

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Fourteenth Meeting of the Committee of Experts
December 8 to 12, 2008
Washington, DC.

OEA/Ser.L
SG/MESICIC/doc.226/08 rev. 4
12 December 2008
Original: English

BELIZE

FINAL REPORT

(Adopted at the December 12, 2008 plenary session)

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

**REPORT ON IMPLEMENTATION IN BELIZE 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 Belize 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 Belize 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 Ninth Meeting, and published at the following web page: http://www.oas.org/juridico/english/mec_rep_blz.pdf

2. Ratification of the Convention and adherence to the Mechanism

According to the official registry of the OAS General Secretariat, Belize ratified the Inter-American Convention against Corruption (IACC) on August 2, 2002 and deposited the respective instrument of ratification on September 6, 2002.

Similarly, Belize signed the Declaration on the Mechanism for Follow-Up of Implementation of the IACC on June 9, 2003.

I. SUMMARY OF THE INFORMATION RECEIVED

Response of Belize

The Committee wishes to acknowledge the cooperation that it received throughout the review process from Belize, 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, Belize sent the provisions and documents it considered pertinent, available at:

http://www.oas.org/juridico/spanish/mesicic2_blz_sp.htm. In addition, Belize informed that the vast majority of its laws are available at www.belize.gov.bz.

For its review, the Committee took into account the information provided by Belize up to May 22, 2008, and that requested by the Secretariat and the members of the review subgroup, 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 12, 2008, at its Fourteenth meeting, held at OAS Headquarters, December 8 – 12, 2008.

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)

1.1. SYSTEMS OF GOVERNMENT HIRING

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

Belize has a set of provisions related to the hiring of public servants, among which the following provisions related to the principal systems should be noted:

- Constitutional provisions, such as those which establish the Public Services Commission (Section 105); and the Judicial and Legal Services Commission (Section 110E); and which also provide that in the performance of their functions, the Commissions shall not be subject to the control of any other person or authority (Sections 105(12) and 115E(12), respectively).

Pursuant to Section 106(1) of the Constitution, the Public Services Commission has the power to appoint individuals to hold or act in offices in the public service, with the exception of those offices within the judicial and legal service² and the security service.³ Section 106(3)(c) authorizes the Governor-General, acting in accordance with the advice of the Minister or Ministers, and following public consultation, to make regulations on the formation of schemes for recruitment to the public service;⁴ Section 107 grants the Public Services Commission the power to appoint high ranking public officers;⁵ and Section 106(5) authorizes the Public Service Commission to delegate its powers,⁶ on the conditions it deems fit, to any one or more of its members, or with the consent of the Prime Minister, to any public officer.

With respect to the Judicial and Legal Services Commission, Section 110F(1) of the Constitution grants the Commission the power, inter-alia, to review the suitability of applicants, as well as appoint individuals to hold or act in offices in the judicial and legal services, including the power to make

² Pursuant to Section 110F(2), the term “judicial and legal service” means “*service in the Departments of Offices of the General Registry of the Supreme Court and Court of Appeal, Magistracy, Chief Parliamentary Counsel, Law Revision, Family Courts, Director of Public Prosecutions and Solicitor General.*”

³ Section 110C of the Constitution established the Security Services Commission. Pursuant to Section 110.D(2), the term “security service”, means service in the Belize Police Department and in the military service.

⁴ Regulation 2(1) of the Public Service Regulations, defines the term “public service”, as “*service in a civil capacity in respect of the Government.*”

⁵ Section 107 (1) of the Belize Constitution provides that this section applies to the offices of “*Financial Secretary, Deputy Financial Secretary, Secretary to the Cabinet, Solicitor General, Permanent Secretary, head of a department of Government, Commissioner of Police, Director, Security and Intelligence Service, Commandant, Belize Defence Force, Ambassador, High Commissioner or principal representative of Belize in any other country or accredited to any international organization and, subject to the provisions of this Constitution, any other office designated by the Governor-General, acting in accordance with the advice of the Prime Minister given after consultation with the Public Services Commission.*”

⁶ On February 4, 2002, by means of Circular 76 of 2002, the PSC delegated its powers to Chief Executive Officers (CEO's) in respect of officers on pay scales 1 through 8. By means of Circular 1 of 2008, dated February 13 of 2008, this delegation was suspended with immediate effect.

appointments, promotions, transfers, and to confirm appointments; and Section 110F(5) authorizes the Judicial and Legal Service Commission to delegate its powers.⁷

- Statutory provisions, such as the Public Service Regulations, which contain provisions related to the government hiring system, and which apply to all of the above-referenced Service Commissions, pursuant to Regulations 2 and 3 thereof, and to all public officers and offices,^{8, i} subject to the following exceptions specified in Regulation 2(2): the offices of the Prime Minister or other Ministers, Ministers of State, Speaker or Deputy Speaker or member of the House of Representatives, President or Vice President or Senator, member of the Belize Advisory Council, or any Commission established under the Constitution, or the Clerk, Deputy Clerk or staff of the National Assembly, or the Ombudsman or the Contractor-General.

In addition, Regulation 3 provides that the Public Service Regulations do not apply to: an office of a Justice of appeal; an officer to whom section 110B of the Constitution applies,⁹ an open vote worker to whom the Government (Open Vote) Workers Regulations apply; an ambassador or High Commissioner; offices to which sections 107, 108 and 109 of the Constitution apply;¹⁰ an office of a Justice of the Supreme Court; and any other category or class of officers where special Regulations are made in respect of that category or class of officers.

- With respect to access to the public service through a merit-based system, Regulation 6 provides that the educational or professional qualifications and other requirements for appointment to permanent posts in the Public Service shall be determined by the Chief Executive Officer, Ministry of the Public Service, after consultation with the appropriate Ministry. In addition, Regulation 11(2) provides that the promotion of officers to fill vacancies shall be approved by the relevant Commission, and that the Commission shall base its decision on the following three factors, in descending order of importance: (a) Performance/Merit; (b) Integrity/Professionalism; and (c) Experience/Employment History.

- With respect to vacancies in the public service, Regulation 7 provides that when a vacancy arises, the Chief Executive Officer of the Ministry shall report it to the Chief Executive Officer of the Ministry of the Public Service and state his recommendations for filling the post. Finally, Regulation 11(1) provides, inter-alia, that no officer shall be appointed to a post for which he is not qualified.

In addition to the above-cited Regulations, Circular Memorandum No. 7 of 2008, establishes a new procedure for the creation of new posts and for the filling of vacant posts in the Public Service, and provides at paragraph 2, that all requests to fill vacant posts shall be submitted to the Ministry of the Public Service, and must be accompanied by “a detailed justification for the filling of the vacancy including; date vacancy occurred, cause of vacancy and proposed date for filling of the post.”

⁷ By means of Circular 1 of 2003, dated February 3, 2003, certain powers of the Judicial and Legal Services Commission were delegated to the Chief Justice and to the Solicitor General. This delegation was suspended by Circular 1 of 2008, dated February 13 of 2008.

⁸ Regulation 2(1) also defines “public office” as “*any office of emolument in the Public Service*”; and “public officer” as “*a person holding or acting in any public office and the word ‘officer’ shall be construed accordingly.*”

⁹ Section 110B of the Belize Constitution refers to the appointment of persons in the Prison Service.

¹⁰ Section 107 of the Belize Constitution refers to appointment of Financial Secretary, Deputy Financial Secretary, Secretary to the Cabinet, Solicitor General, Permanent Secretary, head of a department of Government, Commissioner of Police, Director, Security and Intelligence Service, Comandant, Belize Defence Force, Ambassador, High Commissioner, and other principal representatives of Belize in any country or accredited to any international organization.

Sections 108 and 109 of the Belize Constitution refer to the appointment of the Director or Public Prosecutions and the Auditor General, respectively.

- With respect to methods for challenging selection decisions, the Supreme Court Rules of 2005, at Part 56, allows applications for judicial review to be submitted to the Supreme Court.¹¹ Part 56.1(3) provides that the Court may provide the following remedies: (a) certiorari, for quashing unlawful acts; (b) prohibition; or (c) mandamus, for requiring performance of a public duty; while Part 56.1(4) also empowers the Court to grant an injunction; restitution or damages, or an order for the return of property.

In addition, Section 12(1) of the Ombudsman Act grants the Ombudsman the authority to investigate matters, where he or she has a reasonable cause to believe that (a) an authority or an officer or member of an authority has been guilty of corruption or other wrongdoing; or (b) any person or body of persons as or may have sustained injustice injury or abuse as a result of an action taken by an authority or an officer or a member of such authority. Additionally, Section 12(4) grants the Ombudsman the power to investigate any reports made to the Governor-General or to the Public Services Commission, in respect of the appointment, removal, promotion, disciplinary control or other personnel matters in relation to any person. Section 22(1) provides that when the Ombudsman's investigation evidences a breach of duty, misconduct, or a criminal offense, the matter shall be referred to the person or entity responsible for taking disciplinary or other appropriate action, and submit a special report to the National Assembly, which, pursuant to Section 22(2), may, among other actions and when the report discloses a criminal violation, forward the matter to the Director of Public Prosecutions for appropriate action.

- Statutory provisions, such as the Belize Constitution (Government Open Vote Workers) Regulations, which, pursuant to Article 2 thereof, applies to "*employees of any Government Department whose post is not provided for under any Personal Emoluments item of any Head of Expenditure in the Estimates*" Article 3 classifies workers in two categories: Category A, which includes workers engaged for any permanent year round service, as well as workers who have service for 5 years or more and whose employment is not intended to be permanent year round service, including workers whose employment is intended to be for a particular project only; and Category B, which includes workers with less than five years of service whose employment is not intended to be permanent round the year service, including workers whose employment is intended to be for a particular project only. Article 4 provides that the Head of Department shall engage all workers through the employment exchange of the Labor Department where such a service exists, and also requires the Head of Department to lay out the terms of employment in writing.

- Statutory provisions, such as the National Assembly Staff Act, Chapter 14 of the Laws of Belize Re 2000-3003, which at Section 3 establishes the National Assembly Staff Committee, consisting of (a) the Speaker of the House of Representatives, or in his absence the Deputy Speaker, (b) three members of the House of Representatives nominated by the House, (c) the President of the Senate and one other member of the Senate nominated by the Senate, and (d) one member of the staff of the National Assembly nominated by the Staff of the National Assembly or one other person who is not a member of staff nominated by the Staff of the National Assembly; Section 6 grants the National Assembly Staff Committee the power, inter-alia, to appoint and confirm appointments, and to exercise disciplinary control over National Assembly Staff. Section 6 also provides that appeals from decisions of the Committee can be made to the Belize Advisory Council, in respect of Staff of the National Assembly.

¹¹ See Part 56 of the Supreme Court Rules of 2005 is available at <http://www.belizelaw.org/>.

In addition, the National Assembly Staff (Conditions of Service) Regulations, 2003, provide at Section 3, that the National Assembly Staff Committee makes all permanent appointments in the National Assembly; Section 5 requires the Clerk of the National Assembly to publish the professional qualifications and other requirements for appointment to permanent posts in the National Assembly, after consultation with the Committee; Section 9 requires the Clerk to report vacancies that arise to the Committee, together with his recommendations for filling the post; Section 15(1) provides that no officer shall be appointed or promoted to a post for which he is not qualified an, while Section 15(2) provides that the promotion of officers to fill vacancies shall be approved by the Governor-General or the Committee, and that the decision shall be based on the following factors, in descending order or importance: (a) Performance Track Record; (b) Integrity; and (c) Experience; and Section 18 allows officers who are qualified for a post pursuant to Section 15, to be appointed to act in a vacant post for up to a year, or in a post that is not vacant for a specified period.

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

The constitutional and legal provisions that refer to the principal systems of government hiring that the Committee has examined, based on the information available to it, constitute, as a whole, a body of measures relevant to promoting the purposes of the Convention.

Notwithstanding, the Committee considers it appropriate to make certain observations with respect to the advisability of developing and complementing certain legal provisions that refer to these systems.

- With respect to the system of hiring of public servants in the Public Service,¹² the Committee considers the following:

First, while the Public Services Regulations require that merit be considered when promoting officers to fill vacancies, and although the Regulations provide that no one shall be appointed or promoted to a post for which he is not qualified, there are no express provisions which detail the stages to be followed in filling vacancies. In this regard, the Committee notes that while Regulation 7 of the Public Services Regulations requires the Chief Executive Officer of each respective Ministry to report his recommendation for filling vacancies in that Ministry to the Chief Executive Officer of the Ministry of the Public Service, and while Circular 7 of 2008 requires a detailed justification of the need for the vacancy, there is no requirement, in those cases where a Chief Executive Officer's recommendation with regard to a vacancy is also accompanied by an identification of the person he recommends to fill the post, for a justification of the reason for that identification. Therefore, the Committee considers that the government hiring process may benefit from the adoption of provisions which impose such a requirement. This is notwithstanding the fact that the final decision as to who is hired rests exclusively with the Public Services Commission, in accordance with the Constitution and the Public Service Regulations. The Committee considers that this would encourage further openness, equity and efficiency in the hiring process and it will formulate a recommendation in this regard. (See Recommendation 1.1(a) in Section III of this report)

In a similar sense, the Committee notes that Regulation 6 of the Public Services Commission Regulations makes Chief Executive Officer, Ministry of the Public Service responsible for determining the educational or professional qualifications and other requirements for appointment to permanent posts in the Public Service, after consultation with the appropriate Ministry and although

¹² At the December 5, 2008 meeting of the Review Subgroup, Belize informed that the Ministry of the Public Service has embarked upon a general review of the public service, which includes public consultation.

Circular Memorandum No. 17 of 2007 contains educational and experience requirements for certain categories of posts, there are many public sector posts for which there is no readily available description of those requirements. Accordingly, the Committee considers that it might be useful for Belize to examine the existing job descriptions and classifications, with a view to determining whether having a single document containing the job specification for all generic public sector posts, such as a Job Description or Job Classification Manual, would be useful. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1(b) in Section III of this Report)

The Committee also observes an absence of provisions which require the publication of vacancies that occur in the public service. In this regard, the response of Belize notes that *“There are no provisions requiring the advertisement of vacancies. We understand from relevant human resources personnel within the Public Services Commission that there is a preference to advertise vacancies within the public service, especially for technical positions, but sometimes the posts are filled by internal promotions or transfers, or from existing applications kept on file; and in those instances, there is no advertisement.”*¹³

The Committee notes that Belize also provided the following information: *“With the Delegation of Powers (which was recently suspended), it was specifically required that all vacancies that occurred within the junior posts (the posts that were affected by the delegation of powers) should be advertised within the Public Service. It is not unusual for these posts to, either subsequently or concurrently, be advertised to the general public in the newspapers of nationwide coverage.”*¹⁴ Belize further notes that the practice of publicizing vacancies has continued despite the suspension of the Delegation of Powers.¹⁵

Notwithstanding, the Committee considers that the absence of an express requirement for the publication of vacancies evidences a potential for wide discretion as to which positions in the public service are publicized. The Committee will formulate a recommendation bearing this circumstance in mind. (See Recommendation 1.1(c) in Section III of this report)

With respect to mechanisms for challenging selection decisions, the Committee observes that despite the possibility of judicial review,¹⁶ as well as the possibility of complaints to the Office of the Ombudsman, there is no specific mechanism allowing for complaints and dispute resolution at the administrative level, with respect to selection and recruitment decisions, as well as a written procedure outlining how those challenges or complaints should be resolved. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1(d) in Section III of this report)

In a similar sense, the Committee also notes that there are no provisions which empower the Service Commissions, as the entities responsible for the government hiring system, to take corrective action in the event that an appointment process was, among other things, irregular, improper, or made through a fraudulent competition. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1(e) in Section III of this report)

¹³ Response of Belize to the Questionnaire for the Second Round, at p. 5.

¹⁴ This information was provided by Belize in its comments on the Draft Preliminary Report prepared by the Technical Secretariat.

¹⁵ This information was provided by Belize at the December 5, 2008 meeting of the review subgroup.

¹⁶ At the December 10, 2008, Plenary meeting of the Committee of Experts, Belize informed that there have been no cases of judicial review seeking to challenge selection and recruitment decision.

- With respect to the system of hiring of workers who are governed by the Belize Constitution (Government Open Vote Workers) Regulations, the Committee considers the following:

Although these workers are neither a part of the public service, nor are they appointed by one of the service commissions, inasmuch as these workers are government employees and also public servants for the purposes of the Convention, the Committee notes that this category of employee includes employees who are carrying out essentially permanent functions. Similarly, the Committee observes an absence of time limits for the duration of an open vote worker's employment. Accordingly, the Committee considers that the country under review should consider the advisability of establishing criteria which adequately develop the hiring system for this category of employee, and establish time limits for the duration of their employment, based on the principles of openness, equity and efficiency enshrined in the Convention. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1(f) in Section III of this report)

- With respect to the system of hiring for staff of the National Assembly, the Committee considers the following:

Similar to the Public Service Hiring System, the Committee notes that the system of hiring of staff of the National Assembly does not appear to clearly identify and define the different stages of recruitment and selection in the process, which would ensure the openness, equity and efficiency of the process. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1(g) in Section III of this report)

In addition, unlike the Public Services Regulations, the Staff (Conditions of Service) Regulations, 2003, while stipulating that no one should be appointed for a post for which he is not qualified, and while it requires that the promotion of an officer shall be based (in descending order) on Performance Track Record, Integrity and Experience, there is no similar requirement with respect to appointment of staff. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1(h) in Section III of this report)

Although Section 5 of the Staff (Conditions of Service) Regulations, 2003 requires publication of the qualification and other requirements for appointment to posts, there is no requirement that vacancies be publicized. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1(i) in Section III of this report)

In a similar sense, the Committee notes an absence of provisions which would allow for administrative challenges to be made by unsuccessful applicants with respect to the decisions taken in the process of appointing National Assembly staff. The Committee will also formulate a recommendation in this regard. (See Recommendation 1.1(j) in Section III of this report)

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

With respect to results in this field, the response of Belize notes that *“There is no statistical data on the matter. However, with respect to complaints made to the Ombudsman, information can be found in the annual reports produced by his Office.”*¹⁷

¹⁷ Response of Belize to the Questionnaire for the Second Round, at p. 6.

In this regard, the Committee observes that the Eighth Annual Report of the Ombudsman, corresponding to 2006-2007, contains the following chart breaking down the number of complaints received by the Ombudsman from each Government Department, the number of complaints resolved, the number of complaints resolved, and the average processing time for complaints.

A SUMMARY OF ALL THE DEPARTMENTS

Ministry or Department or Authority	Cases Resolved	Open	Total	Average Time of Resolution
Police Department	84	17	101	29 days
Lands Department	12	8	20	120 days
Civil Matters	76	6	82	9 days
Magistrates Court	8	4	12	4 days
Family Court	17	0	17	33 days
Labour Department	12	5	17	73 days
Ministry of Health	2	2	4	23 days
Ministry of Immigration & Nationality	7	1	8	14 days
Benque Town Council	1	0	1	122 days
Ministry of National Development	0	1	1	- days
Ministry of Housing	0	1	1	- days
Social Security	10	0	10	5 days
Customs Department	1	0	1	6 days
BDF	0	1	1	- days
Ministry Education	6	0	6	98 days
Port Authority	1	0	1	7 days
Belmopan City Council	1	0	1	1 days
Ministry of Home Affairs	1	0	1	1 days
Registrar General	1	0	1	62 day
Director of Public Prosecutions	2	1	3	9 days
Airport Authority	1	0	1	17 days
Ministry of Transport	2	0	2	3 days
Coast Guard Service	1	0	1	16 days
Youth Hostel	1	0	1	1 day
DFC	1	0	1	27 day
Treasury Dept.	1	0	1	6 day
Hopkins Water Board	1	0	1	79 days
Belize Water Services	3	0	3	2 days
Ministry of Works	2	0	2	10 days
Ministry of Finance	1	1	2	15 days
Family Services	6	0	6	39 days
Hattieville Prison	15	0	15	18 days
Village Council	0	1	1	- day
Fisheries Department	0	1	1	- day

The Committee observes that the foregoing chart indicates that a significant number of complaints have been received and processed by the Office of the Ombudsman. Notwithstanding, considering the wide scope of the Ombudsman's responsibility, which encompasses complaints regarding not only hiring, but also promotions, disciplinary actions, dismissals, as well as corruption and abuse of authority, the Committee considers that it would be useful for these results to be broken down in order to indicate the number of complaints which specifically relate to the government hiring and

appointment process. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1(k) in Chapter III of this report)

In addition, due to the absence of results with respect to the government hiring and appointment process, as noted by Belize in its response, and considering that the Committee does not have any other information that might enable it to make a comprehensive evaluation of the results in this field, it will formulate a recommendation in this regard. (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

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

- Statutory provisions such as the Finance and Audit (Reform) Act, 2005, which at Section 17(1) authorizes the Government to enter into procurement or sales contracts; and at Section 17(2) provides for the following three methods of procurement: (1) the limited tendering procedure; (2) the open tendering procedure; and (3) the selective tendering procedure.

Section 17(3) provides that contracts may be lawfully signed by a Minister, or an Ambassador or High Commissioner or Chief Executive Officer or Permanent Representative, or by any other public officer.

Sections 19, 20 and 21 of the Act, respectively, detail the procurement process with respect to each of the three forms of procurement provided for by Section 17(2), as follows:

- Open Tendering Procedure, which includes a public request for the submission of tenders, and which is required for procurements in excess of \$5 million Belize Dollars (Section 19(5)).¹⁸

With respect to this form of procurement, Section 19 establishes various requirements that must be met by the Government, such as, inter-alia, ensuring that all conditions for participation in the tendering procedure as well as the qualification procedures are published adequately in advance so as to allow interested suppliers to participate and complete the qualification procedure (Section 19(1)(a)); ensuring that the conditions for participation in the tendering process are limited to those necessary to ensure the supplier's capacity to perform the contract (Section 19(1)(b)); ensuring that the conditions for participation do not discriminate against applicable suppliers (Section 19(1)(c)); ensuring that qualified suppliers be included in any permanent list of qualified suppliers maintained by the Government, within a reasonable time (Section 19(1)(h)); and ensuring that any supplier included in any such list be notified as soon as possible if the list ceases to be used or if his name is removed therefrom (Section 19(1)(j)). In addition, Section 19(2) also contains provisions regarding when the Government may consider a supplier as ineligible to participate in the open tendering procedure.

¹⁸ As of September 10, 2008, \$1 U.S. Dollar was equivalent to approximately \$1.99 Belize Dollars.

- Selective Tendering Procedure, which includes the procurement of goods and services by the Government in which only invited suppliers are invited to submit tenders.¹⁹

With respect to this form of procurement, Section 20(1) of the Act requires the Government to ensure that a sufficient number of suppliers are invited to ensure competition without affecting the efficiency of the tendering process; Section 20(2) provides the in selecting the suppliers to be invited, the government shall apply the following guidelines: (a) the need for fairness and non-discrimination, (b) the relevant market for the procurement or sale, (c) the need for expediency in the public interest, (d) the number of available suppliers in the relevant market, and (e) the knowledge of government procedures by the applicable suppliers; and Section 20(3) provides that where a permanent list of qualified suppliers is maintained, the Government may select the supplier from that list and award the contract accordingly.

- Limited Tendering Procedure, which includes procurements where no request for tenders is issued and where the Government invites suppliers individually to submit tenders.²⁰

Section 21(1) of the Act provides that limited tendering may be used (a) when no tenders were received under open or selective tendering; (b) where the Government considers that tenders received under open or selective tendering were collusive or not in compliance with a condition specified in the invitation to tender; (c) where, due to technical, reasons or for protection of exclusive rights, or for works of art, the goods or services can only be obtained from one supplier; (d) where, for reasons of extreme urgency brought about by events unforeseeable by the Government, or in the public interest, the goods cannot be procured in time using open or selective tendering; (e) where the goods to be procured are replacement parts and when obtaining the goods from a different supplier would not meet interchangeability requirements with existing goods or installations; (f) where the service to be procured is an extension of an existing service, and when obtaining the service from a different supplier would not meet the interchangeability requirements with existing goods, installation, or service; (g) where the goods to be procured are a prototype, or subject to intellectual property rights, or product or service to be manufactured or performed for the first time; and (h) for reasons of national security or national emergency, or to purchase goods or services needed for the day-to-day operations of the Government.

- Statutory provisions establishing governing or administrative authorities for the government procurement system, such as the Contractor-General Act, which establishes the Office of the Contractor General, as an independent Office (Section 4); and at Section 14 charges the Contractor-General, with (a) monitoring the award and implementation of public contracts in order to ensure (i) impartiality and merit, (ii) that contracts do not involve impropriety or irregularity, (iii) that contracts are implemented pursuant to their terms; and (iv) that there is no fraud, corruption, mismanagement, waste or abuse in the awarding or contracts; (b) investigating fraud, mismanagement, waste or abuse; and (c) developing policy guidelines, evaluating performance, and monitoring actions taken with respect to contract award, execution or termination; and (d) monitoring the granting, suspension or revocation of any license.

Section 15 grants the Contractor-General the authority to investigate any of the following: (a) the selection of contractors; (b) tender procedures relating to contracts awarded by public bodies; (c) the

¹⁹ See Section 2 of the Interpretation section of the Finance and Audit (Reform) Act.

²⁰ Ibid.

award of any public contract; (d) any allegation of fraud, mismanagement, waste or abuse involving public contracts; (e) the implementation of the terms of any contract; and (f) practices and procedures involving the grant, suspension or revocation of any license.

In addition to the provisions contained in the Contractor-General Act, the Finance and Audit (Reform) Act, 2005, at Section 18(2), requires all contracts to be submitted to the Contractor General for review and comments prior to their execution; at Sections 18(3) and 18(4), respectively, the Act requires the Contractor General to either report to both Houses of the National Assembly for debate, when he considers that a contract is not in the interest of Belize, or to the Financial Secretary, when he considers that a contract is in the interest of Belize.

- With respect to mechanisms for challenging or appealing procurement decisions, as discussed above, in Section 1.1.1, the Supreme Court Rules of 2005, allow applications for judicial review to be submitted to the Supreme Court.²¹

Similarly, the response of Belize also notes the possibility of recurring to the Office of the Ombudsman in order to challenge procurement decisions that were made based on abuse of authority. In this regard, Section 12(1) of the Ombudsman Act grants the Ombudsman the authority to investigate matters, where he or she has a reasonable cause to believe that (a) an authority or an officer or member of an authority has been guilty of corruption or other wrongdoing; or (b) any person or body of persons as or may have sustained injustice injury or abuse as a result of an action taken by an authority or an officer or a member of such authority.

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

The provisions and measures which refer to the principal government systems for the procurement of goods and services by Belize that the Committee has examined, based on the information made available to it, constitute a set of relevant measures for the promotion of the purposes of the Convention.

Nevertheless, the Committee considers it appropriate to formulate certain observations with respect to the advisability of enhancing and complementing certain legal provisions that refer to these systems.

- To begin with, and with regard to the different methods of public contracting provided for by the Finance and Audit (Reform) Act 2005, the Committee notes that the legislation does not clearly define the different stages that constitute the procurement process, particularly as regards selection criteria, timeliness, or the entity responsible for making the final decision to award a contract to a particular contractor. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2(a) in Section III of this report)

- In addition, the Committee observes that although the Finance and Audit (Reform) Act contains provisions which provide for three different means of procurement, as well as specific criteria to be included in the respective invitations to tender, there do not appear to be provisions which provide clear criteria upon which the eventual selection will be made, such as, for instance, a requirement that for open tenders, the lowest technically acceptable offer will be awarded the contract. The Committee considers that having these criteria in place would help to ensure that selection decisions

²¹ Available at: <http://www.belizelaw.org/>.

are not discretionary, arbitrary, or subjective, and would help to achieve the impartiality, transparency and equality required by the Convention. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2(b) in Section III of this report)

- With respect to Section 20 of the Act, which inter-alia, provides guidelines for an instance of selective tendering, the Committee observes, that Section 20(3) allows the Government, in the event that a permanent list of qualified suppliers is maintained, to select the supplier from that list and award the contract accordingly. The Committee is concerned that this provision would appear to allow for the direct award of a contract to a particular supplier without competition, and would seem to contradict with Section 20(1), which requires the Government to ensure that the number of applicable suppliers is sufficient to ensure competition. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2(c) in Section III of this report)

- With respect to the limited tendering procedure provided for by Section 21 of the Finance and Audit (Reform) Act, the Committee observes that there is no requirement to justify a decision to resort to limited tendering based on “extreme urgency” or “the public interest” as used in Section 21(1)(d); nor of “national emergency”, as used in Section 21(1)(h)(i). At the same time, there is no definition of those terms in the Finance and Audit (Reform) Act. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2(d) in Section III of this report)

In a similar sense, and with respect to the limited tendering procedure in general, the Committee notes an absence of provisions which require that a decision to use this procedure be justified in writing. The Committee considers that such a requirement would help ensure transparency in the process as well as reduce the opportunity for discretionary use of this procurement procedure. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2(e) in Section III of this report)

Similarly, with respect to Section 21(1)(h), the Committee notes that at subparagraph 21(1)(h)(ii), it provides for goods or services used for day-to-day government operations to be acquired through limited tendering. In this regard, the Committee is concerned that the absence of a definition of what constitutes day-to-day government operations, may allow for too much discretion as to when this type of procurement procedure is used for this purpose. In addition, while certain small purchases may need to be acquired by the government as a need arises, it might be preferable for other recurring expenses, such as the case of office supplies, to be acquired through competitive means. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2(f) in Section III of this report)

- The Committee also observes an absence of provisions which require publication of tender opportunities in the appropriate media, the conditions for participation therein, and the time, method and place for the submission of bids. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2(g) in Section III of this report)

- Similarly, in order to enhance transparency in the procurement process, the Committee considers that Belize may wish to consider possibility, when appropriate, of publishing pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereon. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2(h) in Section III of this report)

- With respect to electronic procurement methods and registries of contractors, the Committee notes that the Finance and Audit (Reform) Act, at Sections 19 and 20, addressing open and selective tendering procedures, respectively, contemplates the use of a list of qualified suppliers. In this connection, the response of Belize notes as follows: *“There are no systems in place for electronic methods and no information systems for government procurement. In practice, however, the Ministry of Works used to keep a register of qualified contractors. It is our understanding that such practice was discontinued overtime. However, from its files, the Tendering Committee has knowledge of all tenderers who usually submit tenders, and due to their small numbers, it is not difficult to keep a mental record thereof.”*²²

Notwithstanding the above, the Committee is of the view that the use of electronic methods and information systems for government procurement assists in adequately informing the public and ensuring openness, and therefore considers that Belize 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. Additionally, the Committee considers that use of an electronic procurement system in order to carry out the contracting needs of the State might be advantageous. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2(i) and 1.2(j) in Section III of this report)

Similarly, with respect to the use of a registry of contractors, the Committee believes that the country under review should consider the advisability of creating 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 a public body 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 body should also maintain a list of sanctioned contractors. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2(k) in Section III of this report)

- The Committee also observes that there are no provisions in place which require prior planning sufficiently in advance of the launch of large-scale or specialized procurement processes, such as the preparation of studies, designs and technical evaluations. The Committee considers that the adoption of provisions that require prior planning would help to ensure the openness, equity and efficiency of the procurement system. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2(l) in Section III of this report)

- The Committee also notes an absence of provisions allowing for the establishment of citizen oversight mechanisms to monitor the execution of contracts where their nature, importance, or magnitude so warrants. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2(m) in Section III of this report)

- With respect to mechanisms allowing for challenges to be made with regard to procurement decisions, the response of Belize notes that *“...there are no specified or legislated ways to challenge a selection other than the usual recourse to the courts for judicial review, complaints to the Ombudsman regarding allegations of abuse of power. In practice, contractors have made recourse to the Contractor General with respect not only to the selection criteria, but also with regard to*

²² Response of Belize to the Questionnaire for the Second Round, at p. 9.

interpretation to provisions of the contract itself; while others have seen it fit to take their complaints to government Ministers, area representatives, and the media."²³ In this regard, the Committee considers that Belize would benefit from implementing provisions which allow for administrative challenge mechanisms. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2(n) in Section III of this report)

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

With respect to results in this field, the response of Belize notes as follows, "*No information available.*"²⁴

Due to the unavailability of results with respect to the government procurement system, as noted by Belize in its response, and considering that the Committee does not have any other information that might enable it to make a comprehensive evaluation of the results in this field, it will formulate a recommendation in this regard. (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

Belize has certain provisions related to systems for protecting public servants and private citizens, who, in good faith, report acts of corruption, among which the following provisions referred to in its response, should be noted:

- The Prevention of Corruption Act, 2007, which at Section 32, provides that a person who threatens to take or takes action harmful to any person, including their employment or occupation, on the grounds that such person has made or may make a disclosure under Section 30²⁵ thereof, shall be subject to a fine of no less than \$25,000 or to imprisonment for no more than one year, or to both.

In addition, Section 35 of the Act provides that any person who makes a good faith complaint to the Integrity Commission, with a reasonable belief that it is substantially true, and in circumstances where it is reasonable to make the complaint, shall not be liable to any form of reprisal or criminal or civil suits.

²³ Ibid.

²⁴ Ibid, at p. 10.

²⁵ Section 30 of the Prevention of Corruption Act, 2007, provides in pertinent part:

"(1) A person exercising any public function who is offered or receives an advantage in circumstances which may constitute an offence under this Act, or the offence of bribery, shall disclose as reasonably practicable and in the prescribed manner

(a) the existence of nature of the advantage, or the offer of it; and

(b) the name, if known, of the person to whom it was given or procured or offered or who agreed to give or procure it.

(2) A person exercising any public function who knows or reasonably suspects, or ought to have known or reasonably to have suspected, that any person has committed, is committing or is about to commit an offence under this Act, or the offence of bribery, must disclose, as soon as reasonably practicable and in the prescribed manner, that knowledge or suspicion, and the information on which it is based, or cause such knowledge or suspicion to be so disclosed."

- Mechanisms which provide opportunities for reporting, such as the Crime Stopper Hotline,²⁶ which allows anonymous reporting of crimes.

- The Justice Protection Act, No. 48 of 2005, which gives legislative authority in Belize to the CARICOM Agreement Establishing a Regional Justice Protection Program, 1999, and which, pursuant to its the first schedule, would allow for participation in the program with respect to crimes which involve a money laundering component.²⁷

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

The provisions, measures and mechanisms which refer to the principal systems for the protection of public servants and private citizens who, in good faith, report acts of corruption in Belize, that the Committee has examined, based on the information made available to it, are relevant to promoting the purposes of the Convention.

Notwithstanding, as noted by Belize in its response to the questionnaire, *“The country itself, however, does not count with an established witness protection system, exclusively for the purposes of protecting public officers or private citizens who in good faith report acts of corruption.”*²⁸ In addition, Belize noted that *“it does not have any ONE elaborate mechanisms to protect servants and private citizens who, in good faith report acts of corruption. However, the existing procedures coordinated by the Police Department (which enjoys collaboration with Interpol) have proved sufficient to promote the purposes of the Convention.”*²⁹

In this connection, the Committee considers that this system could benefit from further development of the existing mechanisms. The Committee will formulate a recommendation in this regard. (See the recommendation in Section 2 of Chapter III of this report).

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

With respect to results in this field, the response of Belize notes as follows, *“No statistical data is available on the matter.”*³⁰

Due to the unavailability of results with respect to the systems under review, as noted by Belize in its response, and considering that the Committee does not have any other information that might enable it to make a comprehensive evaluation of the results in this field, it will formulate 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

²⁶ The Crime Stoppers Belize program was founded in 2004 by the Rotary Club of Belize, with the collaborative support of the Rotary Club of Belmopan, Rotary Club of San Ignacio, the civic leaders, the media, and law enforcement officials.

²⁷ See the Response of Belize to the Questionnaire for the Second Round, at p. 10. See also, http://www.caricom.org/jsp/secretariat/legal_instruments/regional_justice_protection.jsp?menu=secretariat

²⁸ Ibid.

²⁹ This information was provided by Belize in its comments on the Draft Preliminary Report prepared by the Technical Secretariat.

³⁰ Ibid, at p. 13.

Belize 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:

▪ With respect to paragraph (a) of Article VI(1):

- The Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, RE 2003, Section 3(1), which provides that “Every person³¹ who by himself or by or in conjunction with any other person corruptly solicits or receives, or agrees to receive, for himself or for any other person, any gift, advantage³² or consideration³³ whatever as an inducement to, or reward for, or otherwise on account of, any member, officer, or servant of the Government or of a public body³⁴ doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the Government or the said public body is concerned, shall be guilty of a misdemeanor.”

- The Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, RE 2003, Section 4, which provides that “Any person³⁵ on conviction on indictment for offending as aforesaid shall, at the discretion of the court before which he is convicted –

(a) be liable to be imprisoned for a term not exceeding two years or to pay a fine not exceeding two thousand five hundred dollars, or to both such fine and term of imprisonment; and

(b) in addition, be liable to be ordered to pay to such body, and in such manner as the court directs, the amount or value of any gift or consideration³⁶ received by him or any part thereof; and

(c) be liable to be adjudged incapable of being elected or appointed to any public office³⁷ for seven years from the date of his conviction, and to forfeit any such office held by him at the time of his conviction; and

³¹ The Belize Interpretation Act, 2000, provides that the term “person”, “means a natural person or a legal person and 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.”

³² Pursuant to Section 2 of the Prevention of Corruption Act, 2007, the phrase “advantage” includes “(a) money or any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, over a value of \$2,500.00; (b) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage; (c) any office, dignity, employment, contract of employment or services and any agreement to give employment or render services in any capacity; (d) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part; (e) any valuable consideration or benefit of any kind or any discount, commission, rebate, bonus, deduction or percentage over a value of \$2,500.00; (f) any forbearance to demand any money or money’s worth or valuable thing; (g) any service or favor or advantage of any description, 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, and includes the exercise or the forbearance from the exercise of any right or any official power or duty; (h) any right or privilege; (i) any aid, vote, consent or influence or pretended aid, vote, consent or influence; (j) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of paragraphs (a) to (i).”

³³ Pursuant to Section 2 of the Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, RE 2003, the term “consideration”, includes “valuable consideration of any kind”.

³⁴ Pursuant to Section 2 of the Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, RE 2003, the term “public body”, “includes local and public authorities of all descriptions.”

³⁵ See footnote 31, *supra*.

³⁶ See footnote 33, *supra*.

³⁷ Pursuant to Section 2 of the Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, RE 2003, the phrase “public office”, means “any office or employment of a person as a member, officer or servant of such public body.”

(d) in the event of a second conviction for a like offence, in addition to the foregoing penalties, be liable to be adjudged to be forever incapable of holding any public office, and to be incapable for seven years of being registered as an elector, or voting at an election of members of any public body³⁸; and

(e) if such person is an officer or servant in the employ of any public body, upon such conviction, at the discretion of the court, be liable to forfeit his right and claim to any compensation or pension to which he would otherwise have been entitled.”

- The Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, RE 2003, Section 7, which provides that “*Where, in any proceedings against a person³⁹ for an offence under this Act, it is proved that any money, gift or other consideration⁴⁰ has been paid or given to or received by a person in the employment of any Government Department or a public body⁴¹ by or from a person, or agent⁴² of a person, holding or seeking to obtain a contract from any Government Department or public body, the money, gift or consideration⁴³ shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in this Act unless the contrary is proved.*”

- The Prevention of Corruption Act, 2007, Section 26(b), which provides that a person who “*being a member of the National Assembly, solicits or accepts any advantage⁴⁴ as an inducement or a reward for his doing or forbearing to do any act in his capacity as such Member, commits an offence of corruption and is liable on conviction to a fine not less than twenty-five thousand dollars or to imprisonment for a period not exceeding one year, or to both fine and imprisonment.*”

- The Prevention of Corruption Act, 2007, Section 27(b), which provides that a person who “*being a member of a public body,⁴⁵ solicits or accepts any advantage⁴⁶ as an inducement or reward for any such act, or any such abstaining, as is referred to in paragraph (a)(i)(ii) and (iii), (i) [(i) that member’s voting or abstaining from voting at any meeting of the public body in favor or against any measure, resolution, or question submitted to that public body; (ii) the member’s performing, or abstaining from performing, or his aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act; or (iii) the member’s aid in procuring or preventing the passage of any vote or the granting of any contract or advantage in favor of any person...commits an offence and is liable on conviction on indictment to a fine not less than twenty-five thousand dollars or to imprisonment for a period not exceeding one year or to both fine and imprisonment.”] ...commits an offence and is liable on conviction on indictment to a fine not less than twenty-five thousand dollars or to imprisonment for a period not exceeding one year or to both fine and imprisonment.”*

³⁸ See footnote 34, *supra*.

³⁹ See footnote 31, *supra*.

⁴⁰ See footnote 33, *supra*.

⁴¹ See footnote 34, *supra*.

⁴² Pursuant to Section 2 of the Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, RE 2003, the phrase “agent”, means “*any person employed by or acting for another and any person serving under the Government or any public body.*”

⁴³ See footnote 32, *supra*.

⁴⁴ See footnote 32, *supra*.

⁴⁵ The Prevention of Corruption Act 2007, provides that the phrase “public body”, includes “*local and public authorities of all descriptions.*”

⁴⁶ See footnote 44, *supra*.

▪ With respect to paragraph (b) of Article VI(1):

- The Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, RE 2003, Section 3(2), which provides that “*Every person⁴⁷ who, by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any gift, advantage⁴⁸ or consideration⁴⁹ whatever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any member, officer, or servant of the Government or of any public body⁵⁰ doing or forbearing to do anything in respect of any matter or transaction whatever, actual or proposed, in which the Government or such public body as aforesaid is concerned, shall be guilty of a misdemeanor.*”

- The Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, RE 2003, Section 4, noted above with respect to paragraph (a) of Article VI(1) of the Convention.

- Part 1 of the Third Schedule of the Prevention of Corruption Act, 2007, which at Section 1(c)⁵¹, ii provides that a person⁵² commits an act of corruption if “*he offers or grants, directly or indirectly, to a public servant⁵³ any article, money or other benefit being a gift, favour, promise or advantage⁵⁴ to the public servant or another person, for doing any act or omitting to do any act in the performance of the public servant’s public functions;*”

- The Prevention of Corruption Act, 2007, Section 26(a), which provides that a person⁵⁵ who “*offers any advantage⁵⁶ to a Member of the National Assembly as an inducement or a reward for such Member’s doing or forbearing to do any act in his capacity as such Member, commits an offence of corruption and is liable on conviction to a fine not less than twenty-five thousand dollars or to imprisonment for a period not exceeding one year, or to both fine and imprisonment.*”

- The Prevention of Corruption Act, 2007, Section 27(a), which provides that a person⁵⁷ who “*offers any advantage⁵⁸ to any member of a public body⁵⁹ as an inducement or reward for (i) that member’s*

⁴⁷ See footnote 31, *supra*.

⁴⁸ See note 32, *supra*.

⁴⁹ See footnote 33, *supra*.

⁵⁰ See footnote 34, *supra*.

⁵¹ Part 1 of the Third Schedule to the Prevention of Corruption Act 2007, provides in pertinent part as follows:

“*A person commits an act of corruption if:*

1. (a) he in the performance of his public functions does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person;

(b) he fraudulently uses or conceals any property or other benefit derived from any such act or omission to act under paragraph (a) or (b);

(c) he offers or grants, directly or indirectly, to a public servant any article, money or other benefit being a gift, favor, promise or advantage to the public servant or another person, for doing any act or omitting to do any act in the performance of the public servant’s public functions;”

⁵² See footnote 31, *supra*.

⁵³ Section 2 of the Prevention of Corruption Act, 2007, provides that the phrase “public servant”, includes “*the Governor General, members of the National Assembly, members of the Belize Advisory Council, members of the Public Services Commission, members of Elections and Boundaries Commissions, public officers, members and officers of statutory corporations and government agencies, and members and employees of all public bodies, including local authorities.*”

⁵⁴ See footnote 44, *supra*.

⁵⁵ See footnote 31, *supra*.

⁵⁶ See footnote 44, *supra*.

⁵⁷ See footnote 31, *supra*.

⁵⁸ See footnote 44, *supra*.

voting or abstaining from voting at any meeting of the public body in favor or against any measure, resolution, or question submitted to that public body; (ii) the member's performing, or abstaining from performing, or his aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act; or (iii) the member's aid in procuring or preventing the passage of any vote or the granting of any contract or advantage in favor of any person...commits an offence and is liable on conviction on indictment to a fine not less than twenty-five thousand dollars or to imprisonment for a period not exceeding one year or to both fine and imprisonment."

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

- The Prevention of Corruption Act, 2007, Section 22(1), which provides, inter-alia, that "*A person⁶⁰ who, by himself or in conjunction with any other person, or an agent⁶¹, engages or attempts to engage in any of the acts specified in Part 1 of the Third Schedule commits an act of corruption.*"⁶²

- Part 1 of the Third Schedule⁶³ of the Prevention of Corruption Act, 2007, which at Section 1(a) provides that a person⁶⁴ commits an act of corruption if "*he in the performance of his public functions does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person.*"

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

- The Prevention of Corruption Act, 2007, Section 22(1), which provides, inter-alia, that "*A person who, by himself or in conjunction with any other person, or an agent⁶⁵, engages or attempts to engage in any of the acts specified in Part 1 of the Third Schedule commits an act of corruption.*"⁶⁶

- Part 1 of the Third Schedule of the Prevention of Corruption Act, 2007, which at Section 1(b) provides that a person commits an act of corruption if "*he fraudulently uses or conceals any property or other benefit derived from any such act or omission to act under paragraph (a) or (b).*"⁶⁷

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

- The Prevention of Corruption Act, 2007, Section 22(1), which provides, inter-alia, that "*A person⁶⁸ who, by himself or in conjunction with any other person, or an agent⁶⁹, engages or attempts to engage in any of the acts specified in Part 1 of the Third Schedule commits an act of corruption.*"⁷⁰

⁵⁹ See footnote 45, *supra*.

⁶⁰ Ibid.

⁶¹ Pursuant to Section 2 of the Prevention of Corruption Act, 2007, the phrase "agent", includes "*any person employed by or acting for another, any trustee of an insolvent estate, the assignee of an estate assigned for the benefit or with the consent of creditors, the liquidator of a company that is being wound up, the executor of the estate of a deceased person, the legal representative of any person who is of unsound mind or is a minor or is otherwise under disability, any public servant or an officer serving in or under or acting for any public body, a trustee, an administrator or a subcontractor and any person appointed as an agent in terms of any law.*"

⁶² See footnote 51, *supra*.

⁶³ Ibid.

⁶⁴ See footnote 31, *supra*.

⁶⁵ See footnote 61, *supra*.

⁶⁶ See footnote 51, *supra*.

⁶⁷ Ibid.

⁶⁸ See footnote 31, *supra*.

⁶⁹ See footnote 61, *supra*.

⁷⁰ See footnote 51, *supra*.

- Part 1 of the Third Schedule of the Prevention of Corruption Act, 2007, which at Section 1(k) provides that a person commits an act of corruption if *“he instigates, aids, abets or is an accessory after the fact or participates in whatsoever manner in the commission or attempted commission of or conspires to commit any act of corruption referred to in paragraphs (a) to (k).”*

- Section 20 of the Criminal Code, which provides, *“(1) Every person who-(a) directly or indirectly instigates, commands, counsels, procures, solicits or in any manner purposely aids, facilitates, encourages or promotes the commission of any crime, whether by his act, presence or otherwise; or (b) does any act for the purpose of aiding, facilitating, encouraging or promoting the commission of a crime by any other person, whether known or unknown, certain or uncertain, shall be guilty of abetting that crime and of abetting the other person in respect of that crime. (2) Every person who abets a crime shall, if the crime be actually committed in pursuance or during the continuance of the abetment, be deemed guilty of that crime.”*

- Section 21 of the Criminal Code, which provides *“Where a person abets a particular crime, or abets a crime against or in respect of a particular person or thing, and the person abetted actually commits a different crime, or commits the crime against or in respect of a different person or thing, or in a manner different from that which was intended by the abettor, the following provisions shall have effect, namely- (a) If it appears that the crime actually committed was not a probable consequence of the endeavour to commit, nor was substantially the same as the crime which the abettor intended to abet, nor within the scope of the abetment, the abettor shall be punishable for his abetment of the crime which he intended to abet in the manner provided by this Title for the punishment of crimes which are not actually committed.”*

- Section 23 of the Criminal Code, which provides *“(1) If two or more persons agree to commit or abet a crime, or act together with a common purpose in committing or abetting a crime, whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that crime, as the case may be. (2) If a person abets the commission of a crime by another person, and such other person in any manner assent to the abetment, each of them is guilty of conspiracy to commit such crime, although it be not a part of the design of either of them that the person abetting the other should take any part in or towards the preparing for or committing such crime. (3) 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 crime to be committed by them or either of them, or any other person, either within or beyond the jurisdiction, and for the purposes of this subsection as to a crime to be committed beyond the jurisdiction, “crime” means any act which if done within the jurisdiction would be a crime under this Code or under any other law. (4) A person shall not be guilty of conspiracy to commit or abet any crime if he is an intended victim of that crime.”*

Section 24 of the Criminal Code, which provides *“(1) If two or more persons are guilty of conspiracy for the commission or abetment of any crime, each of them shall in case the crime be committed, be punished as for that crime according to the provisions of this Code, or shall in case the crime be not committed, be punished as if he had abetted that crime. (2) Any court having jurisdiction to try a person for a crime shall have jurisdiction to try a person or persons charged with conspiracy to commit or abet that crime.”*

- With regard to the crime of conspiracy, the country under review also relies upon the common law definition of conspiracy as stated by the decision of the Privy Council, the highest court of appeal in Belize, in *Yip Chiu-Cheung v. the Queen*.

“The crime of conspiracy requires an agreement between two or more persons to commit an unlawful act with the intention of carrying out.”⁷¹

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, the Committee observes that they constitute a set of provisions relevant to the promotion of the purposes of the Convention.

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

- With respect to paragraphs (a) of Article VI(1):
 - The Committee observes that while Section 3(1) of the Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, RE 2003, which criminalizes bribery, does not contain the words “directly or indirectly” as used by the Convention, it nonetheless includes that element, in that it makes reference to a person who solicits or receives a bribe “by himself or by or in conjunction with any other person”.
 - Unlike the provisions of the 2003 POCA, the Committee considers that Sections 26(b) and 27(b) of the 2007 POCA, which also criminalize bribery committed by members of the National Assembly and members of public bodies, respectively, do not contemplate the element of “directly or indirectly”, as used by the Convention. The Committee will formulate a recommendation in this regard. (See Recommendation 3.1 in Section 3 of Chapter III of this report)
- With respect to paragraph (b) of Article VI(1):
 - The Committee observes that while Section 3(2) of the Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, RE 2003, which criminalizes bribery, does not contain the words “directly or indirectly” as used by the Convention, it nonetheless includes that element, in that it makes reference to a person who solicits or receives a bribe “by himself or by or in conjunction with any other person”.
 - Unlike the provisions of the 2003 POCA, the Committee considers that Sections 26(a) and 27(a) of the 2007 POCA, which also criminalize bribery committed in respect of members of the National Assembly and members of public bodies, respectively, do not contemplate the element of “directly or indirectly”, as used by the Convention. The Committee will formulate a recommendation in this regard. (See Recommendation 3.2 in Section 3 of Chapter III of this report)
 - The Committee notes that Section 1(c) of Part 1 of the Third Schedule to the 2007 POCA also criminalizes the act of active bribery. In this regard, the Committee observes that unlike Section 3(2) of the 2003 POCA, Section 1(c) does include the words “directly or indirectly”. Nonetheless, the Committee further notes that Section 1(c) makes specific reference to a bribe given to a “public servant” related to performance of the “public servant’s public functions.” The Committee considers

⁷¹ Yip Chiu Cheung v. the Queen [1995] 1 Appeals Court 111.

that because the definition of “public servant” does not include a person who performs public functions, as contemplated by Article VI(1)(b) of the Convention, this provision is insufficient to achieve the objectives thereof. The Committee will formulate a recommendation in this regard. (See Recommendation 3.3 in Section 3 of Chapter III of this report).

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

- The Committee notes that although Section 1(b) of Part 1 of the Third Schedule of the Prevention of Corruption Act, 2007, criminalizes the fraudulent use or concealment of the proceeds of the corruption offences specified therein, the 2003 POCA has no similar provision.

Thus, because Section 1(b) of the Third Schedule to the 2007 POCA does not apply to the offences criminalized by the 2003 POCA, the Committee considers that the 2003 POCA does not criminalize the fraudulent use and concealment of the proceeds of passive and active bribery contemplated therein. In this regard, the Committee considers that Belize might wish to consider the convenience of harmonizing the provisions of the Prevention of Corruption Act, 2007, and the Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, RE 2003. The Committee will formulate a recommendation in this regard. (See Recommendation 3.4 in Section 3 of Chapter III of this report)

- With respect to the criminalization of the Acts of Corruption contained in Article VI(1) in general:

The Committee notes that the 2007 POCA and the 2003 POCA contain different definitions of the acts of corruption contained in Article VI(1) of the Convention.⁷² The Committee will formulate a recommendation in this regard. (See Recommendation 3.4 in Section 3 of Chapter III of this report)

Similarly, the Committee observes that Section 3(1) and 3(2) of the 2003 POCA, which criminalize active and passive bribery, respectively, state that those offenses are misdemeanors, while the 2007 POCA criminalizes similar conduct as acts of corruption. The Committee will formulate a recommendation in this regard. (See Recommendation 3.4 in Section 3 of Chapter III of this report)

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

With respect to results in this field, the response of Belize notes as follows, “*The Prevention of Corruption Act, which repealed the Prevention of Corruption in Public Life Act, was enacted in 2007. As such, objective results as well as data on the objective results are still in the process of being obtained in the enforcement of the provisions of the Prevention of Corruption Act.*”⁷³

Due to the unavailability of results with respect to the systems under review, as noted by Belize in its response, and considering that the Committee does not have any other information that might enable it to make a comprehensive evaluation of the results in this field, it will formulate a recommendation in this regard. (See Recommendation 4.2 in Chapter III of this report)

⁷² At the December 12, 2008 Plenary meeting of the Committee of Experts, Belize explained that the rules of statutory interpretation pursuant to the Interpretation Act, provide that when a latter Act defines a term or phrase in a different manner than a previous Act on the same subject, the provisions of the later Act apply. See also, Sections 64 and 65 of the Interpretation Act, Chapter 1 of the Laws of Belize, R.E. 2003.

⁷³ See the Response of Belize to the Questionnaire for the Second Round, at p. 13.

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 formulates the following conclusions and recommendations with respect to the implementation, in the Belize, of the provisions contained in Articles III(5) (systems of government hiring and for the procurement of goods and services); III(8) (systems for protecting public servants and private citizens who, in good faith, report acts of corruption); and 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

Belize has considered and adopted 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 makes the following recommendation to Belize:

- Consider strengthening the systems of government hiring.

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

- a) Develop, through the relevant legislative and/or administrative procedures, the different stages that comprise the process of selecting and appointing candidates to posts in the Public Service, by adopting provisions and clearly defined criteria that ensure entry to the public service, always taking into account the principles of openness, equity and efficiency as provided in the Convention. (See Section 1.1.2 of Chapter III of this report)
- b) Examine the existing job descriptions and classifications, in order to determine whether it would be useful to have a single Job Description or Job Classification Manual containing all generic public sector posts. (See Section 1.1.2 of Chapter III of this report)
- c) Adopt, through the appropriate legislative and/or administrative procedures, provisions and mechanisms that contain clearly defined criteria for the advertisement of hiring opportunities or vacancies in the public service, as well as the time frame in which they should be advertised, and which take into account the use of the mass media, such as newspapers with national circulation and/or websites, among others. (See Section 1.1.2 of Chapter II of this report)
- d) Adopt, through the appropriate legislative and/or administrative procedures and in keeping with the principle of due process, provisions for the establishment of administrative challenge mechanisms to clarify, modify or revoke substantial acts that are part of the recruitment and selection procedures in the Public Service, ensuring a timely, objective, impartial, and effective procedure. (See Section 1.1.2 of Chapter II of this report)

- e) 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)
- f) Develop, through the appropriate legislative and/or administrative procedures, the different stages that comprise the process of selecting and appointing workers governed by the Belize Constitution (Government Open Vote Workers) Regulations, by adopting provisions and clearly defined criteria that ensure access to this category of service, and establishing a time limit for the duration of their employment, always taking into account the principles of openness, equity and efficiency as provided in the Convention. (See Section 1.1.2 of Chapter III of this report)
- g) Develop, through the appropriate legislative and/or administrative procedures, the different stages that comprise the process of selecting and appointing National Assembly staff, by adopting provisions and clearly defined criteria that ensure access to those positions, always taking into account the principles of openness, equity and efficiency as provided in the Convention. (See Section 1.1.2 of Chapter III of this report)
- h) Adopt, through the appropriate legislative and/or administrative procedures, provisions which provide that the selection and recruitment process for staff of the National Assembly is to be based on merit. (See Section 1.1.2 of Chapter III of this report)
- i) Adopt, through the appropriate legislative and/or administrative procedures, provisions which require the publication of staff vacancies that arise in the National Assembly. (See Section 1.1.2 of Chapter III of this report)
- j) Adopt, through the appropriate legislative and/or administrative procedures and in keeping with the principle of due process, provisions for the establishment of administrative challenge mechanisms to clarify, modify or revoke substantial acts that are part of the recruitment and selection procedures for the National Assembly, ensuring a timely, objective, impartial, and effective procedure. (See Section 1.1.2 of Chapter II of this report)
- k) Consider disaggregating the results provided by the Ombudsman on complaints received and their resolution, in order to indicate how many of those complaints were based on challenges to the government hiring and selection process. (See Section 1.1.3 of Chapter III of this report)

1.2. Government Systems for the Procurement of Goods and Services

Belize has considered and adopted 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 makes the following recommendation to Belize:

- Consider strengthening the government systems for the procurement of goods and services.

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

- a) Adopt provisions which define the different stages that constitute the procurement process, and which include selection criteria, time frames, and which identify the entity responsible for making contract award decisions. (See Section 1.2.2 of Chapter III of this report)
- b) Adopt provisions which establish objective selection criteria in the evaluation of bids (See Section 1.2.2 of Chapter III of this report)
- c) Review Section 20 of the Finance and Audit (Reform) Act of 2005, in order to ensure that in those instances where limited tendering is used, that the government sees to it that there are an adequate number of potential suppliers to ensure competition, as required by Section 20(1) thereof. (See Section 1.2.2 of Chapter III of this report)
- d) Examine the need to adopt provisions which either: require a justification of the decision to resort to limited tendering based on extreme urgency or public interest, as provided for by Sections 21(1)(d) of the Finance and Audit (Reform) Act of 2005, or national emergency, as provided for by Section (21)(1)(h)(i) of the same law; or which define those terms. (See Section 1.2.2 of Chapter III of this report)
- e) Adopt provisions which provide clear selection procedures where the limited tendering procedure is used, and which also require a written justification for the use of this procurement method. (See Section 1.2.2 of Chapter III of this report)
- f) Adopt provisions which clarify what is meant by day-to-day operations of government, as used in Section 21(1)(h)(ii) of the Finance and Audit (Reform) Act of 2005, in order to ensure that goods and services related to recurring expenses are procured competitively, where appropriate. (See Section 1.2.2 of Chapter III of this report)
- g) Adopt provisions which require publication of tender opportunities, including the conditions for participation therein, and the time, method and place for the submission of bids. (See Section 1.2.2 of Chapter III of this report)
- h) Examine 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 III of this report)
- i) Consider the introduction of electronic procurement systems, on an incremental basis, so that goods and services may be acquired through those means. (See Section 1.2.2 of Chapter III of this report)
- j) Strengthen and increase the scope of use of electronic forms of communication, such as the internet, for publicizing the tender and consulting opportunities, status of bids and awards and the progress in the execution of major projects. (See Section 1.2.2 of Chapter III of this report)

- k) Establish a national registry of contractors of goods and services, of mandatory use by all State bodies, which contemplates the possibility of ensuring that the registry 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 III of this report)
- l) Implement provisions that require prior planning sufficiently in advance of the launch of large-scale or specialized procurement process, such as the preparation of studies, designs and technical evaluations. (See Section 1.2.2 of Chapter III of this report)
- m) Adopt provisions that facilitate and encourage the participation of citizen oversight mechanisms in monitoring the execution of contracts where their nature, importance, or magnitude so warrants. (See Section 1.2.2 of Chapter III of this report)
- n) Adopt provisions which regulate, in keeping with the principle of due process, administrative challenge mechanisms relating to the substantive acts of the tendering process, such as the basis for the tender or bid, the rejection of bidders, and the designation of the winner, which are designed to clarify, modify, or revoke such acts. (See Section 1.2.2 of 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)

Belize has considered and adopted 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 2 of Chapter II of this report.

In light of the comments made in the above-noted section, the Committee suggests that Belize 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 (See section 2.2 in Chapter II of this Report).

In meeting this recommendation, Belize 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) Protection of whistleblowers and their families, not only in relation to their physical integrity but also as it concerns the workplace, especially when the person is a public official and the acts of corruption involve superiors 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) The creation of mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it;
- e) Witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens;
- f) Mechanisms to facilitate international cooperation on the foregoing matters, when appropriate, including the technical assistance and cooperation provided for by the Convention, as well as the exchanges of experiences, training, and mutual assistance.
- g) A simple 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) Provisions that clearly delineate the respective competence of judicial and administrative authorities with respect to this area.

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

Belize has adopted measures which criminalize 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 Belize consider the following recommendations:

- 3.1. Review Section 26(b) and 27(b) of the Prevention of Corruption Act, 2007, so as to make it more fully consistent with Article VI(1)(a) of the Convention, by incorporating therein, the words “directly or indirectly”. (See Section 3.2. of Chapter II of this Report).
- 3.2. Review Section 26(a) and 27(a) of the Prevention of Corruption Act, 2007, so as to make it more fully consistent with Article VI(1)(b) of the Convention, by incorporating therein, the words “directly or indirectly”. (See Section 3.2. of Chapter II of this Report).
- 3.3. Review the definition of “public servant” contained in the Prevention of Corruption Act, 2007, by covering “a person who performs public functions”. (See Section 3.2. of Chapter II of this Report).
- 3.4. Consider the convenience of harmonizing the provisions of the Prevention of Corruption Act, Chapter 105 of the Substantive Laws of Belize, Re 2003, with those of the Prevention of Corruption Act, 2007. (See Section 3.2. of Chapter II of this Report).

4. GENERAL RECOMMENDATIONS

Based on the review and comments made throughout this report, the Committee suggests that Belize consider the following recommendations:

- 4.1 Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, provisions, measures, and mechanisms considered in this report, for the purpose of ensuring that they are adequately known, 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, provisions, measures, and mechanisms considered in this report, and to verify follow-up on the recommendations made herein.

5. FOLLOW-UP

The Committee will consider the periodic update Reports submitted by Belize on its progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with Article 31 of the Rules of Procedure and Other Provisions.

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

IV. OBSERVATIONS IN RELATION TO THE PROGRESS IN THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE REPORT FROM THE FIRST ROUND

Based on the information made available to the Committee on the implementation of the recommendations formulated for Belize in the Report in the First Round of Review, the Committee observes 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:

Consider strengthening the implementation of the provisions on conflicts of interest, and ensure that the laws on this matter are applicable to all public officials and employees, so as to permit the practical and effective application of a public ethics system.

Measures suggested by the Committee:

- a. *Establish a standard for addressing the conflicts that can occur between individual specific government matters in which those persons that perform public functions would be expected to act as part of their responsibilities and an official's or family member's financial interests or his outside activities or negotiations for future private employment arrangements. Such a standard could include recusal, request by the person that performs public functions for permission to continue to act, request by the official for a transfer of duties (if appropriate), or direction by an appropriate authority for divestiture/resignation when the conflict is pervasive.*

- b. *Establish suitable restrictions for persons who leave public service, such as prohibitions on participation as a representative of a private interest in ongoing specific matters in which they had participated in an official capacity, or for a reasonable time, restrictions on dealing with former government body in which they served.*

In its response,⁷⁴ Belize presents information with respect to the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the enactment of the Prevention of Corruption Act of 2007.

In light of the foregoing, the Committee takes note of the need for Belize to pay further attention to the implementation of measures (a) and (b) of the foregoing recommendation.

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 implementation of laws and regulatory systems on the proper conservation and use of public resources.

In its response,⁷⁵ Belize presents information with respect to the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the enactment of the Prevention of Corruption Act of 2007.

In light of the foregoing, the Committee takes note of the satisfactory consideration of the foregoing recommendation.

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 standards and mechanisms that require public servants to report to appropriate authorities, acts of corruption in the performance of public functions of which they are aware. This should be complemented by measures that protect public servants who report acts of corruption in good faith.*
- b. *Facilitate compliance with this obligation by such measures as it deems appropriate.*

⁷⁴ See the Report of Belize on the Implementation of the Recommendations of the Committee of Experts in the First Round, at pp. 1-2.

⁷⁵ Ibid, at pp. 3-5.

In its response,⁷⁶ Belize presents information with respect to the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with regard to the enactment of the Prevention of Corruption Act of 2007, which, as noted by the country under review provides, inter-alia, the following:

- “ *to provide for the strengthening of measures to prevent and combat corruption and corruption activities; to provide for the offence of corruption and offences relating to corrupt activities; to provide for investigative measures in respect of corruption and related corrupt activities; to provide measures for establishing probity, integrity and accountability in public life...*”⁷⁷

- “*Section 30(2) of the Act requires any person who knows, reasonably suspects or ought to have reasonably known or suspected that any person has committed, is committing or is about to commit an offence under this act, or the offence of bribery, to disclose it as soon as is reasonably practicable...*”

- Section 31(1) of the Act “*makes the failure to comply with the disclosure requirements in s. 30 an offence which attracts a fine of not less than ten thousand dollars (BZ\$10,000.00) or imprisonment of up to one year.*”⁷⁸

In light of the foregoing, the Committee takes note of the satisfactory consideration by the country under review of the foregoing recommendation.

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

Recommendation:

Consider strengthening the systems for registering income, assets, and liabilities.

Measures suggested by the Committee:

- a. *Consider taking necessary steps to enforce the current financial declaration requirements for those to whom the Prevention of Corruption in Public Life Act law currently applies, including implementing penalties for those who fail to file and establishing penalties for late filing.*
- b. *Identify positions not currently covered by the Act which have duties where the potential for conflict of interest is substantial and require the individuals holding those positions to file financial declarations.*
- c. *Use the financial declarations not only to detect actual violations of law and conflicts of interest, but to also serve as a basis for providing counseling on the prevention of conflicts of interest.*
- d. *Consider making the reports public, were appropriate.*

⁷⁶ Ibid, at pp. 5-7

⁷⁷ Ibid, at p. 5.

⁷⁸ Ibid, at p. 6.

In its response,⁷⁹ Belize presents information with respect to the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with regard to the enactment of the Prevention of Corruption Act of 2007, which, as noted by the country under review, provides, inter-alia, the following:

With respect to measure (a):

- "...requires persons in public life, namely Members of the House of Representatives (including the Speaker), Members of the Senate (including the President), and Members of the Town and City Councils to file sworn declarations of assets, income and liabilities of him/herself, his, her spouse, children and agents in the manner prescribed by the Act."⁸⁰

- "Failure to file a declaration or to provide further particulars to the Commission or the Tribunal may attract a fine of not less than three thousand dollars on a first offence, and a fine of not less than five thousand dollars and/or imprisonment for one year on a second and subsequent offence. In addition, such offenders will be liable to pay the Commission an administrative fine of one hundred dollars for each day that the declaration or explanation remains outstanding."⁸¹

- "The Act also creates the offence of filing false declarations, which attracts a fine of between one and five thousand dollars and/or imprisonment for six months."⁸²

With respect to measure (b):

- "The POCA makes provisions for the National Assembly to extend the application of this Act to any public servant of class of public servants..."⁸³

With respect to measure (c):

- "The Act makes provisions for the reports on the enquiries of the Commission to be sent to the Director of Public Prosecutions ("the DPP") and to the Attorney General. If the DPP is satisfied that the evidence before him is sufficient to substantiate the commission of an offence under the act, he may institute criminal proceedings against such person. Where the person suspected of the commission of an offence is the DPP, the Attorney General may institute proceedings against him."⁸⁴

With respect to measure (d):

- "Pursuant to s. 12 of the POCA, the Commission is required to examine all financial declarations submitted by declarants and to publish Certificates of Declaration in the Gazette, if satisfied that the declarations have been fully made."⁸⁵

The Committee takes note of the satisfactory consideration by Belize of measures (a) and (b) of the foregoing recommendation, as well as of the steps taken towards compliance with measures (c) and

⁷⁹ Ibid, at pp. 7-9.

⁸⁰ Ibid, at p. 7.

⁸¹ Ibid, at p. 8.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid, at p. 9.

(d), and of the need for the country under review to give further attention thereto.

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

Recommendation:

Strengthen, and when appropriate create, oversight bodies in particular in the area of functions to enforce compliance with the matters covered by the provisions of Article III, paragraphs 1, 2, 4, and 11 of the Convention; provide them with the necessary resources to enable them to carry out their functions in full; and establish mechanisms necessary to permit effective institutional coordination, as well as periodic evaluation and monitoring, of the measures they adopt.

In its response,⁸⁶ Belize presents information with respect to the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following:

- The Prevention in Corruption Act, 2007, which expands upon the powers of the Integrity Commission, which, according to the response of Belize, “...is given much wider powers that it had under its predecessor Act. As mentioned above, the Commission is now empowered to examine declarations, request further info in respect thereof, and enquire into declarations, and in so doing may advise the Governor General to appoint a Tribunal to carry out that enquiry...Further, to secure the financial stability of the Commission, the Act requires that the Secretariat submit the necessary budget estimates of the Commission each year to the Prime Minister, who shall include these sums in the budget for that year.”⁸⁷

In light of the foregoing information, the Committee takes note of the steps taken by Belize to comply with this recommendation, as well as of the need for Belize to give additional attention to its implementation.

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

Consider whether the recommendations related to specific mechanisms referred to below indicate a need for Belize to strengthen its general approach to encouraging civil society and nongovernmental organizations in efforts to prevent corruption.

4.2. Mechanisms for access to information

Recommendation:

Strengthen the mechanisms on access to information.

⁸⁶ Ibid, at pp. 9-13.

⁸⁷ Ibid, at p. 10.

Measures suggested by the Committee:

- a. *Conduct a comprehensive review of the rules and regulations that provide exceptions to the right of access to public information, in order to ensure that they do not obstruct the exercise of the right to information as an effective mechanism in efforts against corruption, in accordance with the observations in section 4.2.2 of this report.*
- b. *Strengthen systems that ensure public access, as appropriate, to information on public administration bodies and their program-related and financial activities, in particular as regards those bodies concerned with the issues covered in this report; and improve, where possible, the use of modern technologies to that effect*
- c. *Carry out a comprehensive evaluation of the use and effectiveness of mechanisms for access to information, and, based on the results of that evaluation, consider the adoption of measures to promote, facilitate, and consolidate the effectiveness of these mechanisms.*

In its response,⁸⁸ Belize notes in pertinent part as follows with respect to the implementation of the foregoing recommendation, “*The general difficulty with respect to the recommendation of the honourable Committee of Experts on this matter is the complexity of engaging in comprehensive reviews and evaluations of systems, legislation and mechanisms. Some of these complexities are posed by the time-frame required to successfully carry out such evaluations, as well as the extremely limited resources, including financial and human, with which small countries like ours operate under. In light thereof, Belize humbly requests the Committee to consider removing these recommendations.*”

With regard to paragraph (b) in this section, information can be accessed from the website www.governmentofbelize.gov.bz in which reports from the Office of Governance are posted.”

In light of the foregoing, the Committee takes note of the satisfactory consideration by Belize of measure (b) of this recommendation, notwithstanding the fact, that because it is of a continuous nature, it should continue to be developed. In addition, the Committee takes note of the need for Belize to give further attention to the implementation of measures (a) and (c) of this recommendation.

4.3. Mechanisms for consultation

Recommendation:

Strengthen existing mechanisms and consider creating other ones as part of their efforts to combat corruption.

Measures suggested by the Committee:

- a. *Strengthen consultation mechanisms to enable civil society and nongovernmental organizations to generate opinions and proposals to be taken into account in preventing, detecting, investigating, and punishing corruption.*

⁸⁸ Ibid, at pp. 14-15.

- b. *Design and implement programs to publicize consultation mechanisms and, as appropriate, provide training and instruments to officials necessary for effective implementation of those mechanisms.*

In its response,⁸⁹ Belize presents information with respect to the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The Human Resources Development Committee, created in June, 2006, and which is charged with providing transparency and development of human resources in the Public Service, and whose functions include, inter-alia, *“...advising the Minister of the Public Service on policy goals and strategies regarding training and development of human resources in the Public Service as well as on the priority of training needs and scholarship programs, and to ensure the development, implementation and monitoring of human resource policy and strategy for the Public Service.”*⁹⁰

- The Council on Good Governance and Public Service Modernization, established in June, 2006, and the responsibilities of which, include, inter-alia, *“making recommendations on good governance initiatives; providing guidance in the implementation of improvement initiatives in public sector administration; serving as a forum for interface between the Government of Belize and its social partners for the sharing of ideas and information arising from modernization and governance endeavors; and making recommendations on modernization initiatives to improve service delivery and enhance structures. Members of this Committee are persons of integrity and leaders from the public, private and social sectors.”*⁹¹

- The Joint Staff Advisory Council, which *“advises on matters of human resource development and management and among its duties is seeking improved conditions of work for public officers.”*⁹²

- In addition, Belize notes that *“The membership of each of the above-mentioned Committees include the Chief Executive Officers and Heads of Department of key Ministries and of the Financial Secretary.”*⁹³

In light of the foregoing information, the Committee takes note of the satisfactory consideration by Belize of measures (b) above, notwithstanding the fact that, because they are of a continuous nature, it should continue to be developed. In addition, the Committee takes note of the need for Belize to give additional attention to the implementation of measure (a) of the foregoing recommendation.

4.4. Mechanisms to encourage participation in public administration

Recommendation:

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

⁸⁹ Ibid, at pp. 15-16.

⁹⁰ Ibid, at p. 15.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

Measures suggested by the Committee:

- a. *Develop standards and procedures to establish, maintain and strengthen mechanisms to encourage participation by civil society and nongovernmental organizations in public administration as part of the efforts to prevent corruption*
- b. *Promote public awareness of available corruption prevention mechanisms.*

In its response,⁹⁴ Belize provides information with respect to the foregoing recommendation, referring to the response that it provided to recommendation 4.3(a), above.⁹⁵

In addition, Belize points to the creation of www.governmentofbelize.gov.bz.⁹⁶

In light of the foregoing information, the Committee takes note of the satisfactory consideration by Belize of measure (b), above, notwithstanding the fact that, because it is of a continuous nature, it should continue to be developed. In addition, the Committee takes note of the need for Belize to give further attention to the implementation of measure (a) of this recommendation.

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

Recommendation:

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

Measures suggested by the Committee:

- a. *Promote, where appropriate, methods to facilitate civil society and non-governmental organizations' efforts to engage in activities in the follow up of public administration and prevention of corruption.*
- b. *Design and implement specific programs to publicize mechanisms to encourage participation in follow-up on public administration and, as appropriate, provide the necessary training and tools to public officials for the effective implementation of those mechanisms.*

In its response,⁹⁷ Belize provides information with respect to the foregoing recommendation, as follows:

- *“As reported in the Report of Belize on the implementation of the Convention in the first evaluation round, such mechanisms are already in place at the highest level of governance in this country – civil society has membership in the composition of the Senate, the Upper House of the National Assembly. Additionally, the Bill referred to in Section 3 of this Report entitled “Oversight Bodies for the Selected Provisions” seeks to increase the number of Senators from twelve to thirteen, to provide for a representative from the non-governmental organizations. This will have the effect of effectively*

⁹⁴ Ibid.

⁹⁵ This response refers to the Human Resource Development Committee, the Council on Good Governance and Public Sector Modernization, and the Joint Staff Relations Council.

⁹⁶ See the Report of Belize on the Implementation of the Recommendations of the Committee of Experts in the First Round, at p. 16.

⁹⁷ Ibid, at pp. 16-17.

removing the majority (of members) in the Senate from the Government representatives to the Opposition and Civil Society. Again, this proposed amendment is viewed by the general public as a positive change and one which will promote transparency and accountability.”

With respect to the composition of the Senate transcribed above, the Committee notes that this refers to standards that were in place prior to the date of the Report from the First Round. In addition, with respect to the existence of the draft bill referred to above, the Committee considers that it can be examined once it becomes law. Accordingly, the Committee notes the need for Belize to give further attention to the implementation of measure (a) of the foregoing recommendation.

In addition, the Committee notes that in its response, Belize does not refer to any steps taken with respect to measure (b) of this recommendation, and the Committee accordingly takes note of the need for Belize to give further attention to its implementation.

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

Recommendation 5.1:

Design and implement a comprehensive program of dissemination and training specifically geared to the competent authorities and officials, to ensure they are familiar with and can apply the provisions in force on mutual legal assistance for investigation and prosecution of acts of corruption in the Convention and in other treaties signed by Belize.

In its response,⁹⁸ Belize notes in pertinent part as follows with respect to the implementation of the foregoing recommendation, *“Belize has not developed specific comprehensive programs to train its competent authorities and officials on the implementation of the country’s mutual legal assistance obligations with regard to investigative and prosecution of acts of corruption. However, the country and its officials have benefitted from several training opportunities under the auspices of relevant international organizations which have been held at home and abroad.”*

In light of the foregoing, the Committee takes note of the need for Belize to give further attention to the implementation of this recommendation.

Recommendation 5.2:

Identify and ascribe priority to specific areas in which it deems it could need or it could be useful for it to receive technical cooperation from other States Parties in order to further strengthen its capacity to prevent, detect, investigate and punish corruption.

In its response,⁹⁹ Belize notes as follows with respect to the implementation of the foregoing recommendation, *“Needless to say, the country recognizes that it is in need of further training of its competent authorities and officials for a more effective collaboration with its counterparts. Training in the investigative field and exchange of information on best practices are a priority.”*

In light of the foregoing, the Committee takes note of the need for Belize to give further attention to the implementation of this recommendation.

⁹⁸ Ibid, at pp. 17-18.

⁹⁹ Ibid, at p. 18.

Recommendation 5.3:

Strengthen efforts to exchange technical cooperation with other States Parties on the most effective ways and means to prevent, detect, investigate, and punish corruption.

In its response,¹⁰⁰ Belize notes as follows with respect to the implementation of the foregoing recommendation, “*Belize accepts the importance of this recommendation and is engaged in identifying the most effective ‘best practices’ regarding prevention; detection; investigation and punishment of corruption from within and from its counterparts in other countries, which it hopes, will greatly assist the country’s zero tolerance policy with respect to corruption and corrupt practices.*”

In light of the foregoing, the Committee takes note of the need for Belize to give further attention to the implementation of this recommendation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation 6.1:

Formalize the designation of the Solicitor General as the Central Authority provided for in Article XCIII of the Convention for the purposes of international assistance and cooperation envisaged in that treaty, and communicate that designation to the Secretariat of the OAS in accordance with the procedures provided to that end.

In its response,¹⁰¹ Belize presents the following information with respect to the forgoing recommendation:

“A decision on the matter will be forthcoming in the very near future since one view is that the Attorney General be designated as the Central Authority for Belize for the purposes of international assistance and cooperation anticipated in the present Convention. The Attorney General is the designated Central Authority under the Treaty with the United States of America and under the CARICOM Treaty, which are the most recent.

As soon as the matter is resolved, it shall be duly communicated to the Secretariat of the OAS.”

In light of the foregoing, the Committee takes note of the need for Belize to give further attention to the implementation of this recommendation.

Recommendation 6.2:

Ensure that said authority has sufficient resources to enable it to carry out its functions.

In its response,¹⁰² Belize presents the following information with respect to the forgoing recommendation:

¹⁰⁰ Ibid.

¹⁰¹ Ibid, at pp. 18-19.

¹⁰² Ibid, at p. 19.

“This is one of the special considerations weighing in the final determination of the matter regarding the Central Authority discussed above. In practice, however, the requests for legal assistance from other countries have been addressed by the Attorney General’s Ministry with its existing staff and budget.”

In light of the foregoing, the Committee takes note of the need for Belize to give further attention to the implementation of this recommendation.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

Design and implement, when appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of assuring adequate knowledge, handling, and implantation of the above.

Recommendation 7.2:

Select and develop procedures and indicators, as appropriate, that enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, it may take into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.

Recommendation 7.3:

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, and the recommendations contained in it.

The Committee notes that the response of Belize does not refer to any specific steps taken with respect to the implementation of the three foregoing recommendations. Accordingly, the Committee takes note of the need for Belize to give further attention to their implementation.

ENDNOTES

ⁱ Regulation 2(2) provides that “*For the purposes of these Regulations (a) reference to an office in the Public Service shall be construed as including officers on the Governor-General’s personal staff; (b) a reference to an office in the Public Service shall not be construed as including references to the offices of the Prime Minister or other Ministers, Ministers of State, Speaker or Deputy Speaker or member of the House of Representatives, President or Vice President or Senator, member of the Belize Advisory Council, or any Commission established under the Constitution, or the Clerk, Deputy Clerk or staff of the National Assembly, or the Ombudsman or the Contractor-General; or (c) person shall not be regarded as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service under the Government.*”

ⁱⁱ The full text of Section 1 of Part 1 of the Third Schedule of the Prevention of Corruption Act, 2007, provides as follows: “*A person commits an act of corruption if (a) he in the performance of his public functions does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person; (b) he fraudulently uses or conceals any property or other benefit derived from any such act or omission to act under paragraph (a) or (b); (c) he offers or grants, directly or indirectly, to a public servant any article, money or other benefit being a gift, favour, promise or advantage to the public servant or another person, for doing any act or omitting to do any act in the performance of the public servant’s public functions; (d) he allows his private interest to conflict with his public duties or to improperly influence his conduct in the performance of his public duties; (e) he being a natural person or a corporation, either aggregate or sole, club, society or other body of one or more persons, offers or grants, directly or indirectly to a person performing a public function in a foreign State, any article or money or other benefit, being a gift, favour, promise or advantage in connection with any economic or commercial transaction for an act to be performed or omitted to be performed by that person in the performance of his public functions; (f) he illegally uses for his own benefit or that of a third party, any property (including money) belonging to the Government or any statutory body or any government company or any body providing public utilities to which he has access as a result of or in the course of, the performance of his functions; (g) he, for his own benefit or that of a third person, illegally diverts any property belonging to Government or any other person, which is in his custody for the due administration of his duties; (h) he acquires, or becomes a partner, associate or shareholder in, or a director of a firm or company which has a contract with the Government or with the public body of which such person is a member or employee unless the person makes a disclosure of such partnership, association, shareholding or other interest to the Commission; (i) he illegally uses official influence in support of any scheme, or in furtherance of any contract or proposed contract or other matter in regard to which he has an interest; (j) he or any other person, on his behalf, illegally acquires property or pecuniary resource disproportionate to his legitimate sources of incomes; (k) he instigates, aids, abets, or is an accessory after the fact or participates in whatsoever manner in the commission or attempted commission of or conspires to commit any act of corruption referred to in paragraphs (a) or (k).*”