

⁵ See s. 281 to 312 of this Act, Chapter 101 of the Laws of Belize, R.E. 2000 – 2003.

expenditure, due accounting for, care and management of public moneys and the purchase, safe custody, issue, sale or other disposal or write-off of public stores and other assets of Government as well as for the proper accounting and stock-taking of such stores and property.

A Bill, the Finance and Audit (Reform) (Amendment) Act, 2010, is before the Legislature. Among other things, the Bill seeks to restore the Financial Orders and Stores Orders to their original status of subsidiary legislation, thereby improving its present status.

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

Recommendation 1.3:

Develop and strengthen mechanisms requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

Measures suggested by the Committee:

- a. *Establish standards and mechanisms that require public servants to report to appropriate authorities, acts of corruption in the performance of public functions of which they are aware. This should be complemented by measures that protect public servants who report acts of corruption in good faith.*
- b. *Facilitate compliance with this obligation by such measures as it deems appropriate.*

Adopted Measures:

In February 2008, Belize adopted the POCA 2007 to, inter alia, make provisions for strengthening measures to prevent and combat corruption and corrupt activities, for the offence of corruption and offences relating to corrupt activities, for investigative measures in respect of corruption and related corrupt activities, and provides measures for establishing probity, integrity and accountability in public life.

With respect to the particular measures suggested by the Committee, the POCA 2007 requires that any person who, in the exercise of his public functions, is offered or receives an advantage in circumstances which may constitute an act of corruption or bribery, discloses same as soon as possible (s. 30(1)). Also, persons exercising public functions who know or ought to have known or who suspect or ought to have suspected that a person has committed, is committing or is about to commit an act of corruption or bribery, are required to report same (s.30(2)).⁶ Failure to comply with the above requirements may attract a fine or imprisonment (s. 31(1)). Such reports can be made to the Police, the

⁶ Only exception to requirements established by s. 30 is where the person required to make the report can prove that he reasonably believed that if he made the disclosure he or another person or his property would suffer physical harm (s. 31 (2)).

Integrity Commission established by this Act, or using any internal process established by the employer for that purpose (s. 30(3)).

To facilitate compliance with the requirement for disclosure, the Act does two things: (1) it creates an exception to the general rule requiring disclosure and provides that it is a defence for a person who is charged with the offence of failure to disclose, if he can prove that he reasonably believed that he or another person or his property would suffer physical harm if he made the disclosure (s. 31(2)).

Secondly, it establishes protection mechanism for those persons who, in good faith, report acts of corruption – prohibition from interfering with a person (threats or actions against the person or his lawful employment or occupation on the ground that such person made or may make a disclosure pursuant to s.30 (s. 32(1)). Persons who make complaints to the Commission, in good faith and reasonably believing that the facts are true, are immune from civil or criminal liability (s. 35(1)).

Additionally, persons giving evidence before the Integrity Commission shall not be compelled to incriminate themselves and shall, in respect of evidence given to the Commission, be entitled to all the privileges that persons giving evidence before the Supreme Court are entitled to (s. 45).

RECOMMENDATION 2:

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

Recommendation:

Consider strengthening the systems for registering income, assets, and liabilities.

Measures suggested by the Committee:

- a. Consider taking necessary steps to enforce the current financial declaration requirements for those to whom the Prevention of Corruption in Public Life Act law currently applies, including implementing penalties for those who fail to file and establishing penalties for late filing.*
- b. Identify positions not currently covered by the Act which have duties where the potential for conflict of interest is substantial and require the individuals holding those positions to file financial declarations.*
- c. Use the financial declarations not only to detect actual violations of law and conflicts of interest, but to also serve as a basis for providing counseling on the prevention of conflicts of interest.*
- d. Consider making the reports public, were appropriate.*

Adopted Measures

The Prevention of Corruption in Public Life Act was repealed and replaced by the POCA 2007. This latter Act, *inter alia*, requires persons in public life, namely Members of the House of Representatives (including the Speaker), Members of the Senate (including the President), and Members of the Town and City Councils to file sworn declarations (s. 10) of assets, income and liabilities of him/herself, his, her spouse/children/agents (s. 11), as well as any moneys held on trust. The Integrity Commission may require any declarant to provide further and better particulars or any additional information it considers necessary (s. 11(1)). The Commission may also request the person in public life to furnish further information or documents at any time during its examination of the declaration (s. 12), or at any time thereafter if it is not satisfied with the information provided by the person in public life (s. 13). The Commission may also conduct an enquiry into any filed declaration.

Failure to file a declaration or to provide further particulars to the Commission attracts fines (including administrative fines while the declaration or explanation remains outstanding) and/or imprisonment (s. 19 (1) and (2)). Also, the Commission may submit the matter to the Director of Public Prosecutions for appropriate action where a person fails to file a declaration in accordance with s. 10 or fails to provide further particulars in accordance with s. 13 (s. 14). The Act also creates the offence of filing false declarations, which attracts a fine and/or imprisonment (s. 19 (3)).

The POCA 2007 makes provisions for the National Assembly to extend the application of this Act to any public servant of class of public servants, after consultations with representatives of civil society organizations and hearing public servants thereon (s. 21).

As noted above, the POCA 2007 provides that the Commission may, in appropriate cases, make reports of its enquiries to the Director of Public Prosecutions (“the DPP”) and/or to the Attorney General. The DPP may, if satisfied that the evidence before him is sufficient to substantiate the commission of an offence, institute criminal proceedings against the person in public life, and where the person suspected of the commission of an offence is the DPP, the Attorney General may institute proceedings against him (s. 38). As such, presently, the financial declarations are used to detect actual violations of the law.

While the filed declarations are not themselves made public, the POCA requires the Commission to examine all financial declarations submitted by persons in public life and to publish Certificates of Declaration in the Gazette, if satisfied that the declarations have been fully made (s. 12).

RECOMMENDATION 3:

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

Recommendation:

Strengthen, and when appropriate create, oversight bodies in particular in the area of functions to enforce compliance with the matters covered by the provisions of Article III, paragraphs 1, 2, 4, and 11 of the Convention; provide them with the necessary resources to enable them to carry out their functions in full; and establish mechanisms necessary to permit effective institutional coordination, as well as periodic evaluation and monitoring, of the measures they adopt.

Adopted Measures:

Existing legislation in Belize, particularly s. 12 of the Finance and Audit (Reform) Act, 2005, directs the Office of the Auditor General to audit all accounts of all persons entrusted with the collection, receipt, custody, issue or payment of public moneys, stamps, securities or stores or other Government property and to ensure that collection is duly done and that all expenditures have been properly and lawfully made.

During the period under consideration (2008 – 2010), Belize adopted the POCA 2007, which contains provisions that also address, in part, the recommendation under consideration. For example, it advances the work of the Integrity Commission by giving it wider power than its predecessor Act. POCA 2007 authorizes the Commission to examine declarations, to conduct their own enquiries thereon or to request further information from persons in public life (the declarants); or where they deem it appropriate, it may advise the Governor General to appoint a Tribunal to carry out such enquiries.

The POCA also ensured that the independence (s. 5) and financial stability of the Commission are safeguarded by establishing a Secretariat (s. 7) for the Commission and requiring such Secretariat to submit the necessary yearly budget estimates of the Commission to be included in the budget for the relevant year (s. 52). Further, the Commission itself selects and appoints its own staff (s. 51).

RECOMMENDATION 4:

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

4.1. General participation mechanisms

Recommendation:

Consider whether the recommendations related to specific mechanisms referred to below indicate a need for Belize to strengthen its general approach to encouraging civil society and nongovernmental organizations in efforts to prevent corruption.

Adopted Measures:

Civil Society participation in Belize is etched in the supreme law of the land, the Belize Constitution, by guaranteeing their representation in the Senate. These constitutional provisions are complemented by other existing pieces of legislation and administrative

practices. Within the period under consideration, Belize adopted legislation, which we consider advance the present Recommendation.

Belize amended its Constitution by virtue of the Belize Constitution (Sixth Amendment) Act, 2008⁷, inter alia, to enlarge the membership of the Senate to ensure that Senators nominated by the Opposition and non-governmental organizations together constitute the majority in the Upper House. The Amendment also sought to extend the powers and functions of the Senate to enable them to initiate and conduct public enquiries into mismanagement or corruption by persons in the central government of public statutory bodies, and provides for the expeditious submission of reports by the Auditor General to the National Assembly.

Additionally, s. 21 of the POCA 2007 requires that civil society organizations be consulted by the National Assembly before extending the application of this Act to any public servant of class of public servants who are not presently required to file sworn financial declarations.

These measures adopted by Belize within the period under consideration complement existing administrative practice, including the three advisory bodies that were formed in 2006 to aid the Minister and the Ministry of the Public Service: the Human resource Development Committee, the Council on Good Governance and Public Sector Modernization, and the Joint Staff Relations Council. Each of these Committees has membership from other Government Ministries and from relevant Civil Society organizations.

Of note is that in 2008 – 2009, the Minister of the Public Service conducted country-wide consultations with public servants and civil society on matters affecting the entire public service and on how to improve existing mechanisms and issues.

4.2. Mechanisms for access to information

Recommendation:

Strengthen the mechanisms on access to information.

Measures suggested by the Committee:

- a. *Conduct a comprehensive review of the rules and regulations that provide exceptions to the right of access to public information, in order to ensure that they do not obstruct the exercise of the right to information as an effective mechanism in efforts against corruption, in accordance with the observations in section 4.2.2 of this report.*
- b. *Strengthen systems that ensure public access, as appropriate, to information on public administration bodies and their program-related and financial activities, in particular as regards those bodies concerned with the issues covered in this report; and improve, where possible, the use of modern technologies to that effect.*

⁷ Act No. 13 of 2008, which entered into force on April 12, 2010 by virtue of S.I. No 34 of 2010.

- c. *Carry out a comprehensive evaluation of the use and effectiveness of mechanisms for access to information, and, based on the results of that evaluation, consider the adoption of measures to promote, facilitate, and consolidate the effectiveness of these mechanisms.*

Adopted Measures:

While Belize acknowledged and advised the honourable Committee of Experts on the difficulties which the above list of suggested measures represent for small, thriving countries like Belize – conducting comprehensive review of rules and regulations, while strengthening existing systems and carrying out comprehensive evaluations of the use and effectiveness of existing mechanisms on access to information, Belize employed its best efforts to address the said suggested measures in the best way possible. In that regard, Belize amended the Freedom of Information Act⁸ through the Freedom of Information (Amendment) Act⁹ which, *inter alia*, invalidates secrecy provisions in public contracts, reduces the categories of exempt documents, and penalizes unreasonable refusal or failure to provide access to public documents.

The above-referenced amendment complements existing measures in Belize, which advance the suggested measures of the Committee. These include the Government of Belize's web-site (www.governmentofbelize.gov.bz), which is constantly updated with, *inter alia*, initiatives by the various Government Ministries (fiscal and otherwise), Budget Reports, Bills introduced into the House of Representatives, and Cabinet decisions.

4.3. Mechanisms for consultation

Recommendation:

Strengthen existing mechanisms and consider creating other ones as part of their efforts to combat corruption.

Measures suggested by the Committee:

- a. *Strengthen consultation mechanisms to enable civil society and nongovernmental organizations to generate opinions and proposals to be taken into account in preventing, detecting, investigating, and punishing corruption.*
- b. *Design and implement programs to publicize consultation mechanisms and, as appropriate, provide training and instruments to officials necessary for effective implementation of those mechanisms.*

Adopted Measures:

The Government's website was reviewed and enhanced within the period under consideration to make it more user-friendly. It continues to be constantly updated with relevant information of the work undertaken by the Government as well as with relevant country and public service information, including how, where and who to contact with respect to particular government ministries, departments, missions, etc.

⁸ Chapter 13 of the Laws of Belize, R.E. 2000 – 2003.

⁹ Act No. 7 of 2008, which entered into force on July 5, 2008.

Note also that annually, the Public Service of Belize celebrates Public Service Week, which provides the general public and civil society yet another opportunity for approach, communication and dialogue with the Public Service.

4.4. Mechanisms to encourage participation in public administration

Recommendation:

Implement mechanisms to encourage civil society and nongovernmental organizations to participate in public administration.

Measures suggested by the Committee:

- a. *Develop standards and procedures to establish, maintain and strengthen mechanisms to encourage participation by civil society and nongovernmental organizations in public administration as part of the efforts to prevent corruption*
- b. *Promote public awareness of available corruption prevention mechanisms.*

Adopted Measures:

The three Advisory bodies formed in 2006 to aid the Minister and Ministry of the Public Service in the general decisions affecting the administration of the Public Service in Belize continue to be operational. Representatives in these bodies include the Chief Executive Officers from key government Ministries, the Financial Secretary and members of civil society organizations.

Moreover, the process followed in consulting with the public and private sectors in 2009 – 2010 on the adoption of a ***Plan of Action for the Implementation of the Recommendations formulated by the MESICIC for Belize*** provided a good measure and methodology for consultations with them. It also provided an excellent basis and established a network of contacts for future consultations. The Plan of Action is published in the Attorney General's Ministry's website (www.belize.gov.bz).

4.5. Mechanisms for participation in the follow-up of public administration.

Recommendation:

Implement mechanisms to encourage civil society and nongovernmental organizations to participate in public administration.

Measures suggested by the Committee:

- a. *Promote, where appropriate, methods to facilitate civil society and non-governmental organizations' efforts to engage in activities in the follow up of public administration and prevention of corruption.*
- b. *Design and implement specific programs to publicize mechanisms to encourage participation in follow-up on public administration and, as appropriate, provide the*

necessary training and tools to public officials for the effective implementation of those mechanisms.

Adopted Measures:

The three Advisory bodies formed in 2006 to aid the Minister and Ministry of the Public Service in the general decisions affecting the administration of the Public Service in Belize continue to be operational. Representatives in these bodies include the Chief Executive Officers from key government Ministries, the Financial Secretary and members of civil society organizations.

Moreover, the process followed in consulting with the public and private sectors in 2009 – 2010 on the adoption of a ***Plan of Action for the Implementation of the Recommendations formulated by the MESICIC for Belize*** provided a good measure and methodology for consultations with them. It also provided an excellent basis and established a network of contacts for future consultations. The Plan of Action is published in the Attorney General’s Ministry’s website (www.belize.gov.bz).

RECOMMENDATION 5:

ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendation 5.1:

Design and implement a comprehensive program of dissemination and training specifically geared to the competent authorities and officials, to ensure they are familiar with and can apply the provisions in force on mutual legal assistance for investigation and prosecution of acts of corruption in the Convention and in other treaties signed by Belize.

Recommendation 5.2:

Identify and ascribe priority to specific areas in which it deems it could need or it could be useful for it to receive technical cooperation from other States Parties in order to further strengthen its capacity to prevent, detect, investigate and punish corruption.

Recommendation 5.3:

Strengthen efforts to exchange technical cooperation with other States Parties on the most effective ways and means to prevent, detect, investigate, and punish corruption.

Adopted Measures:

Mechanisms exist in Belize which address, in part, the three Recommendations made by the Committee under this section. This includes the fact that Belize has bilateral mutual legal assistance treaties with the United States of America¹⁰ and with the Caribbean Community¹¹, and is currently pursuing negotiations of a similar treaty with its northernmost neighbor, the United Mexican States. Belize is also Party to relevant

¹⁰ The Mutual Legal Assistance in Criminal Matters (Belize/USA) Act, No. 10 of 2005.

¹¹ The Caribbean Treaty on Mutual Legal Assistance in Serious Criminal Matters Act, No. 45 of 2005.

international conventions which make wide provisions for mutual legal assistance among Member States. These include the present Convention, the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the United Nations Convention against Transnational Organized Crime.

During the period under evaluation, Belize did not develop any specific training course on the subject-matter for its competent authorities and officials. However, such officials have continued to benefit from relevant training sessions organized by relevant international organizations such as the United Nations Office on Drugs and Crime. Of particular note is the fact that, with its existing resources, Belize has been able to assist its counterparts by respond to their requests for legal assistance, which in itself, has been a learning experience.

B. SECOND ROUND OF REVIEW

RECOMMENDATION 1:

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

1.1. Systems of Government Hiring

Recommendation:

Consider strengthening the systems of government hiring.

Measures Suggested by the Committee:

- a) *Develop, through the relevant legislative and/or administrative procedures, the different stages that comprise the process of selecting and appointing candidates to posts in the Public Service, by adopting provisions and clearly defined criteria that ensure entry to the public service, always taking into account the principles of openness, equity and efficiency as provided in the Convention.*
- b) *Examine the existing job descriptions and classifications, in order to determine whether it would be useful to have a single Job Description or Job Classification Manual containing all generic public sector posts.*
- c) *Adopt, through the appropriate legislative and/or administrative procedures, provisions and mechanisms that contain clearly defined criteria for the advertisement of hiring opportunities or vacancies in the public service, as well as the time frame in which they should be advertised, and which take into account the use of the mass media, such as newspapers with national circulation and/or websites, among others.*
- d) *Adopt, through the appropriate legislative and/or administrative procedures and in keeping with the principle of due process, provisions for the establishment of administrative challenge mechanisms to clarify, modify or revoke substantial acts that are part of the*

recruitment and selection procedures in the Public Service, ensuring a timely, objective, impartial, and effective procedure.

- e) Strengthen the legal provisions regarding the Service Commissions, so that these authorities have the competence to revoke or take other corrective measures when it is found that an appointment process was, among other things, irregular, improper, or made through a fraudulent competition.*
- f) Develop, through the appropriate legislative and/or administrative procedures, the different stages that comprise the process of selecting and appointing workers governed by the Belize Constitution (Government Open Vote Workers) Regulations, by adopting provisions and clearly defined criteria that ensure access to this category of service, and establishing a time limit for the duration of their employment, always taking into account the principles of openness, equity and efficiency as provided in the Convention.*
- g) Develop, through the appropriate legislative and/or administrative procedures, the different stages that comprise the process of selecting and appointing National Assembly staff, by adopting provisions and clearly defined criteria that ensure access to those positions, always taking into account the principles of openness, equity and efficiency as provided in the Convention.*
- h) Adopt, through the appropriate legislative and/or administrative procedures, provisions which provide that the selection and recruitment process for staff of the National Assembly is to be based on merit.*
- i) Adopt, through the appropriate legislative and/or administrative procedures, provisions which require the publication of staff vacancies that arise in the National Assembly.*
- j) Adopt, through the appropriate legislative and/or administrative procedures and in keeping with the principle of due process, provisions for the establishment of administrative challenge mechanisms to clarify, modify or revoke substantial acts that are part of the recruitment and selection procedures for the National Assembly, ensuring a timely, objective, impartial, and effective procedure.*
- k) Consider disaggregating the results provided by the Ombudsman on complaints received and their resolution, in order to indicate how many of those complaints were based on challenges to the government hiring and selection process.*

Adopted Measures:

Mechanisms established in Belize prior to the period under consideration, in large part, address the above measures suggested by the Committee. These include the three different Services Commissions – the Public Service Commission, the Security Services Commission and the Judicial and Legal Services Commission¹² – established by the Constitution of Belize. Their duties and functions are established by the Services Commissions Regulations. The Constitution mandates that each of these three Commissions must be totally independent, thus not subject to the control of any other

¹² Sections 105, 110C and 110E of the Belize Constitution Act, Chapter 4 of the Substantive Laws of Belize, R.E. 2000 – 2003.

person or authority (sections 105 (12) and 110E (12) of the Constitution). Each of these Commissions has the power of appointment, promotion, transfer and confirmation of appointment.

The subsidiary legislation of the Constitution establishes the Public Service Regulations (“the PSR”), which applies to all¹³ permanent appointments made by each of the three Services Commissions, and the Open Vote Workers Regulations, which applies for the Government’s Open Vote Workers¹⁴.

The National Assembly Staff Act¹⁵ establishes the National Assembly Staff Committee (s.3), which is given the power of appointment, confirmation of appointment and authority to exercise disciplinary control over National Assembly Staff. Appeals against their decisions can be made to the Belize Advisory Council (s. 6).

Regulation 6 of the PSR makes provisions for accessing the public service through a merit-based system and establishes that the educational or professional qualifications and other requirements for appointment to permanent posts in the Public Service shall be determined by the Chief Executive Officer (“CEO”), Ministry of the Public Service, after consultation with the appropriate Ministry. Regulation 11(2) provides that the promotion of officers to fill vacancies shall be approved by the relevant Commission, and that the Commission shall base its decision on the following three factors, in descending order of importance: (a) Performance/Merit; (b) Integrity/Professionalism; and (c) Experience/Employment History. Similar provisions created by the National Assembly Staff (Conditions of Service) Regulations apply to National Assembly Staff.

When a vacancy arises in the public service, the CEO of the Ministry must report it to the CEO of the Ministry of the Public Service and state his recommendations for filling the post (Regulation 7 of the PSR). There is no specific requirement for advertisement of vacancies that arise within the public service, but it is done as a matter of practice, especially for technical positions.

No officer shall be appointed to a post for which he is not qualified (Regulation 11(1) of the PSR). There is no specific appeals mechanism established for challenging a decision made in the selection process. Thus, in those instances, recourse would need to be made to the local courts or through complaints to the Ombudsman.

¹³ Exceptions are specified in sub-regulation 2 (2) and include the offices of the Prime Minister and other Ministers, Ministers of State; Speaker, Deputy Speaker and Members of the House of Representatives; President and Vice President of the Senate and Senators; Members of the Belize Advisory Council or any Commission established under the Constitution; the Clerk, Deputy Clerk and Staff of the National Assembly; the Ombudsman and the Contractor General. Other exceptions are created by Regulation 3 of the Constitution and include the office of a Justice of Appeal ; Section 110B posts (Prisons); Open Vote Workers; Ambassadors and High Commissioners; Sections 107, 108 and 109 posts (Chief Executive Officers, Director of Public Prosecutions, and Auditor General, respectively); Office of a Justice of the Supreme Court.

¹⁴ The Open Vote Workers’ Regulations defines an open vote worker as “*an employee of any Government Department whose post is not provided for under any Personal Emoluments item of any Head of Expenditure in the Estimates.*”

¹⁵ Chapter 14 of the Laws of Belize, R.E. 2000 – 2003.

During the period under consideration, the Government adopted a number of measures which, in one way or another, affected some of the above-mentioned measures suggested by the Committee:

1. Circular Memorandum No. 7 of 2008, an administrative decision, established a new procedure for the creation of new posts and for the filling of vacant posts in the Public Service. All requests to fill vacant posts shall be submitted to the Ministry of the Public Service, and must be accompanied by a detailed justification for the filling of the vacancy, including date vacancy occurred, cause of vacancy and proposed date for filling of the post (Paragraph 2).
2. Suspension of Delegation of Powers – on February 15, 2008, the authority of the Public Service Commission to delegate their powers in accordance with s. 106 (5) of the Constitution, and of the Judicial and Legal Services Commissions to delegate its powers to the Chief Justice and the Solicitor General were suspended indefinitely.
3. Services Commissions (Amendment) Regulation, 2009 – restores in part the delegation of powers by the Services Commissions and provides that “*the power to transfer Public Officers within the clerical, secretarial, administrative and accounting grades is delegated to the Chief Executive Officer of the Ministry of the Public Service.*” Further, with respect to “*the administrative and accounting grades, the Chief Executive Officer of the Ministry of the Public Service shall exercise the said power to transfer after consultation with the Administrative and Accounts Post Panel.*”
4. Public Service (Amendment) Regulations, 2009 – establishes a new procedure for filling vacancies. It requires that the CEO of the Ministry where the vacancy occurs shall report it to the Chief Executive Officer of the Ministry of the Public Service and state his recommendations for filling the post. It also vests the decisions regarding travel arrangements for overseas appointments, applications for secondment, and applications for grant of leave (vacation leave, extended sick leave, special leave, leave without pay) to be determined by the Chief Executive Officer of the Ministry of the Public Service.

1.2. Government Systems for the Procurement of Goods and Services

Recommendation:

Consider strengthening the government systems for the procurement of goods and services.

Measures suggested by the Committee:

- a) *Adopt provisions which define the different stages that constitute the procurement process, and which include selection criteria, time frames, and which identify the entity responsible for making contract award decisions.*

- b) *Adopt provisions which establish objective selection criteria in the evaluation of bids.*
- c) *Review Section 20 of the Finance and Audit (Reform) Act of 2005, in order to ensure that in those instances where limited tendering is used, that the government sees to it that there are an adequate number of potential suppliers to ensure competition, as required by Section 20(1) thereof.*
- d) *Examine the need to adopt provisions which either: require a justification of the decision to resort to limited tendering based on extreme urgency or public interest, as provided for by Sections 21(1)(d) of the Finance and Audit (Reform) Act of 2005, or national emergency, as provided for by Section (21)(1)(h)(i) of the same law; or which define those terms.*
- e) *Adopt provisions which provide clear selection procedures where the limited tendering procedure is used, and which also require a written justification for the use of this procurement method.*
- f) *Adopt provisions which clarify what is meant by day-to-day operations of government, as used in Section 21(1)(h)(ii) of the Finance and Audit (Reform) Act of 2005, in order to ensure that goods and services related to recurring expenses are procured competitively, where appropriate.*
- g) *Adopt provisions which require publication of tender opportunities, including the conditions for participation therein, and the time, method and place for the submission of bids.*
- h) *Examine the possibility of publishing, when appropriate, pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereon.*
- i) *Consider the introduction of electronic procurement systems, on an incremental basis, so that goods and services may be acquired through those means.*
- j) *Strengthen and increase the scope of use of electronic forms of communication, such as the internet, for publicizing the tender and consulting opportunities, status of bids and awards and the progress in the execution of major projects.*
- k) *Establish a national registry of contractors of goods and services, of mandatory use by all State bodies, which contemplates the possibility of ensuring that the registry also include a list of sanctioned contractors, in order to foster the principles of openness, equity and efficiency provided for in the Convention.*
- l) *Implement provisions that require prior planning sufficiently in advance of the launch of large-scale or specialized procurement process, such as the preparation of studies, designs and technical evaluations.*
- m) *Adopt provisions that facilitate and encourage the participation of citizen oversight mechanisms in monitoring the execution of contracts where their nature, importance, or magnitude so warrants.*
- n) *Adopt provisions which regulate, in keeping with the principle of due process, administrative challenge mechanisms relating to the substantive acts of the tendering process, such as the basis for the tender or bid, the rejection of bidders, and the designation of the winner, which are designed to clarify, modify, or revoke such acts.*

Adopted Measures:

The Government's system for the procurement of goods and services were historically guided by an outdated Finance and Audit Act¹⁶, which were aided by practices developed under equally historic Financial Orders and Stores Orders. In 2005, that system was strengthened by a new and improved Finance and Audit (Reform) Act¹⁷ which sought, *inter alia*, to make new and better provisions regulating public revenue, expenditure and contracts and which repealed the old Finance and Audit Act. Section 17(1) thereof authorizes the Government, *inter alia*, to acquire property of any kind. It provides in material part: “[] the Government shall have power to acquire, hold and dispose of, by sale or otherwise, property of any kind, and all property owned by the Government shall be held in the name of the Government of Belize.”

The Act, which is substantive legislation, makes wide and general provisions that address most of the measures suggested by the Committee. The flaw in the process is that subsidiary legislation, which spell out in detail the substantive elements created by the Act, were never developed.

Between 2009 and 2010, at the request of the Government of Belize, the Inter-American Development Bank hired a consultancy to conduct an evaluation of the country's public procurement system using the methodology of the Organization for Economic Cooperation and Development/Development Assistance Committee (OECD/DAC). This methodology uses four pillars to analyze and assess the quality of the National Procurement Systems of Belize against international standards.¹⁸ Information was gathered through the review of documentation as well as through interviews with a number of relevant ministries and departments of government, statutory bodies, municipal bodies, non-state actors, including representatives of private sector organizations, as well as with some of the larger private sector businesses which had supplied goods and services to the Government of Belize in the past.

The findings and recommendations were strikingly along the same lines as the measures suggested by the Committee in this section. In general, the findings were that procurement legislation and enforcement were weak; procurement functions were decentralized and often performed by ad-hoc Committees established in individual Government Ministries; criteria for evaluation of tenders or quotations were not standardized; there were no standardized procurement guidelines which has caused a wide range of procurement practices and deeply entrenched informal procedures.

¹⁶ Chapter 15 of the Substantive Laws of Belize, R.E. 2000.

¹⁷ Act No. 12 of 2005.

¹⁸ These four pillars are: Pillar I: Legislative and Regulatory Framework (the existing legal framework); Pillar II: Institutional Framework and Management Capacity (the institutional architecture); Pillar III: Procurement Operations and Market Practices (the operation of the system and the competitiveness of the national market); and Pillar IV: Integrity and Transparency of the Public Procurement System.

It was thus recommended that legislation be reformed, fleshed out and regulations therefor be developed; that the Act applies not only to public officials but to all persons who are entrusted with public property; and the Act should require procurement planning and national publishing of tenders. It was further recommended that the Financial Orders and Stores Orders should be comprehensively updated into Regulations that meet international standards; that e-procurement should be gradually adopted; that procurement records must be kept; that personnel be trained on the revised and improved legislation; that mechanisms for reporting fraudulent, corrupt or unethical behavior should be strengthened.

At its regular meeting held on November 30, 2010, the Cabinet of Belize accepted the Report and the recommendations contained therein in full and pledged to undertake the necessary steps to continue to improve the Government's procurement system.

Along those lines, a Bill, the Finance and Audit (Reform) (Amendment) Act, 2010, is presently before the Legislature for approval. That Bill seeks, *inter alia*, to enhance transparency in the tendering process for the Government procurement and sale contracts, and to restore the Financial Orders and Stores Orders to their original status of subsidiary legislation, all of which address some of the measures suggested by the Committee in this area.

RECOMMENDATION 2:

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

Recommendation:

Adopt a comprehensive legal and regulatory framework that provides protection for public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with its Constitution and the basic principles of its domestic legal system.

Measures suggested by the Committee:

- a) *Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings;*
- b) *Protection of whistleblowers and their families, not only in relation to their physical integrity but also as it concerns the workplace, especially when the person is a public official and the acts of corruption involve superiors or co-workers;*

- c) *Expand the existing mechanisms for reporting, such as anonymous reporting or protection of identity reporting, that guarantee the personal security and the confidentiality of the identity of public servants and private citizens who, in good faith, report acts of corruption;*
- d) *The creation of mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it;*
- e) *Witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens;*
- f) *Mechanisms to facilitate international cooperation on the foregoing matters, when appropriate, including the technical assistance and cooperation provided for by the Convention, as well as the exchanges of experiences, training, and mutual assistance.*
- g) *A simple whistleblower protection application process.*
- h) *Provisions which provide for administrative and criminal sanctions for the failure to observe the rules and/or duties relating to protection.*
- i) *Provisions that clearly delineate the respective competence of judicial and administrative authorities with respect to this area.*

Adopted Measures:

As has been pointed out elsewhere in the present Report, during the period under consideration, the Government of Belize adopted¹⁹ the Prevention of Corruption Act, 2007 (“the POCA 2007”). That piece of legislation, *inter alia*, makes provisions for strengthening measures to prevent and combat corruption and corrupt activities, creates the offence of corruption and offences relating to corrupt activities, establishes investigative measures in respect of corruption and related corrupt activities, and creates measures for establishing probity, integrity and accountability in public life.

With respect to the particular measures suggested by the Committee under this section, the POCA 2007 requires that any person who, in the exercise of his public functions, is offered or receives an advantage in circumstances which may constitute an act of corruption or bribery, discloses same as soon as possible (s. 30(1)). It also requires persons exercising public functions who know or ought to have known or who suspect or ought to have suspected that a person has committed, is committing or is about to commit an act of corruption or bribery, are required to report same (s.30(2)).²⁰

To protect persons who, in good faith report acts of corruption, and to equally facilitate compliance with the requirement for disclosure and/or reporting, the Act establishes a number of reporting and protection mechanisms:

¹⁹ February 2008.

²⁰ Only exception to requirements established by s. 30 is where the person required to make the report can prove that he reasonably believed that if he made the disclosure he or another person or his property would suffer physical harm (s. 31 (2)).

- (1) it facilitates the avenues for reporting – reports can be made to the Police, the Integrity Commission established by this Act, or using any internal process established by the employer for that purpose (s. 30 (3));
- (2) it creates an exception to the general rule requiring disclosure and provides that it is a defence for a person who is charged with the offence of failure to disclose, if he can prove that he reasonably believed that he or another person or his property would suffer physical harm if he made the disclosure (s. 31(2));
- (3) it establishes protection mechanism for those persons who, in good faith, report acts of corruption:
 - prohibition from interfering with a person (threats or actions against the person or his lawful employment or occupation on the ground that such person made or may make a disclosure pursuant to s.30 (s. 32(1)).
 - immunity from civil or criminal liability - persons making complaints to the Commission, in good faith and reasonably believing that the facts are true, are immune from civil or criminal liability (s. 35(1)).
- (4) protects witnesses from self-incrimination - persons giving evidence before the Integrity Commission shall not be compelled to incriminate themselves and shall, in respect of evidence given to the Commission, be entitled to all the privileges that persons giving evidence before the Supreme Court are entitled to (s. 45).

RECOMMENDATION 3:

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

Recommendations:

- 3.1. *Review Section 26(b) and 27(b) of the Prevention of Corruption Act, 2007, so as to make it more fully consistent with Article VI(1)(a) of the Convention, by incorporating therein, the words “directly or indirectly”.*
- 3.2. *Review Section 26(a) and 27(a) of the Prevention of Corruption Act, 2007, so as to make it more fully consistent with Article VI(1)(b) of the Convention, by incorporating therein, the words “directly or indirectly”.*
- 3.3. *Review the definition of “public servant” contained in the Prevention of Corruption Act, 2007, by covering “a person who performs public functions”.*
- 3.4. *Consider the convenience of harmonizing the provisions of the Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, Re 2003, with those of the Prevention of Corruption Act, 2007.*

Adopted Measures:

During the period under evaluation, the country did not adopt any specific measure to address the measures suggested by the Committee under this section.

RECOMMENDATION 4:

GENERAL RECOMMENDATIONS

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.*

Adopted Measures:

It is import to note that one of the findings of the consultancy undertaken under the auspices of the Inter-American Development Bank in 2009 – 2010 with respect to the Government’s procurement system was specifically that proper training of officials is necessary. A related recommendation was made thereon in the Report, which has been sanctioned by the Cabinet.

SECTION II: DIFFICULTIES IN THE IMPLEMENTATION OF THE RECOMMENDATIONS

In general, the particular realities of each country play a crucial role in determining that country’s ability to adopt certain recommendations or suggested measures made thereto by important international mechanisms such as the Committee of Experts of the MESICIC. Small countries like Belize are often faced with extremely limited resources (human, financial and technical), and, in many instances, have to prioritize between complying with our obligations under international conventions and satisfying the immediate needs of our people arising from a major hurricane or other *force majeure*.

One of the greatest technical difficulties in following recommendations or adopting suggested measures arises when such recommendations or suggested measures involve the adoption of new legislation or the amendment of existing legislation. This, of course, is due to the processes involved with such undertakings. As expected, it is even more difficult to convince legislators to amend legislation when the recommendation is to add specific wording. Case on point is the recommendation in the Second Round of Review to add the words “*directly or indirectly*” in certain sections of the Prevention of Corruption Act, 2007.

At the time the Belize delegation respectfully submitted to the honourable Committee that the concept of “directly or indirectly” were covered by the legislation in that the relevant provisions mentioned “for himself or another person”. It was the considered opinion of the Belizean delegation that those provisions sufficiently complied with the intent of the Convention and that it was unnecessary to use the specific terms (“directly or indirectly”) to comply with the intent of the Convention.

Another general difficulty observed during these first two Rounds of Review was the time-frame for the adoption of recommendations and suggested measures. The time-frame was especially difficult after revision in the Second Round (December 2008) since during the material time (2009 – 2010) Belize was more involved with the development and adoption of the Plan of Action.

One particular recommendation with which Belize experienced difficulties due its general complexity was Recommendation 4.2 on mechanisms for access to information, which specifically recommended that the country strengthens said mechanisms. In the Report on Follow-Up of the First Evaluation Round, Belize alerted the honourable Committee of Experts of the difficulties which the complexity of suggested measures represented for small, thriving countries like Belize – conducting comprehensive review of rules and regulations, while strengthening existing systems and carrying out comprehensive evaluations of the use and effectiveness of existing mechanisms on access to information.

The above notwithstanding, Belize sought to address the matter with an amendment to the Freedom of Information Act, Chapter 13 of the Laws of Belize, through the Freedom of Information (Amendment) Act²¹ which, *inter alia*, invalidates secrecy provisions in public contracts, reduces the categories of exempt documents, and penalizes unreasonable refusal or failure to provide access to public documents.

SECTION III: OTHER PROGRESS IN THE IMPLEMENTATION OF THE CONVENTION

Asset Recovery

One of the areas in which Belize has made significant legislative progress has been in the area of asset recovery. The Asset Recovery Regime in Belize is governed by the Money Laundering and Terrorism (Prevention) Act, No. 18 of 2008 (Gazetted on December 30, 2008), hereafter the MLTPA, which seeks, *inter alia*, “to make new and improved provisions for the investigation and prosecution of money laundering, terrorism and other related crimes; to provide for the forfeiture of the proceeds of crime and terrorist property; to require reporting entities to take preventative measures to help combat money laundering and terrorist financing”.

²¹ Act No. 7 of 2008, which entered into force on July 5, 2008.

The Financial Intelligence Unit of Belize (“the FIU”), is Belize’s competent authority for investigation and prosecution of financial crimes. Sections 11 and 12 of the MLTPA give the FIU wide powers, including the power to identify and trace property that is or may become subject to confiscation or is suspected of being the *proceeds of crime* or used for the financing of terrorism. Section 2 of the MLTPA defines “**Proceeds of crime**” as “*any property derived, obtained or realized, directly or indirectly, as a result of or in connection with a serious crime and includes, on a proportional basis, property into which any property derived or realized directly from such offence was later converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the crime.*” Corruption and bribery are listed in this Act as serious crimes.

Section 10 enhances the above provisions by giving the Courts of Belize extra-territorial jurisdiction with respect to the offences created under this Act. It provides: “*Notwithstanding anything to the contrary contained in any other law, the offences created by this Act shall be investigated, tried, judged and sentenced by a court in Belize regardless of whether or not the serious offences occurred in Belize or in another territorial jurisdiction, but without prejudice to extradition where applicable in accordance with the law.*”

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DECEMBER 2010
ATTORNEY GENERAL’S MINISTRY
BELMOPAN, BELIZE