

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

FINAL REPORT

(Adopted in the plenary session held on March 12, 2005)

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

**REPORT ON IMPLEMENTATION IN
THE COMMONWEALTH OF THE BAHAMAS
OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE FRAMEWORK
OF THE FIRST ROUND¹**

INTRODUCTION

1. Legal-institutional framework²

The Commonwealth of The Bahamas is a sovereign and democratic state with a parliamentary form of government that is composed of the executive, legislative and judicial branches.

Under the Constitution, the Queen of England is the Head of State and is represented in The Bahamas by the Governor-General, who is appointed by and serves at Her Majesty's pleasure. The Prime Minister and a Cabinet consisting of not fewer than eight other Ministers exercise executive powers. The Prime Minister is appointed by the Governor-General and must be a member of the House of Assembly who is the leader of the party, which commands the support of the majority of the members of that House.

The legislative branch is represented by Parliament, which consists of Her Majesty, the Senate and the House of Assembly. The Senate has sixteen members who are appointed by the Governor-General; nine members on the advice of the Prime Minister, four on the advice of the Leader of the Opposition and three on the advice of the Prime Minister after consultation with the Leader of the Opposition. The House of Assembly must have a minimum of thirty- eight members elected by universal adult suffrage every five years. The number of members of the House of Assembly may be increased by Order made by the Governor-General on the recommendation of the Constituencies Commission. At present there are forty members of the House of Assembly.

Parliament makes laws for the peace, order and good government of The Bahamas. An Act of Parliament may amend the Constitution and entrenched provisions may be amended only by a two-thirds majority vote of all members of each House followed by a referendum. Specially entrenched provisions may be amended only by a three quarter majority of all members of each House followed by a referendum.

An independent judiciary through the court system exercises judicial power.

The Supreme Court is a court of general jurisdiction in both civil and criminal matters. The Governor-General on the recommendation of the Prime Minister appoints the Chief Justice after consultation with the Leader of the Opposition and acting on the advice of the Judicial and Legal Service Commission, appoints the other justices.

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on March 12, 2005, at its seventh meeting, held at OAS Headquarters in Washington D.C., United States, March 7 to 12, 2005.

² Updated response of The Bahamas to the questionnaire, Introduction.

There are eleven Justices of the Supreme Court, not including the Chief Justice. Two Justices are resident in Freeport, Grand Bahama and have jurisdiction over matters concerning the northern region of The Bahamas, which includes Abaco, Bimini and Grand Bahama. The Supreme Court has original jurisdiction in constitutional matters.

Decisions of the Supreme Court are subject to appellate review by The Bahamas Court of Appeal, the highest tribunal in The Bahamas, which sits on a full time basis. The Governor-General on the recommendation of the Prime Minister appoints the five Justices of Appeal after consultation with the Leader of The Opposition. There are four (4) resident Justices of Appeal and one non-resident Justice of Appeal. Typically, a panel of three (3) judges conducts hearings but in certain constitutional matters the full court is empanelled. In certain instances, such as appeals relating to fundamental rights and freedoms, appeals from the Court of Appeal lie to the Judicial Committee of Her Majesty's Privy Council in the United Kingdom.

Magistrates Courts exercise summary jurisdiction in criminal matters and in civil matters involving amounts not exceeding \$5,000. Magistrates Courts are presided over by Stipendiary and Circuit Magistrates. There are three magistrates' courts in Freeport, Grand Bahama, one in Eight Mile Rock, Grand Bahama and one in Abaco.

In addition, all Administrators on islands other than New Providence and Grand Bahama exercise summary jurisdiction in criminal matters of a less serious nature and in civil matters involving amounts not exceeding \$400.

Appeals from a decision by a Stipendiary and Circuit Magistrate exercising original jurisdiction go to the Supreme Court or in some instances, directly to the Court of Appeal.

Justices of the Supreme Court and the Court of Appeal may be suspended or removed from office by the Governor-General following an inquiry by a tribunal established for that purpose.

2. Ratification of the Convention and adherence to the Mechanism

According to the official register of the OAS General Secretariat, The Bahamas ratified the Inter-American Convention against Corruption on March 9, 2000 and deposited the instrument of ratification on March 14, 2000.

In addition, The Bahamas signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001, on the occasion of the OAS General Assembly in San Jose, Costa Rica.

I. SUMMARY OF INFORMATION RECEIVED

The Committee wishes to acknowledge The Bahamas' cooperation in the entire review process, and especially the assistance of the Office of the Attorney-General, which was evident in its response to the questionnaire and the effort put forth to collect and display all available data in that document in a succinct, systematic and orderly manner. With its response The Bahamas sent the relevant provisions and documents, listed in the appendix of this report.

For its review the Committee took into consideration the information provided by The Bahamas up to August 30, 2004.

No documents or data were received from civil society within the time period set forth in Article 33 (b) of the Committee's Rules of Procedure.

II. REVIEW OF THE IMPLEMENTATION BY THE BAHAMAS OF THE PROVISIONS SELECTED

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

1.1 CONFLICTS OF INTEREST

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

As detailed in its Response to the Questionnaire, The Bahamas has a set of standards of conduct at the constitutional, statutory and regulatory levels, as well as mechanisms and other measures designed to prevent conflicts of interest that may occur within the public service.

Of the constitutional provisions related to the above-mentioned standards of conduct, the following should be highlighted:

- Constitutional provisions, such as those found in Article 42(1) of the Constitution, disqualifying a person from being appointed or serving as a Senator who, a) is a member of the House of Assembly;³ b) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas;⁴ c) is disqualified from membership to the House of Assembly for being convicted for violating a law related to elections;⁵ or d) is interested in any government contract and has not disclosed to the Governor-General such interest.⁶
- Constitutional provisions, such as those found in Article 42(2) of the Constitution, which, by virtue of a law of Parliament, disqualifies a person from being appointed or serving as a Senator who holds or acts in an office or appointment as specified by that law, who is member of The Bahamas armed forces or who is a member of the police force.
- Constitutional provisions, such as those found in Article 48(1) of the Constitution, disqualifying a person from being elected or serving as a Member of the House of Assembly who, a) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas;⁷ b) holds or acts any office that is responsible for the conduct of any election or for the compilation and or revision of any electoral register;⁸ c) has been convicted for violating a law related to elections;⁹ d) is a Senator;¹⁰ or e) is interested in any government contract and has not disclosed the nature of such contract and his interest therein by publishing a notice in the Gazette within one month before the day of the election.¹¹

³ The Constitution of the Commonwealth of The Bahamas, Article 42(d).

⁴ Article 42(e).

⁵ Article 42(h).

⁶ Article 42(i).

⁷ Article 48(d).

⁸ Article 48(g).

⁹ Article 48(h).

¹⁰ Article 48(i).

¹¹ Article 48(j).

- Constitutional provisions, such as those found in Article 48(2) of the Constitution, which, by virtue of a law of Parliament, disqualify a person from membership to the House of Assembly who holds or acts in an office or appointment as specified by that law, who is member of The Bahamas armed forces or who is a member of the police force.
- Constitutional provisions prohibiting Senators, Members of the House of Assembly or public officers from holding office in certain bodies, such as the Public Service Commission,¹² the Public Service Board of Appeal,¹³ the Judicial and Legal Service Commission¹⁴ and the Police Service Commission.¹⁵

The Bahamas has also statutes and regulations consistent with the above-mentioned standards of conduct, notably:

- General Orders that provide important and comprehensive rules of conduct and policies that govern the Public Service¹⁶ and include rules that prevent corruption, conflicts of interest and limit political participation by certain public officers.¹⁷ Among those to be highlighted are:
 - Provisions prohibiting any public officer engaging either directly or indirectly in trade or in private professional practice, or from taking part, directly or indirectly, in the management or proceedings of a commercial undertaking (Paragraphs 900 – 901).¹⁸
 - Provisions not allowing the awarding of a government contract to a Government servant or to any partnership to which he is a partner, or to a company of which he is a director, unless the measure of his interests in the contract is fully disclosed and the Director of Public Personnel has given permission for the contract to be awarded (Paragraph 913).
 - Provisions prohibiting a government servant from accepting a directorship with a company holding a contract with his Department, unless expressly permitted by the Director of Public Personnel (Paragraph 914).

¹² Article 107(2).

¹³ Article 114(2). This body hears appeals when the Governor-General, on the advice of the Public Service Commission, decides to remove a public officer or imposes a penalty by way of disciplinary control.

¹⁴-Article 116(4).

¹⁵ Article 118(2).

¹⁶ The General Orders define the Public Service as “the service of the Crown in a civil capacity in respect of the Government of The Bahamas (including service as a Member of the Judicial Service Commission, the Public Service Commission or the Police Service Commission) but, save as may be otherwise expressly provided, does not include service

(a) on the personal staff of the Governor-General; or

(b) as a Justice of the Supreme Court or as a Justice of the Court of Appeal; or

(c) in the Department of Tourism.”

¹⁷ The General Orders define this term as,

“(a) a person who holds a pensionable office within the meaning of any Act relating to the pensions or gratuities of persons employed in the public service;

(b) a person who is employed in the public service whose employment is not of a casual nature and whose whole time is employed in the public service.”

¹⁸ In addition, Paragraph 902 states that:

“The prohibitions stated in General Orders 900 and 901 arise from the need for an officer to devote the whole of his time and attention to the service of Government and from the need to ensure that an officer's private affairs are not in conflict with, or do not in any way affect, and may not appear to be in conflict with, or in any way affect, the performance of his official duties.”

- Provisions requiring a public officer to divest his private investments and disclose them to the Director of Public Personnel if it is considered that he would have knowledge or authority over those investments in carrying out his official duties and his private affairs might be brought into real or apparent conflict with his public duties or in any way influence them or appear to influence them in the discharge of his duties (Paragraph 915).
 - Provisions requiring a public officer in reporting to the Director of Public Personnel if he intends to acquire any private interest that might compromise the complete integrity with which he should carry out his official responsibilities (Paragraph 915).
 - Provisions providing that a public officer be transferred to other duties when the Director of Public Personnel determines that the interests in trade or commerce of a public officer's wife conflict or are likely to conflict, or may seem to conflict, with the efficient and faithful performance of the officer's duties (Paragraph 919)
 - Provisions prohibiting public officers from handling public money if excessively in debt (Paragraph 1011), from receiving valuable presents (Paragraph 1020) and from selling or leasing their private property to the government (Paragraphs 1030 – 1031).
 - Provisions limiting the political activities senior public officers may take part in. These senior public officers, particularly those whose duties include advising Ministers or who may hold a sensitive post or a senior or influential position are completely prohibited from all political activities (Paragraph 949).¹⁹
- The Code of Ethics for Ministers and Parliamentary Secretaries, presented to the House of Assembly on the 25th of June, 2002, provides a standard of conduct to prevent conflicts of interest in order to ensure that the Prime Minister and other Ministers of government observe the highest standards of probity in public life.²⁰ The Code includes the following:
- Private work whether remunerated or not is prohibited.
 - A Minister must not hold any other public office or serve as director and or officer of public or private companies or associations except personal or family holding companies that are not involved in any business or trade, and religious or non-profit organizations.

¹⁹ These senior public officers are in the Politically Restricted Group. They include all public officers serving in any post in the Governor-General's Office, the Cabinet Office, Ministry of Finance, the Service Commissions, the House of Assembly, the Senate, the Parliamentary Registration Department, Principals and Vice Principals of Schools, Department of Public Service, the Ministry of Foreign Affairs and all officers of the Royal Bahamas Police Force. There is an Intermediate Group that consists of typists, clerks and technicians. They are free to engage in political activities but only if specific permission is granted and subject to conditions which may be imposed. The Politically Free Group is composed of unestablished daily paid employees and their equivalent, in other words, all public officers not included in the aforementioned groups. They are completely free to engage in all political activity.

²⁰ The Code of Ethics Communication, submitted with the Code of Ethics for Ministers and Parliamentary Secretaries, pointed out that this could only be achieved if Ministers, "avoid any material conflict between their private interests and public duties, avoid using their ministerial status or influence for the enrichment of themselves or their families and avoid all forms of ethically improper behaviour including the solicitation or acceptance of personal gifts or loans from organizations or individuals who are seeking to obtain or retain the patronage or favour of the Government."

- On appointment, a Minister must divest him or herself of any investments that could create a conflict of interest. If the Prime Minister is satisfied that outright disposal is impractical, these investments are to be transferred to a “blind trust”. A trustee not related to the Minister should administer such a trust.
 - A Minister who previously engaged in a profession or business is not necessarily required to dispose of his interest in the relevant entity, but he shall remove his name from all business letterheads or amend them to reflect his inactive status and cease to participate in the profits except for an amount due to him in return for his previous investment.
 - Ministers with direct contractual relationships with the Government must terminate them.
 - While in office, a Minister should not make investments which could result in a conflict of interest, nor use “insider information” to make speculative investments in the securities market or to obtain some advantage for him or herself in advance of an imminent change in Government policy or revenue measures.
 - Ministers are prohibited from recommending former firms or businesses to persons seeking the Government’s favor or continued favor.
 - Whenever Cabinet is due to discuss any matter that could affect the private interest of a Minister, that Minister should declare his interest and withdraw from the meeting for the duration of their discussion.
 - Ministers should not accept gifts that might be perceived to create an obligation to the donor.
- The Powers and Privileges (Senate and House of Assembly) Act, section 27, which prohibits any person from offering a bribe to any Senator or Member of Parliament to influence their conduct in the legislative process; prohibits a Senator or Member of Parliament from accepting, agreeing to accept, obtaining or agreeing to obtain any bribe, compensation or benefit from speaking, voting or acting as such Senator or Member in proceedings of the Senate or House or a committee or refraining from doing so; and prohibits a Senator or Member of Parliament from bringing forward, promoting or advocating any proceedings or measures for consideration of any pecuniary fee or reward.
 - The Prevention of Bribery Act, section 3(2), which provides that a public officer may not solicit nor accept any advantages as inducement to or reward for his performing or abstaining from performing, expediting or delaying any act in his capacity as a public officer or assisting, favoring or hindering any person in the transaction of any business with a public body.
 - The Prevention of Bribery Act, section 4(2), which provides that a public officer may not solicit or accept any advantage for giving assistance or using influence in the promotion, execution or procuring of any contract or subcontract with a public body.

The Bahamas also has mechanisms to enforce the abovementioned standards of conduct, among which the following should be noted:

- The Public Service Commission, established under article 107 of the Constitution, exercises disciplinary control over acts of misconduct of the General Orders, which are dealt with as soon as possible after the time of occurrence.²¹ The Commission consists of a Chairman and between two and four other members, all appointed by the Governor-General acting on the recommendation of the Prime Minister in consultation with the Leader of the Opposition. The functions of this Commission include advising the Governor-General on appointment and dismissal of these officers and hold disciplinary proceedings for misconduct in accordance with the Public Service Commission Regulations (sections 41 – 47) and Chapter 11 of the General Orders (Paragraph 1110). Acts of misconduct is defined as any act either contrary to specific rules or regulations or against the general interests of efficient public service. Paragraph 1041 of the General Orders also state that “disciplinary action can be taken for general misconduct to the prejudice of discipline and the proper administration of Government business, for example, corruption, dishonesty, false claims, the falsification of records or their suppression, or failure to keep them, and the like.” Under section 40(1) of the Public Service Commission Regulations, the following punishments may be ordered: dismissal, reduction in rank, reduction in salary, deferment of increment, withholding of increment, reprimand and forfeiture of any part of any emolument. The General Orders, also provide sanctions in the form of dismissal, deferment or withholding of increment, reduction in rank or salary as well as forfeiture of all rights to retiring benefits.²²
- The Police Service Commission established under article 118 of the Constitution in relation to the police. The Police Service Commission consists of a Chairman and two other members appointed by the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition. The primary function of this Commission is to advise the Governor-General with respect to the appointment, removal and exercise of disciplinary control over certain classes of officers, specifically, “any officer of the Police Force or of the Reserves and includes any supernumerary police officer appointed under Part VIII of the Police Act and any constable appointed under Part XI of that Act.”²³ It should also be noted that the General Orders define the Public Service Commission as to be read, when appropriate, as the Police Service Commission and therefore the standards of conduct concerning conflicts of interest are applicable to these officers as well.²⁴ As such, the Commission also holds disciplinary proceedings for misconduct in accordance with Chapter 11 of the General Orders (Paragraph 1110) and the Police Service Commission Regulations (sections 40 – 43). The General Orders provide sanctions in the form of dismissal, deferment or withholding of increment, reduction in rank or salary as well as forfeiture of all rights to retiring benefits.²⁵
- The Judicial and Legal Service Commission as established under article 116 of the Constitution in relation to judicial and legal officers. It is composed of the Chief Justice, who is the Chairman, another Justice or Justice of Appeal appointed by the Governor-General on the advice of the Chief Justice, the Chairman of the Public Service Commission and two other persons appointed by the Governor-General on the recommendation of the Prime Minister after consultation with the

²¹ Public Service Commission Regulations, section 31.

²² General Orders, Paragraphs 1102, 1133 and 1136.

²³ Police Service Commission Regulations, section 2. See also, The Bahamas Constitution: Options for Change, The Bahamas Constitutional Commission, pg. 56.

²⁴ General Orders, Paragraph 100(6).

²⁵ General Orders, Paragraphs 1102, 1133 and 1136.

Leader of the Opposition. This body's main function is the appointment of members of the Judiciary and to advise the Governor-General on the appointment, removal and exercise of disciplinary control over persons acting in the capacity of judicial office, specifically, "such public offices for appointment to which persons are required to possess legal qualifications as may be prescribed by Parliament."²⁶ As in the case of the Police Service Commission, the General Orders define the Public Service Commission as to be read, when appropriate, as the Judicial and Legal Service Commission and therefore the standards of conduct concerning conflicts of interest are applicable to these officers as well. As such, the Commission also holds disciplinary proceedings for misconduct in accordance with Chapter 11 of the General Orders (Paragraph 1110) and the Judicial and Legal Service Commission Regulations (sections 40 – 44). Under section 39(1) of these Regulations, the following punishments may be ordered: dismissal, reduction in rank, reduction in salary, deferment of increment, withholding of increment, reprimand and forfeiture of any part of any emolument. The General Orders, also provide sanctions in the form of dismissal, deferment or withholding of increment, reduction in rank or salary as well as forfeiture of all rights to retiring benefits.²⁷

- The Commission of Inquiry Act, which provides that the Governor-General can establish a Commission to inquire into and report on any matter stated as the subject of inquiry, including into allegations of corruption involving public officials, if it is determined that it will be for the public benefit. The members are appointed by the Governor-General and are to report their findings on the subject of inquiry.²⁸ The Commission sets the manner and rules under which a Commission of Inquiry conducts an investigation²⁹ and they have powers to summon and compel the attendance of witnesses, call for the production of documents or things including the power to retain and examine them and examine persons appearing before them.³⁰ The inquiry are to be held in public unless the Commissioners deem it in the public interest, or necessary for the efficient conduct of the inquiry, that they should be held in camera.³¹
- The Penal Code, section 453(3), which provides that "every public officer or juror who is guilty of corruption, or of willful oppression, or of extortion, in respect of the duties of his office, commits misdemeanour and shall be liable to imprisonment for two years."
- The Powers and Privileges (Senate and House of Assembly) Act, which provides that any person who violates the provisions contained in the Act is guilty of an offence and shall be liable on conviction on information to a fine not exceeding three thousand dollars and/or to imprisonment for a term not exceeding three years.
- The Prevention of Bribery Act, section 10, which provides that a person convicted on information is liable to a fine not exceeding ten thousand dollars and/or to imprisonment for a term not exceeding four years, or on summary conviction, to a fine not exceeding five thousand dollars and/or to imprisonment not to exceed two years. In addition, the person is also required to pay to such person or public body the amount or value of any advantage received or such part as the court may specify.

²⁶ The Constitution of the Commonwealth of The Bahamas, Article 117(2). See also, The Bahamas Constitution: Options for Change, The Bahamas Constitutional Commission, pg. 59.

²⁷ General Orders, Paragraphs 1102, 1133 and 1136.

²⁸ Commissions of Inquiry Act, section 2.

²⁹ *Id.*, section 9.

³⁰ *Id.*, section 10.

³¹ Commissions of Inquiry Act, section 4(4)..

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

The constitutional and legal provisions on standards of conduct aimed at preventing conflicts of interest and on enforcement mechanisms are relevant for promoting of the purposes of the Convention.

The Committee notes that provision is made within The Bahamas legal framework, via the Constitution, for a system of incompatibilities, disqualifications and prohibitions in the public service. The Constitution contains a number of general and specific provisions for the correct, honorable and proper fulfillment of public functions that encompass the principles established in the Convention. The Committee believes that this indicates progress in implementing the Convention.

In particular, it should be noted that the General Orders offer an important set of rules that address and prevent conflict of interests for the Public Service. In addition, the Code of Ethics for Ministers and Parliamentary Secretaries provides a solid foundation in meeting the object and purpose of the Convention.

Nevertheless, the Committee would like to note that the General Orders do not include all personnel employed by the Government. These exceptions are the personal staff of the Governor-General, the Justices of the Supreme Court and of the Court of Appeal and those employed by the Department of Tourism.³² These are not the only offices that do not form part of the Public Service and therefore not fall under the General Orders. All political offices, the office of the members of the Public Service Commission and permanent commissions, members of boards, committees or similar bodies established by law and other offices specified not to be public offices for the purpose of the constitutional provisions also are exempt from these controls. These exceptions present a means to undermine the system in place to prevent conflicts of interest and corruption and standards should be put in place to monitor and regulate the actions of those offices.

The Committee would also like to refer to the composition of the Judicial and Legal Service Commission. The members of this Commission include the Chief Justice and other Justices of the Supreme Court or Justice of Appeal. Based on their recommendations, the Governor-General makes appointments, removes officers and exercises disciplinary control. The Committee notes that The Bahamas authorities did not provide any documents addressing standards applicable to the conduct of Justices of the Supreme Court and the Justices of Appeal. The Committee is concerned that there are no explicit rules contemplated for preventing conflicts of interest subsequent to exiting public office, such as a ban on former public officers in intervening in official matters that they participated in during their time in office or dealing with institutions they were recently connected with, and, in general, other situations that might lead to improper exploitation of one's status as a former public officer.

Moreover, the sanctions contemplated for violation of the Code of Ethics for Ministers and Parliamentary Secretaries are political in nature, as this Code is enforceable at the sole instance of the Prime Minister. As well, there are no rules of conduct to govern the behavior of Senators or Members of the House of Assembly. An Integrity in Public Life Act, described as governing all parliamentarians, heads of Government Boards and senior civil servants and "designed to induce higher levels of accountability and transparency so as to discourage corruption and ethical impropriety in public life" has been introduced to address this concern, but it has not been given

³² General Orders, Paragraph 100(2).

statutory effect.³³ As such, since this bill has not been passed, there are no rules of conduct for Senators or Members of the House of Assembly.

The Prime Minister, under the Code of Ethics, has discretion to allow Ministers to keep any direct contractual relationships with the Government, to hold onto directorships or to hold onto shares or equities in companies that have contractual relationships with the Government, so long as they are put into a blind trust. However, there appear to be no provisions in place regulating the manner in which the Prime Minister makes this determination.

Additionally, it should be noted that there are no standards in place to prevent those who perform public functions from appointing as employees persons to whom they are related by marriage or permanent relationship or kinship.

As stated in the previous section, the Powers and Privileges (Senate and House of Assembly) Act, provides that any person that violates the provisions contained in the Act is guilty of an offence and shall be liable on conviction on information to a fine not exceeding three thousand dollars and/or to imprisonment for a term not exceeding three years, however, section 33 of the Act states that no criminal prosecution under the Act may arise, except in pursuance of a fiat of the Attorney-General. Likewise, no criminal prosecutions may arise under the Public Disclosure Act or the Prevention of Bribery Act without explicit authorization of the Attorney General. The Bahamas did not submit information about outreach and training programs to help those in the public service identify and prevent conflict of interests and corruption.

In view of the foregoing comments, the Committee will make a recommendation.

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

The Bahamas has stated, "...that there are no statistical data available which shows the results obtained in implementing the standards."³⁴ The lack of information and the limited nature of what is available make it impossible to fully assess results in this area. The Committee will therefore make a recommendation.³⁵

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

1.2.1 Existence of legal framework and/or other measures

The Bahamas has a set of norms concerning the standards of conduct in the conservation and proper use of resources entrusted to public officials in the performance of their functions, consisting of various legal provisions, including the following:

³³ Speech from the Throne at the Opening of the New Parliament 22nd Day of May, 2002 by Her Excellency Dame Ivy Dumont, Governor-General.

³⁴ Updated Response to Questionnaire, pg.13.

³⁵ It should be noted that a Commission of Inquiry was established in February 2004 to look into allegations of impropriety by members of the Royal Bahamas Defence Force and the Royal Bahamas Police Force. The Commission presented its report on August 31, 2004.

- The Constitution, Article 128, creates a Consolidated Fund, into which is paid all Government revenues. The Minister of Finance is to prepare annually, estimates of revenues and expenditures for public services to be paid out of this Fund during the next financial year and an Appropriations Bill. Parliamentary authorization is necessary before any money can be spent from this fund.
- The Financial Administration and Audit Act, which makes provisions for the administration, control and audit of the public finances of The Bahamas. As noted in the response by The Bahamas in the Updated Questionnaire, the Auditor General, under this Act, is “responsible for examining, enquiring into and auditing the accounts of all accounting officers and persons responsible for the collection, receipt, custody or disposal of public monies or public stores, and reporting any irregularities thereto. Further he may consult with the auditors of any statutory corporation regarding its financial affairs, and if he is dissatisfied with the result of such consultation he may so report to the Minister of Finance.”³⁶
- According to the response by The Bahamas to the Updated Questionnaire, the Rules of the House of Assembly, paragraph 24, states that there is a standing committee designated the Committee of Public Accounts that examines the accounts showing appropriation of the sums granted by the legislature to meet the public expenditure of The Bahamas.³⁷
- The General Orders, Paragraph 1048, which provides that public officers are liable for the loss of public funds whether by reason of neglect or fault or by the disregard of or failure to comply with any provisions found in the General Orders, Financial Instructions, Store Rules or departmental instructions.
- The General Orders, which provides that no public officer or government servant may disclose or communicate any document in possession of the Government unless granted permission first (Paragraph 938), give any person information relating to the business of the public service (Paragraph 1900) give an impression of any official seal to any private person (Paragraphs 1049 and 1916), take copies of communications and reports referring to themselves (Paragraph 1915) and disclosing to any person except when it is in the interests of Government to do so, any article, note, document or information entrusted to that person and due care and diligence should be exercised to prevent such knowledge from being disclosed or communicated (Paragraph 1045).
- The Code of Ethics for Ministers and Parliamentary Secretaries provide that a Minister is in flagrant breach of the Code if the Minister, directly or indirectly, uses “insider information” to make speculative investments or to obtain some advantage for himself, a family member or associate in advance of a change in Government policy or revenue measures.

The Bahamas also has enforcement mechanisms for these standards of conduct, among which are the following:

- The Constitution provides that there shall be an Auditor General who is empowered to make proper expenditure of funds. As noted under Article 136 of the Constitution, “the accounts of the Supreme Court, the Senate, the House of Assembly, all departments and offices of the Government (but excluding the Department of the Auditor-General), the Public Service

³⁶ Updated Response to Questionnaire, pg. 11.

³⁷ Updated Response to Questionnaire, pg. 14. These Rules were not provided to the Committee.

Commission, the Judicial and Legal Service Commission, the Police Service Commission and all Magistrates' Courts shall, at least once in every year, be audited and reported on by the Auditor-General who, with his subordinate staff, shall at all times be entitled to have access to all books, records, returns and reports relating to such accounts." These reports are public documents once they are presented to the House of Assembly.

- The Financial Administration and Audit Act, section 22, which establishes the liability of public officers who misappropriate public funds. This section reads, "any person who is or was an officer:
 - (a) has failed to collect any moneys owing to the Government for the collection of which such person is or was at the time of such employment responsible;
 - (b) is or was responsible for any improper payment of public moneys or for any payment of such moneys which is not duly vouched; or
 - (c) is or was responsible for any deficiency in, or for the loss or destruction of, any public money, public stores or other Government property, and if, within a period specified by the Financial Secretary, an explanation satisfactory to him is not furnished with regard to such failure to collect, improper payment, payment not duly vouched, deficiency, loss or destruction, as the case may be, the Financial Secretary may surcharge against the said person the amount not collected or such improper payment, payment not duly vouched, deficiency, loss or the value of the property destroyed, as the case may be, or such lesser amount as the Financial Secretary may determine."
- Section 26 of the Financial Administration and Audit Act, which allows for the recovery of the surcharge by monthly deductions from the salary of such officer, or by the Attorney-General instituting legal proceedings to recover the debt.
- The Penal Code, section 235, which provides that if any public officer who is bound to pay or account for any moneys or valuable things, fails to pay or account for the same according to that officer's duty to any officer or person lawfully demanding the same that officer commits an offence.
- As under the previous section on examining the standards of conduct regarding conflicts of interests, the Public Service Commission exercises disciplinary control over acts of misconduct of the General Orders, via Public Service Commission Regulations 41 and 42 and General Orders, Chapters 11.

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

The standards and mechanisms for conservation and proper use of public resources that have been reviewed by the Committee, based on the information at its disposal, are relevant for the promotion of the purposes of the Convention.

While there are legal provisions and mechanisms in place to recover funds that have been misappropriated, the Committee would like to note, that there is no legal provision expressly stating that there is a duty upon public officials to conserve and properly use the resources entrusted to them. The Committee also believes that the comments made in the aforementioned section on conflicts of

interest are applicable, in so far as that the General Orders does not govern the activities of all persons in the public service and the conduct of important segments of those that work for the government are not being monitored.

In addition, there are no provisions applicable to Senators or Members of the House of Assembly, as the Integrity in Public Life Act has not been enacted, and there are no sanctions for breaches by Ministers or Parliament Secretaries of the Code of Ethics.

The Committee will make the pertinent recommendations in light of these observations.

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

According to The Bahamas, for 2003, 8 persons were punished for disciplinary matters for corrupt behavior and 7 persons suspended. For the first six months of 2004, 5 persons have been punished while 4 have been suspended. The Bahamas has also indicated in its response that discussions are underway to discuss Public Sector Reform. However, there is no further information on the results of the operation of the Financial Administration and Audit Act.

Thus, the Committee lacks sufficient information to fully assess results in this field. In light of this circumstance, the Committee will make a recommendation.

1.3. MEASURES AND SYSTEMS REQUIRING GOVERNMENT OFFICIALS TO REPORT TO APPROPRIATE AUTHORITIES ACTS OF CORRUPTION IN THE PERFORMANCE OF PUBLIC FUNCTIONS OF WHICH THEY ARE AWARE

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

The Bahamas has a set of provisions concerning these standards of conduct and mechanisms, consisting of various legal provisions, among which the following should be noted:

- The General Orders, Paragraph 1040, which provides that an act by a public officer which may bring the Service into disrepute must be reported to the Permanent Secretary by the head of the Department to which the officer in question belongs or is attached.
- The Financial Administration and Audit Act, section 30, which provides that in the case of irregularity in the collection, custody or expenditure of public monies detected by the Auditor General, this must be reported to the Minister of Finance.

The Bahamas also notes in its response to the Updated Questionnaire reports that where there is evidence of corruption, a report is made to the Royal Bahamas Police Force for investigation.³⁸

³⁸ Updated Response to Questionnaire, pg. 20.

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

The standards and mechanisms related to the measures and systems that require public servants to report acts of corruption in the public service of which they are aware, as reviewed by the Committee based on the information made available, are relevant for the promotion of the objectives of the Convention.

The Committee believes that The Bahamas should consider establishing further rules on this obligation to include provisions to facilitate reporting acts of corruption by public servants and to grant them effective protection from the threats or any other act of pressure or coercion they might face as a consequence of discharging those duties.

As with the analysis in the aforementioned section on conflicts of interest, the Committee is concerned that important segments of those who work for the government are not covered by the reporting requirements of the General Orders.

In addition, there are no provisions applicable to Senators, Members of the House of Assembly and Ministers and Parliamentary Secretaries.

The Committee will make a recommendation in light of this situation.

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

The Bahamas has not provided information on this matter in its response. The lack of information makes it impossible to fully assess results in this field. In light of this circumstance, the Committee will make a recommendation.

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

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

The Bahamas has a set of provisions concerning these systems, consisting of various kinds of regulations, among which the following should be noted:

- The Public Disclosure Act, section 4, makes provisions for the public disclosure of the assets, income and liabilities for Senators and Members of Parliament. They are required to declare their assets, income and liabilities in a prescribed form, as at December 31 each year and this declaration must be submitted by March 1 of the following year. Moreover, on the first anniversary of the date on ceasing to be a Senator or Member of Parliament, a declaration must be furnished covering the period from the last declaration to the anniversary date.³⁹ Article 5 of the Act provides that the assets, income and liabilities of the declarant's spouse and children are to be declared as well as any property held in trust by the declarant, the declarant's spouse or the declarant's children for any other person. (Second Schedule, Form A).

³⁹ The Public Disclosure Act, section 4(2)(c).

- The Public Disclosure Act (Application to Public Appointees and Public Officers) Notice makes this requirement mandatory for all public appointees and public officers included in the attached Schedule to the act.⁴⁰ As with the requirement for Senators and Members of Parliament, the declaration must be submitted before March 1 of the following year and one must be made one year after the aforementioned public appointees and public officers have ceased holding those offices.⁴¹
- The Public Disclosure Act, section 3, establishes the Public Disclosure Commission, an oversight body that examines these declarations with the competence to ask for further explanations of the items declared (Article 6(1)). When the Commission is satisfied that a declaration has been fully made, it shall publish a summary of that declaration in the Gazette (Article 6(2)). However, if the Commission is not satisfied that a declaration has been fully made or a person makes a written complaint in relation to the published summary declaration and the Commission is of the opinion that an investigation is warranted, it may ask the Senator or Member of Parliament to furnish further information, attend on the Commission, make independent inquiries and investigations and summon witnesses (Article 7). If a declaration is not provided or if the Commission is not satisfied with any aspect of the declaration after examination and enquiries, it shall report the matter to the Prime Minister and Leader of the Opposition.
- Public Disclosure Act, section 13, provides that, in addition to the report to the Prime Minister and Leader of the Opposition, those persons who fail, without reasonable cause, to make a declaration or who make a false one are guilty of an offence and upon conviction on information be liable to a fine not exceeding ten thousand dollars and/or imprisonment for a term not exceeding two years. Moreover, if the offence involves the deliberate non-disclosure of the property of a Senator or Member of Parliament, the court, in addition to the fine and/or term of imprisonment, shall declare the property forfeited to the Government if it is situated within The Bahamas or order the value of the property to be paid to the Government if it is situated outside The Bahamas.
- The Parliamentary Elections Act, 1992 section 37(1) (a) provides that a person cannot be a valid candidate unless a declaration is made of that person's assets, income and liabilities as well as those of the spouse and children. Form E of the Act lists the information required for this declaration. This declaration is made public at the same time a person's nomination is accepted by the returning officer. This publication is made no later than the second day after nomination day.⁴²

⁴⁰ The list of public appointees and public officers are the Secretary of the Cabinet, the Financial Secretary, the Chairman of the Public Service Commission, the Permanent Secretary, the Director of Legal Affairs, the Auditor-General, the Director of Public Personnel, the Commissioner of Police, the Secretary of Revenue, the Deputy Permanent Secretary, the Deputy Financial Secretary, the Deputy Auditor-General, the Deputy Commissioner of Police, the Deputy Director of Public Personnel, the Head of Department, the Deputy Head of Department, the General Manager (by whatever name called) of any Corporation established by Act of Parliament for public purposes, the Governor of the Central Bank of The Bahamas and the Deputy Governor of the Central Bank of The Bahamas.

⁴¹ The Public Disclosure Act, section 9.

⁴² Parliamentary Elections Act, section 39.

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

The Bahamas has a set of provisions that clearly establish the requirement that public officials who hold certain posts must submit a sworn declaration of assets, income and liabilities, which is relevant to the purposes of the provision of the Convention whose implementation is being reviewed.

Persons who are appointed as Senators and to certain senior public offices are required to make a declaration only after being appointed to those positions. In addition, the declarations of the senior public officers are not made public. On this point, the Committee notes Article III, paragraph 4 of the Convention, aims to create and maintain systems for registering income and “where appropriate, for making such registrations public.” The Bahamas may wish to consider making these documents public.

The Committee will make recommendations in light of these considerations.

2.3 Results of the legal framework and/or other measures

The Bahamas did not provide information on this matter in its response to the questionnaire. Therefore, the Committee does not have sufficient information to fully assess results in this field. In light of this circumstance, the Committee will make a recommendation.

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

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

The Bahamas has in place four oversight bodies for enforcement of the measures covered in paragraphs 1, 2 and 4 of Article III of the Convention. For clarity, some of the explanation of the functions of these bodies is taken from section 1.1.1 of this report:

- The Public Service Commission established under article 107 of the Constitution in relation to public officers. The Commission consists of a Chairman and between two and four other members, all appointed by the Governor-General acting on the recommendation of the Prime Ministers in consultation with the Leader of the Opposition. The functions of this Commission include advising the Governor-General on appointment and dismissal of these officers and holding disciplinary proceedings for misconduct in accordance with the Public Service Commission Regulations.
- The Police Service Commission established under article 118 of the Constitution in relation to the police. The Police Service Commission consists of a Chairman and two other members appointed by the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition. The primary function of this Commission is to advise the Governor-General with respect to the appointment, removal and exercise of disciplinary control over certain classes of officers.⁴³

⁴³ Police Service Commission Regulations, sections 40 – 43. See also The Bahamas Constitution: Options for Change, The Bahamas Constitutional Commission, pg. 56.

- The Judicial and Legal Service Commission as established under article 116 of the Constitution in relation to attorneys. It is composed of the Chief Justice, who is the Chairman, another Justice or Justice of Appeal appointed by the Governor-General on the advice of the Chief Justice, the Chairman of the Public Service Commission and two other persons appointed by the Governor-General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition. This body's main function is in appointing members of the Judiciary and in advising the Governor-General on the appointment, removal and exercise of disciplinary control over persons acting in the capacity of judicial office, which also includes the legal officers in the Attorney-General's office.⁴⁴
- The Public Disclosure Commission as established in the Public Disclosure Act, which examines the declarations of assets, income and liabilities submitted by Members of Parliament, Senators and senior public officers.

3.2 Adequacy of the legal framework and/or other measures

The Bahamas' measures for oversight bodies charged with the responsibility of ensuring compliance with the provisions stated in paragraphs 1, 2 and 4 of Article III of the Convention satisfy those provisions, considering the existence of bodies with general or specific competence to ensure compliance, which constitutes progress in implementation of the Convention.

Based on the information at its disposal, the Committee considers that The Bahamas has relevant standards for promotion of the purposes of the Convention in the above-mentioned provisions but not for Article III, paragraph 11.

As noted under section 1.1.2, the Committee is concerned that the General Orders do not apply to the conduct of the personal staff of the Governor-General, the Justices of the Supreme Court and of the Court of Appeal and those employed by the Department of Tourism. According to the aforementioned report by the Constitutional Commission, these are not the only offices that do not form part of the Public Service. All political offices, the office of the members of the Public Service Commission and permanent commissions, members of boards, committees or similar bodies established by law and other offices specified not to be public offices for the purpose of the constitutional provisions also do not fall under the purview of an oversight body.⁴⁵

Furthermore, as stated under section 1.1.2, there is no oversight body to impose sanctions in relation to Ministers and Parliamentary Secretaries for violations of the Code of Ethics that apply to their behavior.

In addition, the Committee notes that coordination and communication among the oversight bodies in performing their particular functions is a positive step to designing common public policies to fight corruption.

Taking into account these considerations, the Committee will make a recommendation.

⁴⁴ *Id.*

⁴⁵ *Id.*, pg. 59.

3.3 Results of the legal framework and/or other measures

The Bahamas did not supply information on this point in its response to the questionnaire and, as a result, the Committee does not have sufficient information to assess this field. In light of this circumstance, the Committee will make a recommendation.

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

4.1 GENERAL PARTICIPATION MECHANISMS

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

The Bahamas in its response states that two measures concerning these mechanisms exist, which are the following:

- The Public Disclosure Act, s. 6(3), which allows for members of the public to make a written complaint concerning the declarations made by a Senator or Member of Parliament on their assets, income and liabilities, to the Public Disclosure Commission. As stated under section 2.1 of this report, the Public Disclosure Commission is an oversight body that examines these declarations and an individual may make a written complaint in relation to the published summary declaration.
- Members of the public may make complaints to the Police Complaints Unit concerning corruption by Police Officers.

Constitutional provisions also are in place that relate to Article III, paragraph 11 of the Convention. Chapter III of the Constitution guarantees many freedoms to the citizens of The Bahamas, such as freedom of expression (Article 23), freedom of assembly and association (Article 24), and the fundamental right not to be deprived of life, liberty and the security of the person or property (Article 15).

A Constitutional Commission was established in 2002 to review the provisions of the Constitution and to consider methods of amending the current one or adopting a new one. As noted in the response by The Bahamas to the questionnaire, specific objectives of the review include the strengthening of the fundamental freedoms and civil and political rights of the individual, including a consideration of extending the right to freedom of expression to include a free press.⁴⁶ This Commission has produced a booklet, The Bahamas Constitution: Options for Change, containing basic information with a view of deepening public knowledge of the Constitution and to stimulate public interest and debate. As noted in the response to the questionnaire, “the Commission was instructed to engage in nation-wide consultation and dialogue with The Bahamas people, associations and academic institutions as an intrinsic part of the foregoing inquiry and to do so by such means as the Commission may deem appropriate, including town meetings throughout The Bahamas; “call in” radio and television programmes; public symposia; public circulars inviting comments on constitutional reform as well as public hearings before the Commission of statements from interested parties. To this end the Constitutional Commission has held a series of Town Meetings in New Providence, Grand Bahama and all the major Bahamian islands.”⁴⁷ The Commission is required to submit a report within two years.

⁴⁶ The Bahamas Constitution: Options for Change, The Bahamas Constitutional Commission, pg. 20, and Updated Response to Questionnaire, pg. 29.

⁴⁷ Updated Response to Questionnaire, pg. 30.

4.1.2 Adequacy of the legal framework and/or measures

Based on the information available to it, the Committee observes that The Bahamas has constitutional and legal provisions to encourage participation of civil society and non-governmental organizations in public activities. Encouraging the protection of civil liberties provides a basis for civil society and non-governmental organizations to operate freely and independently and thereby facilitate prevention of corruption.

Although the Bahamas states that it is common practice for public bodies to hold town meetings and also to invite comments from civil society on certain issues the Committee is concerned that there are no formal mechanisms in place to provide for: access to information by civil society and nongovernmental organizations; consultation with such entities; active participation by such entities in public administration and in the follow-up thereof. The Committee does not have sufficient information to evaluate the common practices cited by The Bahamas.

In light of the foregoing considerations, the Committee will make appropriate recommendations.

4.1.3 Results of the legal framework and/or other measures

The Bahamas states that the Public Disclosure Commission has not received any complaints in the last two years. However, for the statistics they do have available, for the period January to June 2002, the Police Complaints Unit received one hundred and ninety four complaints of which one hundred and sixty are under investigation, twenty one have been resolved and thirteen are under judicial deliberation. Nevertheless, the lack of more current information makes it impossible to fully assess results in this field. In light of this circumstance, the Committee will make a recommendation.

4.2. MECHANISMS FOR ACCESS TO INFORMATION

The Bahamas states that there no mechanisms “that regulate and facilitate the access of civil society and nongovernmental organizations to information in the control of public institutions.”⁴⁸

In light of this circumstance, the Committee will make a recommendation.

4.3 CONSULTATIVE MECHANISMS

The Bahamas states that “there are no mechanisms to consult civil society.”⁴⁹

In light of this circumstance, the Committee will make a recommendation.

4.4 MECHANISMS TO ENCOURAGE PARTICIPATION IN PUBLIC ADMINISTRATION

The Bahamas states that “there are no mechanisms to encourage active participation in public administration.”⁵⁰

In light of this circumstance, the Committee will make a recommendation.

⁴⁸ *Id.* pg. 25.

⁴⁹ *Id.*

⁵⁰ *Id.*

4.5 MECHANISMS FOR PARTICIPATION IN THE FOLLOW UP OF THE PUBLIC ADMINISTRATION

The Bahamas states that "there are no mechanisms for active participation of civil society in the follow-up of public administration."⁵¹

In light of this circumstance, the Committee will make a recommendation.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

5.1. MUTUAL ASSISTANCE

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

The Mutual Legal Assistance (Criminal Matters) Act 1988 provides for legal assistance in criminal matters from other countries that have a treaty with The Bahamas. Three treaties are in place, with the United States, Canada and the United Kingdom, although in the last case, this only applies to dangerous drugs. These treaties cover acts of corruption so long as they are not political in nature. Under the Act, the Attorney-General is designated as the Competent Authority to whom requests for legal assistance should be sent. When the Attorney-General receives a request, it is reviewed to ensure that it complies with the provisions of the Act. As noted in the webpage on Mutual Legal Assistance in Criminal Matters and Extradition that is maintained at the Organization of American States, a tool for information exchange, "the requesting authority should provide the Attorney-General with the following information:

- A factual history of the proceedings/investigation commenced against the subject of the request;
- A detailed definition of the Law of the Requesting Country upon which the request is based;
- In the case of a request for the production of bank documents - the name and address of the relevant banking institution and/or the account name and number;
- In the case of a request for the production of documents - a detailed list of the documents required;
- In the case of a request for interviews/depositions - questions should be submitted for each individual that needs to be interviewed; and

(In compliance with Rules 39 and 65 of The Rules of The Supreme Court of The Commonwealth of The Bahamas).

- (vi) If possible, supporting documentation, i.e. exhibits etc., which provide a sufficient connection between the subject of the request and the alleged offence(s).⁵²

⁵¹ *Id.* pg. 25 – 26.

⁵² Procedures for Dealing with Requests for Assistance from Other Jurisdictions:
www.oas.org/juridico/new/en/bhs/en_bhs-mla-genpres.html.

In addition, for countries that do not have a treaty, Letters Rogatory may be sent through diplomatic channels and requests for assistance may be made via the Criminal Justice (International Cooperation) Act 2000. The request, under the Act, must “emanate from a court or prosecutor in a country outside The Bahamas and that authority should ensure that an offence under the Law of its country has been committed or that there are reasonable grounds for suspecting that an offence has been committed and that proceedings in respect of that offence have been instituted in its country or that an investigation has been initiated.”⁵³ Again, the Attorney-General is designated as the relevant authority to receive the requests.

5.1.2 Adequacy of the legal framework and/or other measures

The provisions mentioned by The Bahamas in its response can contribute to achievement of the Convention objectives to encourage and facilitate mutual assistance among the states parties, and can contribute specifically to the investigation and prosecution of corrupt acts, if they are used for that purpose.

The Bahamas says that it has only received and executed one request for mutual legal assistance in a criminal matter dealing with corruption.⁵⁴ Accordingly, the Committee would like to stress the importance of appropriate government officials and authorities, as well as those countries with which The Bahamas maintains close or ongoing mutual cooperation relations, the possibility of using the Convention for this purpose. In addition, the Committee would like to stress the importance of ensuring that the mutual assistance treaties entered into by The Bahamas, together with the Inter-American Convention on Corruption itself, are applied to specific cases of corruption. This presupposes a proper understanding of their provisions on the part of those responsible for applying them.

Taking into account these considerations, the Committee will formulate a recommendation.

5.1.3 Results of the legal framework and/or other measures

As noted in the previous section, The Bahamas has received and executed one request for mutual legal assistance in a criminal matter dealing with corruption of high-level public officials from a member country of the OAS. Charges have been laid in the requesting country. However, the provision of the information to the requesting country is now subject to challenge before the Supreme Court of the Bahamas.

Taking into account of the lack of information provided in this area, the Committee will formulate a recommendation.

5.2 MUTUAL TECHNICAL COOPERATION

5.2.1 Existence of provision in the legal framework and/or other measures

The Bahamas notes that it does not have mechanisms in place to permit mutual technical cooperation. They have not made requests to other countries or received requests for mutual technical cooperation under the Convention. The Bahamas further states that they have not implemented its obligation under Article XIV (2) of the Convention.

⁵³ Updated Response to Questionnaire, pg. 26.

⁵⁴ *Id.*, pg. 27

5.2.2 Adequacy of the legal framework and/or other measures

In the light of the comments in the previous section, it is not possible to assess the adequacy of the framework and measures. The Committee will make a recommendation for The Bahamas to have mechanisms to develop mutual technical cooperation as prescribed in the Convention.

5.2.3 Results of the legal framework and/or other measures

Absent both mechanisms on the subject and information on results, it is not possible to evaluate them. In light of these circumstances, the Committee will make a recommendation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

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

According to the information provided by The Bahamas in its response to the questionnaire, the Attorney-General is being used as the central authority for the purposes of channeling requests for mutual assistance and mutual technical cooperation, as provided under the Convention.

However, since the OAS General Secretariat has not received formal notification of the designation, the Committee will make a recommendation on this point.

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

The fact that The Bahamas is using the Attorney-General, as the central authority for the Convention, is a step toward its implementation, because of the importance attached to the carrying out of the duties assigned to it.

The Bahamas notes that the Attorney-General does have the necessary human, financial and technical resources to enable it to properly make and receive requests for assistance and cooperation under the Convention. An International Legal Cooperation Unit (ILCU) has been established within the Office of the Attorney-General and is responsible for addressing all requests for legal assistance sent from foreign jurisdictions.⁵⁵

6.3 Results of the legal framework and/or other measures

The Bahamas states that it has not received or made requests for cooperation under the Convention. However, as noted under section 5.1.3, The Bahamas has stated that they have received one request for mutual legal assistance concerning high-level public officials and corruption from a member country of the OAS.

⁵⁵ Updated Response to Questionnaire, pg. 28.

III. CONCLUSIONS AND RECOMMENDATIONS

Based on the review in Chapter II of this report, the Committee offers the following conclusions and recommendations regarding implementation by The Bahamas of the provisions of Article III, paragraphs 1 and 2 (standards of conduct and mechanisms to enforce them); III.4 (systems for registering income, assets, and liabilities); III.9 (oversight bodies, solely with respect to the exercise by such bodies of functions related to compliance with the provisions contained in Article III. 1, 2, 4, and 11 of the Convention); III.11 (mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption); Article XIV (Assistance and Cooperation) and Article XVIII (Central Authorities) of the Convention, which were selected in the context of the first round.

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

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 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.
- b. Implement a code of ethics for Senators and Members of the House of Assembly, including sanction mechanisms for violations.
- c. Apply conflict of interest restrictions for an appropriate period following government service.
- 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.

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 within 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 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.
- b. Establish mechanisms that protect from official reprisal a person who, in good faith, reports acts of corruption.
- c. Provide appropriate training to officials and employees concerning the requirement to report acts of corruption and the protections for those who report.

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

The Bahamas has considered and adopted, measures intended to establish, maintain, and strengthen systems for registration of income, assets, and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public, as noted in section 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 the systems for registration of income, assets, and liabilities.

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

- a. Establish a method whereby, within a specific time period before or immediately after being appointed as a Senator or to a senior post listed under the Public Disclosure Act (Application to Public Appointees and Public Officers) Notice, a person be required to make a declaration of their assets, liabilities and income as well as those of their spouse and children. Such declarations should then be used to help identify potential conflicts of interest and suggest measures to be taken by the person to avoid those conflicts as well as help identify other violations of law.
- b. Consider making declarations made by those appointed to senior posts accessible to the public, when appropriate.

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

The Bahamas has considered and adopted measures to establish, maintain, and strengthen oversight bodies for effective compliance with three of the four provisions selected for analysis in the first round (Article III, paragraphs 1, 2 and 4 of the Convention), as noted in section 3 of Chapter II of this report. The Bahamas provided no information in its response to the questionnaire regarding oversight bodies addressing the requirements of paragraph 11.

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

- 3.1 Strengthen the system for monitoring implementation of the provisions of Article III, 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 currently do not fall under the purview of any controls.

- b. Consider establishing an oversight body in the Code of Ethics for Ministers and Parliamentary Secretaries to oversee their conduct.
- 3.2 Establish a body, or provide additional authority to an existing body or bodies, in order to ensure appropriate monitoring of the mechanisms recommended in section 4, below (Article III, paragraph 11).

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

The Bahamas has considered and adopted certain measures to establish, maintain, and strengthen mechanisms to promote the participation of civil society and nongovernmental organizations in efforts to prevent corruption, as noted in section 4 of Chapter II of this report.

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

4.1 General participation mechanisms

Develop additional systems of transparent procedures that allow nongovernmental organizations and civil society to participate more effectively in efforts to prevent corruption.

4.2 Mechanisms to ensure access to information:

- 4.2.1 Establish an enforceable freedom of information or access to government information system.

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

- a. Establish clear written standards as to the types of information that will be provided under the system.
- b. Establish standards recognizing the right of all persons to request information or to consult or obtain copies of documents in the possession, or under the control of public institutions concerning official actions, except for legally protected cases.

- 4.2.2 Establish a requirement that all government entities, to the extent practicable publicize their procedures and other relevant information through the use of such communication methods as publications, dissemination centers, mass media and Internet web sites.

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.

- 4.3.2 Design and implement programs to publicize the consultation mechanisms and, when appropriate, to train and to provide the necessary tools to effectively implement such mechanisms.

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 of 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.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

The Bahamas has adopted measures dealing with mutual assistance, but not mutual technical cooperation, in accordance with the provisions of Article XIV of the Convention, as noted and reviewed in section 5 of Chapter II of this report.

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

5.1. Mutual Assistance

- 5.1.1 Design and implement a comprehensive program for informing and training competent authorities and public servants on provisions related to mutual legal assistance provided for in the Inter-American Convention Against Corruption and in other treaties signed by The Bahamas.
- 5.1.2 Disseminate to the competent authorities of those countries with which The Bahamas maintains close or ongoing mutual cooperation relations, the

requirements which must be fulfilled in preparing petitions, as well as the documentation that should be attached.

5.2 Mutual Technical Cooperation

- 5.2.1 Review comprehensively the specific areas in which The Bahamas might need or could usefully receive mutual technical cooperation to prevent, detect, investigate, and punish acts of corruption; and that based on this review, a comprehensive strategy be designed and implemented that would permit The Bahamas to approach other States Parties and non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs.
- 5.2.2 Promote the efforts of technical cooperation exchange with other State Parties on the effective ways and methods to prevent, detect, investigate and punish acts of corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

The Bahamas has adopted certain measures relative to the designation of the central authority referred to in Article XVIII of the Convention, discussed in section 6, Chapter II of this report.

In light of the comments made, the Committee suggests that The Bahamas consider the following recommendations:

- 6.1 Notify the OAS General Secretariat formally of the designation of the central authority, pursuant to the prescribed formalities.
- 6.2 Implement a mechanism for channeling requests for cooperation on mutual legal assistance, as provided under the Convention.

7. GENERAL RECOMMENDATIONS

Based on the review and the contributions made throughout this report, the Committee suggests that The Bahamas consider the following recommendations:

- 7.1 Encourage ongoing review and enhancement of provisions regulating public officials and employees, and adapt them, as appropriate, to prevent and punish improper conduct of public officials and employees, at all levels, as well as to establish clear obligations in the performance of their duties.
- 7.2 Develop procedures to ensure that public officials and employees receive the training they need to effectively carry out their duties.
- 7.3 Select, develop, and report to the Technical Secretariat of the Committee, procedures and indicators that make it possible to monitor the recommendations established in this report.

8. FOLLOW-UP

The Committee will consider the periodic reports from The Bahamas on its progress in implementing the above recommendations in the framework of the Committee's plenary meetings, as prescribed in Article 30 of the Rules of Procedure.

It is further recommended that the Committee review the progress made in implementing the recommendations contained in this report, as provided in Articles 31 and, when appropriate Article 32 of the Rules of Procedure.

The Committee wishes to place on record the request made by The Bahamas to the Secretariat to publish this report to the Mechanism's webpage and by any other means of communication, in accordance with the provisions of Article 25(g) of the Rules of Procedure and Other Provisions.

**APPENDIX TO THE REPORT ON IMPLEMENTATION IN THE BAHAMAS
OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW
IN THE FRAMEWORK OF THE FIRST ROUND**

Together with its response, The Bahamas sent attachments on the following provisions and documents:

1. The Constitution of The Bahamas
2. The Prevention of Bribery Act
3. The Public Disclosure Act
4. The Penal Code
5. The Powers and Privileges (Senate and House of Assembly) Act
6. The Mutual Legal Assistance in Criminal Matters Act
7. The Criminal Justice (International Cooperation) Act
8. The Financial Administration and Audit Act
9. The Proceeds of Crime Act
10. The Commission of Inquiry Act
11. The Parliamentary Elections Act
12. The Official Secrets Act
13. The Public Service Commission Regulations
14. General Orders
15. The Code of Ethics for Ministers and Parliamentary Secretaries
16. The Public Disclosure (Application to Public Appointees and Public Officers Notice).
17. Judicial and Legal Service Commission Regulations
18. Police Service Commission Regulations
19. The Bahamas Constitution: Options for Change