

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

FINAL REPORT

(Adopted at the September 16, 2010 plenary session)

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

**FINAL REPORT ON IMPLEMENTATION IN THE BAHAMAS OF THE CONVENTION
PROVISIONS SELECTED FOR REVIEW IN THE THIRD ROUND, AND ON FOLLOW-UP
TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN PREVIOUS
ROUNDS¹**

INTRODUCTION

1. Contents of the Report

[1] This report presents, first, a review of implementation in The Bahamas of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the third round: Article III, paragraphs 7 and 10, and Articles VIII, IX, X and XIII.

[2] Second, the report will examine follow-up to the recommendations that were formulated to The Bahamas by the MESICIC Committee of Experts in the previous rounds, which are contained in the report on that country adopted by the Committee and published at the following web pages:
www.oas.org/juridico/english/mec_rep_bhs.pdf and
www.oas.org/juridico/english/mesicic_II_inf_bhs_en.doc

2. Ratification of the Convention and adherence to the Mechanism

[3] According to the official records of the OAS General Secretariat, The Bahamas deposited the instrument of ratification of the Inter-American Convention against Corruption on March 14, 2000.

[4] 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.

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of The Bahamas

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from The Bahamas and in particular from the Office of the Attorney General, which was evidenced, inter alia, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, The Bahamas sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following webpage: www.oas.org/juridico/english/mesicic3_bhs.htm

[6] For its review, the Committee took into account the information provided by The Bahamas up to February 22, 2010, and that furnished and requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and the review Methodology.

¹ This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 16, 2010, at its Seventeenth Meeting, held at OAS Headquarters, September 13 – 16, 2010.

II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE THIRD ROUND

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT² FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

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

[7] The Bahamas does not tax the income of natural or legal persons.

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

[8] Since The Bahamas does not tax the income of persons or have any other tax in place that allows for deductions of any kind, the Committee offers no observations. The review for the denial or prevention of favorable tax treatment, as defined by the Committee under footnote 2 and as it has been carried out in this round for the other country reports, is not applicable in the case of The Bahamas.

1.3. Results of the legal framework and/or other measures

[9] There are no results to be reported.

1.4. Conclusions and recommendations

[10] No recommendations are formulated by the Committee in this section.

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

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

[11]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:

[12]– Statutory provisions such as the Companies Act,³ of which the following should be noted:

[13]Section 118, which provides the requirement that the directors of a company are to place before the shareholders at every annual general meeting the 1) comparative financial statements, 2) report of the auditor, and 3) any further information respecting the financial position of the company.

[14]Section 120, which provides that the directors of a company are to approve the financial statements referred to in section 118, and this approval is evidenced by the signature of one or more directors.

2 For the purposes of this report, the MESICIC Committee of Experts defines favorable tax treatment as all exemptions and any deductible items used for the purposes of determining the income tax base, and other treatment that gives rise to favorable reductions in the amount of tax payable by taxpayers.

3 The Companies Act, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_308.html. Section 2 provides that a 'company' unless the context otherwise requires, means a company that is incorporated or registered under this Act.

Section 121 further provides that these statements cannot be published or circulated unless they are accompanied by a report of the auditor of the company's accounts.⁴

[15]Section 125, which provides that a company shall, in each year by resolution of the members, appoint an auditor to hold office for a year. Section 127 further provides that an individual shall not be qualified to be an auditor if he is not independent of the company, its affiliated companies and of the directors and officers of the company and its affiliated companies.⁵

[16]Section 128, which provides for the appointment of an auditor to a company. This auditor must be a professionally qualified auditor or an accountant licensed to practice as such under the Public Accountants Act.⁶

[17]Section 129, which provides that the auditor has a right of access at all times to the books and accounts and vouchers of a company and shall be entitled to require from the directors and officers such information and explanation as may be necessary for the performance of the duties of the auditors. This section further provides that auditors are required to make a report to the members on the accounts examined by them and on every balance sheet laid before the company in the general meeting and offer an opinion as to whether the balance sheet is drawn up in accordance with the national accounting standards approved by a recognized professional body of chartered accountants, so as to give a fair representation of the company's affairs.

[18]Section 136, which provides the director or an officer of a company are to immediately notify the company's auditor of any error or misstatement in a financial statement. The auditor, upon receiving notification or becomes aware of an error in a financial statement upon which he has reported to the company and in his opinion, the error or misstatement is material, shall inform each director of the company accordingly. The directors are then required to prepare and issue a revised financial statement, and if a public company, inform the Registrar of the error or misstatement.⁷

[19]Section 286, which provides that a company or officer that willfully contravenes, among other sections, section 118 is liable to a civil penalty of twenty dollars for each day or part thereof during which the contravention continues. In addition, a director or officer who knowingly permits the contravention is liable to a civil penalty of twenty dollars for each day the contravention continues.

[20]Section 293, which provides that any person who makes or assists in making a report, return, notice or other document that contains an untrue statement of a material fact or omits to state a material fact

4 Section 124 states that sections 118 – 123 of the Act does not apply to private companies. Private companies, as defined under section 2 of the Act, refers to section 62 of the Securities Industry Act, 1998, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_363.html. This Act defines 'private company' as a company which by its Articles (a) restricts the right to transfer its shares; (b) limits the number of its members to no more than fifty beneficial owners; and (c) prohibits invitation to the public to subscribe for any shares, debentures or other securities of the company.

5 Section 127 3) of the Companies Act further provides that and individual shall be presumed not to be independent of a company if he or his business partner:

“(a) is a business partner, a director, an officer or an employee of the company or any of its affiliates, or a business partner of any director, officer or employee of any such company or its affiliates;

(b) beneficially owns or controls, directly or indirectly, a material interest in the shares or debentures of the company or its affiliates; or

(c) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the company or any of its affiliates within two years of his proposed appointment as auditor of the company.”

6 Public Accountants Act, 1991, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_364.html

7 Section 266 of the Companies Act provides that the Registrar is responsible for administering the Act, *supra* note 3.

required in the report, return, notice or other document is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years.

[21]Section 297, which is a general penalty provision, provides that any person, who without reasonable cause, contravenes any section of the Act, unless some other penalty is provided, is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years.

[22]The First Schedule to the Act regarding Articles of Association of a Company Limited by Shares, which provides under Section 99 that directors are to keep true accounts of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place and the assets and liabilities of the company. Section 100 further provides that those books of account shall be kept at the registered office of the company or at such other place as the directors think fit and shall always be open to inspection by the directors.⁸

[23]– Statutory provisions such as the International Business Companies Act, 2000,⁹ which provides under section 67 that a company under this Act shall keep financial statements, accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company. In addition, section 68 provides that a member of the company may, in person or by attorney and in furtherance of a proper purpose, to inspect during normal business hours the books, records, minutes and consents kept by the company.

[24] – Statutory provisions such the Financial Transactions Reporting Act, 2000,¹⁰ of which the following should be noted:

[25]Section 14, which provides that notwithstanding any other written law or any rule of law, a financial institution¹¹ shall report a transaction to the Financial Intelligence Unit if it knows, suspects or has reasonable grounds to suspect that the transaction or proposed transaction involves proceeds of criminal

8 Section 10(2) of the Act provides that a company limited by shares may, instead of filing articles of association, notify the Registrar in writing at the time of submission of its memorandum of association of a company that it adopts the First Schedule either with or without modification. Under section 5 of the Act, a 'company limited by shares' is defined as a company incorporated on the principle of having the liability of its members limited to the amount unpaid on their shares.

9 International Business Companies Act, 2000, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_309.html

10 Financial Transactions Reporting Act, 2000, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_368.html

11 Financial institution is defined under the Act as:

- a) a bank or trust company,
- b) a company carrying on life assurance business,
- c) a co-operative society,
- d) a friendly society,
- e) a licensed casino operator,
- f) a broker-dealer,
- g) a real estate broker,
- h) a trustee or administration manager or investment manager of a superannuation scheme,
- i) a mutual fund administrator or operator of a mutual fund,
- j) any person whose business or a principal part of whose business consists of any of the following- (i) borrowing or lending or investing money; (ii) administering or managing funds on behalf of other persons; (iii) acting as trustee in respect of funds of other persons; (iv) dealing in life assurance policies; (v) providing financial services that involve the transfer or exchange of funds,
- k) a counsel and attorney, but only to the extent that the counsel and attorney receives funds in the course of that person's business- (i) for the purposes of deposit or investment; (ii) for the purpose of settling real estate transactions; or (iii) to be held in a client account,
- l) an accountant, but only to the extent that the accountant receives funds in the course of that person's business for the purposes of deposit or investment.

conduct as defined in the Proceeds of Crime Act, 2000 or any offence under that Act or an attempt to avoid the enforcement of any provision of that Act. Section 15 further provides that notwithstanding any other written law or any rule of law, an auditor who 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.

[26]Section 23, which provides that financial institutions are to keep records on every transaction conducted through it. The records are to contain the nature of the transaction; the amount of the transaction; the date on which it was conducted; the parties to the transaction; and where applicable, the facility through which the transaction was conducted. These records are to be kept for a period of no less than five years.

[27]Section 26, which provides that records are to be kept either in written form in the English language, or so as to enable the records to be readily accessible and readily convertible into written form in the English language.

[28]Section 30, which provides that every financial institution which fails to retain or properly keep records under section 23 commits an offence and is liable on summary conviction to a fine not exceeding, in the case of an individual, twenty thousand dollars and in the case of a body corporate, one hundred thousand dollars.¹²

[29] Section 39, which establishes the Compliance Commission, which purpose is to ensure compliance with the provisions of the Act. Section 44 further provides that the Commission may at all reasonable times require a financial institution to produce for examination such records that are to be kept pursuant to section 23, among others.¹³

[30]– Statutory provisions such as the Financial Transactions Reporting Regulations, 2000,¹⁴ which provides under Regulation 11 that records required to be kept under section 23 of the Financial Transactions Reporting Act, 2000 may be stored on microfiche, computer disk or in other electronic form.

[31]– Statutory provisions such as the Public Accountants Act, 1991,¹⁵ which under section 3, established The Bahamas Institute of Chartered Accountants. Section 4 of the Act provides that the objects of the Institute are, among others, to govern the discipline and regulate the professional conduct members, associates and students and promote the best standards of practice in financial reporting as

12 The Bahamas noted, on September 10, 2010, that no financial institution has been sanctioned under section 30 for failing to keep reasonable records of their financial transaction for a period of less than five years, as no financial institution has been found to be in violation of this section.

13 In addition, the country under review, on August 11, 2010, noted that this Commission has the power to issue anti-money laundering Codes of Practice for financial institutions that fall under its supervisory scope. A Code of Practice has been issued for members of the Bahamas Institute of Chartered Accountants (BICA), its purpose being to provide licensed public accountants with practical guidance and examples of good practice on how to implement the requirements of the anti-money laundering legislation. The Commission also organizes annual training programs for accountants, which generally occur as part of the BICA continuing professional education week. The officers of the Commission are also available for specific training programs for individual firms upon request, see for example the Handbook and Code of Practice for Accountants on Anti-Money Laundering and Anti-Terrorism Financing, 24.244.180.32/bica/pdf/ComplianceCommission-Code.pdf

14 Financial Transactions Reporting Regulations, 2000,

http://laws.bahamas.gov.bs/subsidiary/subsidiary_CHAPTER_368.html#a606

15 Public Accountants Act, 1991, *supra* note 6.

well as promote and increase the knowledge, skill and proficiency of its members, associates and students.

[32]– Statutory provisions such as the Public Accountants (Rules of Professional Conduct) Regulations, 1993,¹⁶ of which the following should be noted:

[33]Regulation 2, which provides that every accountant must perform professional services with objectivity and integrity and free of conflicts of interest. In addition, accountants must not knowingly misrepresent facts or subordinate their judgment to others.

[34]Regulation 5, which provides that an accountant must not disclose or make any use of information received in the course of any professional relationship with, or concerning the affairs of, any client or employer of the accountant unless authorized to do so by the client or employer or is required to do so by any law of The Bahamas or by the Investigation or Disciplinary Committee of the Institute.

[35]Regulation 7, which provides that an accountant engaged in public practice¹⁷ shall perform professional standards in accordance with generally accepted standards of the profession. This Regulation contains interpretation provisions, which sets out the accounting standards. The applicable accounting standards are a) the International Accounting Standards (IAS) as promulgated by the International Accounting Standards Committee (IASC), except for any IAS specifically excluded by the Institute; b) accounting standards that differ from the IASC if there is substantial authoritative support for alternative treatment and the departure is disclosed; c) accounting standards that are generally accepted for ordinary industrial and commercial enterprises; and d) accounting standards required by any written law.

[36]Regulation 9, which provides that every accountant should bring attention to the Council any action or behavior by any other accountant that is unlawful. An accountant must not knowingly provide any service in connection with any unlawful activity that would constitute a breach of the Rules or that would adversely reflect on an accountant's competence, reputation or integrity.

[37] In addition, there are also provisions in the Co-operative Societies Act,¹⁸ which regulate cooperative societies; the Securities Industry Act, 1999,¹⁹ which regulates the securities exchanges and the securities industry; and the Financial and Corporate Service Providers Act, 2000,²⁰ which licenses and regulates financial and corporate service providers.

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

[38] With respect to the provisions that refer to the prevention of bribery of domestic and foreign government officials that the Committee has examined, based on the information available to it, they constitute a set of measures relevant for promoting the purposes of the Convention.

16 Public Accounts (Rules of Professional Conduct) Regulations, 1993,

http://laws.bahamas.gov.bs/subsidiary/subsidiary_CHAPTER_364.html#a601

17 'Public practice' is defined under section 2 of the Public Accountants Act, 1991 as meaning: "the performance of accounting or auditing services for reward, other than as an employee in the public service, including the investigation of financial or accounting statements or data, and the issuing of written opinions, reports or certificates concerning any such statements or data in order to enhance the credibility of such statements or data."

18 Cooperative Societies Act, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_314.html

19 Securities Industry Act, 1999, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_363.html

20 Financial and Corporate Service Providers Act, 2000, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_369.html

[39]Notwithstanding, the Committee considers it appropriate to express some comments regarding the advisability of developing and complementing certain legal provisions that might be useful for the country under review to consider.

[40]With respect to the Companies Act and the International Business Act, the Committee notes that these Acts do not establish sufficient internal accounting controls that enable their officers to detect corrupt acts, impose a duty to keep accounting records or set out in detail how these accounting records are to be prepared and maintained. For example, these Acts do not contain a requirement that accounting records regarding operations are to be accompanied by supporting documents that contain the information necessary to confirm the accuracy and veracity of those entries, nor a requirement that the recipients of any cash or in-kind expenditures, payments, loans granted or contributions made be precisely identified in the accounting records. In addition, these Acts do not contain any timeframe for the custody period of accounting records. Similarly, the country under review may consider establishing sanctions for failing to properly keep, prepare and maintain these records.

[41]The Committee does note, however, that those companies of limited shares, under the Companies Act, may adopt the First Schedule as their articles of association, which require directors are to keep true accounts of the sums of money received and expended by the company and that the books of account shall be kept at the registered office of the company or at such other place as the directors think fit and shall always be open to inspection by the directors. Nevertheless, the adoption of this Schedule is not obligatory as it is up to a company's discretion whether to do so. The Committee additionally notes that the Financial Transactions Reporting Act, 2000 requires financial institutions to keep detailed accounts of their operations and requires records to be kept for a period of five years as well as providing for sanctions. Nevertheless, these requirements only apply to financial institutions as defined under that Act, and not to all publicly held companies and other types of associations. The Committee will formulate recommendations in this regard. (see Recommendations 2.4 (a), 2.4(b), 2.4(c) and 2.4(d) in Section 2.4 of Chapter II of this Report)

[42]The Committee also considers that it might be beneficial for the country under review to consider establishing provisions in the Companies Act and the International Business Act, that require a company to take reasonable precautions to prevent the loss or destruction of accounting records, prevent falsification of entries and facilitate detection and correction of inaccuracies. Similarly, the country under review may consider establishing sanctions for contravening the proposed provisions. The Committee will formulate a recommendation in this regard. (see Recommendations 2.4(e) in Section 2.4 of Chapter II of this Report)

[43]With respect to the Rules of Professional Conduct for public accountants, the Committee notes that information acquired by an accountant in the course of any professional relationship should not be disclosed except where consent has been obtained from a client or employer or required to do so by law or by the Investigation or Disciplinary Committee of The Bahamas Institute of Chartered Accountants. The Committee believes it necessary for the country under review to consider adopting, taking into account of the relevant laws governing professional confidentiality and through the appropriate means, pertinent measures to ensure that "professional confidentiality" is not an obstacle for professionals whose activities are governed by the Rules to bring to the attention of the appropriate authorities any acts of corruption that they discover in the course of their work. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4(f) in Section 2.4 of Chapter II of this Report)

[44]The Committee believes it would be useful for the country under review to consider holding awareness campaigns targeted at persons responsible for maintaining accounts and verifying their

accuracy, on the importance of observing the rules issued to guarantee the truthfulness of those records and the consequences of violation, and also to consider implementing training programs designed specifically for internal comptrollers in publicly held companies and other types of associations who are required to keep accounts, to instruct them in ways of detecting acts of bribery in the course of their work. (see Recommendation 2.4(g) in Section 2.4 of Chapter II of this Report)

[45]In addition, the Committee believes that it would be useful for the country under review to consider holding awareness and integrity promotion campaigns that target the private sector and to consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption. (see Recommendation 2.4(h) in Section 2.4 of Chapter II of this Report)

[46]The Committee also believes that it would be beneficial for the country under review to consider strengthening measures as it deems appropriate to make it easier for the organs and agencies responsible for the prevention and/or investigation of noncompliance with measures designed to safeguard the accuracy of accounting records to detect sums paid for corruption concealed in those records. (see Recommendation 2.4(i) in Section 2.4 of Chapter II of this Report)

2.3. Results of the legal framework and/or other measures

[47]With respect to results in this field, The Bahamas provides information regarding the number of suspicious transaction reports were received by the Financial Intelligence Unit during the period January 1, 2008 through December 31, 2008.²¹ The country under review also reports that it does not maintain statistics regarding the sanctions imposed as a result of a violation of section 293 of the Companies Act, which makes an offence the making of a report, return, notice or other document that contains an untrue statement or omits to state a material fact in these documents. Given the relevancy of this provision to promote the purposes of the Convention, the Committee will formulate a recommendation in this regard. (see Recommendation 2.4(j) in Section 2.4 of Chapter II of this Report)

[48]Considering that the information provided does not directly refer to the issue being examined and that it does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the appropriate manner, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (see Recommendation 2.4(k) in Section 2.4 of Chapter II of this Report)

2.4. Conclusions and recommendations

[49] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 10 of the Convention:

²¹ Response of The Bahamas to the Questionnaire for the Third Round, pgs. 9 – 10:
http://www.oas.org/juridico/english/mesicic3_bhs_resp.pdf

[50] The Bahamas has considered and adopted measures intended to create, maintain and strengthen provisions for the prevention of the bribery of domestic and foreign government officials, as described in section 2 of Chapter II of this report.

[51] In light of the comments formulated in the above-noted sections, the Committee suggests that The Bahamas consider the following recommendation:

[52] Strengthen the provisions on the prevention of bribery of domestic and foreign government officials. To comply with this recommendation, The Bahamas could take the following measures into account:

- a. Adopt the appropriate measures to ensure that the companies to which the provisions of the Companies Act and the International Business Act are applicable, establish sufficient internal accounting controls that enable their officers to detect corrupt acts (see Section 2.2 of Chapter II of this Report)
- b. Adopt the appropriate measures that ensure that the companies to which the provisions of the Companies Act and the International Business Act are applicable, have a duty to maintain accounting records and that the entries in these records are accompanied by supporting documents which contain the information necessary to confirm the accuracy and veracity of the entries therein, as well as precisely identify the recipients of any cash or in-kind expenditures, payments, loans granted or contributions made. (see Section 2.2 of Chapter II of this Report)
- c. Adopt the appropriate measures so that that the companies to which the provisions of the Companies Act and the International Business Act are applicable, maintain accounting records for a prescribed custody period. (see Section 2.2 of Chapter II of this Report)
- d. Adopt the appropriate measures so that that the companies to which the provisions of the Companies Act and the International Business Act are applicable, are subject to sanctions for failing to maintain, prepare and keep accounting records. (see Section 2.2 of Chapter II of this Report)
- e. Adopt the appropriate measures to establish provisions in the Companies Act and the International Business Act that require a company to take reasonable precautions to prevent the loss or destruction of accounting records, prevent falsification of entries and facilitate detection and correction of inaccuracies and establish sanctions for contravening the proposed provisions. (see Section 2.2 of Chapter II of this Report)
- f. Adopt through the means as it deems appropriate, measures to ensure that “professional confidentiality” is not an obstacle for professionals whose activities are governed by the Rules of Professional Conduct for public accountants to bring to the attention of the appropriate authorities any acts of corruption that they discover in the course of their work. (see Section 2.2 of Chapter II of this Report)
- g. Conduct awareness campaigns that target individuals responsible for the entry and accuracy of accounting records, on the importance of abiding by the standards in force to ensure the veracity of said records and the consequences of their violation, in addition to implementing training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect corrupt acts through their work. (see Section 2.2 of Chapter II of this Report)

- h. Consider holding awareness and integrity promotion campaigns that target the private sector and consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption. (see Section 2.2 of Chapter II of this Report)
- i. Consider the adoption of the instruments necessary to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records and protect their contents, of sums paid for corruption that are concealed in those records, such as the following (See section 2.2 of chapter II of this report):
 - i. Review methods, including account scrutiny and analysis of periodically requested information, by which to detect anomalies in accounting records that could indicate the payment of sums for corruption;
 - ii. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred;
 - iii. Manuals, guidelines or directives for those organs or entities on how to review accounting records in order to detect sums paid for corruption;
 - iv. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based;
 - v. Institutional coordination mechanisms that enable those organs or entities to easily obtain the necessary collaboration from other institutions to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity; and
 - vi. Training programs for the officials of these organs and entities, specifically designed to alert them to the methods used to disguise payments for corruption in those records and to instruct them on how to detect them.
- j. Maintain statistics regarding the sanctions imposed as a result of a violation of section 293 of the Companies Act. (see Section 2.3 of Chapter II of this Report)
- k. Through the authorities responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records and protect their contents and for the authorities that ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations formulated in this report in relation thereto. (see Section 2.3 of Chapter II of this Report)

3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

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

[53]The Bahamas has not yet established transnational bribery as an offense as provided in Article VIII of the Convention, although the country under review states that it signed and become a member of several major Conventions relating to transnational crimes and cooperation between member states.²²

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

[54]Based on the observations contained in the preceding section, the Committee will formulate the relevant recommendations to the country under review so that, subject to its Constitution and the fundamental principles of its legal system, it establish transnational bribery as an offense as provided in Article VIII of the Convention. (see Recommendation 3.4.1 in Section 3.4 of Chapter II of this Report)

[55]Similarly, the Committee believes it advisable for the country under review to consider the possibility of adopting the measures necessary to ensure, with respect the provisions that would, in due course, prohibit and punish the acts described in Article VIII of the Convention, that there is clarity as regards what should be understood by the term “government official of another state.” (see Recommendation 3.4.2 in Section 3.4 of Chapter II of this Report)

[56]In addition, the Committee notes that since The Bahamas has not established transnational bribery as an offense, the country under review may consider the adoption of provisions and measures, as it deems appropriate, to comply with the third paragraph of Article VIII of the Convention in order to provide assistance and cooperation with respect to this offense to other State Parties. (see recommendation 3.4.3 in Section 3.4 of Chapter II of this Report.)

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

[57]The lack of standards in this area precludes an appraisal of results in this respect.

[58]Considering that the Committee does not have information that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies charged with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (see Recommendation 3.4.4 in Section 3.4 of Chapter II of this Report)

3.4. Conclusions and recommendations

[59]Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article VIII of the Convention:

[60]The Bahamas has not criminalized the offense of transnational bribery as provided in Article VIII of the Convention, as described in Chapter II, Section 3 of this report.

²² *Ibid.* at pg. 10.

[61] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendations:

- 3.4.1. Criminalize, subject to its Constitution and the fundamental principles of its legal system, the conduct of transnational bribery as described in Article VIII of the Convention, which defines it as the offering or granting, directly or indirectly, by nationals of a state party, 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. (See Chapter II, Section 3.2 of this report).
- 3.4.2. Consider the possibility of adopting the necessary measures to ensure, with respect to the provisions that ultimately do prohibit and punish the acts described in Article VIII of the Convention, that there is clarity as regards what should be understood by the term "government official of another state." (See Chapter II, Section 3.2 of this report).
- 3.4.3. Adopt the provisions and measures it deems appropriate, to comply with Article VIII, paragraph 3, of the Convention, which requires that any state party that has not established transnational bribery as an offense shall, insofar as its laws permit, provide the assistance and cooperation with respect to it provided for in the Convention. (See Chapter II, Section 3.2 of this report.)
- 3.4.4. Select and develop, through the organs and agencies responsible for providing assistance and cooperation with respect thereto, as provided in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Chapter II, Section 3.3 of this report).

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

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

[62] The Bahamas has not yet established illicit enrichment as an offense as provided in Article IX of the Convention, although the country under review states that it provides for the prosecution of those offences that are provided for by The Bahamas Penal Code.²³

²³ *Ibid.*, pg. 11. The country under review, on August 11, 2010, stated that the Proceeds of Crime Act, which was enacted in 2000, would assist in the prosecution of illicit enrichment. This Act refers to direct and indirect proceeds of criminal conduct. Sections 6(1) and 6 (2) of the Act include gifts regarding proceeds from drugs or relevant offences. It is important to note that it is not necessary that a person must be convicted of an offence to establish that the assets were proceeds of criminal conduct. Also, assets include realizable property. Realizable Property as defined in section 4(3), includes any property when dealing with confiscation order, which may be issued for proceeds of drug trafficking, relevant offences or money laundering. The Act was established to specifically empower the relevant authorities, i.e. Police, Customs and the Courts to conduct seizure and confiscation of the proceeds of crime and connected purposes. Section 46 (1) allows a police officer to seize any cash if he has reasonable grounds to suspect that it directly or indirectly related to any person's proceeds of crime. Section 59 of the Act provides for a Civil Standard of Proof, i.e. the Prosecution must prove on a balance of probabilities in any proceedings for an offence under the Act. In addition the burden of proof shifts, as a reasonable or

4.2 Adequacy of the legal framework and/or other measures

[63] Based on the observations contained in the preceding section, the Committee will formulate the relevant recommendations to the country under review so that, subject to its Constitution and the fundamental principles of its legal system, it establish as an offense the conduct described in Article IX of the Convention. (See Recommendation 4.4.1 in Section 4.4 of Chapter II of this Report)

4.3 Results of the legal framework and/or other measures

[64] The lack of standards on this area precludes an appraisal of results in this respect.

[65] Considering that the Committee does not have information that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies, responsible for requesting and/or providing assistance and cooperation, in so far as its laws permit, with respect of the offense of illicit enrichment, as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (see Recommendation 4.4.2 in Section 4.4 of Chapter II of this Report)

4.4 Conclusions and recommendations

[66] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article IX of the Convention:

[67] The Bahamas has not criminalized the offense of illicit enrichment as provided in Article IX of the Convention, as described in Chapter II, Section 4 of this report.

[68] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendations:

- 4.4.1. Criminalize, subject to its Constitution and the fundamental principles of its legal system, the conduct of illicit enrichment as described in Article IX of the Convention. (See Chapter II, Section 4.2 of this report).
- 4.4.2. Select and develop, through the organs and agencies responsible for requesting and/or providing assistance and cooperation, in so far as its laws permit, with respect to the offense of illicit enrichment, as provided in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Chapter II, Section 4.3 of this report).

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

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

[69] The Bahamas has not criminalized transnational bribery and illicit enrichment as provided in Articles VIII and IX, respectively, of the Convention, as was noted in Chapter II, Sections 3 and 4 of this Report.

5.2 Adequacy of the legal framework and/or other

[70] Bearing in mind that the country under review has not criminalized transnational bribery and illicit enrichment as provided in Articles VIII and IX of the Convention, respectively, the Committee will recommend that, when it does so, it notify the OAS Secretary General of that fact, in accordance with Article X of the Convention. (See the Recommendation in Chapter II, Section 5.3 of this Report).

5.3 Conclusions and recommendation

[71] On the basis of the analysis conducted in foregoing sections 5.1 and 5.2, the Committee offers the following conclusions and recommendation with respect to implementation in the country under review of the provisions contained in Article X of the Convention.

[72] The Bahamas has not criminalized transnational bribery and illicit enrichment as provided in Articles VIII and IX, respectively, of the Convention. Accordingly, when it does so, the Committee recommends that it notify the OAS Secretary General of that fact, in accordance with Article X of the Convention.

6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

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

[73] The Bahamas has a set of provisions related to extradition, among which the following should be noted:

[74]- Statutory provisions such as the Extradition Act, 1994²⁴ which applies to Commonwealth Countries,²⁵ the United States²⁶ and countries with whom there exists an extradition treaty or agreement with The Bahamas.²⁷ The following provisions should be noted:

24 Extradition Act, 1994, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_96.html

25 See the Schedule to the Extradition (Designated Commonwealth Countries) Order, 1994, which provides a list of countries that have been designated Commonwealth Countries, http://laws.bahamas.gov.bs/subsidiary/subsidiary_CHAPTER_96.html#a111. The following State Parties to the Inter-American Convention against Corruption are on this list: Antigua and Barbuda, Barbados, Belize, Canada, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines.

26 Extradition (Application to the United States) Order, 1994, http://laws.bahamas.gov.bs/subsidiary/subsidiary_CHAPTER_96.html#a111.

27 See the Schedule to the Extradition (Application to Foreign States) Order, 1994, which provides a list of countries with whom there exists an extradition treaty or agreement with The Bahamas, http://laws.bahamas.gov.bs/subsidiary/subsidiary_CHAPTER_96.html#a111. The following State Parties to the Inter-American Convention against Corruption on this list are: Bolivia, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, the United States of America and Uruguay.

[75]Section 5(1), which provides that any offence of which a person is accused or has been convicted in an approved State²⁸ is an extradition offence, if, in the case of a designated Commonwealth State, the offence is one that is punishable under that law with imprisonment for a term of two years or any greater punishment and if the conduct of the person would constitute an offence against the law of The Bahamas if it took place there and it would be punishable under The Bahamas law with imprisonment for a term of two years or any greater punishment. In the case of a treaty State, it is an offence which is provided for the extradition treaty with that State and if the conduct of the person would constitute an offence against the law of The Bahamas if it took place there. Section 6(2) further provides that an offence established in an international Convention can also be considered an extraditable offence for the purpose of the Act. In this regard, The Bahamas notes that the Inter-American Convention against Corruption can be used as a legal basis for extradition.

[76]Section 6, which provides that a person accused of an extradition offence or is alleged to be unlawfully at large after conviction of such an offence in any such State, may be arrested and returned to that State.

[77]Section 7(1), which provides that a person shall not be extradited under the Act or committed or kept in custody for the purposes of such extradition if it appears to the Minister, to the court of committal²⁹ or the Supreme Court on an application of habeas corpus that the offence in respect of which that person is accused or was convicted, i) is an offence of a political character or that is an offence under military law which is not also an offence under the general criminal law;³⁰ ii) that the request for return is in fact made for the purpose of prosecuting or punishing on account of race, religion, nationality or political opinions; iii) if extradited, the returnee might be denied a fair trial or punished, detained or restricted by reason of race, religion, nationality or political opinions; iv) the offence of which a person is accused is statute-barred in the approved State that has requested extradition; or v) extradition is prohibited by any law in force in The Bahamas. In addition, section 7(2) provides that a person will not be returned if it appears that if charged in The Bahamas, he would be entitled to be discharged under any rule of law relating to a previous acquittal or conviction.

[78]Section 9, which provides that a warrant for the arrest of the person accused of an extradition offence or alleged to be unlawfully at large after conviction of such an offence may be issued by a magistrate, on receipt of an authority to proceed, or without such authority, by magistrate upon information that the person is in The Bahamas or is believed to be on his way to The Bahamas. This arrest warrant may be executed in any part of The Bahamas.

[79]Section 10, which provides the procedure for arresting a person in pursuance of a warrant issued under section 9. Under section 10(2), a court of committal has the same jurisdiction and powers, including the power to remand in custody or to release on bail.

[80]Section 11(3), which provides that on application of *habeas corpus*, the Supreme Court may order the person committed to be discharged from custody if it appears to the Court that it would, having regard to all circumstances, be unjust or oppressive to return the person if it finds that the offence of

28 'Approved State' is defined under the Act as either a designated Commonwealth State or a treaty State.

29 'Court of committal' is defined under the Act as a magistrate, see section 10(1).

30 Section 7(5) provides that the offence of a political character does not include "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, counseling or procuring of the offence or a conspiracy by persons to commit the offence."

which he is accused or was convicted is of a trivial nature, by reason of the passage of time; or the accusation was not made in good faith in the interest of justice.

[81]Section 15, which provides that a person remanded or committed to custody under section 10 shall be committed to the same institutions as a person charged with an offence before the court of committal.

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

[82]With respect to provisions related to extradition, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[83]The Committee nevertheless deems it appropriate to express the following comment that could be considered by the country under review, as follows:

[84]The Committee believes it is necessary that pursuant to Article XIII(6), of the Convention, the country under review should consider adopting the relevant measures to inform a requesting state that its extradition for offenses covered in the Convention has been denied because it deems it has jurisdiction over the offence and it has decided to submit the case to its competent authorities for the purpose of prosecution, and to report on the final result of the case. (see Recommendation 6.4(a) in Section 6.4 of Chapter II of this Report)

6.3. Results of the legal framework and/or other measures

[85]With respect to results in this field, The Bahamas notes that from the period 1994, the year the Extradition Act came into force, to the present, there were a total of 61 extradition requests. Of this total, three were denied, nine discontinued, three withdrawn, eighteen granted, while the remaining requests are pending or no action has taken place as the requesting State has not pursued its request any further.

[86]Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies responsible for processing incoming and outgoing extradition requests, respectively, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. The Committee will formulate a recommendation in this regard. (see Recommendation 6.4(b) in Section 6.4 of Chapter II of this Report)

[87]In addition, the Committee considers that it might be useful for the country under review to consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases. This could consist, among other measures, in the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (see Recommendation 6.4(c) in Section 6.4 of Chapter II of this Report)

6.4. Conclusions and recommendations

[88]Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article XIII of the Convention:

[89] The Bahamas has adopted measures regarding extradition as provided in Article XIII of the Convention, as described in Chapter II, Section 6 of this report.

[90] In light of the comments formulated in that section, the Committee suggests that The Bahamas consider the following recommendations:

- a. Consider the convenience of establishing relevant measures to inform, in due course, a requesting state that its extradition request for offenses covered by the Convention has been denied because the State deems that it has jurisdiction over the offence and it has decided to submit the case to its competent authorities for the purposes of prosecution, and to report on the final result of the case. (See Section 6.2 of Chapter II of this Report)
- b. Select and develop, through the competent organs or agencies, procedures and indicators, when appropriate and where they do not yet exist, to verify the follow up to the recommendations formulated in this report with respect to this area; and to analyze objective results obtained in relation to requests for extradition formulated to other States Parties to the Convention, for the investigation or prosecution of the crimes that have been criminalized pursuant thereto and the steps that have been taken to respond to similar requests from other States Parties. (See Section 6.3 of Chapter II of this Report)
- c. Consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases, which could consist of, among other measures, the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (See Section 6.3 of Chapter II of this Report)

III. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN REPORTS FROM PREVIOUS ROUNDS

[91] Regarding the progress made with the implementation of the recommendations issued in the Report adopted during the First and Second Round of Review, The Bahamas provided no information in its Response to the Questionnaire.

[92] In connection with this, the Committee notes its concern at not having received any specific information from the country under review in the terms set out in Article 29 of the Rules of Procedure and elaborated upon in the questionnaire and methodology adopted by the Committee for the Third Round. The Committee consequently offers the following remarks:

[93] 1. The Committee believes it should note the following background details regarding what the MESICIC State Parties agreed on for following up on implementation of recommendations:

[94] a. The Document of Buenos Aires – which created the MESICIC and was signed by all of the Mechanism’s member states – establishes that one of its goals is “to follow up on the commitments made by the States Parties to the Convention and to study how they are being implemented.” It also states that its characteristics include ensuring “equal treatment among States Parties” and being “conducted on the basis of consensus and on the basis of the principle of cooperation among States Parties.”

[95] b. Article 29 of the Rules of Procedure, adopted through the consensus of all the members of the Committee at its Eighth Regular Meeting (September 2005) provides that:

[96] *“Article 29. Follow-up within the framework of future rounds. 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. 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.”*

[97] *“With respect to the implementation of recommendations, the State Party shall refer to any difficulties that may have arisen in the process. 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.”*

[98] *“During the second and subsequent rounds, the country report of each State Party shall address the steps taken to implement the recommendation adopted by the Committee in previous country reports. The country report shall note those recommendations that have been satisfactorily considered and those that need additional attention by the country under review.”*

[99] c. In accordance with the terms of Article 29 of the Rules of Procedure, the Committee adopted, by consensus and as a part of the Third Round questionnaire,³¹ the standard form to be used by the states to present information on the progress made with the recommendations extended during the First and Second Round. Similarly, the Committee adopted by consensus the methodology for review in the Third Round,³² which establishes all provisions and considerations regarding the scope of the follow-up that the Committee is to conduct with respect to the recommendations extended to each country in the First and Second Round country reports.

[100] 2. The report adopted in connection with The Bahamas as a part of the First and Second Round of Review, including the recommendations formulated for that country therein, was adopted with the consensus of The Bahamas as the country under review and in accordance with the procedure established in the Document of Buenos Aires and the Rules of Procedure.

[101] 3. Related to each of the recommendations set out in the country reports, the Committee includes, in each case and in accordance with the review carried out, a series of measures that it believes the country under review could take into account in order to make progress with the implementation of those recommendations.

[102] In accordance with the consideration given to the recommendations, the country under review can always make progress with their implementation by adopting the measures suggested by the Committee or other alternative measures that it deems appropriate.

[103] Consequently, the standard form adopted by the Committee for States to report on their progress with implementing the First and Second Round recommendations allows the State to indicate the measure or measures suggested by the Committee or the measure or measures taken by the State to implement the corresponding recommendation and to briefly describe the specific steps it has taken in connection with those measures.

[104] 4. In accordance with the provisions of Article 29 of the Rules of Procedure, this standard form allows the country under review to set out the possible difficulties it sees in the implementation of the

31 See Questionnaire at: http://www.oas.org/juridico/english/mesicic_quest_IIIround.doc

32 See Methodology at: http://www.oas.org/juridico/english/mesicic_method_IIIround.pdf

various recommendations and, in addition, to identify which of its domestic agencies have participated in the implementation of the corresponding recommendation and to identify specific needs (such as technical assistance or help in other areas) associated with its implementation.

[105] 5. The Committee would like to stress that in accordance with the decisions taken by the MESICIC States Parties, the information sought on each State's progress with implementing the recommendations and the standard form in which it is to be provided is intended, as one of its basic aims, to facilitate, promote, and strengthen cooperation among the States Parties, in compliance with the terms of the Convention, the Document of Buenos Aires, and the Rules of Procedure.

[106] Thus, Article 29 of the Rules of Procedure establishes that: "During the second and subsequent rounds, the country report of each State Party shall address the steps taken to implement the recommendation adopted by the Committee in previous country reports. The country report shall note those recommendations that have been satisfactorily considered and those that need additional attention by the country under review."

[107] 6. All the above underscores the importance of the reviewed State's supplying adequate, detailed information in the fashion agreed on by the Committee.

[108] Clearly, without that information, the Committee cannot address any measure taken or difficulty encountered by the State, nor can it note any recommendation that has been satisfactorily implemented or that requires additional attention. Without that information, the Committee is essentially unable to perform any review or to comply with the mandate imposed by Article 29 of the Rules of Procedure.

[109] 7. The lack of information on the implementation of the recommendations has the more serious implication of making it impossible to pursue the basic goal of facilitating, promoting, and strengthening cooperation among the States Parties, in accordance with the terms of the Convention, the Document of Buenos Aires, and the Rules of Procedure. Thus, in the absence of relevant information, it is impossible to identify those areas where progress has been made or to share them with other States to which those experiences could be of use. Furthermore, it prevents the sharing of any difficulties detected by the country under review and the facilitation of international cooperation for the State in overcoming those problems.

[110] Bearing in mind the considerations set out above, the Committee urges The Bahamas to report on its progress with implementing the recommendations extended to it in the First and Second Round Reports at the forthcoming meetings of the Committee, in compliance with Article 31 of the Rules of Procedure.

[111] The Committee will continue to duly monitor the implementation of the recommendations it extended to The Bahamas, in accordance with the terms of its Rules of Procedure.

**RECOMMENDATIONS TO THE BAHAMAS BY THE COMMITTEE OF EXPERTS
DURING THE FIRST ROUND OF REVIEW**

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

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

Recommendation 1.1:

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.

Measures suggested by the Committee:

- 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.*

[112] The Bahamas did not present information with respect to the implementation of the foregoing recommendation or its measures. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

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

Recommendation 1.2:

Strengthen 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.

[113] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

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

Recommendation 1.3:

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

Measures suggested by the Committee:

- a. *Establish 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.*

[114] The Bahamas did not present information with respect to the implementation of the foregoing recommendation or its measures. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

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

Recommendation 2:

Strengthen the systems for registration of income, assets, and liabilities.

Measures suggested by the Committee:

- 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.*

[115] The Bahamas did not present information with respect to the implementation of the foregoing recommendation or its measures. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

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

Recommendation 3.1:

Strengthen the system for monitoring implementation of the provisions of Article III, paragraphs 1, 2, and 4.

Measures suggested by the Committee:

- 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.*

[116] The Bahamas did not present information with respect to the implementation of the foregoing recommendation or its measures. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

Recommendation 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).

[117] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

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

4.1 General participation mechanisms

Recommendation 4.1:

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

[118] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

4.2. Mechanisms for access to information

Recommendation 4.2.1:

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

Measures suggested by the Committee:

- 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.*

[119] The Bahamas did not present information with respect to the implementation of the foregoing recommendation or its measures. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

Recommendation 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.

[120] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

4.3. Mechanisms for consultation

Recommendation 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.

[121] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

Recommendation 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.

[122] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

4.4. Mechanisms to encourage participation in public administration

Recommendation 4.4:

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

Measures suggested by the Committee:

- 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.*

[123] The Bahamas did not present information with respect to the implementation of the foregoing recommendation or its measures. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

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

Recommendation 4.5:

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.

Measures suggested by the Committee:

- 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.*

[124] The Bahamas did not present information with respect to the implementation of the foregoing recommendation or its measures. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendation 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.

[125] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

Recommendation 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.

[126] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

Recommendation 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.

[127] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

Recommendation 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.

[128] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation 6.1:

Notify the OAS General Secretariat formally of the designation of the central authority, pursuant to the prescribed formalities.

[129] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

Recommendation 6.2:

Implement a mechanism for channeling requests for cooperation on mutual legal assistance, as provided under the Convention.

[130] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

7. GENERAL RECOMMENDATIONS

Recommendation 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.

[131] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

Recommendation 7.2:

Develop procedures to ensure that public officials and employees receive the training they need to effectively carry out their duties.

[132] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

Recommendation 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.

[133] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

**RECOMMENDATIONS TO THE BAHAMAS BY THE COMMITTEE OF EXPERTS
DURING THE SECOND ROUND OF REVIEW**

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

1.1. Systems of Government Hiring

Recommendation 1.1:

Establish, maintain and strengthen the systems of government hiring of public servants, when applicable, that assure the openness, equity and efficiency of such systems.

Measures suggested by the Committee:

- a. *Adopt, through the appropriate legislative or administrative procedures, a legal instrument that explicitly provides that government hiring into the Public Service is to be based on the principle of merit.*
- b. *Adopt, through the appropriate legislative or administrative procedures, a legal instrument that provides parameters on the use of the exception of 'serious inconvenience' that also includes a written justification for its application.*
- c. *Adopt, through the appropriate legislative or administrative procedures, a legal instrument that provides parameters on the use of the 'urgent' procedural exception in the creation of new posts.*
- d. *Adopt, through the appropriate legislative or administrative procedures, a legal instrument that provides parameters on the use of the exception of 'very exceptional circumstances' in cases where a temporary appointment is to exceed twelve months, which also includes a written justification for its application.*
- e. *Ensure that the Public Service Commission clearly substantiate when a decision is made not to advertise a vacancy to the general public, as well as ensure the use of modern means of media for publicizing vacancies (e.g. the internet).*
- f. *Strengthen the legal provisions regarding the Service Commissions so that these authorities have the competence to revoke or take other corrective measures when it is found that an appointment process was, among other things, irregular, improper or made through a fraudulent competition.*
- g. *Increase training programs for those responsible for managing public service selection and staffing processes.*
- h. *Increase training and induction programs for those who have recently entered the public service, so as to allow all employees to understand their duties and the functions expected of them.*

[134] The Bahamas did not present information with respect to the implementation of the foregoing recommendation or its measures. Accordingly, the Committee takes note of the need for the country under review to give additional attention thereto.

1.2. Government Systems for the Procurement of Goods and Services

Recommendation 1.2:

Promote the adoption of provisions, in the government systems for the procurement of goods and services, which ensure the principles of openness, equity and efficiency under the Convention.

Measures suggested by the Committee:

- a. Consider the establishment of a single legal and regulatory framework which encompasses all the branches and agencies of the State.*
- b. Consider the appointment of a private individual outside of the public service and Government to the Government Tenders Board.*
- c. Implement provisions outlining clear procedures for the selection of contractors when either public tendering or selective tendering procedures are utilized.*
- d. Implement provisions that provide for the publication of tendering opportunities in appropriate media, their conditions for participation and the time, method and place for submission of bids.*
- e. Study the possibility of publishing, when appropriate, pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereon.*
- f. Implement provisions outlining clear procedures for the selection of a sole contractor without competitive bidding as well as provide a written justification for doing so.*
- g. Implement provisions that provide for objective selection factors or criteria in the evaluation of bids, including those of public works.*
- h. Implement provisions that require that the outcome of a bid evaluation is substantiated clearly and accurately, when applicable.*
- i. Reevaluate the threshold of fifty thousand dollars that trigger the involvement of the Board in the tendering process.*
- j. Implement provisions that require awards to be publicized in a sufficiently justified or substantiated announcement.*
- k. Implement provisions that require prior planning sufficiently in advance of the launch of procurement process, such as preparing studies, designs and technical evaluations, and to assess the appropriateness and timeliness of the purchase.*
- l. Establish a governing or administering authority responsible for the internal and external audit, control and oversight of the government procurement system.*
- m. Develop and implement provisions that punish public officials in cases of non-compliance with the laws and regulations that govern public procurement, without prejudice to any other responsibilities under the existing system.*
- n. Strengthen and increase the scope of use of electronic communications, such as the internet for*

publicizing the tender opportunities, status of bids and awards and the progress in the execution of major projects.

- o. Develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means.*
- p. Establish a centralized registry of contractors of works, goods or services, mandatory to all State bodies and dependencies, which contemplate the possibility to ensure that such registration also include a list of sanctioned contractors, in order to foster the principles of openness, equity and efficiency provided for in the Convention.*
- q. Implement a mechanism by legislative or administrative means to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons.*
- r. Implement provisions that facilitate the participation of citizen overseers or watchdogs in monitoring the execution of contracts where the nature, importance or magnitude so warrants, in particular public works contracts.*
- s. Implement specific provisions allowing for challenges to the procurement process at the administrative level, which detail the procedure to be followed by government entities in handling and responding to such challenges and appeals.*

[135] The Bahamas did not present information with respect to the implementation of the foregoing recommendation or its measures. Accordingly, the Committee takes note of the need for the country under review to give additional attention thereto.

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

Recommendation 2:

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

Measures suggested by the Committee:

- a. Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings.*
- b. Measures to protect not only the physical integrity of whistleblowers and their families, but also to provide protection in the workplace, especially when the person is a public official and the acts of corruption involve his superior or co-workers.*
- c. Expand the existing mechanisms for reporting, such as anonymous reporting or protection of identity reporting, that guarantee the personal security and the confidentiality of the identity of public servants and private citizens who in good faith report acts of corruption.*
- d. Mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate*

authorities to process protection requests and the bodies responsible for providing it.

- e. Witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens.*
- f. Mechanisms to facilitate international cooperation on the foregoing matters, when appropriate, including the technical assistance and cooperation provided for by the Convention, as well as the exchanges of experiences, training, and mutual assistance.*
- g. A simplified whistleblower protection application process.*
- h. Provisions which provide for administrative and criminal sanctions for the failure to observe the rules and/or duties relating to protection.*
- i. The respective competence of judicial and administrative authorities with respect to this area, clearly distinguishing one from the other.*

[136] The Bahamas did not present information with respect to the implementation of the foregoing recommendation or its measures. Accordingly, the Committee takes note of the need for the country under review to give additional attention thereto.

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

Recommendation 3:

Implement provisions which criminalize other acts or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party other than as set out in Section 3.1 of Section 2 of this Report, pursuant to Article VI(1)(c) of the Convention.

[137] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention thereto.

4. GENERAL RECOMMENDATIONS

Recommendation 4.1:

Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.

[138] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention thereto.

Recommendation 4.2:

Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein.

[139] The Bahamas did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention thereto.