

**COMPLETION OF ADDITIONAL QUESTIONNAIRE**

**ON-SITE VISIT**

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

**23-26 September, 2014**

**Nassau, The Bahamas**

**“STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE  
(ARTICLE II, PARAGRAPHS 1 AND 2 OF THE CONVENTION)”**

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

**The Bahamas has reviewed the applicability of, and adopted, measures to establish, maintain, and strengthen standards of conduct aimed at preventing conflicts of interest and mechanisms to enforce them, as noted in section 1.1 of Chapter II of this report.**

In light of the comments made in that section, the Committee suggests that The Bahamas consider the following recommendation:

Ensure that that the laws concerning conflicts of interest are fully in effect, that they support recommendation 7.1 when appropriate, and that they are applicable to all public officials and employees, so as to permit practical and effective application of a public ethics system.

In meeting this recommendation, The Bahamas may wish to take into account the following measures:

- a. Establish or adapt and then implement standards of conduct for those offices that currently do not fall under the purview of any

controls, including adequate sanctions for violations of those standards.

Ans. At the on-site MESICIC Meeting, 23<sup>rd</sup> September, 2014, Office of the Attorney-General, Nassau, The Bahamas, that the four offices of concern were:

- the Governor-General's Office
- the Senate the House of Assembly,
- the Judiciary; and
- the Employees of the Ministry of Tourism

I. The Governor-General's Office

The staff of the Governor-General's Office provided for in Chapter IV, Article 35, of the Constitution of The Bahamas. The staff of the Governor-General are not expressly prescribed in the Constitution as Public Servants. However, Article 35(4) provides that the Governor-General, acting in accordance with his own judgment may select from a list submitted by the Public Service Commission to fill such vacancies as may be required.

Indeed of the twenty-seven (27) persons were hired to the Governor-General's Office, nine (9) were reclassified as permanent and pensionable public servants. Eighteen (18) others are currently under consideration for permanent and pensionable status. Relevant factors such as, suitable qualifications for entry into the public service are some of the outstanding documents required by the Department of Public Personnel, as criterion for appointment. The P & P staff would then be governed by General Orders.

## II. Senators and Members of the House of Assembly

Chapter V, Article 39 of the Constitution governs Parliamentarians. Part II, Article 39 of the Constitution refers.

## III. The Judiciary

The Judiciary is appointed pursuant to Article 96(4) of the Constitution. The Code of Conduct for the Judiciary is provided for in the Bangalore Principles of Judicial Conduct, 2002, which binds members of the Judiciary of The Bahamas.

The Bangalore Draft Code of Judicial Conduct, 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002 refers.

A judge is required under those Rules to observe international standards of independence<sup>1</sup>, impartiality<sup>2</sup>, integrity<sup>3</sup>, propriety<sup>4</sup>, equality<sup>5</sup> and be competent and diligent<sup>6</sup>.

---

<sup>1</sup> Value 1

<sup>2</sup> Value 2

<sup>3</sup> Value 3

<sup>4</sup> Value 4

<sup>5</sup> Value 5

<sup>6</sup> Value 6

A failure to observe any of these common standards could result in a judge being removed from Judicial Office. Article 96(4) to (9) describes the procedure for the removal of a Justice of Supreme Court. The Justice of the Court of Appeal is appointed by Article 99(1) of the Constitution and his/her dismissal is provided for in Article 102(4) to (10). The Privy Council consists of Judges in England who are usually members of the House of Lords. They abide by these standards. Ultimately they are the highest court of appeal for The Bahamas.

- b. Implement a code of ethics for Senators and Members of the House of Assembly, including sanction mechanisms for violations.

Ans. Reference is made to the Powers and Privileges (Senate and House of Assembly) Act, Chapter 8. Article 42 of the Constitution provides the means by which a Senator can be disqualified.

- c. Apply conflict of interest restrictions for an appropriate period following government service.

Ans. Lawyers and accountants who are employed in the public service are bound by their professional code of ethics from engaging in a conflict of interests immediately following employment in the government service, for an appropriate period. Similarly, engineers and architects who are employed with the Ministry of Public Works are prohibited from engaging in matters involving a conflict of interest upon the cessation of their employment in the public service. There is no similar law,

rule or code of ethics which governs parliamentarians in this area. Minister Gomez was prepared to give an undertaking to recommend to Cabinet that the Cabinet Ministerial Manual be amended to include a prohibition of persons who have left public life engaging in matters which create a conflict of interest.

- d. Ensure that there are mechanisms in place that provide transparency in the cases where the Prime Minister decides to allow a Minister to hold any contractual relationships with, to hold directorships of, or to hold equities in, companies that have contractual relationships with the Government.

Ans. Pursuant to Chapter V, Article 42(1)(i) of the Constitution a Senator can be disqualified if his interest in any government contract has not been disclosed to the Governor-General and the nature therein at the time of his appointment. Similarly, Part III, Article (1)(i) provides, that a Member of Parliament of the House of Assembly may be disqualified. Article 48(1)(j) of the Constitution provides that no person shall be qualified to be elected as a member of the House of Assembly who is interested in any government contract and has not disclosed the nature of such contract and of his interest therein by publishing a notice in the Gazette within one month before the day of election. This is important because the Prime Minister selects his Cabinet Ministers from elected Members of Parliament and Senators.

There is a manual of procedures for Cabinet Ministers which expressly prohibits Senators and Members of Parliament from entering into contractual relationships which place them in a conflict of interest.

Cabinet expressly prohibits a conflict of interest of a Cabinet Minister or his spouse, the relevant sections are sections 37, 38, 39, 40(a), (b) and (c), 41 to 45 of the Cabinet Manual, 1991 should be read into the record. Senators and Members of the House of Assembly who are not in the Cabinet are known as backbenchers. Their conduct would be governed by the Penal Code. Backbenchers who become Chairman of public corporations or a fiduciary duty governed under the Companies Act<sup>7</sup> and the Trustee Act<sup>8</sup>.

**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 mechanisms to enforce compliance.**

**The Bahamas has reviewed the applicability of and adopted certain measures intended to establish, maintain, and strengthen standards of conduct to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions, as indicated in section 1.2 of Chapter II of this report.**

In light of the comments made in that section, the Committee suggests that The Bahamas consider the following recommendation:

Strengthen control systems with the public administration by developing enforceable written standards applicable to all public officials and employees to create a duty to conserve and properly use of the resources entrusted to them.

**1.3 Standards of conduct and mechanisms concerning measures and systems requiring public officials to report to appropriate authorities acts of**

---

<sup>7</sup> Ch. 308

<sup>8</sup> Ch. 176

corruption in the performance of public functions of which they are aware.

The Bahamas has considered and adopted, certain measures to establish, maintain, and strengthen standards of conduct and mechanisms concerning measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, as noted in section 1.3 of Chapter II of this report.

In light of the comments made in that section, the Committee suggests that The Bahamas consider the following recommendation:

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.

In meeting this recommendation, The Bahamas may wish to take into account the following measures:

- a. Establish reporting requirements for those public officials and employees who are currently not required to report to appropriate authorities acts of corruption in the performance of public functions.

Ans. The Penal Code Act, Chapter 84, sections 450 to 470 refers:

*"450. Whoever without lawful excuse refuses to serve in any public office in which he is bound to serve, and for the refusal to serve in which no penalty or punishment is provided by any statute, is guilty of a misdemeanour.*

*451. Whoever pretends to be or acts as a public officer or juror, not being lawfully authorised to act as such officer or juror, and in or under colour of that assumed character does or attempts to do, or procures or attempts to procure any person to do or abstain from doing, any act whatsoever is guilty of a misdemeanour, unless he shows either —*

*(1) that he so pretended or acted under a mistake of law or of fact;*  
or

(2) in the case of a person acting as a public officer, that he so acted in good faith for the public benefit.

**452.** Whoever, in order that he may obtain or be qualified to act in any public office or to vote at any public election, makes, signs, publishes or uses any declaration, statement or oath required by law in such case, or any certificate or testimonial as to his conduct or services, or as to any other matter which is material for the obtaining by him of the office, or for his qualification to act in the office or to vote at the election, shall, if he does so, knowing that the declaration, statement, oath, certificate, or testimonial is false in any material particular, be liable to imprisonment for two years and is guilty of a misdemeanour.

**453.** (1) Every public officer or juror who is guilty of corruption, or of wilful oppression, or of extortion, in respect of the duties of his office, commits a misdemeanour and shall be liable to imprisonment for two years.

(2) A public officer or juror is guilty of wilful oppression in respect of the duties of his office if he wilfully commits any excess or abuse of his authority, to the injury of the public or of any person.

(3) A public officer is guilty of extortion who, under cover of his office, demands or obtains from any person, whether for public purposes or for himself or any other person, any money or valuable consideration which he knows that he is not lawfully authorised to demand or obtain, or at a time at which he knows that he is not lawfully authorised to demand the same.

**454.** Every public officer who, being bound or authorised as such officer, to attest or certify, by writing or otherwise, any document or matter, or that an event has or has not happened, attests or certifies the document or matter, knowing the same to be false in any material particular, or attests or certifies that the event has happened or has not happened, as the case may be, without knowing or having reason to believe that the same has happened or has not happened, as the case may be, according to his attestation or certificate, is guilty of a misdemeanour.

**455.** Every public officer who intentionally and unlawfully destroys, injures, falsifies, or conceals any document which is in his possession, custody, or control, or to which he has access, by virtue of his office, is guilty of a misdemeanour.

**456.** Any officer of the post office who, for any purposes whatsoever, secretes, or destroys a postal packet in course of transmission by post, shall



be liable to imprisonment for seven years, or, if the postal packet contains any chattel or money, or valuable security, to imprisonment for twenty years.

**456.** Any officer of the post office who, for any purposes whatsoever, secretes, or destroys a postal packet in course of transmission by post, shall be liable to imprisonment for seven years, or, if the postal packet contains any chattel or money, or valuable security, to imprisonment for twenty years.

**457.** (1) Any officer of the post office who, contrary to his duty, opens or procures or suffers to be opened any postal packet in course of transmission by post, or wilfully detains or delays, or procures or suffers to be detained or delayed any such postal packet, is guilty of a misdemeanour.

(2) Nothing in this section shall extend to the opening, detaining, or delaying of a postal packet returned for want of a true direction, or returned by reason that the person to whom the same is directed is dead or cannot be found, or shall have refused the same, or shall have refused or neglected to pay the postage thereof, or to the opening or detaining or delaying of a postal packet under the authority of the laws relating to the post office or in obedience to an express order in writing under the hand of the Governor-General.

**458.** (1) Any officer of the post office who grants or issues any money order with a fraudulent intent, shall be liable to imprisonment for seven years.

(2) If any officer of the post office re-issues a money order previously paid, he shall be deemed to have issued the order with a fraudulent intent under this section.

**459.** Whoever, being employed or engaged in any capacity whatsoever in or about a telegraph station or office, and contrary to his duty, discloses or in any way makes known or intercepts the contents or any part of the contents of any message transmitted or received to or at any such station or office is guilty of a misdemeanour and shall be liable to imprisonment for one year.

**460.** Whoever unlawfully or maliciously in any manner whatsoever, prevents or obstructs or attempts to prevent or obstruct the sending, conveying or delivering of any telegraphic communication, is guilty of a misdemeanour.

**461.** Every officer of a prison, who uses any kind of torture to a prisoner, or who is guilty of cruelty to a prisoner, or who intentionally and unlawfully causes any harm to a prisoner, is guilty of a misdemeanour.

**462.** Whoever corrupts or attempts to corrupt any person in respect of any duties as a public officer or juror is guilty of a misdemeanour.

**463.** Whoever accepts, or agrees or offers to accept, any valuable consideration under pretence or colour of having unduly influenced, or of agreeing or being able so to influence, any person in respect of his duties as a public officer or juror, is guilty of a misdemeanour and shall be liable to imprisonment for one year.

**464.** Whoever, otherwise than in the due execution of his duties as a judicial officer or juror, makes or offers to make any agreement with any person as to the judgment or verdict which he will or will not give as a judicial officer or juror in any pending or future proceeding, is guilty of a misdemeanour and shall be liable to imprisonment for one year.

**465.** Whoever, with a purpose of procuring any undue advantage or disadvantage to any party to any judicial proceeding, procures himself or any other person to be summoned, empanelled or sworn as a juror in the proceeding, or endeavours to prevent any other person from being summoned, empanelled or sworn as a juror in the proceeding, is guilty of a misdemeanour and shall be liable to imprisonment for one year.

**466.** Whoever is a party to or abets the unlawful sale or purchase of any public office, or the making of any unlawful and corrupt bargain or transaction with respect to an appointment to a public office, or with respect to the profits of a public office, is guilty of a misdemeanour.

**467.** Whoever attempts to prevent, obstruct or disturb any public election by any kind of force, violence or threats, or by any act which is a crime punishable under this Code, is guilty of a misdemeanour.

**468. (1)** Whoever is guilty of corruption, intimidation, or personation in respect of a public election, is guilty of a misdemeanour and shall be liable to imprisonment for nine months, and shall, during seven years from the date of his conviction, be incapable of voting at any public election and of holding the public office in respect of which the election was held, or any public office of the same nature.

**(2)** A person is guilty of intimidation at a public election if he endeavours to influence the conduct of any voter in respect of the election

*by a threat of any evil consequence to be caused to him, or to any other person, on account of his conduct as such voter*

**469.** *Whoever forges or falsifies, or intentionally and unlawfully injures or destroys, any voting paper or other similar thing, or intentionally and unlawfully injures or destroys any ballot box, polling booth or other apparatus or thing used for the purposes of a public election is guilty of a misdemeanour.*

**470.** *Whoever, being a public officer, charged with the counting of votes or the making of a return at any public election, wilfully falsifies the account of such votes or makes a false return shall be liable to imprisonment for five years."*

- c. Provide appropriate training to officials and employees concerning the requirement to report acts of corruption and the protections for those who report.

Ans. We are off the view that training is not required, however protection is, which we have provided.

### **3.1 Strengthen the system for monitoring implementation of the provisions of Article II, paragraphs 1, 2, and 4.**

In meeting this recommendation, The Bahamas may wish to take into account the following measures:

- a. Establish oversight bodies for those offices that are currently do not fall under the purview of any controls.

Ans. The oversight body for the Judiciary is the Court. The oversight body for the Governor-General staff would be the Public Service Commission and Public Service Board of Appeal.

- b. Consider establishing an oversight body in the Code of Ethics for Ministers and Parliamentary Secretaries to oversee their conduct.

Ans. The Public Accounts Committee of the House of Assembly.

#### **4.3 Consultative mechanisms**

4.3.1 Establish consultation mechanisms to enable civil society and non-governmental organizations to provide opinions and proposals to be taken into account in preventing, detecting, investigating and punishing corruption.

#### **4.4 Mechanisms to encourage participation in public administration.**

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

In meeting this recommendation, The Bahamas may wish to take into account the following measures:

- a. Establish mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption.
- b. Promote public awareness of available corruption prevention mechanisms.

#### **4.5 Mechanisms for participation in the follow up of public administration**

Establish mechanisms to encourage civil society and nongovernmental organizations to participate in the follow up public administration and generate opinions and proposals to be taken into account in preventing, detecting, investigating and punishing corruption.

In meeting this recommendation, The Bahamas may wish to take into account the following measures:

- a. Promote methods, where appropriate, to allow, facilitate, and assist civil society and nongovernmental organizations in developing activities in the follow up of public administration and prevent corruption.
- b. Design and implement specific programs to publicize the mechanisms for encouraging participation in the follow up of public administration.

Ans. 4.3, 4.4 and 4.5 are covered in the Civil Society Organization Bill, 2014 which Bill has been submitted to the on-site team. We have drafted and circulated the Bill, a bill for an Act to establish and register civil society organizations, promote and encourage the development of civil society, to regulate their operations in order to create transparency, accountability and to establish minimum standard which shall be observed by all civil society organizations. Over the last two years and three months we have engaged in meetings with the Bahamas Christian Council and other stakeholders in The Bahamian society to garnish support for a wide range of legislation. We have at these meetings encouraged persons who have attended to discourse on the problems confronting the different communities and our public outreach has covered a number of anti-corruption measures. We have sought to encourage public/private partnership.