

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

FINAL REPORT

(Adopted at the December 7, 2007 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 SECOND ROUND,
AND ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT
COUNTRY IN THE FIRST ROUND¹**

INTRODUCTION

1. Contents of the Report

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 second round: Article III, paragraphs 5 and 8, and Article VI.

Second, the Report will examine follow-up to the recommendations that were formulated to The Bahamas by the MESICIC Committee of Experts in the first round, which are contained in the Report on that country adopted by the Committee at its Seventh meeting, and published at the following web page: http://www.oas.org/juridico/english/mec_rep_bhs.pdf

2. Ratification of the Convention and adherence to the Mechanism

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

In addition, The Bahamas signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001.

I. SUMMARY OF INFORMATION RECEIVED

1. Response of The Bahamas

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.

For its review, the Committee took into account the information provided by The Bahamas up to May 25, 2007, and that requested by the Secretariat, to carry out its functions in keeping with its Rules of Procedure and Other Provisions.

¹ This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on December 7, 2007, at its Twelfth meeting, held at OAS Headquarters, December 3 – 7, 2007.

II. REVIEW OF IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND

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

SYSTEMS OF GOVERNMENT HIRING

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

The Bahamas has a set of provisions related to the above systems, among which the following provisions related to the principal systems should be noted:

- Constitutional provisions, such as those that establish the Public Service Commission (Article 107), which provides advice to the Governor-General regarding appointment to and removal from all public offices as well as the exercise of disciplinary control over persons holding or acting in such offices,² other than those that fall under the Judicial and Legal Service Commission, the Police Service Commission or offices to which appointments are made by the Governor-General.³ In addition, Article 116 establishes the Judicial and Legal Service Commission, which is responsible for public offices for appointment to which persons are required to possess legal qualifications as may be prescribed by Parliament.⁴

- Statutory provisions, such as the Public Service Commission Regulations,⁵ which provide that candidates for appointment to public offices⁶ shall be selected on the basis of an examination (Regulation 16). Where a vacancy is not to be filled through promotion, the vacancy is to be notified to the public by advertisement in time to enable candidates to make an application in accordance with the advertisement, unless the Commission otherwise directs (Regulation 17). The Regulations also provide for a detailed procedure on these appointments.⁷ These procedures provide, among others, that once it is determined that a post is to be advertised, a draft advertisement is prepared, the Commission shall arrange for its publication and receive the replies and the Commission may interview the candidates or appoint a Selection Board for this purpose.⁸ These same Regulations also provide sanctions to any person who tries to directly or indirectly or through another person influences or attempts to influence a decision of the Commission or of the Chairman or any member.⁹ Sanctions are also contemplated for any person who, in connection

² See Article 108 of the Constitution of The Bahamas,

http://laws.bahamas.gov.bs/statutes/statute_THE_CONSTITUTION.html.

³ See Article 109 where it states that the Governor-General, acting on the recommendation of the Public Service Commission after the Commission has consulted the Prime Minister, has the power to make appointments to the office of the Permanent Secretary or Head of a Department of a Government, *ibid*.

⁴ See Article 117(2), *ibid*.

⁵ Public Service Commission Regulations,

http://laws.bahamas.gov.bs/subsidiary/subsidiary_THE_CONSTITUTION.html#a7

⁶ The Regulations provide that “public office”, “public officer” and “public service” shall have the same meanings as are assigned to those expressions in the Constitution, Regulation 2, *ibid*.

⁷ Regulation 24, *ibid*.

⁸ *Ibid*. In addition, Regulation 23 provides that when it is necessary to make an appointment of a public officer, these procedures shall be followed except where any delay involved in carrying out such procedures is likely to cause a serious inconvenience.

⁹ Regulation 12.

with any application for employment willfully gives to the Commission or any member thereof any information known to be false.¹⁰

- Statutory provisions, such as the Public Service (Delegation of Powers) Order,¹¹ which empowers the enumerated officers to appoint on probation or on temporary terms, other than a contract officer, a person to the offices listed in Part I of the Order.¹² Article 3 provides the conditions for exercise of this power. These include, among others, the requirement that appointments be made at the minimum of the salary scale or at a salary previously determined by the Public Service Commission; appointments, other than a temporary one, are probationary for a twelve month period, with the confirmation of appointment after completion of probation to be referred to the Public Service Commission; temporary appointments are carried out on a daily, weekly or monthly basis; and no appointments are to be made of any person who has been convicted of a criminal offence without prior consultation with the Director of Public Personnel.

- Statutory provisions, such as the Judicial and Legal Services Commission,¹³ which provide that candidates for appointment to a judicial or legal office¹⁴ shall be selected on the basis of an examination (Regulation 16). Where a vacancy is not to be filled by promotion or result of an examination, the vacancy is to be notified to the public by advertisement in time to enable candidates to make an application in accordance with the advertisement, unless the Commission otherwise directs (Regulation 17). The Regulations also provide for a detailed procedure on these appointments.¹⁵ These procedures provide, among others, that once it is determined that a post is to be advertised, a draft advertisement is prepared, the Commission shall arrange for its publication and receive the replies and the Commission may interview the candidates or appoint a selection board for this purpose.¹⁶ These same Regulations also provide sanctions to any person who tries to directly or indirectly or through another person influences or attempts to influence a decision of the Commission or of the Chairman or any member.¹⁷ Sanctions are also contemplated for any person who, in connection with any application for employment willfully gives to the Commission or any member thereof any information known to be false.¹⁸

¹⁰ Regulation 13.

¹¹ Public Service (Delegation of Powers) Order,

http://laws.bahamas.gov.bs/subsidiary/subsidiary_THE_CONSTITUTION.html#a2.

¹² The enumerated officers are the Secretary to the Cabinet, Financial Secretary, Director of Legal Affairs, Permanent Secretary, Director of Public Personnel, Commissioner of Police, Auditor General, Registrar of the Supreme Court and the Secretary to the Service Commissions Clerk of the House of Assembly. The offices listed include, among others, those remunerated at hourly, daily or weekly rates.

¹³ Judicial and Legal Service Commission Regulations,

http://laws.bahamas.gov.bs/subsidiary/subsidiary_THE_CONSTITUTION.html#a6.

¹⁴ The Regulations provide that “judicial or legal office” means an office referred to in Article 117 of the Constitution. In addition, a “judicial or legal officer” means the holder of a judicial or legal office, Regulation 2, *ibid*.

¹⁵ Regulation 24, *ibid*.

¹⁶ *Ibid*. In addition, Regulation 23 provides that when it is necessary to make an appointment of a judicial or legal officer, these procedures shall be followed except where any delay involved in carrying out such procedures is likely to cause a serious inconvenience.

¹⁷ Regulation 12.

¹⁸ Regulation 13.

- Statutory provisions such as the Judicial and Legal Service (Prescribed Public Offices) Act, which in its schedules outlines the public offices to which Article 117 of the Constitution applies and therefore fall under the purview of the Judicial and Legal Service Commission.¹⁹

- Administrative provisions such as the General Orders²⁰ that provide important and comprehensive rules of conduct and policies that govern the Public Service²¹ and are applicable to those that fall under the Public Service Commission and the Judicial and Legal Service Commission.²² Among those to be highlighted are:

- Provisions providing that first appointments can be made on probation; on contract; on temporary terms or; on hourly, daily or weekly rates and part-time (General Order 201).
- Provisions providing that when a post becomes vacant, it may be filled by appointment of a candidate with the requisite qualification and experience from within or outside the Public Service (General Order 202).
- Provisions stating that the procedure for making all appointments in the Public Service is described in the Public Service Commission Regulations (General Order 203).²³
- Provisions providing that even where the filling of a vacancy is urgent and the Head of a Department knows of a suitable candidate, the normal method should be to advertise the post and invite the candidate to apply (General Order 206).
- Provisions stating that in the cases where an empowered officer makes an appointment under the Public Service (Delegation of Powers) Order, he must act in accordance with the relevant Public Service Commission Regulations and conditions such as the requirement that all vacancies not filled by promotion must be advertised in the local press. These advertisements are to be as brief as possible, giving the name of the Department concerned, a required statement of qualifications, duties to be performed, a salary or salary scale, the address to which applications should be sent and the closing date for applications to be received (General Order 212(4)).
- Provisions requiring candidates to possess the minimum educational qualifications, as may be prescribed from time to time; be certified by a Government Medical Officer to be

¹⁹ Judicial and Legal Service (Prescribed Public Offices) Act,
http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_42.html.

²⁰ General Orders,
<http://www.bahamas.gov.bs/bahamasweb2/home.nsf/vContentW/11DFF3FEDD3F549B06256ED3005CEB38>.

²¹ The General Orders define the Public Service as “the service of the Crown in a civil capacity in respect of the Government of The Bahamas (including service as a Member of the Judicial Service Commission, the Public Service Commission or the Police Service Commission) but, save as may be otherwise expressly provided, does not include service

(a) on the personal staff of the Governor-General; or
(b) as a Justice of the Supreme Court or as a Justice of the Court of Appeal; or
(c) in the Department of Tourism.”

²² The General Orders state, under its Definitions section, that “The Public Service Commission” or “Commission” shall be read in those places where it is appropriate, as The Police Service Commission; or The Judicial and Legal Service Commission, General Order 100(6).

²³ Thus, appointments on probation, on contract, on temporary terms and on an hourly, daily, weekly rates and part-time are included in this provision.

in sound health and medically fit for employment and; provide the name of at least three referees, one of which must be his last employer, if previously employed, or head of school or college last attended, if not previously employed, in order to be eligible for appointment to the Public Service (General Order 214).

- Provisions providing that contract appointments are made by formal agreements for a specified period and do not provide for the payment of a pension. Employment beyond such period must be made the subject of a new contract or an extension of the period in the original contract (General Order 255).²⁴
- Provisions providing that the conditions of service of an officer on contract are those provided for in the contract (General Order 256).
- Provisions providing that the General Orders apply to temporary officers in the same way that they apply to officers in the pensionable establishment (General Orders 270).²⁵

- Statutory provisions such as the Supreme Court Act, whereby the Supreme Court may, on an application for judicial review, grant relief to any person whose interests were adversely affected by a decision made by a public body, public authority or a person acting in the exercise of a public duty, among others.²⁶

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

With respect to the constitutional and legal provisions that refer to the systems of government hiring that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention.

Notwithstanding, the Committee considers it appropriate to make a number of observations on the advisability of developing and complementing certain legal provisions that refer to those systems.

As stated in Section 1.1.1., the Constitution provides that the Public Service Commission and the Judicial and Service Commission provide advice to the Governor-General regarding the appointment of those public officers that fall under their purview. The Regulations for these Service Commissions further provide that method of entry into these Services shall be made on the basis of an examination and a possible interview.²⁷ Furthermore, these appointments are to be filled by candidates who have the requisite qualification and experience from within or outside the Public Service.²⁸ However, the legislation does not make it explicitly clear that selection into the Public Service is based on merit. The legislation scheme in place does not state that the candidate that is best qualified for the job is to be selected on the basis of the examination and interview, when carried out. In order to properly assure the openness, equity and efficiency of the government hiring system, the Committee believes that the legislation in place should explicitly

²⁴ See generally, General Orders 255 – 261.

²⁵ See generally, General Orders 270 – 273.

²⁶ Supreme Court Act, Section 19, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_53.html. In addition, the Constitution, under Article 26 provides that one of the fundamental rights and freedoms of an individual is the right not to be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

²⁷ Regulations 16 and 23 under both the Public Service Commission Regulations and the Judicial and Legal Service Commission Regulations. This method is also applicable to appointments on contract, on temporary terms and on an hourly, daily, weekly rates and part-time, see General Order 203, *supra* note 20.

²⁸ General Order 202.

state that selection is made on merit, based on the written competitive examinations and interviews. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(a) in Section 1 of Chapter III of this Report).

Furthermore, the Regulations for the Public Service Commission and the Judicial and Legal Service Commission provide an exception to the scheme in place when a delay involved in the appointment to a vacancy is likely to cause serious inconvenience. When this occurs, the Head of a Department or Permanent Secretary shall report the matter to the Chairman of the Service Commission who may as a matter of urgency recommend an acting appointment without regard to that procedure. The Committee notes that this exception could be open to abuse as nowhere in this system is a definition or example provided as to what constitutes a ‘serious inconvenience.’ Though the Chairman is to notify all members of the Commission as soon as possible after a recommendation has been made, nowhere does it state that a justified reason is to be provided. Given the potential for abuse that this exception may entail, The Bahamas should consider providing in the Regulations parameters that define a ‘serious inconvenience’ and that a written justified reason be made. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(b) in Section 1 of Chapter III of this Report).

The Committee notes that in the discussions of the review of the subgroup, the country under review indicated that in the creation of new posts, there are two processes.²⁹ The normal process requires the identification of a new post, budgetary approval and clearance for the establishment of the new post from the Department of Public Service.³⁰ However, the country under review also indicated that the creation of new posts depended on whether the need is urgent. In the cases of urgency, the Head of a Department must make the request through the Department of Public Service, which then sends the request to the Cabinet for its approval. The Committee notes that this procedural exception could be open to abuse as nowhere in this system is a definition or example provided for the term ‘urgent.’ Given the potential for abuse that this exception may entail, The Bahamas should consider providing in the Regulations parameters that define ‘urgent’. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(c) in Section 1 of Chapter III of this Report).

In addition, the Committee notes that the General Order 273 provides that temporary non-pensionable appointments may be made on a daily, weekly or monthly basis and should not for more than twelve months. Any appointment that exceeds this period must receive the prior approval of the Director of Public Personnel, and this will be only in very exceptional circumstances. The Committee notes that this provision that allows for temporary appointments could be open to abuse as there is no definition or example provided as to what constitutes a “very exceptional circumstance.” Though the prior approval of the Director of Public Personnel is required, nowhere does it state that a justified reason is to be provided. Given the potential for abuse that this exception may entail, The Bahamas should consider providing in the Regulations parameters that define ‘very exceptional circumstance’ and that a written justified reason be made. In this regard, the Committee will formulate a recommendation. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(d) in Section 1 of Chapter III of this Report).

²⁹ This information was received at the subgroup meeting in a document submitted by The Bahamas for that meeting that addressed the issues presented by members of the review subgroup, Argentina and Grenada, to the Draft Preliminary Report.

³⁰ See Regulation 24 of the Public Service Commission Regulations, *supra* note 5.

The Committee also notes that there are provisions for the advertising of positions in the Regulations of the Public Service Commission and the Judicial and Legal Service Commission. Advertisements are to be made when a vacancy occurs and are not to be filled by promotion (or result of an examination in the case of the Judicial Service), unless the Commission otherwise directs. Moreover, when an impending vacancy arises, the Head of the Department shall report to the Permanent Secretary a recommendation on how the post should be filled and whether it should be advertised. The Committee notes that the language in these provisions are discretionary and do not require that the Public Service Commission clearly substantiate when a decision is made not to advertise a vacancy to the general public. Moreover, while the General Orders provide that the vacancies are to be published in the local press, there are no further regulations on the use of other media, such as the internet. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(e) in Section 1 of Chapter III of this Report).

The Committee observes, in addition, that while there are sanctions for improper influence of a decision by a Service Commission and penalty for supplying false information in any application for employment to a Service Commission, the regulations in place for the Service Commissions do not allow for preventive or corrective measures against irregular selection processes, such as fraudulent competition, or to declare invalid an irregular appointment. The Committee considers it advisable for The Bahamas to include in its regulations provisions that establish control mechanisms, or strengthen existing ones, so that the Service Commissions have the competence to investigate an appointment process and, if found that it was not made on the basis of merit or in the event of error, omission or improper conduct in the selection process, for the revocation of the appointment or for other corrective measures to be taken. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(f) in Section 1 of Chapter III of this Report).

Finally, the Committee considers it advisable that the country under review implement training programs for those responsible for managing the selection and staffing processes, as well as training and induction programs for those persons recently hired into public service. In this regard, the Committee will formulate a recommendation (see Recommendations 1.1(g) and 1.1(h) in Section 1 of Chapter III of this Report).

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

With respect to results, the Committee notes that The Bahamas in its Response did not provide any information.

In addition to highlighting the importance of replying in full to the questions on results in the Questionnaire, the Committee does not have information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic. In this regard, it will formulate a recommendation to the Service Commissions. (See Recommendation 4.2 in Chapter III of this Report)

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

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

The Bahamas has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- Statutory provisions such as the Financial Administration and Audit Act,³¹ which under Section 21(e) provides that the Minister of Finance may make regulations providing for the procedure to be followed in the procurement of all supplies, works or services required by Government and for the establishment of a Board to be responsible for the awarding of contracts for such supplies, works or services.

- Statutory provisions such as the Financial Regulations,³² which under Regulation 56(1) establishes the Government Tenders Board (Board). This Board is to be made up of the Financial Secretary, who is the Chairman; the Permanent Secretary of the Ministry of Works; the Permanent Secretary of the Ministry of Health; and a public officer that serves as secretary. Regulation 57 further provides that the functions of the Board is to make recommendations to the Minister of Finance for the award of contracts for supplies, works and services in excess of fifty thousand dollars but not exceeding two hundred and fifty thousand dollars. For those contracts in excess of two hundred and fifty thousand dollars, the award is referred to the Cabinet for approval.³³

- As aforementioned in Section 1.1.1, statutory provisions such as the Supreme Court Act, whereby the Supreme Court may, on an application for judicial review, grant relief to any person whose interests were adversely affected by a decision made by a public body, public authority or a person acting in the exercise of a public duty, among others.³⁴

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

With respect to the legal provisions governing public procurement systems, the Committee deems it appropriate to express some comments for the country under review to consider in supplementing, developing or adapting the legal framework and the government procurement measures now in force, in light of the following:

- While the Financial Administration and Audit Act and the Financial Regulations provide for the establishment of a Government Tenders Board for the awarding of contracts for supplies, works and services required by the Government, the legislation does not indicate whether the scope of the Board's authority encompasses all essential branches and organs of the State. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(a) in Section 1 of Chapter III of this Report)
- In addition, The Bahamas could consider amending its legislation so that a private individual outside of the public service and Government is also appointed to the Government Tenders Board, in order to encourage more transparency and objectivity in the public procurement process. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(b) in Section 1 of Chapter III of this Report)

³¹ Financial Administration and Audit Act, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_359.html#Ch359s30.

³² Financial Regulations, http://laws.bahamas.gov.bs/subsidiary/subsidiary_CHAPTER_359.html#SICH359FINANCIALREGULATIONSs56.

³³ Regulation 58, *ibid*.

³⁴ Supreme Court Act, Section 19, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_53.html. In addition, the Constitution, under Article 26 provides that one of the fundamental rights and freedoms of an individual is the right not to be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

- With regard to the differing methods of public contracting, the Committee finds that provisions are inadequate in ensuring transparency. Although in the Response to the Questionnaire The Bahamas states that tender are invited to bid for government contracts either by way of public invitation or select tender process,³⁵ the legislation is silent on this matter. As a consequence, the legislation is also silent on the proper procedures to be followed in carrying out these tender processes. In addition, there is no legislative provision regarding factors to be taken into account when a tender process undertaken as either a public invitation or selective. Therefore it is difficult to ascertain whether the rules in place for these procurement processes are transparent and objective. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(c) in Section 1 of Chapter III of this Report)
- In addition, though the Response to the Questionnaire states that public invitation tenders are advertised in the local and international media inviting qualified tenders for supply of goods and services and that these advertisements include specifications and deadline for submission of bids,³⁶ the legislation is silent on this matter. As such, the legislation does not provide for publication in appropriate media, including the Internet, of information on the opening and initiation of tender processes, their conditions for participation, and the time, method and place for submission of bids. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(d) in Section 1 of Chapter III of this Report)
- In order to increase the transparency of procurement processes, the Committee suggests that The Bahamas study the possibility of, when appropriate, publishing pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereon. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(e) in Section 1 of Chapter III of this Report)
- The Committee notes that in the Response to the Questionnaire, the country under review states that when there is only one qualified tender that can provide the required goods or services a recommendation is made to the Board for award of contract without competitive bidding.³⁷ In these cases, the client ministry must obtain an expert estimate of the cost of the goods or services for comparative analysis. Again, the Committee found that the legislation does not provide for this contingency, as it is silent on this matter. The Committee believes that the country under review should have provisions regulating these circumstances and in doing so, a written justification be provided. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(f) in Section 1 of Chapter III of this Report)
- With respect to the criteria to be used in the evaluation of bids, including those of public works, the Committee takes note of the absence of such norms in the legislative regime in place. There appears to be no evaluation guidelines that provide objective selection factors or criteria. Though the country under review in its Response does state that the client ministry analyzes the bids based on price, experience, capability and capacity to carry out the work, these are not found in the legislation in place.³⁸ Therefore, to preserve

³⁵ Response to the Questionnaire, pg. 5, http://www.oas.org/juridico/spanish/mesicic2_bhs_resp_en.doc.

³⁶ *Ibid.* pg. 5.

³⁷ *Ibid.* pg. 6.

³⁸ *Ibid.* pg. 6.

impartiality, transparency and equality of opportunity, the Committee believes that The Bahamas should consider adopting objective criteria for the evaluation of bids that are reflected in legislation or formulated in an administrative document. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(g) in Section 1 of Chapter III of this Report)

- The Committee notes that Regulation 57 of the Financial Regulations provides that the Board forwards a recommendation to either the Minister of Finance or the Cabinet, depending on the amount of the contract, for their approval of award of contract. However, the legislation is silent on requiring the Minister of Finance or Cabinet to substantiate clearly and accurately the outcome of a bid evaluation. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(h) in Section 1 of Chapter III of this Report)
- The Committee notes that the legislation in place provides that the Board make recommendations to the Minister of Finance regarding contracts in excess of fifty thousand dollars but less than two hundred and fifty thousand. The Committee believes that the threshold of fifty thousand dollars leaves too much discretion for a potentially significant amount of money without the need to use a tendering process that is transparent and not arbitrary and subjective. Therefore, to preserve impartiality, transparency and equality of opportunity, the Committee believes The Bahamas should consider reevaluating this threshold amount. In this regard, the Committee will formulate a recommendation. (see Recommendation 1.2(i) in Section 1 of Chapter III of this Report)
- The Committee also notes that the legislation is silent regarding the publication of awards in a sufficiently justified or substantiated announcement, including aspects relating the selection decision, so that any person or any supervisory body may fully understand the essential justification for the selection of the bid, in order to lend objectivity, transparency and openness to the tendering process. (see Recommendation 1.2(j) in Section 1 of Chapter III of this Report)
- The Committee observes that there are no provisions within the legislative regime in place 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. The Committee believes that adopting measures that require prior planning would assure the openness, equity and efficiency of the system in place for the procurement of goods and services. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(k) in Section 1 of Chapter III of this Report)
- With respect to control mechanisms, the Committee notes an absence of provisions providing for the selection of an individual or entity responsible for audit, control and oversight over the procurement system. It is critical to the development of a sound government procurement system for a fully operational and functional external and internal control system. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(l) in Section 1 of Chapter III of this Report)
- The Committee also notes an absence of provisions establishing sanctions for public officers who fail to fulfill or infringe the provisions that govern the government

procurement system. The Committee believes that the country under review could consider the development and implementation of a system of sanctions for public officers who violate their duties and principles in the area of government procurement. (See Recommendation 1.2(m) in Section 1 of Chapter III of this Report)

- The use of electronic methods and information systems for government procurement assists in adequately informing the public and ensuring openness. The Committee believes that The Bahamas could consider the use of electronic means to provide information regarding procurement, including the status of bids and awards and the progress of major projects. The Bahamas may also wish to consider using an electronic procurement system or electronic bidding in order to carry out the contracting needs of the State. In this regard, the Committee will formulate a recommendation. (See Recommendations 1.2(n) and 1.2(o) in Section 1 of Chapter III of this Report)
- In regards to registration of contractors, the Committee notes an absence of legislation. The Committee feels that the country under review should consider the advisability of amending the existing legislation in order to create a centralized registry of contractors of works, goods and services. This registry should be compulsory for all State bodies and dependencies, its purpose being to foster the principles of openness, equity and efficiency provided for in the Convention. The Committee also suggests that the country under review consider granting to an agency the authority to exclude and/or sanction any contractor, for a certain period of time, from the proposed registry, as circumstances may warrant. There could, for example, be provisions outlining the reasons for an intended exclusion or sanction. This agency should also maintain a list of sanctioned contractors. In this regard, the Committee will formulate recommendations. (See Recommendations 1.2(p) and 1.2(q) in Section 1 of Chapter III of this Report).
- The Committee has no information regarding provisions that allow for the establishment of citizen overseers or watchdogs to monitor the execution of contracts where the nature, importance or magnitude so warrants, in particular public works contracts. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(r) in Section 1 of Chapter III of this Report)
- With respect to mechanisms for challenges or appeals to the bid process, there is no mechanism in place. The Committee considers that there is a need for a specific mechanism allowing for complaints and dispute resolution at the administrative level, as well as a written procedure as to how government entities should receive and respond to challenges or complaints. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(s) in Section 1 of Chapter II of this report)

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

With respect to results, the Committee notes that The Bahamas in its Response did not provide any information.

In addition to highlighting the importance of replying in full to the questions on results in the Questionnaire, 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. In this regard, it will formulate a recommendation. (See Recommendation 4.2 in Chapter III of this Report)

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

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

The Bahamas has a set of measures and provisions related to the above-mentioned systems, among which the following should be noted:

- Statutory provisions such as Section 46 of the Criminal Procedure Code,³⁹ which provides that a presiding judge or magistrate may, at any stage of the trial of any offence before the court, order that the public generally or any particular person shall not have access to or remain in the room or building when the trial is being conducted if it appears to him to be necessary for the due administration of justice or in the interests of defence, public safety, public order or public morality or for the welfare of persons under eighteen years of age.

In addition, The Bahamas in its Response states that there exist programs such as ‘Crime stoppers,’ which provides for anonymous reporting through a telephone service. Moreover, there exists a Corruption Unit within the Royal Bahamas Police Force, whereby the department deals with internal affairs matters and reports of corruption within the Police Force and Government.⁴⁰ Citizens can report such acts of corruption to this Unit and provisions are available for anonymous reporting and for the protection of a person’s identity, where necessary.⁴¹ The country under review also states that an informal witness protection program exists in The Bahamas.

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

Taking into account the previous section, it is not appropriate to make observations in this regard as there is no formal legislative regime in place for the protection of public servants and private citizens who, in good faith, report acts of corruption. Though citizens can report acts of corruption to the Corruption Unit within the Royal Bahamas Police Force, the mechanism in place is inadequate for promoting the purposes of the Convention. As such, the Committee will formulate recommendations that it deems advisable for The Bahamas to consider, in accordance with Article III(8) of the Convention, in establishing systems for protection public servants and private citizens who, in good faith, report acts of corruption. (See recommendation 2 in Section 2 of Chapter III of this Report).⁴²

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

The Bahamas states in its Response that the ‘Crime Stoppers’ program has received over three thousand calls to date and has provided useful intelligence to authorities and led to the clearing of many cases, arrests and convictions as well as the recovery of stolen property.⁴³ In addition, the

³⁹ Criminal Procedure Code, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_91.html.

⁴⁰ Response to the Questionnaire, *supra* note 35 at pg. 8.

⁴¹ *Ibid.*

⁴² The Response to the Questionnaire states that there exists a Justice Protection Act 2006, which while not yet in force, is supported by both the Government and the opposition party and is in the process of becoming fully enacted, *ibid.* The country under review indicates that once this Act is fully enacted, relevant statistical data will be made available.

⁴³ *Ibid.*, pg. 10.

country under review states that presently, it does not have relevant statistical data. Therefore, the Committee was unable to properly evaluate this area.

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, it will make a recommendation in this regard. (See Recommendation 4.2 in Chapter III of this Report)

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

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

The Bahamas has a set of provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention, among which the following should be noted:

a. With regard to paragraph (a) of Article VI(1):

- Section 3(2) of the Prevention of Bribery Act,⁴⁴ which provides: “Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage⁴⁵ as an inducement to or reward for or otherwise on account of his-

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.”

Under this Act ‘public servant’ means a public officer and any employee or member of a public body, whether temporary or permanent and whether paid or unpaid.⁴⁶

⁴⁴ Prevention of Bribery Act, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_88.html.

⁴⁵ The Act defines ‘advantage’ as:

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- (e) the exercise of forbearance from the exercise of any right or any power or duty; and
- (f) any offer, undertaking or promise, whether conditional or unconditional, or any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e).

⁴⁶ ‘Public body’ is defined in the act as: (a) the Government; (b) a Ministry or Department of the Government; (c) the Senate or House of Assembly; (d) a corporation established by Act of Parliament for public purposes or any subsidiary company thereof registered under the Companies Act; (e) any board, commission, authority, committee or other body, whether paid or unpaid, appointed by the Governor-General or a Minister of the Government.

- Section 4(2) of the Prevention of Bribery Act, which provides: “Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantages as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in-

- (a) the promotion, execution or procuring of; or
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or subcontract as is referred to in subsection (1) shall be guilty of an offence..”

- Section 8(1) of the Prevention of Bribery Act, which provides: “Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his-

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.”

The Act defines an ‘agent’ as a public servant and any person employed by or acting for another. A ‘principal’ is defined as including: (a) an employer; (b) a beneficiary under a trust; (c) a trust estate as though it were a person; (d) any person beneficially interested in the estate of a deceased person; (e) the estate of a deceased person as though it were a person; and (f) in the case of an employee of a public body, the public body.

- Section 2(2)(b) and 2(2)(c) of the Prevention of Bribery Act, which provides: “For the purposes of this Act...

- (b) a person⁴⁷ solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and
- (c) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.”

- Section 10 of the Prevention of Bribery Act, which provides: “Any person guilty of an offence under this Part shall be liable-

- (a) on conviction on information to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding four years or to both such fine and imprisonment; and
- (b) on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment,

⁴⁷ Section 3 of the Interpretation and General Clauses Act provides that “In this and in any other written law unless the context otherwise requires- "person" includes any public body and any body of persons, corporate or unincorporate, and this definition shall apply notwithstanding that the word "person" occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation,” http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_2.html.

and shall be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify.”

- Section 463 of the Penal Code,⁴⁸ which provides: “Whoever accepts, agrees, or offers to accept any valuable consideration under pretence or colour of having unduly influenced, or of agreeing or being able so to influence, any person in respect of his duties as a public officer⁴⁹ or juror, is guilty of a misdemeanour and shall be liable to imprisonment for one year.”

- Section 464 of the Penal Code, which provides: “Whoever, otherwise than in the due execution of his duties as a judicial officer⁵⁰ or juror, makes or offers to make any agreement with any person as to the judgment or verdict which he will or will not give as a judicial officer or juror in any pending or future proceeding, is guilty of a misdemeanour and shall be liable to imprisonment for one year.”

- Section 473 of the Penal Code, which provides: “A public officer, juror or voter is guilty of corruption in respect of the duties of his office or vote, if he directly or indirectly agrees or offers to permit his conduct as such officer, juror or voter to be influenced by the gift, promise or prospect of any valuable consideration to be received by him, or by any other person, from any person whomsoever.”

- Section 474 of the Penal Code, which provides: “It is immaterial for the purpose of either of section 472 or 473, that the person respecting whose conduct the endeavour, agreement, or offer therein mentioned is made is not yet, at the time of the making of the endeavour, agreement or offer, such a public officer, juror or voter, if the endeavour, agreement or offer is made in the expectation that he will or may become or act as such officer, juror, or voter.”

- Section 476 of the Penal Code, which provides: “If, after a person has done any act as a public officer, juror, or voter, he secretly accepts, or agrees or offers secretly to accept for himself or for any other person, any valuable consideration on account of such act, he shall be presumed, until the contrary is shown, to have been guilty of corruption within the meaning of this Title, in respect of such act before the doing thereof.”

b. With regard to paragraph (b) of Article VI(1):

- In addition to the aforementioned, Section 3(1) of the Prevention of Bribery Act, which provides: “Any person who, without lawful authority or reasonable excuse, offers any advantage

⁴⁸ Penal Code, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_84.html#Ch84s453.

⁴⁹ The Penal Code defines a ‘public officer’ as “any person holding any of the following offices, or performing the duties thereof, whether as a deputy or otherwise, namely-

(1) any civil office, including the office of Governor-General, the power of appointing a person to which or of removing a person from which is vested in Her Majesty, or in the Governor-General, or in any public commission or board or committee; (2) any office to which a person is nominated or appointed by statute or by public election; (3) any civil office, the power of appointing to which or of removing from which is vested in any person or persons holding public office of any kind included in either of subsections (1) or (2) of this section; (4) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court; (5) any justice of the peace.

⁵⁰ The Penal Code defines a ‘judicial officer’ as “any person executing judicial functions as a public officer.”

to a public servant as an inducement to or reward for or otherwise on account of that public servant's-

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.”

- Section 4(1) of the Prevention of Bribery Act, which provides: “(1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in-

(a) the promotion, execution, or procuring of-

- (i) any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance; or
- (ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid,

shall be guilty of an offence.”

- Section 7 of the Prevention of Bribery Act, which provides: “Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any public body, offers an advantage to any public servant employed in or by that public body, shall be guilty of an offence.”

- Section 8(2) of the Prevention of Bribery Act, which provides: “Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's-

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principals affairs or business,

shall be guilty of an offence.”

- Section 2(2)(a) of the Prevention of Bribery Act, which provides: “For the purposes of this Act-

(a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or in trust for any other person...”

- Section 462 of the Penal Code, which provides: “Whoever corrupts or attempts to corrupt any person in respect of any duties as a public officer or juror is guilty of a misdemeanour.”

- Section 472 of the Penal Code, which provides: “A person is guilty of corrupting a public officer, juror, or voter in respect of the duties of his office or in respect of his vote, if he endeavours directly or indirectly to influence the conduct of the public officer, juror or voter in respect of the duties of his office or in respect of his vote, by the gift, promise or prospect of any valuable consideration to be received by the public officer, juror or voter, or by any other person, from any person whomsoever.”

- Section 477 of the Penal Code, which provides: “If, after a public officer, juror or voter has done any act as such officer, juror or voter, any other person secretly agrees or offers to give to or procure for him or for any other person any valuable consideration on account of such act, the person so agreeing or offering shall be presumed, until the contrary is shown, to have been guilty of having, before the doing of the act, corrupted such public officer, juror or voter in respect of the act.”

c. With regard to paragraph (c) of Article VI(1):

- In addition to the aforementioned, Section 10(3) of the Prevention of Bribery Act provides: “Any agent who, with intent to deceive his principal, uses any receipt, account or other document-

(a) in respect of which the principal is interested; and

(b) which contains any statement which is false or erroneous or defective in any material particular; and

(c) which to his knowledge is intended to mislead the principal,

shall be guilty of an offence.”

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

- Section 453 of the Penal Code, which provides: “(1) Every public officer or juror who is guilty of corruption, or of willful oppression, or of extortion, in respect of the duties of his office, commits a misdemeanour and shall be liable to imprisonment for two years.

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

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

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

- Section 471 of the Penal Code, which provides: “(1) The provisions of the section of this Title for prohibiting the sale or purchase of a public office, or relating to corrupt bargains or transactions in respect of public offices, extend to every civil public office, the sale and purchase whereof is not authorised by any Act or by rules lawfully made respecting such office by some person having authority to make the same.

(2) For the purposes of the said section, "corrupt bargain or transaction" includes any agreement, not made with such sanction as aforesaid, for the giving or receipt by any person of any valuable consideration for nominating or appointing a person to an office, or for procuring, soliciting or recommending the nomination or appointment of a person to an office, or for resigning or procuring the resignation of an office, or for any promise, offer or endeavour to do any such act as hereinbefore in this section mentioned, and includes any agreement, not made with such sanction as aforesaid, for paying to any person, or permitting any person to retain or receive, the whole or any part of the salary, fees or other remuneration or benefits of an office.”

d. With respect to paragraph (d) of Article VI(1):

- Section 40 of the Proceeds of Crime Act,⁵¹ which provides: “(1) A person is guilty of an offence of money laundering if he-

- (a) uses, transfers, sends or delivers to any person or place any property which, in whole or in part directly or indirectly represents his proceeds of criminal conduct; or
- (b) disposes, converts, alters or otherwise deals with in any manner and by any means that property,

with the intent to conceal or disguise such property.

(2) A person is guilty of an offence of money laundering if, knowing, suspecting or having reasonable grounds to suspect that any property in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he-

- (a) uses, transfers, sends or delivers to any person or place that property; or
- (b) disposes of or otherwise deals with in any manner by any means that property,

with the intent to conceal or disguise such property.

⁵¹ Proceeds of Crime Act, http://laws.bahamas.gov.bs/statutes/statute_CHAPTER_93.html#Ch93s40.

(3) In this section the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.”

- Section 41(1) of the Proceeds of Crime Act, which provides: “A person is guilty of an offence if he enters into or is otherwise concerned in an arrangement whereby-

(a) the retention or control by or on behalf of another persons ("A) of A's proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or

(b) A's proceeds of criminal conduct-

(i) are used to secure that funds are placed at A's disposal; or

(ii) are used for A's benefit to acquire property,

and he knows, suspects, or has reasonable grounds to suspect that A is a person who is or has been engaged in or has benefited from criminal conduct.”

- Section 42 of the Proceeds of Crime Act, which provides: “(1) A person is guilty of an offence if, knowing, suspecting or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.

(2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.

(3) For the purposes of subsection (2)-

(a) a person does not acquire property for adequate consideration if the value of the consideration is significantly less than the value of the property; and

(b) a person does not use or have possession of property for adequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him in criminal conduct shall not be treated as consideration for the purposes of subsection (2).”

e. With respect to paragraph (e) of Article VI(1):

- Section 83 of the Penal Code, which provides: “(1) A person who attempts to commit an offence by any means shall not be acquitted on the ground that, by reason of the imperfection or other condition of the means, or by reason of the circumstances under which they are used, or by reason of any circumstances affecting the person against whom, or the thing in respect of which, the offence is intended to be committed, or by reason of the absence of such person or thing, the offence could not be committed according to his intent.

(2) Whoever attempts to commit an offence shall, if the attempt is frustrated by reason only of accident or of circumstances or events independent of his will, be deemed guilty of an attempt in the first degree, and shall, except as in this Code otherwise expressly provided, be punishable in the same manner as if the offence had been completed.

(3) Whoever is guilty of an attempt other than an attempt in the first degree, shall, except as in this Code otherwise expressly provided, be liable to any kind of punishment to which he would have been liable if the offence had been completed; but the court shall mitigate the punishment according to the circumstances of the case.

(4) Where any act amounts to a complete offence, as defined by any provisions of this Code, and is also an attempt to commit some other crime, a person who is guilty of it shall be liable to be convicted and punished either under such provision or under this section.

(5) Any provision of this Code with respect to intent, exemption, justification or extenuation, or any other matter in the case of any act, shall apply with the necessary modifications, to the case of an attempt to do that act.

(6) The question whether an act done or omitted with intent to commit an offence is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit, is a question of law.”

- Section 86 of the Penal Code, which provides: “(1) Whoever directly or indirectly, instigates, commands, counsels, procures, solicits or in any manner purposely aids, facilitates, encourages or promotes, whether by his act or presence or otherwise, and every person who does any act for the purpose of aiding, facilitating, encouraging or promoting the commission of an offence by any other person, whether known or unknown, certain or uncertain, is guilty of abetting that offence, and of abetting the other person in respect of that offence.

(2) Whoever abets a crime or offence shall, if the same is actually committed in pursuance or during the continuance of the abetment, be deemed guilty of that crime or offence.

(3) Whoever abets a crime shall, if the crime is not actually committed, be punishable as follows, that is to say-

(a) if the commission of the crime is prevented by reason only of accident, or of circumstances or events independent of the will of the abettor, the abettor shall, where the crime abetted was murder, be liable to imprisonment for life, or shall, where the crime abetted was any crime other than murder, be punishable in the same manner as if the crime had been actually committed in pursuance of the abetment;

(b) in any other case the abettor shall, if the crime which he abetted was a felony, be deemed guilty of felony, or shall, if such crime was a misdemeanour, be deemed guilty of a misdemeanour.

(4) Whoever abets a crime or an offence shall be punishable on indictment or on summary conviction, according as he would be punishable for committing that crime or offence.

(5) An abettor may be tried before, with, or after a person abetted, and although the person abetted is dead or is otherwise not amenable to justice; and any number of abettors at different times to an offence may likewise be tried together.

(6) An abettor may be tried, before, with, or after any other abettor, whether he and such other abettor abetted each other in respect of the offence or not, and whether they abetted the same or different parts of the offence.

(7) An abettor shall have the benefit of any matter of exemption, justification or extenuation to which he is entitled under this Code, notwithstanding that the person abetted or any other abettor is not entitled to the like benefit.

(8) Whoever within the jurisdiction of the courts, abets the doing beyond the jurisdiction of an act which, if done within the jurisdiction, would be an offence shall be punishable as if he had abetted that offence.”

- Section 88 of the Penal Code, which provides: “Whoever, knowing that a person decides to commit or is committing a felony, fails to use all reasonable means to prevent the commission or completion thereof is guilty of a misdemeanour.”

- Section 89 of the Penal Code, which provides: “(1) If two or more persons agree or act together with a common purpose in committing or abetting an offence whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that offence as the case may be.

(2) A person within the jurisdiction of the courts can be guilty of conspiracy by agreeing with another person who is beyond the jurisdiction for the commission or abetment of any offence to be committed by them or either of them, or by any other person, either within or beyond the jurisdiction; and for the purposes of this subsection as to an offence to be committed beyond the jurisdiction, "offence" means any act which, if done within the jurisdiction, would be an offence under this Code or an offence punishable on conviction under any other law.”

- Section 9 of the Prevention of Bribery Act, which provides: “(1) If, in any proceedings for an offence under any section in this Part, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that-

- (a) he did not actually have the power, right or opportunity so to do or forbear;
- (b) he accepted the advantage without intending so to do or forbear; or
- (c) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section in this Part, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing, or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.”

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

With respect to provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention that have been examined by the Committee, based on the information made available to it, they constitute, as a whole, a set of provisions relevant for promoting the purposes of the Convention.

Nonetheless, the Committee considers it appropriate to make certain observations regarding the advisability that The Bahamas consider complementing and implementing certain provisions in this area, taking into account the following:

- With respect to paragraph (c) of Article VI(1):

- The Committee observes that while the offences set out in section are relevant for promoting the purposes of the Convention, it does not contemplate other cases where an act or omission to act could also lead to the illicit obtainment of benefits for himself or another. In this regard, the Committee will formulate a recommendation.⁵² (see Recommendation 3.1 in Section 3 of Chapter III of this Report)

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

The Bahamas in its Response states the following:⁵³

- *“One of many examples of the above anti-corruption legislation in practice is to be found in the case of Ezel Sherman & Others v The Commissioner of Police No. 94, 95 and 96 of 1995. In this case the Defendants were convicted of various offences relating to bribery. The charges arose out of what is known as a “sting operation” involving the prosecution of senior public officers (including the Chief Passport Officer) within the Passport Office, Nassau, The Bahamas.*
- *A similar case was that of Commissioner of Police v. Michael Duvalier Criminal Appeal No. 72 of 2001. Duvalier was a Police Officer who was charged and convicted of soliciting and accepting from a citizen, the sum of \$200, as an inducement to perform an act in his capacity as a public servant. This was contrary to section 3 (2) (b) and section 10 (b) of the Prevention of Bribery Act, Chapter 81.*
- *Another case is that of Sidney Stubbs v Gina Gonzales Appeal No. 28 of 2004. Although this case was concerned with bankruptcy proceedings, there was an issue of whether Stubbs, a member of the House of Assembly had declared a true value of his assets in accordance with the Bankruptcy Act, Chapter 69 of the Statute Laws of the Bahamas.*
- *The case of Moss v Commissioner of Police [1989] BHS J. No. 108 1989 No. 74 involved the offence of offering to a public servant contrary to section 3 (1) (a) and 10 (b) of the Prevention of Bribery Act, chapter 81. The Defendant had offered a Stipendiary Magistrate the sum of \$10,000 as an inducement to her performing an act in her capacity as a public servant. To wit; to acquit another person of offences with which he was on trial before her as a Magistrate.*
- *The case of The Commissioner of Police v Elam R. Moxey No. 19 of 1993 was a case against a public officer. It involved forgery offences and perverting the course of justice.”*

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 the criminal investigations referred to, it will formulate a recommendation to the Judicial Branch in this regard (See Recommendation 4.2 in Chapter III of this Report).

⁵² The country under review stated that an Integrity in Public Life Act is currently before cabinet for consideration and its provisions contemplate other cases where an act or omission to act could also lead to the illicit obtainment of benefits for oneself or a third party.

⁵³ Response to the Questionnaire, *supra* note 35 at pgs. 17 - 18.

III. CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO THE IMPLEMENTATION OF THE PROVISIONS SELECTED IN THE FRAMEWORK OF THE SECOND ROUND

Based on the review conducted in Chapter II of this Report, the Committee offers the following conclusions and recommendations regarding implementation by The Bahamas of the provisions contained in Article III(5) (systems of government hiring and for the procurement of goods and services); Article III(8) (systems for protecting public servants and private citizens who, in good faith, report acts of corruption); and Article VI (acts of corruption) of the Convention, which were selected for review within the framework of the second round.

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

1.1. Systems of Government Hiring

The Bahamas has considered and adopted certain measures intended to establish, maintain and strengthen the systems of government hiring, as discussed in Section 1.1 of Chapter II of this Report.

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

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

In meeting this recommendation, The Bahamas could take into account the following measures:

- 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. (See Section 1.1.2. of Chapter II of this Report)
- 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. (See Section 1.1.2. of Chapter II of this Report)
- 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. (See Section 1.1.2. of Chapter II of this Report)
- 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. (See Section 1.1.2. of Chapter II of this Report)
- 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). (See Section 1.1.2. of Chapter II of this Report). (See Section 1.1.2. of Chapter II of this Report)

- 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. (See Section 1.1.2. of Chapter II of this Report)
- g) Increase training programs for those responsible for managing public service selection and staffing processes. (See Section 1.1.2. of Chapter II of this Report).
- 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. (See Section 1.1.2. of Chapter II of this Report).

1.2. Government Systems for the Procurement of Goods and Services

The Bahamas has considered and adopted certain measures intended to establish, maintain and strengthen the systems for government procurement of goods and services, as discussed in Section 1.2 of Chapter II of this Report.

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

- 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. In meeting this recommendation, The Bahamas could take into account the following measures:
 - a) Consider the establishment of a single legal and regulatory framework which encompasses all the branches and agencies of the State (See Section 1.2.2. of Chapter II of this Report)
 - b) Consider the appointment of a private individual outside of the public service and Government to the Government Tenders Board (See Section 1.2.2. of Chapter II of this Report)
 - c) Implement provisions outlining clear procedures for the selection of contractors when either public tendering or selective tendering procedures are utilized. (See Section 1.2.2. of Chapter II of this Report)
 - 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. (See Section 1.2.2. of Chapter II of this Report)
 - 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. (See Section 1.2.2. of Chapter II of this Report)
 - 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. (See Section 1.2.2. of Chapter II of this Report)

- g) Implement provisions that provide for objective selection factors or criteria in the evaluation of bids, including those of public works. (See Section 1.2.2. of Chapter II of this Report)
- h) Implement provisions that require that the outcome of a bid evaluation is substantiated clearly and accurately, when applicable. (See Section 1.2.2. of Chapter II of this Report)
- i) Reevaluate the threshold of fifty thousand dollars that trigger the involvement of the Board in the tendering process. (See Section 1.2.2. of Chapter II of this Report)
- j) Implement provisions that require awards to be publicized in a sufficiently justified or substantiated announcement. (See Section 1.2.2. of Chapter II of this Report)
- 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. (See Section 1.2.2. of Chapter II of this Report)
- l) Establish a governing or administering authority responsible for the internal and external audit, control and oversight of the government procurement system. (See Section 1.2.2. of Chapter II of this Report)
- 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. (See Section 1.2.2. of Chapter II of this Report)
- 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. (See Section 1.2.2. of Chapter II of this Report)
- o) Develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means. (See Section 1.2.2. of Chapter II of this Report)
- 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. (See Section 1.2.2. of Chapter II of this Report)
- q) Implement a mechanism by legislative or administrative means to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons. (See Section 1.2.2. of Chapter II of this Report)
- 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. (See Section 1.2.2. of Chapter II of this Report)

- 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. (See Section 1.2.2. of Chapter II of this Report)

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

The Bahamas has certain measures intended to establish, maintain and strengthen systems for protecting public servants and private citizens who in good faith report acts of corruption, as discussed in Section 3 of Chapter II of this Report.

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

- Adopt a comprehensive legal and regulatory framework that provides protection for public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with its Constitution and the basic principles of its domestic legal system.⁵⁴

In meeting this recommendation, The Bahamas could take into account the following measures:

- 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;

⁵⁴ The Response to the Questionnaire states that there exists a Justice Protection Act 2006, which while not yet in force, is supported by both the Government and the opposition party and is in the process of becoming fully enacted, *ibid*.

- 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.

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

The Bahamas has adopted measures aimed at criminalizing the acts of corruption provided for by Article VI(1) of the Convention, as discussed in Section 3 of Chapter II of this Report.

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

- 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.⁵⁵ (See Section 3.2. of Chapter II of this Report)

4. GENERAL RECOMMENDATIONS

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

- 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.
- 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. (see Sections 1.1.3, 1.2.3, 2.3 and 3.3 of Chapter II of this Report)

5. FOLLOW-UP

The Committee will consider the periodic update Reports submitted by The Bahamas concerning progress in implementing previous recommendations, within the framework of the plenary

⁵⁵ The country under review stated that an Integrity in Public Life Act is currently before cabinet for consideration and its provisions contemplate other cases where an act or omission to act could also lead to the illicit obtainment of benefits for oneself or a third party.

meetings of the Committee and in accordance with the provisions of Article 31 of the Rules of Procedure and Other Provisions.

Similarly, the Committee will review the progress in implementing the recommendations made in this Report, in accordance with the provisions of Article 29 of the Rules of Procedure.

IV. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN THE FIRST ROUND

The Committee observes, in relation with the implementation of the recommendations formulated for The Bahamas in the Report in the First Round of review, based on the information at its disposal, the following:

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.*

In its Response, the country under review provided information with respect to the above recommendation:

- Legislation is to be placed for the Legislature for the enactment of a Code of Ethics for Ministers. That legislation is currently being drafted and is being designed so that there are stated acceptable standards of conduct with enforceable sanctions.⁵⁶

⁵⁶ Response to the Questionnaire, Part II, pg. 2, http://www.oas.org/juridico/spanish/mesicic2_bhs_sp.htm.

- Legislation is also being drafted for the creation of the Office of Ombudsman, which is intended to provide oversight for injustices caused by improper, unreasonable or inadequate administrative conduct in the public sector.⁵⁷

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for The Bahamas to continue giving additional attention to the implementation of this recommendation. In addition, the Committee takes note of the need for the country under review to give additional attention to the implementation of measures (a) – (d).

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.

In its Response, the country under review provided no information with respect to the above recommendation.⁵⁸ The Committee takes note of the need for the country under review to give additional attention to its implementation.

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.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

In its Response, the country under review provided no information with respect to the above recommendation.⁵⁹ The Committee takes note of the need for the country under review to give additional attention to its implementation.

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.*

In its Response, the country under review provided information with respect to the above recommendation:

- These recommendations are under review within the context of the draft legislation on the Code of Ethics.⁶⁰

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for The Bahamas to continue giving additional attention to the implementation of the recommendation.

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.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*, pg. 3.

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

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).

In its Response, the country under review provided information with respect to the above recommendations:

- These recommendations are under review within the context of the draft legislation on the Code of Ethics.⁶¹

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendations as well as the need for The Bahamas to continue giving additional attention to the implementation of these recommendations.

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.

In its Response, the country under review provided no information with respect to the above recommendation.⁶² The Committee takes note of the need for the country under review to give additional attention to its implementation.

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.*

⁶¹ *Ibid.*, pg. 4.

⁶² *Ibid.*

In its Response, the country under review provided no information with respect to the above recommendation.⁶³ The Committee takes note of the need for the country under review to give additional attention to its implementation.

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.

In its Response, the country under review provided information with respect to the above recommendation:

- The incoming Government of the Commonwealth of The Bahamas has committed itself to enact a Freedom of Information Act, which is presently being drafted and will address the recommendations made in this section.⁶⁴

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for The Bahamas to continue giving additional attention to the implementation of the recommendation.

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.

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.

In its Response, the country under review provided no information with respect to the above recommendations.⁶⁵ The Committee takes note of the need for the country under review to give additional attention to its implementation.

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.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

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.*

In its Response, the country under review provided no information with respect to the above recommendation.⁶⁶ The Committee takes note of the need for the country under review to give additional attention to its implementation.

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.*

In its Response, the country under review provided information with respect to the above recommendation:

- The Government of The Commonwealth of The Bahamas has committed itself and the civil service to a program of transparency and accountability, by which the Executive will account to Parliament and the people its stewardship of the annual Budget at the half budget year point, accounting for the expenditure of public money and resources.⁶⁷

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for The Bahamas to continue giving additional attention to the implementation of the recommendation.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

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.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, pg. 5.

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.

In its Response, the country under review provided information with respect to the above recommendations:

- The process for making mutual legal assistance and international legal cooperation assistance requests (as well as extradition applications to The Bahamas) is posted on the OAS website for mutual legal assistance and extradition.⁶⁸

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendations as well as the need for The Bahamas to continue giving additional attention to the implementation of these recommendations.

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.

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.

In its Response, the country under review provided information with respect to the above recommendations:

- The Bahamas has recently communicated its interest in receiving technical assistance in implementing the provisions of the OAS Corruption Convention.⁶⁹

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendations as well as the need for The Bahamas to continue giving additional attention to the implementation of these recommendations.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

Recommendation 6.1:

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

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

Recommendation 6.2:

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

In its Response, the country under review provided no information with respect to the above recommendations.⁷⁰ The Committee takes note of the need for the country under review to give additional attention to its implementation.

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.

Recommendation 7.2:

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

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.

In its Response, the country under review provided no information with respect to the above recommendations.⁷¹ The Committee takes note of the need for the country under review to give additional attention to its implementation.

⁷⁰ *Ibid.*, pg. 6.

⁷¹ *Ibid.*