

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Fourteenth Meeting of the Committee of Experts
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QUESTIONNAIRE
ON THE PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION SELECTED IN THE THIRD ROUND AND FOR FOLLOW-UP ON THE
RECOMMENDATIONS FORMULATED IN THE PREVIOUS ROUNDS

INTRODUCTION

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

At its thirteenth meeting, held from June 23 to 27, 2008, the Committee decided that during the third round it would review implementation by States Parties of the following provisions of the Convention: Article III, paragraphs 7 and 10; and Articles VIII, IX, X, and XIII.

Furthermore, the first paragraph of Article 29 of the Rules provides that “At the start of a new round, there shall be included within the questionnaire a section on “Follow-up on Recommendations” to enable the review of progress made in implementing the recommendations included in its country report adopted in previous rounds,’ and that ‘to that end, each State Party shall submit the appropriate information in the standard format that the Committee shall provide as an Annex to the Questionnaire.’ The aforesaid Article also provides in its second paragraph that “with respect to the implementation of recommendations, the State Party shall refer to any difficulties that may have arisen in the process,” and that, “should it deem it to be appropriate, the State Party may also identify the domestic agencies that have participated in implementing the recommendations, as well as identify specific technical assistance or other needs connected with the implementation of the recommendations.”

In light of the above, this document contains the questions that comprise the questionnaire adopted by the Committee.

The responses given to the questionnaire shall be reviewed in accordance with the methodology adopted by the Committee, which is annexed to this document and may also be consulted on the OAS Webpage at: http://www.oas.org/juridico/english/mesicic_method_IIIround.pdf

In accordance with Article 21 of the Rules, the State Party shall forward the response to the questionnaire through its Permanent Mission to the OAS, in an electronic format, along with the corresponding supporting documents, within the time period established by the Committee.

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

In completing this questionnaire, States Parties should keep in mind the deadlines set by the Committee in the schedule for the Third Round as well as the recommendation contained therein that responses to the questionnaire not exceed 35 pages.

SECTION I

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

CHAPTER ONE

DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

- a) Describe the laws, rules and/or measures that expressly deny or prevent favorable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of your country. Please attach a copy of the relevant provisions and documents.
- b) Describe the means or mechanisms to enforce the respective laws, rules and/or measures taken to prevent, investigate and/or sanction those who obtain favorable tax treatment for expenditures made in violation of the anticorruption laws of your country.
- c) Briefly mention the objective results that have been obtained in applying the respective laws, rules and/or measures, providing any relevant statistical data available in your country, if possible for the last two years.

CHAPTER TWO

PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III (10) OF THE CONVENTION)

- a) Are there laws and/or other measures in your country to deter or impede bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts? If so, please specify what they are, briefly describe them, and list and attach a copy of the related provisions and documents, referring in particular to the following aspects:
 - i. Publicly held companies and other types of associations required to maintain accounting records of their operations in accordance with the accounting standards in force in your country.

- ii. Rules regarding how these accounting records are to be maintained, indicating what length of time they must be kept; if they must be kept in books of account or any other medium that affords suitable protection for their contents; if said records are required to state all cash or in-kind expenditure, payments, or contributions, as well as specify their reason or purpose, and precisely identify their recipients; and if they must be substantiated with supporting documents containing the necessary information to confirm their veracity.
 - iii. Mechanisms to enforce the respective laws and/or other measures, such as the prohibitions against the establishment of accounts or operations without recording them on the books; registration of fictional expenditures or misstatement of the purpose thereof; adulteration of accounting records; use of false documents to support accounting records, and destruction of accounting documents before their prescribed custody period expires; as well as criminal, financial, or other penalties for those who infringe these prohibitions, and organs and agencies responsible for prevention and/or investigation of their violation and for imposing the appropriate punishment.
- b) In relation to question a), briefly mention the objective results that have been obtained in enforcing the respective laws and/or other measures to which it refers, such as steps taken to prevent or investigate their infringement and penalties imposed in that regard, providing any relevant statistical data available in your country, if possible for the last two years.
 - c) If there are no laws and/or other measures such as those mentioned in question a), briefly indicate how your State has considered the applicability within your own institutional system of the provisions contained in Article III (10) of the Convention.

[1] The Commonwealth of the Bahamas has a set of provisions related to prevention of bribery of domestic and foreign government officials, among which the following should be noted:

[2] - The Prevention of Bribery Act, chapter 88, Section makes it an offence for any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any public body, offers an advantage to any public servant employed in or by that public body.

[3] – Further , Section 8 makes it an offence where any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his-(a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business.

[4] – The Bribery Act further states that Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's-(a)

doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or (b)

showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principals affairs or business, shall be guilty of an offence.

[5] – The Bribery Act describes Agent as includes a public servant and any person employed by or acting for another.

[6] – The Bribery Act allows for the Attorney-General, if satisfied that there are reasonable grounds for suspecting that an offence under this Act has been committed by any person, may, for the purposes of an investigation into such offence, authorise in writing any police officer of or above the rank of inspector or any public servant specified in such authorisation, on the production by him of the authorisation to request from any person, subject to that person obtaining the written consent of

the person named or otherwise identified in such authorisation, the production of any accounts, books, documents, safe-deposit box or other article of or relating to such person which may be required for the purpose of such investigation and the disclosure of all or any information relating thereto, and to take copies of such accounts and books or of any relevant entry therein.

[7] – Section 9 of the Bribery Act makes the Giver and Acceptor of advantage guilty of an offence even if the purpose is not carried out.

Additionally, the Penal Code of the Bahamas, Section 453 makes it a criminal offence punishable by imprisonment for two years of any public officer or juror who is guilty of corruption in respect of the duties of his office.

[8] The Financial Transactions Reporting, Chapter 368, of The Bahamas Laws provides information in relation to the above question. Particularly Part IV.

[9] Section 23 states: In relation to every transaction that is conducted through a financial institution, that financial institution shall keep such records as are reasonably necessary to enable that transaction to be readily reconstructed by the Financial Intelligence Unit.

[10] Question 2 Rules regarding how these accounting records are to be maintained, indicating what length of time they must be kept; if they must be kept in books of account or any other medium that affords suitable protection for their contents; if said records are required to state all cash or in-kind expenditure, payments, or contributions, as well as specify their reason or purpose, and precisely identify their recipients; and if they must be substantiated with supporting documents containing the necessary information to confirm their veracity.

[11] Section 23 states: That such records shall contain the following information; the nature of the transaction, the amount of the transaction, and the currency in which it was denominated, the date on which the transaction was conducted, the parties to the transaction, where applicable the facility through which the transaction was conducted and any other facilities, whether or not provided by the financial institution directly involved in the transaction. Every financial institution shall retain the records kept by that financial institution, in accordance with Section 23, in relation to a transaction for a period of not less than five years after the completion of that transaction.

Section 11 of The Financial Transactions Reporting Act, 2000 (NO. 40 OF 2000) Consolidated Version of The Financial Transactions Reporting Regulations (No. 1), 2000 incorporating The Financial Transactions Reporting (Amendment) Regulations, 2001 states:

That records required by Sections 23, 24 or 25 of the Act which are required to be kept by any financial institution may be stored on microfiche, computer disk or in other electronic form.

The Financial Transactions Reporting, Chapter 368, Section 6 states:

A financial institution is required to verify the identity of facility holders.

The Financial Transactions Reporting, Chapter 368, Section 7 states:

A financial institution is required to verify the identity of persons conducting certain occasional transactions.

The Financial Transactions Reporting, Chapter 368, Section 8 states:

A financial institution is required to seek verification where persons are acting on behalf of others in respect of occasional transactions.

The Financial Transactions Reporting, Chapter 368, Section 9 states:

A financial institution is required to seek verification where facility holders are acting on behalf of others.

Section 3 of The Financial Transactions Reporting Act, Ch. 368 Financial Transactions Reporting (Amendment) Regulations, and 2003 states:

Where a financial institution is required to verify the identity of any person, the following information is required: full and correct name of individual; address; date and place of birth; purpose of the account and the nature of the business relationship. In addition to the requirements the following information may be required: source of funds; signature; telephone and fax number (if any); occupation and name of employer (if self employed, the nature of the self employment); copy of the relevant pages of passport, driver's licence, voter's card, national identity card or such other identification document bearing a photographic likeness of the individual as is reasonably capable of establishing the identity of the individual.

Section 4 of The Financial Transactions Reporting Act, 2000 (NO. 40 OF 2000) Consolidated Version of The Financial Transactions Reporting Regulations (No. 1), 2000 incorporating The Financial Transactions Reporting (Amendment) Regulations, 2001 states:

Where a financial institution is required to verify the identity of any corporate entity whether incorporated in The Bahamas or elsewhere, the following information is required (The Financial Transactions Reporting Act, Ch. 368 Financial Transactions Reporting (Amendment) Regulations, 2003 Regulation 4): certified copy of the certificate of incorporation; certified copy of the Memorandum and Articles of Association of the entity location of the registered office or registered agent of the corporate entity; resolution of the Board of Directors authorising the opening of the account and conferring authority on the person who will operate the account; confirmation that the corporate entity has not been struck off the register or is not in the process of being wound up; names and addresses of all officers and directors of the corporate entity; names and addresses of the beneficial owners of the corporate entity; description and nature of the business including: date of commencement of business; products or services provided; location of principal business; purpose of the account and the potential parameters of the account including: size, in the case of investment and custody accounts; balance ranges, in the case of deposit accounts; the expected transaction volume of the account; written confirmation that all credits to the account are and will be beneficially owned by the facility holder except in of 2001 circumstances where the account is being operated by an intermediary for the purpose of holding funds in his professional capacity; such other official document and other information as is reasonably capable of establishing the structural information of the corporate entity.

Section 5 of The Financial Transactions Reporting Act, 2000 (NO. 40 OF 2000) Consolidated Version of The Financial Transactions Reporting Regulations (No. 1), 2000 incorporating The Financial Transactions Reporting (Amendment) Regulations, 2001 states:

Where a financial institution is required to verify the identity of partnerships or other unincorporated businesses, the following information may be required (The Financial Transactions Reporting Act, Ch. 368 Financial Transactions Reporting (Amendment) Regulations, 2003 Regulation 5): verification of all partners or beneficial owners in accordance with regulation 3; copy of partnership agreement (if any) or other agreement establishing the unincorporated business; description and nature of the business including, date of commencement of business, products or services provided, location of principal place of business; purpose of the account and the potential parameters of the account including, size in the case of investment and client accounts, balance ranges, in the case of deposit and client accounts, the expected transaction volume of the account; mandate from the partnership or beneficial owner authorising the opening of the account and conferring authority on those who will operate the account; written confirmation that all credits to the account are and will be beneficially owned by the facility holder except in circumstances of 2001 where the account is being operated by an intermediary for the purpose of holding funds in his professional capacity; such documentary or other evidence as is reasonably capable of establishing the identity of the partners or beneficial owners.

Question 3

Mechanisms to enforce the respective laws and/or other measures, such as the prohibitions against the establishment of accounts or operations without recording them on the books; registration of fictional expenditures or misstatement of the purpose thereof; adulteration of accounting records; use of false documents to support accounting records, and destruction of accounting documents before their prescribed custody period expires; as well as criminal, financial, or other penalties for those who infringe these prohibitions, and organs and agencies responsible for prevention and/or investigation of their violation and for imposing the appropriate punishment.

The Financial Transactions Reporting, Chapter 368, Section 12 states:

That every financial institution commits an offence against this section which permits a person to become a facility holder in relation to any facility (being a facility provided by that institution) without first having verified the identity of that person; permits any person to conduct an occasional transaction through that financial institution, without first having verified the identity of that person, in any case where the amount of funds involved in the transaction exceeds the prescribed amount; where an occasional transaction is conducted by any person through that financial institution, fails to verify the identity of that person as soon as practicable after that person, or any other person, has also conducted or is conducting one or more other occasional transactions through that financial institution; the circumstances in which those transactions have been or are being, conducted provide reasonable grounds to believe that the transactions have been, or are being, structured to avoid the amount of cash in the transaction exceeding the prescribed amount; and the total amount of cash involved in those transactions exceeds the prescribed amount are satisfied in respect of that transaction; where an occasional transaction is conducted by any person through that financial

institution; that person, or any other person, has also conducted or is conducting one or more other occasional transactions through that financial institution; and the circumstances in which those transactions have been, or are being, conducted provide reasonable grounds to believe that the person is conducting the transactions on behalf of any other person or persons; and that the transactions have been, or are being, structured to avoid having his identity verified and the total amount of cash involved in those transactions exceeds the prescribed amount, then the financial institution shall verify the identity of the person or persons on whose behalf it is believed the transactions are being conducted. If the conditions specified above apply in respect of that transaction, fails to undertake the verification required as soon as practicable after the conditions specified above are satisfied in respect of that transaction;

where a person who is a facility holder in relation to a facility provided by that financial institution conducts a transaction through that facility; the amount of funds involved in the transaction exceeds the prescribed amount; the financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons, fails to verify the identity of that other person or, as the case requires, those other persons before the transaction is conducted; or as soon as practicable after the financial institution has reasonable grounds to believe that the transaction is being, or has been, so conducted; or where a person who is a facility holder in relation to a facility provided by that financial institution conducts a transaction through that facility; and the person who is a facility holder in relation to a facility provided by a financial institution conducts a transaction through that facility, and the following conditions apply, namely that person, or any other person, has also conducted or is conducting one or more other transactions through that facility; the circumstances in which those transactions have been, or are being, conducted provide reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons; that the transactions have been, or are being, structured to avoid having his identity verified; and the total amount of cash involved in those transactions exceeds the prescribed amount, the financial institution shall verify the identity of the other person or persons, where the financial institution fails to undertake the verification required as soon as practicable after the above specified conditions are satisfied in respect of that transaction. Every financial institution which commits an offence against this section is liable on summary conviction to a fine not exceeding in the case of an individual, twenty thousand dollars; in the case of a body corporate, one hundred thousand dollars.

The Financial Transactions Reporting, Chapter 368, Section 28 states:

That every financial institution shall ensure that every record retained by that financial institution and every copy of any such record, is destroyed as soon as practicable after the expiry of the period for which the financial institution is required to retain that record. Nothing in this section requires the destruction of any record, or any copy of any record, in any case where there is a lawful reason for retaining that record.

The Financial Transactions Reporting, Chapter 368, Section 14 states:

That where any person conducts or seeks to conduct any transaction by, through or with a financial institution (whether or not the transaction or proposed transaction involves funds); and the financial institution knows, suspects or has reasonable grounds to suspect that the transaction or proposed transaction involves proceeds of criminal conduct as defined in the Proceeds of Crime Act, 2000, or

any offence under the Proceeds of Crime Act, 2000 or an attempt to avoid the enforcement of any provision of the Proceeds of Crime Act, 2000, the financial institution shall, as soon as practicable after forming that suspicion, report that transaction or proposed transaction to the Financial Intelligence Unit.

The Financial Transactions Reporting, Chapter 368, Section 15 states:

That notwithstanding any other written law or any rule of law, any person who, in the course of carrying out the duties of that person's occupation as an auditor, has reasonable grounds to suspect, in relation to any transaction that the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act, 2000, shall report that transaction to any member of the Police. Section 39 established the Compliance Commission for the purpose of ensuring compliance with the Financial Transactions Reporting Act.

The Financial Transactions Reporting, Chapter 368, Section 40 states:

That The Commission shall consist of three members being persons appearing to have wide experience in, and to have shown capacity in, financial and commercial matters, industry, law or law enforcement.

The Financial Transactions Reporting, Chapter 368, Section 43 States:

The functions of the Commission are to maintain a general review of financial institutions in relation to the conduct of financial transactions and to ensure compliance with the provisions of this Act.

The Financial Transactions Reporting, Chapter 368, Section 44 states:

That annually and when deemed necessary by the Commission, at the expense of the financial institution, to conduct on site examinations of the business of the financial institution for the purpose of ensuring compliance with the provisions of this Act, and in such cases where the Commission is unable to conduct such examination, to appoint an auditor at the expense of the financial institution to conduct such examination and to report thereon to the Commission. In the performance of its duties under this Act the Commission may at all reasonable times require the financial institution to produce for examination such records that are required to be kept pursuant to sections 23, 24 and 25; and require a financial institution to supply such information or explanation, as the Commission may

reasonably require for the purpose of enabling the Commission to perform its functions under this Act. Any person failing or refusing to produce any record or to supply any information or explanation as is required is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment. Chapter 367 of the Laws of The Bahamas, The Financial Intelligence Unit in the exercise of its functions shall act as the agency responsible for receiving, analysing, obtaining and disseminating information which relates to or may relate to the proceeds of the offences specified in the Second Schedule. Without limiting the foregoing and notwithstanding any other law to the contrary, the Financial Intelligence unit shall receive all disclosures of information such as are required to be made pursuant to the Proceeds of Crime Act, 2000 which are relevant to its functions, including information from any Foreign Financial Intelligence Unit. It may upon receipt of such disclosures order in writing any person to refrain from completing any transaction for a period not exceeding seventy-two hours. It may upon receipt of a request from a Foreign Financial Intelligence Unit or law enforcement authority including the Commissioner of Police of The Bahamas order any person to freeze a person's bank account for a period not exceeding five days if satisfied that the request relates to the proceeds of any of the offences specified in the Second Schedule. An aggrieved person may apply to a judge in chambers to discharge the order of the Financial Intelligence Unit and shall serve notice on the Financial Intelligence Unit to join in the proceedings but such order shall remain in full force and effect until the judge determines otherwise. It may require the production of such information excluding information subject to legal professional privilege that the Financial Intelligence Unit considers relevant to fulfil its functions. It shall retain a record of all information that it receives for a minimum of five years after the information is received. It shall provide information, subject to such conditions as may be determined by the Director, to the Commissioner of Police where the information may relate to the commission of an offence specified in the Second Schedule. It may provide information relating to the commission of an offence specified in the Second Schedule to any Foreign Financial Intelligence Unit, subject to any conditions as may be considered appropriate by the Director. It may enter into any agreement or arrangement, in writing, with a Foreign Financial Intelligence Unit which the Director considers necessary or desirable for the discharge or performance of the functions of the Financial Intelligence Unit. It shall inform the public and financial and business entities of their obligations under measures that have been or might be taken to detect, prevent and deter the commission of the offences specified in the Second Schedule. Any person failing or refusing to provide such information as is required is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

- d) In relation to question a), briefly mention the objective results that have been obtained in enforcing the respective laws and/or other measures to which it refers, such as steps taken to prevent or investigate their infringement and penalties imposed in that regard, providing any relevant statistical data available in your country, if possible for the last two years.

A total of one hundred and twenty-nine (129) Suspicious Transactions Reports were received by the Financial Intelligence Unit during the period of January 1st, 2008 through December 31st, 2008 [the status of the reports include the Financial Intelligence Unit processing of the reports up to March 31st, 2009. Thirty-seven (37) of the reports were forwarded to the Commissioner of Police for investigation. Thirty-eight (38) of the reports were analyzed and closed by the Financial Intelligence

Unit. Fifty-four (54) reports are still pending. There was an increase of approximately 3% in Suspicious Transaction Reports. By comparison, a total of one hundred and twenty-five (125) Suspicious Transaction Reports were made to the Financial Intelligence Unit for the period of January 1st, 2007 through December 31st, 2007. For the period under review, approximately 28% of the Suspicious Transaction Reports were forwarded to the Commissioner of Police for investigation. The type of Financial Institution submitting Suspicious Transaction Reports were Casino (1) report, Domestic Banks (16), Domestic Offshore Banks (52), Offshore Banks (51), Trust Companies (8) and Real Estate Agent/Broker (1).

- e) If there are no laws and/or other measures such as those mentioned in question a), briefly indicate how your State has considered the applicability within your own institutional system of the provisions contained in Article III (10) of the Convention.

CHAPTER THREE

TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

1. Criminalization of transnational bribery

- a) Does your State prohibit and punish, subject to its Constitution and the fundamental principles of its legal system, the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions? If so, please indicate if in your country it is considered an act of corruption for the purposes of the Convention, and describe briefly the laws and/or other measures regarding them, indicating what penalties they provide, and attach a copy of them.
- b) If your State has criminalized transnational bribery, briefly mention the objective results that have been obtained in that regard, such as judicial proceedings undertaken and their outcome. The above information should refer, as far as possible, to the last five years.
- c) If your State has not criminalized transnational bribery, briefly mention if your country has taken any steps to do so.

The Bahamas has not Criminalized transnational bribery but has taken steps by signing on and becoming a member of several major Conventions relating to transnational crimes and cooperation between member states.

2. Assistance and cooperation in the case of States Parties that have not criminalized transnational bribery

- a) If your State has not criminalized transnational bribery, does it, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in the Convention.
- b) If so, briefly mention the objective results that have been obtained in that regard. The above information should refer, as far as possible, to the last five years.

CHAPTER FOUR

ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

1. Criminalization of illicit enrichment

- a) Has your State established as an offense, subject to its Constitution and the fundamental principles of its legal system, a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions? If so, please indicate if in your country it is considered an act of corruption for the purposes of the Convention, and describe briefly the laws and/or other measures regarding them, indicating what sanctions they provide, and attach a copy of them.
- b) If your State has criminalized illicit enrichment, briefly mention the objective results that have been obtained in that regard, such as judicial proceedings undertaken and their outcome. The above information should refer, as far as possible, to the last five years.
- c) If your State has not criminalized illicit enrichment, briefly mention if your country has taken any steps to do so.

The Bahamas has not criminalized illicit enrichment but provides for the prosecution of those offences that are provided for by the Bahamas Penal Code.

2. Assistance and cooperation in the case of States Parties that have not criminalized illicit enrichment

- a) If your State has not criminalized illicit enrichment, does it, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in the Convention.
- b) If so, briefly mention the objective results that have been obtained in that regard. The above information should refer, as far as possible, to the last five years.

CHAPTER FIVE

NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)

If, subsequent to its ratification of the Convention, your State has criminalized transnational bribery and/or illicit enrichment, as provided at Articles VIII (1) and IX (1) of said Convention, please indicate if it has notified the Secretary General of the OAS.

CHAPTER SIX

EXTRADITION (ARTICLE XIII OF THE CONVENTION)

- a) Bearing in mind the provisions contained in Article XIII (1, 2, 3, and 4) of the Convention, under your country's legal framework, may this Convention be considered the legal basis for extradition in connection with the offenses it has criminalized in accordance therewith? If so, briefly describe any existing laws and/or other measures that allow as much, and attach a copy thereof.
- b) If your State may refuse extradition for the above offenses solely on the basis of the nationality of the person sought, or because it deems that it has jurisdiction over the offense, please indicate, when this occurs, if it submits the case to the competent authorities for the purpose of prosecution and reports the final outcome to the requesting State in due course. If so, briefly describe the existing laws and/or other measures in that regard and attach a copy thereof.
- c) Please indicate if, subject to the provisions of its domestic law and its extradition treaties, your State, upon being satisfied that the circumstances so warrant and are urgent, and at the request of another State Party to the Convention, takes into custody the person whose extradition is sought and who is present in its territory, or takes other appropriate measures to ensure their presence at extradition proceedings. If so, briefly describe the existing laws and/or other measures in that regard and attach a copy thereof.
- d) Briefly state the objective results that have been obtained in enforcing the existing rules and/or other measures on extradition for the aforementioned offenses, such as extradition requests made to other States Parties for the purpose of investigating or prosecuting those offenses and procedures initiated by your State to attend to requests received by it from other States Parties with the same purpose, as well as the results thereof. The above information should refer, as far as possible, to the last five years.

Bearing in mind the provisions contained in Article XIII of the Convention, under the Bahamas legal framework, this Convention may be considered the legal basis for extradition in connection with the offenses it has criminalized in accordance therewith. In describing existing law of the Bahamas the International Protected Persons Act is as follow.

(2) Where no such arrangement as is mentioned in Section 4 of the Extradition Act has been made with a State Which is a party to the Convention, an order applying that? Act may be made under that section by the Minister responsible for Foreign Affairs as if the Convention were such an arrangement with that State; but where that Act is applied by virtue of this subsection, it shall have effect as so applied as if the only extradition crimes within the meaning of that Act were —

(a) an offence described in section 3 or 4, including attempting to commit that offence (where it is not itself constituted by a mere attempt) aiding, abetting, inciting, counselling or procuring any person to commit any such offence when it is not in fact committed; and

(b) each offence described in section 5 or 6, and further for the purposes of that Act each offence referred to at paragraphs (a) and (b) shall, if not already described in the treaty, be deemed to be an offence described in any extradition treaty in force at the commencement of this Act between The Bahamas and any foreign country that is a party to the Convention.

(3) Notwithstanding anything in subsection (1) no person shall be liable to be surrendered under the Extradition Act in respect of an act or omission that amounts to an extradition offence under such a treaty as referred to in that subsection if that act or omission occurred before the date on which that offence was deemed by that subsection to be an offence described in that treaty.

9. (1) Where the surrender of a person is sought under the Extradition Act in respect of any act or omission that amounts to an offence referred to in section 8(2)(a) or (b) and for which the person whose surrender is sought could be tried and punished in the country seeking the surrender, being a country that is a party to the Convention, that act or omission shall be deemed to have been committed within the jurisdiction of that country notwithstanding that it was committed outside the territory of that country

(2) Without prejudice to subsection (1), where any act or omission to which that subsection applies occurred in The Bahamas, the Extradition Act and the relevant extradition treaty shall apply with any necessary modifications as if the act or omission had occurred outside The Bahamas.

(3) For the purposes of section 8 and this section, the terms “foreign country” and “country”, respectively, include any territory for whose international relations the Government of a foreign country or country, as the case may be, is responsible and to which the extradition treaty (if any) and the Convention extend.

10. (1) Notwithstanding anything in sections 8 and 9 or the Extradition Act, no person shall be surrendered from The Bahamas to another country in respect of any act or omission that amounts to an offence under any of the provisions of sections 3 to 6 if proceedings have been brought in The Bahamas against that person in respect of that act or omission.

(2) Notwithstanding anything in sections 8 and 9 or the Extradition Act but subject to subsection (3) no court in The Bahamas shall order the surrender, or the committal for the purposes of surrender, of a person to another country in respect of an act or omission that amounts to an offence under any of the provisions of sections 3 to 6 if the

Attorney-General certifies that deliberations are being or are about to be had to determine whether or not proceedings should be brought in The Bahamas against that person in respect of the act or omission.

(3) If, in any case to which subsection (2) applies, it is subsequently determined that proceedings should not be brought in The Bahamas against the person in respect of the act or omission, the Attorney-General shall advise the court accordingly, and the court shall proceed with the matter as if the Attorney-General's certificate had never been given.

11. (1) Subject to subsection (2), no proceedings for the trial and punishment of any person charged with an offence under any of the provisions of sections 3 to 6 shall be instituted in any court except with the consent of the Attorney-General.

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(2) A person charged with an offence under any of those provisions may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

12. For any purpose in connection with this Act, a certificate, given by the Minister responsible for Foreign Affairs certifying —

- (a) any fact relevant to the question of whether a person was or was not a protected person at any material time; or
 - (b) that any country is or is not, or was or was not at any material time, a party to the Convention; or
 - (c) that the Government of any country is or is not, or was or was not at any material time, responsible for the international relations of any territory,
- shall be sufficient evidence of that fact.

SCHEDULES

FIRST SCHEDULE (Section 3)

Section of the Penal Code Subject Matter

265 Aggravated assault

269 Wounding

270 Causing grievous harm

272 Maiming

273 Using deadly means of harm

274 Administering noxious matter

275 Causing harm with aggravation

276 Choking, strangling, etc., to render person

incapable

(Repealed) Rape and attempt to commit rape

Evidence.

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282 Kidnapping

289 Manslaughter

291 Murder

292 Attempt to commit murder

SECOND SCHEDULE (Section 4)

**OFFENCES AGAINST PREMISES OR VEHICLES OF
INTERNATIONALLY PROTECTED PERSONS**

Section of The Penal Code Subject Matter

323 Arson of dwelling house

324 Arson of building

325 Arson of vehicle

326 Use of explosive to cause damage

327 Causing damage generally by fire

328 Wilful damage

B

Circumstance in which the Bahamas may refuse extradition for offences are outlined in Section 7 of the Extradition Act..

(1) A person shall not be extradited under this Act to an approved State or committed to or kept in custody for the purposes of such extradition if it appears to the Minister, to the court of committal or to the Supreme Court on an application for *habeas corpus* —

(a) that the offence of which that person is accused or was convicted is an offence of a political character or that it is an offence under military law which is not also an offence under the general criminal law; or

(b) that the request for extradition, though purporting to be on account of an extraditable offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or

(c) that he might, if extradited, be denied a fair trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions; or

(d) if the offence of which that person is accused is statute-barred in the approved State that has requested his extradition; or

(e) if his extradition is prohibited by any law in force in The Bahamas.

(2) A person accused of an offence or alleged to be unlawfully at large after being convicted of an offence

shall not be extradited to any approved State, or be committed to or kept in custody for the purposes of his extradition, if it appears to the Minister, to the court of committal or to the Supreme Court on an application for *habeas corpus* that if charged with that offence in The Bahamas he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(3) Paragraph (a) of subsection (1) shall not apply to a crime referred to under sections 3 and 5 of the Anti-Terrorism Act.

(4) A person shall not be extradited to an approved State or be committed to or kept in custody for the purposes of such extradition, unless provision is made by the law of that State, or by an arrangement made with that State, for securing that he will not —

(a) be tried or detained with a view to trial for or in respect of any offence committed before his extradition under this Act other than —

(i) the offence in respect of which his extradition is requested;

(ii) any lesser offence proved by the facts proved before a court of committal or, in relation to a fugitive brought before a magistrate pursuant to section 17, any lesser offence disclosed by the facts upon which the request for his extradition is based; or

(iii) any other offence being an extraditable offence in respect of which the Minister consents to his being so dealt with;

(b) without the consent of the Minister, be returned or surrendered to another State or detained with a view to such return or surrender, unless he had first been restored to The Bahamas, or had had an opportunity of leaving the approved State.

(5) Any such arrangement as is mentioned in subsection (4) may be an arrangement made for the particular case or an arrangement of a more general nature; and for the purposes of that subsection a certificate issued by or under the authority of the Minister confirming the existence of an arrangement with any approved State and stating its terms shall be conclusive evidence of the matters contained in the certificate.

(6) As regards any request by an approved State, the reference in this section to an offence of a political character does not include —

(a) an offence or an attempt to commit an offence which is extraditable pursuant to a multilateral

treaty or convention —

- (i) to which both The Bahamas and the approved State are parties;
 - (ii) the purpose of which is to prevent or repress a specific category of offences; and
 - (iii) which imposes on States an obligation either to extradite the person sought or to submit the matter to the competent authorities for decision as to prosecution; or
- (b) an offence or an attempt to commit an offence against the law relating to genocide or the aiding, abetting, inciting, counselling or procuring of the offence or a conspiracy by persons to commit the offence.

C.

The existing laws in regard to the request of another State Party to the Convention who takes into custody the person whose extradition is sought and who is present in its territory or takes other appropriate measure to ensure their presence at extradition measure is found in the extradition Act Section 12 which states:

12. (1) Where a person is committed to await his Extradition and is not discharged by order of the Supreme Court, the Minister may, by warrant, order him to be extradited to the approved State by which the request for the extradition was made unless the extradition of that person is prohibited, or prohibited for the time being, by section 7 or by this section, or the Minister decides under this section to make no such order in his case.

(2) The Minister may in the case of a person who is serving a sentence of imprisonment or detention or is charged with an offence, in The Bahamas —

- (a) defer the making of an order under this section —
 - (i) until the sentence has been served; or
 - (ii) until the charge is disposed of or withdrawn and, if it results in a sentence of imprisonment (not being a suspended sentence), until the sentence has been served;

D

Dating back to the last five years, the objective result that haven been obtained in enforcing the existing rules on extradition for the aforementioned offences

SECTION II

FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORTS IN PREVIOUS REVIEW ROUNDS

1. First Round

In accordance with Article 29 of the *Rules*, please provide information, in the standard format attached to this questionnaire (Annex I), on progress on each of the recommendations made to your State in the First Round, on which your country did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those that it supplied information but which the Committee considered in Section IV of your country's report for that round that they needed additional attention.

2. Second Round

In accordance with Article 29 of the *Rules*, please provide information, in the standard format attached to this questionnaire (Annex II), on progress in implementation of the recommendations formulated in the report adopted by the Committee with respect to your country in the framework of the Second Review Round.

SECTION III

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

Please provide the following information:

- (a) State Party Bahamas Government
 - (b) The official to be consulted regarding the responses to the questionnaire is:
 - () Ms.:Cheryll Grant Bethell
- Title/position: Director of Public Prosecutions
Agency/office: Attorney General Office
Address: East Hill Street, Nassau, Bahamas
Telephone number: (242) 502 - 0400

