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IMPLEMENTATION OF THE INTER-AMERICAN
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THE BAHAMAS

FINAL REPORT

(Adopted at the September 13, 2018 plenary session)

SUMMARY

This report contains a comprehensive review of the implementation of the recommendations formulated to The Bahamas in the Second Round Report with respect to paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption. These provisions refer, respectively, to systems for hiring public servants and procurement of government goods and services and to protecting public servants and private citizens who in good faith report acts of corruption, as well as to legal characterization of the acts of corruption contemplated in Article VI of the Convention. The report also makes reference, where appropriate, to new developments in implementing those provisions.

The report also includes comprehensive analysis of the implementation in The Bahamas of paragraphs 3 and 12 of Article III, regarding, respectively, measures to establish, maintain, and strengthen instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, and the study of other preventive measures that take into account the relationship between equitable compensation and probity in public service, which were selected by the MESICIC Committee of Experts for the Fifth Round. Reference is also made to best practices reported by the country under review with respect to implementation of the provisions selected for the Second and Fifth Rounds.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee's Rules of Procedure, and the methodologies it has adopted for conducting on-site visits and for the Fifth Round, including the criteria set out therein for guiding the review based on equal treatment for all states parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the states parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out mainly taking into account the Response to the Questionnaire by The Bahamas and information gathered during the on-site visit conducted between April 17 to 19, 2018, by representatives of Trinidad and Tobago and Costa Rica, with the support of the Technical Secretariat. During that visit, the information furnished by The Bahamas was clarified and supplemented with the opinions of civil society organizations.

With regard to the follow-up on the recommendations formulated to The Bahamas in the Second Round and with respect to which the Committee, in the Third Round Report, found required additional attention, based on the methodology for the Fifth Round and bearing in mind the information provided by The Bahamas in its Response to the Questionnaire and during the on-site visit, a determination was made as to which of those recommendations had been satisfactorily implemented, which required additional attention, which required reformulation, and which were no longer valid.

Specifically, with respect to the systems for hiring government officials, it is pertinent to highlight the creation in March 2017 of a manual entitled "The Bahamas Government Human Resources Policies," which was issued by the Department of the Public Service, and its purpose is to provide a clear procedure for hiring within the government system. With respect to the government systems for procurement of goods and services, it should be noted that the Government of The Bahamas prepared a Public Procurement Bill in 2018, which is being reviewed in Parliament, covering all three branches of government and its purpose is to specifically address the legal and regulatory framework for the procurement of goods and services.

In addition, the Government of the Bahamas is in the process of implementing a Supplier's Registry and an e-procurement website. The system is a centralized electronic registry of suppliers and Micro Small and Medium Enterprises (MSMEs) which will be managed and maintained by the Ministry of Finance, Procurement Unit, with access granted to Government Ministry's and Departments. The e-Procurement and Suppliers Registry was established in February 2018. With respect to systems for protecting public servants and private citizens who, in good faith report acts of corruption, it is appropriate to highlight the enactment of the following laws: i) Criminal Evidence (Witness Anonymity) Act, 2011, Part III, Sections 11(1) and 12(1), affording protection to persons who offer evidence in criminal proceedings, ii) The Justice Protection Act, Chapter 64A was implemented to protect persons appearing as witnesses in judicial proceedings.

Some of the recommendations formulated in the Second Round that remain valid or have been reformulated address issues as: adopt, through the appropriate legislative or administrative procedures, a legal instrument that explicitly provides that government hiring into the Public Service is to be based on the principle of merit; ensure that the Public Service Commission clearly substantiate when a decision is made not to advertise a vacancy to the general public; 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; consider enacting a new comprehensive legal and regulatory framework which encompasses all the branches and agencies of the State applicable to government procurement of goods, works, and services and embodies the principles of openness, equity, and efficiency upheld in the Convention; establish a centralized registry of contractors of works, goods or services, mandatory to all State bodies and dependencies, which contemplate the possibility to ensure that such registration also include a list of sanctioned contractors, in order to foster the principles of openness, equity and efficiency provided for in the Convention; protection for whistleblowers and their families, not just in respect of their bodily integrity but also with regard to their job status, especially when the person is a public official and the acts of corruption may involve superiors or co-workers; and implement provisions which criminalize other acts or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party other than as set out in Section 3.1 of Section 2 of this Report, pursuant to Article VI(1)(c) of the Convention.

In addition, regarding the new developments in The Bahamas with respect to the implementation of the provisions of the Convention selected for the Second Round, the Committee also formulated recommendations on the following: publish and make readily available both the evaluation forms and master score cards used to evaluate candidates for positions to be filled from within the Public Service; provide to the Public Services Commission the resources needed to acquire a comprehensive human resource management system, within available resources; take the necessary steps to ensure participation in training programs for personnel responsible for administering the processes for selecting and hiring Public Service personnel, including evaluations upon completion of training; make public the Public Procurement Bill, 2018; make all necessary arrangements to secure the human and financial resources needed to complete the new e-Procurement system and ensure that it is maintained so that it is able to perform its functions appropriately, within the availability of resources; establish a simplified, readily available process for filing applications for protection measures for whistleblowers and witnesses of acts of corruption; and compile detailed annual statistics on prosecutions initiated by the Department of Public Prosecution into acts of corruption, so as to determine how many have been suspended, how many have prescribed, how many have been

archived, how many are ongoing, and how many have been referred to the competent authority for a decision, in order to identify challenges and, where necessary, recommend corrective measures.

For the review of the first provisions selected for the Fifth Round that refer to instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as set out under Article III, paragraph 3 of the Convention, The Bahamas selected the Ministry of Finance and the Department of Public Service.

This review was focused on determining, with respect to the selected personnel, if the country under review has adopted provisions and/or measures which ensure the proper understanding of their responsibilities and the ethical rules governing their activities; the manner or occasions in which personnel are provided instructions; the programs in place for them; the bodies responsible for them; as well as the objective results obtained on the implementation of said provisions and/ or measures, taking into account any difficulties and/or weaknesses to achieve the purpose of this provision of the Convention. At the same time, it took note of any difficulties and/or shortcomings in accomplishing the object of that provision of the Convention.

Some of the recommendations formulated to The Bahamas, for its consideration, with respect to this topic, are noted as follows:

With respect to the Ministry of Finance, establish a formal training program for Ministry of Finance personnel, in order to ensure mandatory participation in face-to-face or online training or induction programs for recently hired personnel that should include the courses offered and a timetable so that all personnel can understand their responsibilities and the functions they are expected to perform. There should also be end-of-training evaluations at the end of the formal training program; and establish a governing organ responsible for defining, steering, giving guidance on, or supporting the manner in which Ministry of Finance personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to ensure compliance with the norms and/or measures in force in this regard.

In relation to the Department of Public Service, establish a formal training program containing instructions on the ethical rules governing their activities for Department of Public Service personnel, that should include the courses offered and a timetable to ensure that they are taught: when they take up office, whenever there is a change in their functions, when a different set of ethical rules is applied, or when those rules are altered. There should also be end-of-training evaluations at the end of the formal training program; and include in training programs for personnel under the authority of the Department of Public Service modules dealing with knowledge of the risks of corruption inherent in the performance of their functions and with the consequences and sanctions for those involved in acts of corruption.

In accordance with the aforementioned methodology, the review of the second provision selected for the Fifth Round, as set out under Article III, paragraph 12 of the Convention, the Committee concluded that The Bahamas has considered and adopted measures intended to establish objective and transparent criteria for determining the compensation of public servants.

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

**DRAFT PRELIMINARY REPORT ON FOLLOW-UP ON IMPLEMENTATION IN THE
BAHAMAS OF THE RECOMMENDATIONS FORMULATED AND PROVISIONS
REVIEWED IN THE SECOND ROUND, AND ON THE PROVISIONS OF THE
CONVENTION SELECTED FOR REVIEW IN THE FIFTH ROUND^{1/}**

INTRODUCTION

1. Content of the Report

[1] As agreed upon by the Committee of Experts (hereinafter “the Committee”) of the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) at its Twenty-fourth Meeting,² this Report will first refer to follow up on implementation of the recommendations formulated to The Bahamas in the Report from the Second Round, which the Committee found required additional attention in the Third Round Report. Those reports are posted on the following Internet website: <http://www.oas.org/juridico/english/bhs.htm>

[2] Second, where applicable, it will refer to new developments in The Bahamas with regard to the provisions of the Inter-American Convention against Corruption (hereinafter “the Convention”) selected for the Second Round, and regarding such matters as the legal framework, technological developments and results, and, if applicable, appropriate observations and recommendations will be formulated.

[3] Third, it will address implementation of the provisions of the Convention selected by the Committee for the Fifth Round. Those provisions are contained in paragraphs 3 and 12 of Article III regarding, respectively, measures to establish, maintain, and strengthen “*instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities*”, and “*the study of preventive measures that take into account the relationship between equitable compensation and probity in public service.*”

[4] Fourth, it will refer to the best practices that the country under review wished voluntarily to share regarding implementation of the provisions of the Convention selected for the Second and Fifth Rounds.

2. Ratification of the Convention and adherence to the Mechanism

¹ This draft preliminary Report was prepared in accordance with Articles 23(a) and 28 of the Committee’s Rules of Procedure (SG/MESICIC/doc.9/02 rev. 5), and the [Methodology](#) for follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round and for the review of the provisions of the Convention selected for the Fifth Round (SG/MESICIC/doc.438/15 rev. 1) and the format for country reports (SG/MESICIC/doc.439/15 rev.1). These last two documents were adopted by the Committee at its Twenty-Fifth Meeting, held at OAS Headquarters in Washington D.C., United States of America, from March 16-20, 2015.

² See the Minutes of the 24th Meeting of the Committee, available at: http://www.oas.org/juridico/docs/XXIV_min.doc

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

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

I. SUMMARY OF INFORMATION RECEIVED

1. Response of The Bahamas

[7] The Committee wishes to acknowledge the cooperation that it received, throughout the review process, from The Bahamas and in particular from the Office of the Attorney General and Ministry of Legal Affairs, which was evidenced, inter alia, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents, and in the support for the on-site visit to which reference is made below. Together with its response, The Bahamas sent the provisions and documents it considered pertinent.³

[8] The Committee also notes that The Bahamas gave its consent for the on-site visit, in accordance with item 5 of the *Methodology for Conducting On-site Visits*.⁴ As members of the preliminary review subgroup, the representatives of Trinidad and Tobago and Costa Rica conducted the on-site visit from April 17-19, 2018, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this Report, and the agenda of meetings is attached thereto, in keeping with provision 34 of the above-mentioned *Methodology*.

[9] For its review, the Committee took into account the information provided by The Bahamas up to April 19, 2018, as well as that furnished and requested by the Technical Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure⁵; the *Methodology for Follow-up on the Implementation of the Recommendations Formulated and Provisions reviewed in the Second Round and for Analysis of the Convention Provisions Selected for the Fifth Round*⁶; and the *Methodology for Conducting On-Site Visits*.

2. Documents and information received from civil society organizations and/or, inter alia, private-sector organizations, professional associations, academics, and researchers.

[10] The Committee did not receive documents from civil society organizations within the time frame established in the schedule for the Fifth Round, as envisaged by Article 34(b) of the Committee's Rules of Procedure.

[11] Furthermore, in the course of the on-site visit conducted in the country under review from April 17-19, 2018, information was collected from other civil society organizations, professional associations, and academics invited to participate in meetings to that end, in keeping with the provisions contained in provision 27 of the *Methodology for Conducting On-site Visits*. A list of those persons is included in the agenda for that visit, which is appended hereto. Pertinent parts of this information are reflected in the appropriate sections of this Report.

³ Available at: http://www.oas.org/juridico/english/mesicic5_bhs.htm

⁴ Available at: http://www.oas.org/juridico/english/met_onsite.pdf

⁵ Available at: http://www.oas.org/juridico/PDFs/mesicic4_rules_en.pdf

⁶ Available at: http://www.oas.org/juridico/PDFs/mesicic5_metodologia_en.pdf

II. FOLLOW UP ON IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE SECOND ROUND AND NEW DEVELOPMENTS WITH REGARD TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THAT ROUND

[12] The Committee will first refer to progress made and new information and developments in The Bahamas with respect to the recommendations formulated and measures for their implementation suggested by the Committee in its Report from the Second Round,⁷ that were deemed to require additional attention in the Report of the Third Round,⁸ and it will proceed to take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them in accordance Section V of the *Methodology* adopted by the Committee for the Fifth Round.

[13] In this section, the Committee will, where applicable, take note of any difficulties indicated by the country under review with implementing the recommendations and measures alluded to in the foregoing paragraph and of any technical cooperation requested by the State in that connection.

[14] Second, where applicable, it will refer to new developments in The Bahamas in respect of the provisions of the Convention selected for the Second Round regarding such matters as the regulatory framework, technological developments and outcomes, and will formulate any observations and recommendations that may be applicable.

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

1.1. SYSTEMS FOR HIRING GOVERNMENT OFFICIALS

1.1.1. Follow up on Implementation of the Recommendations Formulated in the Second Round

Recommendation 1.1:

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

Measure a) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Adopt, through the appropriate legislative or administrative procedures, a legal instrument that explicitly provides that government hiring into the Public Service is to be based on the principle of merit.

⁷ Available at: http://www.oas.org/juridico/english/mesicic_II_inf_bhs_en.pdf

⁸ Available at: http://www.oas.org/juridico/english/mesicic_III_rep_bhs.pdf

[15] In its Response to the Questionnaire,⁹ the country under review provided the following information regarding the above measure:

[16] –“*In March 2017, the Department of Public Service published a manual entitled ‘The Bahamas Government Human Resources Policies’¹⁰ its purpose is to provide a clear procedure for hiring within the government system. For example, it is important to note the following policy, found at page 15 of the manual:*

[17] - *Policies on Entry “APPOINTMENTS: The Policy on new appointments is in accordance with the Public Service Act, 1969, Part II 5 (1) which states:*

[18] - *“Every Public Officer appointed to an office for which a scale of salary is provided shall enter that scale at the lowest point thereof unless the Governor General, acting in accordance with the advice of the appropriate Commission, approves of such persons entering such scale at an incremental point above that point.”*

[19] - *Applicants must meet the minimum requirements for the recommended post. All new entrants to the public service are to be placed at the minimum of the salary scale OR at the salary point equal to the relevant post qualification(s), if that entry point is a high value.”*

[20] The Committee likewise notes that, during the on-site visit, the country under review provided additional information regarding a sample of an internal advertisement (Circular No. 01 of 2018) approved by the Public Service Commission to fill the position of District Superintendent.¹¹ The circular stipulates the academic and professional experience requirements for the post, the specific functions to be performed, salary, and deadline for applications.

[21] Furthermore, evaluation forms were also made available during the on-site visit:

- i. **Interview Form**, containing, in particular, the following information: i) Name of the candidate, indicating Date of Initial Appointment; ii) Current Post and Current Salary; iii) Qualifications (Academic and Professional); iv) Years of Experience (Administration and Teaching); v) Performance Appraisal, last three years. Also, at the bottom of that evaluation form, the following questions are envisaged: i) Does Officer meet Academic criteria? ii) Does Officer meet Teaching Experience? iii) Does Officer meet Administrative Experience? and iv) Does Officer meet Performance Criteria? Yes__ No__
- ii. **Master Score Sheet**, to contain the following information: i) Candidate’s name; ii) Interview Time; iii) Members of the Evaluation Panel, as Public Service Commission (PSC) Chair and PSC Members; v) Ministry Representative; vi) Total Score; vii) Average Score and viii) Comments.

⁹ See Response of The Bahamas to the Questionnaire for the Fifth Round of Review, pg. 9, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

¹⁰ Available at: <https://www.bahamas.gov.bs/wps/wcm/connect/c706dcd8-82df-41f4-a448-f01b60014779/HumanResourcePolicyManual-FinalDraft.pdf?MOD=AJPERES>

¹¹ Available at: http://www.oas.org/juridico/PDFs/mesicic5_bhs_sample_annex25.pdf

[22] Nevertheless, the Committee observes that, during the on-site visit, the representatives from the Department of Public Service reported that current legislation does not explicitly establish that hiring for public service must be based on merit.¹²

[23] In light of the above information, the Committee reiterates the need for the country under review to give additional attention to implementation of measure (a). (see Recommendation 1.1.3.1 in Section 1.1.3 of Chapter II of this Report)

[24] The Committee further notes that neither the evaluation form nor the above-mentioned Master Score Sheet is available online. Accordingly, in the Committee's view, the country under review should consider the possibility of publishing that information online, so as to further promote transparency and accountability in public service, bearing in mind that it would lend legitimacy to the process and enable candidates to familiarize themselves with clearly defined criteria to be used by the evaluation panel during interviews. The Committee will therefore formulate a recommendation in that regard. (see Recommendation 1.1.3.2 in Section 1.1.3 of Chapter II of this Report)

Measure b) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Adopt, through the appropriate legislative or administrative procedures, a legal instrument that provides parameters on the use of the exception of 'serious inconvenience' that also includes a written justification for its application.

[25] In its Response to the Questionnaire,¹³ the country under review provided the following information regarding the above measure:

[26] – *“The Public Service Commission established the ‘Out-of-Turn Acting Appointments Policy’¹⁴ ...”*

[27] ...–*“As numerous instances can result in a ‘serious inconvenience’ occurring which requires the urgent creation of a new post, placing a parameters on the term may result in an issue in the future which results in the new post not being able to be created as a result of the parameter placed on the phrase.”*

[28] –*“The policy for this type of acting appointment was established to fill vacancies that occurred after interviews for the Public School Administrators exercise would have been completed. These vacancies were due to unforeseen circumstances e.g. unexpected resignations, prolonged illness, such as absence on maternity leave, early retirement or death. Serving officers are appointed to act until the post is otherwise filled or until they obtained the requisite academic qualifications and/or experience for the post or until the post is advertised. These officers performed the duties of substantive holder of the post and are encourage to apply to fill the vacancy when it is published.”*

[29] The Committee notes that, during the on-site visit, the representatives of the Department of Public Service,¹⁵ noted the following regarding the foregoing measure:

¹² PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_deppublic_annex29.pdf, slide 1.

¹³ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 11
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

¹⁴ Please see page 31 of the Report of the Public Service Commission of the Commonwealth of The Bahamas for the Year 2014 – 2016: http://www.oas.org/juridico/PDFs/mesicic5_bhs_annex11.pdf

[30] – *“This was explained in the “Out of Turn Acting Appointments Policy” which was established to fill vacancies that occurred after interviews for the public school administrator’s exercise.”*

[31] The Committee likewise wishes to recall the reasons for the measure as set out in the Report of the Second Round,¹⁶ which stated that:

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

[33] In light of the above information, the Committee takes note of the need for the country under review to give additional attention to implementation of measure (b). (see Recommendation 1.1.3.3 of Section 1.1.3 of Chapter II of this Report)

Measure c) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Adopt, through the appropriate legislative or administrative procedures, a legal instrument that provides parameters on the use of the ‘urgent’ procedural exception in the creation of new posts.

[34] In its Response to the Questionnaire,¹⁷ the country under review provided the following information with respect to the above measure:

[35] - *“New posts are only created as a result of the recommendation by the Minister of Public Service and National Insurance to Cabinet. The only way in which a new post can be created urgently is by requesting the Secretary of the Cabinet to seek the Prime Minister’s Approval to place the matter on the Cabinet’s agenda forthwith.*

[36] - *“The Permanent Secretary in a Ministry, after observing the need for the creation of a new post as a result of new developments in the Ministry, would write to the Permanent Secretary of the Public Service stating that there is a need for an individual to fill a position. The Permanent Secretary would include that pay scale and the qualifications that are necessary for the individual fulfilling the post. This document, after being reviewed by the Permanent Secretary of the Public Service would forward the request to the Public Service Commission for comment. After receiving the comments from the Public Service Commission, the Department of Public Service would then write to the Permanent Secretary of the requesting Ministry the decision with regards to the creation of the*

¹⁵ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_deppublic_annex29.pdf, slide 4.

¹⁶ See Report of The Bahamas from the Second Round, pg. 6, http://www.oas.org/juridico/english/mesicic_II_inf_bhs_en.pdf

¹⁷ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 12-13, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

new post. This document would either permit or deny the requesting Ministry to write to the Cabinet to obtain their approval.”

[37] The Committee notes that the previous information provided by the country under review in its Response to the Questionnaire had already been reviewed by the Committee in the Report of the Second Round for The Bahamas.¹⁸ Moreover, during the on-site visit, the country under review did not provide additional and pertinent information on this regard.

[38] The Committee likewise wishes to recall the reasons for the measure as set out in the Report of the Second Round,¹⁹ which stated that:

[39] -*“The country under review indicated that in the creation of new posts, there are two processes.²⁹ The normal process requires the identification of a new post, budgetary approval and clearance for the establishment of the new post from the Department of Public Service.³⁰ However, the country under review also indicated that the creation of new posts depended on whether the need is urgent. In the cases of urgency, the Head of a Department must make the request through the Department of Public Service, which then sends the request to the Cabinet for its approval. The Committee notes that this procedural exception could be open to abuse as nowhere in this system is a definition or example provided for the term ‘urgent.’ Given the potential for abuse that this exception may entail, The Bahamas should consider providing in the Regulations parameters that define ‘urgent’.”*

[40] In light of the above information, the Committee takes note of the need for the country under review to give additional attention to implementation of measure (c). (see Recommendation 1.1.3.4 of Section 1.1.3 of Chapter II of this Report)

Measure d) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Adopt, through the appropriate legislative or administrative procedures, a legal instrument that provides parameters on the use of the exception of ‘very exceptional circumstances’ in cases where a temporary appointment is to exceed twelve months, which also includes a written justification for its application.

[41] In its Response to the Questionnaire,²⁰ the country under review provides the following information with respect to the above measure:

[42] –*“The Bahamas Government Human Resources Policies manual provides for the appointment of individuals on special programmes for appointment into the public service:*

[43] -*“APPOINTMENTS ON SPECIAL PROGRAMMES: Persons appointed to special programmes in the Public Service are not public officers and therefore their years of service are non-pensionable, nor are they entitled to any benefits under the Pensions Act.*

[44] - *These include but are not limited to the following categories:*

¹⁸ See Report of The Bahamas from the Second Round, pgs. 6-7,

http://www.oas.org/juridico/english/mesicic_II_inf_bhs_en.pdf

¹⁹ Ibid.

²⁰ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 14-16

http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

- i. *Unemployment Work Assistance Programme;*
- ii. *Casual Relief Workers;*
- iii. *Special Project Workers;*
- iv. *Sundry Workers;*
- v. *Bahamix Employees;*
- vi. *Appointments by Local Council;*
- vii. *Contract Workers (Bahamians).*

[45] - *If the individuals are considered for appointment to the Public Service it will be on twelve (12) months' probation or temporary month-to-month terms in the first instance."*

[46] Additionally, during the on-site visit, the representatives of the Department of Public Service²¹ reported the following in relation to the foregoing measure:

[47] – *"The Ministry of the Public Service is actively engaged in the regularization and establishment of these persons to the Permanent and Pensionable Establishment. In the past, they were not appointed in less than 5 years, but as the Public Service grew exponentially and became the employer of choice, the appropriate recommendations for their regularization were not received in a timely manner."*

[48] The Committee likewise takes note of the difficulty alluded to by the country under review in its Response to the Questionnaire,²² regarding the foregoing measure:

[49] – *"The difficulty with implementing this recommendation is that the Public Service Commission does not currently have a Comprehensive Human Resource Information Management System and is currently solely utilizing physical paper files. As such, with regards to a temporary appointment there is a high possibility that the expiration of a twelve month period might be overlooked as there is no automated computerized flagging system. This issue is greatly enhanced due to the fact that The Bahamas is an archipelago."*

[50] In light of the above, the Committee takes note of the need for the country under review to give additional attention to implementation of measure (d) and reiterates the need for the country under review to continue addressing this recommendation, given that there are still no rules setting parameters for exceptions to the process under "very exceptional circumstances" in cases where a temporary appointment exceeds twelve months and a reasonable justification is provided in writing. (see Recommendation 1.1.3.5 of Section 1.1.3 of Chapter II of this Report)

[51] At the same time, in light of the information provided by the country under review in its Response to the Questionnaire regarding the difficulty of implementing this recommendation due to the absence of a comprehensive human resource management system and the fact that currently only physical paper files are utilized, so that there is a high possibility of the twelve month limit on temporary appointments being overlooked, the Committee considers that having such a comprehensive system would help the aforementioned Commission achieve greater efficiency in the Public Service. Additionally, The Bahamas should consider, when appropriate, collaboration agreements with universities, institutes and related institutions, for the design and implementation of

²¹ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_deppublic_annex29.pdf, slide 7.

²² See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 17
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

technological support training programs with regard to modernizing their human resource system. The Committee will make a recommendation in that regard. (see Recommendations 1.1.3.6 and 1.1.3.7 of Section 1.1.3 of Chapter II of this Report)

Measure e) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Ensure that the Public Service Commission clearly substantiate when a decision is made not to advertise a vacancy to the general public, as well as ensure the use of modern means of media for publicizing vacancies (e.g. the internet).

[52] Regarding this measure, in its Response to the Questionnaire,²³ the country under review provides the following information with respect to the above measure:

[53] – *“When a vacancy is available within the Public Service, the position is firstly advertised internally to the staff of the Public Service via a Circular which states that an assessment exercise is about to be held. The Circulars are published by way of The Bahamas Government Intranet that all officers are expected to consult on a daily basis, further hard copies are circulated throughout the government service through each respective Permanent Secretary also sent to the various Ministry’s. These Circulars state the effective date of the assessment as well as the criteria, such as years in the post and academic qualifications, each individual must possess in order to be selected to take part in the assessment.”*

[54] - *“Prior to or subsequent to these advertisements, assessment exercises are held. During these exercises, the skills of the employee participant are assessed through examinations and an interview. At the end of the course the successful participants are eligible for promotion. Cabinet determines the number of vacancies which depends on the actual amount of vacancies available within the Public Service. This provides an opportunity for those individuals already in the Public Service the chance to improve themselves educationally and elevate though the Public Service. These assessments are done on a needed basis and depends on the amount of individuals within the Public Service, retiring from the Public Service or dying while in the Public Service”.*

[55] In addition, the Committee observes that, during the on-site visit, the country under review provided additional information regarding Article 33.1 of the Bahamas Public Service Union's Industrial Agreement,²⁴ regarding the position vacancy notice, which reads as follows:

[56] – *“When a vacancy occurs within the Public Service a position vacancy notice will be published internally inviting applications within a period not less than thirty (30) working days from the date of publication. Such notice shall also be copied to the Union. Interested employees shall have the right to apply and be considered, provided then written applications are received within the specific period”.*

[57] The Committee likewise takes note of the difficulty alluded to by the country under review in its Response to the Questionnaire,²⁵ regarding the foregoing measure:

²³ Ibid, pgs. 17-18.

²⁴ Available at: http://www.oas.org/juridico/PDFs/mesicci5_bhs_art33_annex26.pdf

²⁵ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 18 http://www.oas.org/juridico/PDFs/mesicci5_bhs_resp2.pdf

[58] – *“The difficulty with implementing this Recommendation is that advertisements to the general public for positions within the Public Service cannot be made until the advertisement of the vacant positions are made internally. In the majority of instances, the vacancy is filled by an individual who is already in the Public Service; hence, there will be no need to advertise the position to the general public. Post are only advertised for specialized areas which require technical skills which are not readily available within the Public Service”.*

[59] Given the foregoing, the Committee notes that there are still no rules requiring the Public Service Commission to clearly substantiate a decision not to advertise a vacancy to the general public, as well as ensure the use of mass media (such as local and national newspapers or web sites) for publicizing vacancies that have not been filled by individuals already in the Public Service. The Committee also deems it appropriate to reformulate this recommendation so as to make it clearer. (see Recommendations 1.1.3.8 and 1.1.3.9 of Section 1.1.3 of Chapter II of this Report)

Measure f) suggested by the Committee that requires additional attention within the Framework of the Third Round:

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.

[60] In its Response to the Questionnaire,²⁶ the country under review provides the following information with respect to the above measure:

[61] - *“When an incorrect appointment is brought to the attention of the Public Service Commission, disciplinary actions are taken under Regulations 40 of the Public Service Commission Regulation which states:*

[62] *“The following punishments may be ordered as a result of proceedings under these Regulations:*

- a. dismissal;*
- b. reduction in rank;*
- c. reduction in salary;*
- d. deferment of increment;*
- e. withholding of increment;*
- f. reprimand;*
- g. forfeiture of any part of any emoluments...”*

[63] - *“Additionally, Article 114 of The Constitution of The Bahamas provides for the Public Service Board of Appeal (PSBOA). This is an independent board mandated to safeguard the rights of individuals officers. Any public officer who does not agree with the disciplinary actions taken by the Commission may appeal the decision to the PSBOA”.*

[64] - *“See page 35 of the Report of the Public Service Commission of the Commonwealth of The Bahamas for the Years 2014 – 2016²⁷:*

²⁶ Ibid, pgs. 19-20.

Disciplinary Matters Statistics

During the years under review, the Public Service Commission recommended that thirty-eight (38), fifty-two (52) and twenty-nine (29) officers be disciplined under Public Service Commission Regulations 28 and 40 as indicated below:

Table 14

Types of Punishments approved by the Governor General	Year Under Review		
	2014	2015	2016
<i>Dismissal</i>	8	14	7
<i>Reduction in Rank</i>	2	1	0
<i>Reduction in Salary by one increment</i>	1	4	0
<i>Reduction in Salary by two increments</i>	1	1	1
<i>Withholding of Increment</i>	4	1	7
<i>Reprimand</i>	1	3	0
<i>Forfeiture of any part of any emoluments withheld during any period of interdiction under the provisions of Regulations (37)</i>	1	0	0
<i>Extension of Probationary Appointment</i>	20	26	14
<i>Upholding of the Permanent Secretary's decision to dismiss</i>	0	1	0
<i>Retirement in the Public Interest</i>	0	1	0
Total	38	52	29

Besides punishments contained in Public Service Commission Regulations 28 and 40, the Commission expressed its willingness to consider disbarring and officer from promotions for a specified period or deferring a promotion to another exercise.

[65] The Committee notes that the foregoing information alludes to only one statistical table regarding disciplinary matters. However, it does not provide information on outcomes with respect to the hiring of public officers.

[66] In addition, the Committee observes that neither in its Response to the Questionnaire nor during the on-site visit did the country under review provide new information signaling progress with implementing the foregoing measure contained in the recommendation, because that recommendation refers to strengthening legal provisions with regard to Service Commissions, which has not been carried out.

²⁷ Available at: http://www.oas.org/juridico/PDFs/mesicic5_bhs_annex11.pdf

[67] The Committee likewise wishes to recall the reasons for the foregoing recommendation as set out in the Report of the Second Round,²⁸ which stated that:

[68] – *“The Committee observes, in addition, that while there are sanctions for improper influence of a decision by a Service Commission and penalty for supplying false information in any application for employment to a Service Commission, the regulations in place for the Service Commissions do not allow for preventive or corrective measures against irregular selection processes, such as fraudulent competition, or to declare invalid an irregular appointment. The Committee considers it advisable for The Bahamas to include in its regulations provisions that establish control mechanisms, or strengthen existing ones, so that the Service Commissions have the competence to investigate an appointment process and, if found that it was not made on the basis of merit or in the event of error, omission or improper conduct in the selection process, for the revocation of the appointment or for other corrective measures to be taken”.*

[69] In light of the above information, the Committee reiterates the need for the country under review to give additional attention to implementation of measure (f). (see Recommendation 1.1.3.10 of Section 1.1.3 of Chapter II of this Report)

Measure g) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Increase training programs for those responsible for managing public service selection and staffing processes.

[70] In its Response to the Questionnaire,²⁹ the country under review provides the following information with respect to the above measure:

[71] – *“In March 2017, the Policy and Planning Unit of the Ministry of the Public Service and National Insurance published The Bahamas Government Human Resource Policy Manual³⁰. As a result of this publication, the Public Service Centre for Human Resource Development holds bi-monthly training seminars for all Human Resource Managers in the Public Service which focus on ensuring that each Human Resource Manager is adequately knowledgeable of all policies”.*

[72] – *“The Ministry of the Public Service and National Insurance Circular No. 16 of 2017 which has the schedule of courses for August - December 2017 can be found at the following link”:*
<http://www.bahamas.gov.bs/wps/wcm/connect/e6322941-2913-4ddd-996b-a1f6d4c3b95f/Circular+No.+16+of+2017+dated+17.05.17.pdf?MOD=AJPERES&CACHEID=e6322941-2913-4ddd-996b-a1f6d4c3b95f>

[73] – *“Subsequent to the training provided to the Human Resource Managers, they are required to return to their respective Ministry and train their staff using the knowledge obtained from the training seminar. This concept of “training the trainer” ensures that all Human Resource staff within the Public Service are knowledgeable of all policies and procedures in place within the Government Service”.*

²⁸ See Report of The Bahamas from the Second Round, pg. 7,
http://www.oas.org/juridico/english/mesicic_II_inf_bhs_en.pdf

²⁹ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 20
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

³⁰ Available at: <https://www.bahamas.gov.bs/wps/wcm/connect/c706dadb-82df-41f4-a448-f01b60014779/HumanResourcePolicyManual-FinalDraft.pdf?MOD=AJPERES>

[74] The Committee likewise takes note of the difficulty alluded to by the country under review in its Response to the Questionnaire,³¹ regarding the foregoing measure:

[75] – *“There are some instances where a Human Resource Manager for a Ministry may be unable to attend particular sessions held at the Public Service Centre for Human Resources Development (PSCHRD). Subsequently, the HR staff of that particular Ministry will be at a disadvantage as the material presented to them may be inadequate as their ‘trainer’ may have missed information which is not outlined in the Human Resource Policy Manual”.*

[76] The Committee notes that, during the on-site visit, the representatives of the Department of Public Service,³² noted the following regarding the foregoing measure:

[77] – *“We have fortnightly meetings for the Human Resources Managers in each Agency. It is expected that they will adopt a train the trainers approach in each of their respective Ministry’s or Departments. These meetings began in September and continues to the present time”.*

[78] – *“The presentation is then sent via Internet to all HR Managers following each training session”.*

[79] Considering the information provided by the country under review in both its Response to the Questionnaire and during the on-site visit, the Committee reiterates the need for the country under review to give additional attention to implementation of measure (g), bearing in mind that, although there are training programs delivered by the Public Service Centre for Human Resources Development (PSCHRD), the course schedule for the months of August to December 2017 does not include programs specifically geared to training the personnel responsible for administering the processes used to select and hire public service personnel. The Committee deems it appropriate to reformulate this recommendation as to make it clearer. (see Recommendation 1.1.3.11 of Section 1.1.3 of Chapter II of this Report)

[80] In addition, the Committee notes that, during the on-site visit, the representatives of the Department of Public Service, noted that, The Bahamas being an archipelago, communications were often difficult, and funding was not available to enable management personnel to take part in training courses, so that it would be useful to have a web page posting electronic versions of the training courses. The Committee will therefore make a recommendation to the country under review to the effect that it consider taking steps to provide a web page to ensure access by all managerial personnel in public service to online training. (see Recommendation 1.1.3.12 of Section 1.1.3 of Chapter II of this Report)

Measure h) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Increase training and induction programs for those who have recently entered the public service, so as to allow all employees to understand their duties and the functions expected of them.

[81] Bearing in mind that in Chapter III of this Report contains an up-to-date and detailed review regarding “instructions to government personnel to ensure proper understanding of their

³¹ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 21
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

³² PowerPoint presentation: http://www.oas.org/juridico/PDFs/mesicic5_bhs_deppublic_annex29.pdf, slide 9.

responsibilities and the ethical rules governing their activities” (Article III.3 of the Convention), including, inter alia, training and induction programs for new entrants into the Public Service, the Committee believes that this recommendation is redundant.

1.1.2. New developments with Respect to the provisions of the Convention on Systems of Government Hiring

1.1.2.1. New developments with Respect to the Legal Framework

[82] In its Response to the Questionnaire,³³ the country under review reported new developments related to the legal framework, which are presented as follows:

[83] –*“The implementation of a checklist as a new feature which would provide clarity for personnel within the Department of Public Service to make a determination on the requirements for new appointments into the Public Service.”*

[84] –*“Subsequent to the aforementioned new policy there is to be found at Annex I of The Bahamas Government Human Resources Policy a checklist outlining the documentation requirements, which are to accompany a recommendation from the requisite Ministry/Department, for the hiring of persons into the Public Service. Included within the checklist are:*

- *Verification/Certified Qualifications such as BJC, BGCSE, or Equivalent;*
- *Certified Degree;*
- *Certified Official Final Transcript; and*
- *Certified Copies of Documented Experience.”*

[85] –*“The ‘Out-of-Turn Acting Appointments Policy’³⁴ was established to fill vacancies that occurred after interviews for the Public Schools Administrators exercise was completed. The vacancies were due to unforeseen circumstances eg. unexpected resignations, prolonged illness, such as absence on maternity leave, early retirement, or death”.*

[86] –*“On 31st March 2017, the Ministry of Public Service published ‘The Bahamas Government Human Resources Policies Manual’³⁵”.*

1.1.2.2 New Developments with Respect to Technology

[87] In its Response to the Questionnaire, the country under review made no reference at all to any new developments in respect of its technological development in this area.

1.1.2.3 Results

[88] Neither in its Response to the Questionnaire nor during the on-site visit did the country under review provide information regarding outcomes related to either the hiring of public servants or the

³³ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 10 -16, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

³⁴ Available on page 31 of the Report of the Public Service Commission of the Commonwealth of The Bahamas for the Year 2014 - 2016.

³⁵ Available at: <https://www.bahamas.gov.bs/wps/wcm/connect/c706dcbd-82df-41f4-a448-f01b60014779/HumanResourcePolicyManual-FinalDraft.pdf?MOD=AJPERES>

challenges. In light of the above information, the Committee will make a recommendation in that regard to the country under review. (see Recommendation 1.1.3.13 of Section 1.1.3 of Chapter II of this Report)

1.1.3. Recommendations

[89] In light of the observations formulated in sections 1.1.1 and 1.1.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 1.1.3.1 Adopt, through the appropriate legislative or administrative procedures, a legal instrument that explicitly provides that government hiring into the Public Service is to be based on the principle of merit.(see paragraph 23 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.2 Publish and make readily available both the evaluation forms and master score cards used to evaluate candidates for positions to be filled from within the Public Service. (see paragraph 24 in Section 1.1.1 of Chapter II of this Report).
- 1.1.3.3 Adopt, through the appropriate legislative or administrative procedures, a legal instrument that provides parameters on the use of the exception of ‘serious inconvenience’ that also includes a written justification for its application. (see paragraph 33 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.4 Adopt, through the appropriate legislative or administrative procedures, a legal instrument that provides parameters on the use of the ‘urgent’ procedural exception in the creation of new posts. (see paragraph 40 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.5 Adopt, through the appropriate legislative or administrative procedures, a legal instrument that provides parameters on the use of the exception of ‘very exceptional circumstances’ in cases where a temporary appointment is to exceed twelve months, which also includes a written justification for its application. (see paragraph 50 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.6 Allocate to the Public Services Commission the resources needed to acquire a comprehensive human resource management system, bearing in mind the availability of resources. (see paragraph 51 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.7 Consider, when appropriate, collaboration agreements with universities, institutes and related institutions, for the design and implementation of technological support training programs with regard to modernizing their human resource system. (see paragraph 51 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.8 Ensure that the Public Service Commission clearly substantiate when a decision is made not to advertise a vacancy to the general public. (see paragraph 59 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.9 Ensure that mass media (such as local and national newspapers or web pages) are used to advertise and fill vacancies in the Public Service through external competition, in order

to assure the principles of openness, equity, and efficiency under the Convention. (see paragraph 59 in Section 1.1.1 of Chapter II of this Report)

- 1.1.3.10 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 paragraph 69 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.11 Take the necessary steps to ensure participation in training programs for personnel responsible for administering the processes for selecting and hiring Public Service personnel, including evaluations upon completion of training. (see paragraph 79 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.12 Have the appropriate authority adopt measures needed for the design, development, and implementation of a web page for posting mandatory training programs for personnel responsible for administering the processes for selecting and hiring Public Service personnel and making participation on training programs mandatory, bearing in mind the availability of resources. (see paragraph 80 in Section 1.1.1 of Chapter II of this Report)
- 1.1.3.13 Compile detailed annual statistics on entry into the Public Service through internal and external competitions, relating to on-probation appointments; on-contract appointments; appointments on temporary terms; and appointments by the hour, day, or week and part-time appointments (Commonwealth of the Bahamas General Orders – Chapter 2). Likewise, provide statistics on permanent and pensionable appointments, and on the number of hiring opportunities or vacancies in any one given year for each of those or other types of contract; how many competitions were carried out or foregone, how many people took part in them, and how many people entered the Public Service in a given year. In addition, report on how many appeals were filed against decisions handed down in selection processes and the outcomes of those appeals, with a view to identifying challenges and recommending corrective measures, where necessary. (see paragraph 88 in Section 1.1.1 of Chapter II of this Report)

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

1.2.1. Follow up on Implementation of the Recommendations Formulated in the Second Round

Recommendation 1.2:

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

Measure a) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Consider the establishment of a single legal and regulatory framework which encompasses all the branches and agencies of the State.

[90] In its Response to the Questionnaire,³⁶ the country under review presents information and new developments with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[91] –“ *The Government of the Commonwealth of The Bahamas has proposed the Public Procurement Bill, 2018³⁷ which is intended to specifically address the legal and regulatory framework for procuring goods and services.*”

[92] –“*The Financial Administration and Audit Act, (FAA), CH.359 Sections 56, 57, 58 & 59, establishes the Government Tenders Board and outlines measures that are to be adopted by government agencies and the country, in order to regularize the procurement of goods and services.*”

[93] Additionally, the Committee notes that, during the on-site visit, the representatives of the Ministry of Finance³⁸ noted the following regarding the foregoing measure:

[94] -“*The specific actions that have been carried out to implement the above recommendation is the establishment of Financial Administration and Audit Act, (1975) (FAA), CH.359 Section 56, 57, 58 & 59. This Act established the Government Tenders Board and outlines measures that are to be adopted by government agencies and the country to regularize the procurement of goods and services.*”

[95] –“*The Procurement Bill, 2018 will address will encompass all three branches of government.*”

[96] The Committee notes that the previous information provided by the country under review in its Response to the Questionnaire and during the on-site visit had already been reviewed by the Committee in the Report of the Second Round for The Bahamas.³⁹

[97] With respect of the above information, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (a) and reiterates the need for the country under review to continue to give attention thereto, since, although a Bill exists, a single legal and regulatory framework has not yet been adopted that covers all State branches and agencies of the State, as provided for in said measure. The legal framework for procurement is scattered over several instruments, such as the Financial Management and Audits Act, Financial Rules of Procedure, and the Supreme Court Act. The Committee also deems it useful to suggest to The Bahamas to consider the possibility of issuing a new comprehensive legal framework for public procurement that encompasses the whole legal system applicable to public procurement and whose provisions are based on the principles of openness, equity, and efficiency upheld in the Convention. The Committee considers worth reframing this recommendation as to make it clearer. (see Recommendation 1.2.3.1 of Section 1.2.3 of Chapter II of this Report)

³⁶ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 24-25
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

³⁷ Available at: http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp_annex1.pdf

³⁸ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slides 1 and 22

³⁹ See Report of The Bahamas from the Second Round, pg. 8,
http://www.oas.org/juridico/english/mesicic_II_inf_bhs_en.pdf

Measure b) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Consider the appointment of a private individual outside of the public service and Government to the Government Tenders Board.

[98] In its Response to the Questionnaire,⁴⁰ the country under review presented information and new developments with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[99] - *“The proposed Public Procurement Bill, 2018, (Regulation), Section 12 identifies the various associations, professional bodies, civil society and a nominee from the leader of the opposition party – who would constitute the Tender’s Board.”*

[100] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance,⁴¹ noted the following regarding the foregoing measure:

[101] - *“The proposed Public Procurement Bill , 2018 specifically addresses the consideration for the appointment of private individuals outside of the Public Service and Government to the Government Tenders Board.”*

[102] - *“E.g.1. Bahamas Chamber of Commerce; 2. Any other professional body recognised by the Government”.*

[103] With respect to the above information, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (b) and reiterates the need for the country under review to continue to give attention thereto, since, although a Bill exists, a comprehensive legal and regulatory framework has not yet been adopted that considers the appointment of a private individual outside of the public service and Government to the Government Tenders Board, as provided in said measure. (see Recommendation 1.2.3.2 of Section 1.2.3 of Chapter II of this Report)

Measure c) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implement provisions outlining clear procedures for the selection of contractors when either public tendering or selective tendering procedures are utilized.

[104] In its Response to the Questionnaire,⁴² the country under review presented information and new developments with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[105] – *“There are clear procedures in place for the selection of contractors, as the Ministry of Finance publishes invitations for tenders through several different sources:*

⁴⁰ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 25-26

http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁴¹ PowerPoint presentation: http://www.oas.org/juridico/PDFs/mesicic5_bhs_deppublic_annex29.pdf, slide 9.

⁴² See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 26-28

http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

- i. *The Bahamas Government’s website, <http://laws.bahamas.gov.bs/cms/en/>*
- ii. *Local media i.e. newspapers; and*
- iii. *With the Inter-American Development Bank (“IDB”) and the Caribbean Development Bank when a project relates to or is being funded by these entities.*

[106] - *“Also, there are two basic methods of procurement in The Bahamas:*

1. *Public Tendering, where all interested members of the public are invited to submit bids, despite any prerequisites. The invitations for bids are advertised via the print media, via The Bahamas Government’s website: www.bahamas.gov.bs; and*
2. *Select Tendering, which is done when there are specialized services to be provided and contractors who meet the relevant criteria/prerequisite are known to the respective Government Agencies.”*

[107] – *“Part 111, Section 24-33 of the proposed Public Procurement Bill provides clear procedures for methods of procurement when selecting contractors for public tendering process.”*

[108] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance,⁴³ noted the following regarding the foregoing measure:

[109] - *“Invitations for tenders are published through The Bahamas Government’s website in the local media and also with the assistance of the Inter-American Development, Caribbean Development Bank when a project relates to or is being funded by the bank.”*

[110] With respect to the above information, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (c) and reiterates the need for the country under review to continue to give attention thereto, since, although a Bill exists, no provisions have been implemented outlining clear procedures for the selection of contractors when either public tendering or selective tendering procedures are utilized, as provided in said measure. (see Recommendation 1.2.3.3 of Section 1.2.3 of Chapter II of this Report)

Measure d) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implement provisions that provide for the publication of tendering opportunities in appropriate media, their conditions for participation and the time, method and place for submission of bids.

[111] In its Response to the Questionnaire,⁴⁴ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[112] - *“The Tender Bid documentation are published within the local media with the specification requirements.”*

⁴³ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slide 3

⁴⁴ Ibid. Pgs. 28-29.

[113] - *“The requisite documents are published on the Government’s website and it is important to note that assistance is available from various international agencies i.e. IDB and CBD for publication.”*

[114] With respect to the above information, the Committee notes that the country under review did not provide a legal norm or document containing it.

[115] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance⁴⁵ noted the following regarding the foregoing measure:

[116] - *“The Tender Document outlines the specific closing date and time for submission of bid.”*

[117] - *“Instructions are indicated for bidders to submit original and two copies of documents address to the Chairman of the Tenders Board and deposited in the Tenders Board box located at the Ministry of Finance.”*

[118] With respect to the above information, the Committee notes that the country under review did not provide a legal norm or document containing it.

[119] The Committee likewise wishes to recall the reasons for the foregoing recommendation as set out in the Report of the Second Round,⁴⁶ which stated that:

[120] - *“The legislation does not provide for publication in appropriate media, including the Internet, of information on the opening and initiation of tender processes, their conditions for participation, and the time, method and place for submission of bids.”*

[121] With respect to the above information, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (d) and reiterates the need to continue giving attention thereto given that, while a Bill exists, provisions have not yet been adopted for the publication of tenders in appropriate media or regarding the conditions for participation and the time, method, and place for submission of bids, as provided for in said measure. (see Recommendation 1.2.3.4 of Section 1.2.3 of Chapter II of this Report)

Measure e) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Study the possibility of publishing, when appropriate, pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereon.

[122] In its Response to the Questionnaire,⁴⁷ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

⁴⁵ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slide 4

⁴⁶ See Report of The Bahamas from the Second Round, pg. 9, http://www.oas.org/juridico/english/mesicic_II_inf_bhs_en.pdf

⁴⁷ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 29-30 http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

[123] - *“The actions that have been undertaken to implement the recommendation are as follows, currently, pre-bidding terms and conditions are documented in the tender documents which are prepared by various agencies and, in most cases, the Ministry of Works (for International loan projects). This is where interested persons may ascertain all of the relevant information in order to make a determination whether or not they will submit a bid.”*

[124] - *“The documentation is also published in the local media and on the Government’s website and the same may be submitted to the following email address: tendersboardfina@bahamas.gov.bs.*

[125] - *“Further, those persons interested in submitting a bid are able to obtain a copy of the documentation from the relevant Ministry/Department and submit their bid directly to The Chairman of the Tenders Board, Ministry of Finance.”*

[126] With respect to the above information, the Committee notes that the country under review did not provide a legal norm or document containing it. The Committee does note, however, during the on-site visit, that The Bahamas presented and tested a new e-procurement and Suppliers Registry System, which it considered as a best practice.

[127] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance noted the following regarding the foregoing measure:⁴⁸

[128] - *“In February, 2018 the Government of The Bahamas implemented an eProcurement and Supplier Registry which will allow suppliers to obtain information with regards to procurement opportunities, pre-bidding terms and conditions.”*

[129] - *“The system also allow suppliers to submit queries and receive comments regarding procurement of goods and services.”*

[130] With respect to the above information, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (e) and reiterates the need to continue to give attention thereto given that, although The Bahamas is in the process of implementing a new e-Procurement and Supplier Registry, which is currently at its initial stage, the system does not yet provide for publication, where applicable, of the draft bidding conditions in such a way that interested parties can familiarize themselves with them and possibly make comments, as provided in said measure. (see Recommendation 1.2.3.5 of Section 1.2.3 of Chapter II of this Report)

Measure f) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implement provisions outlining clear procedures for the selection of a sole contractor without competitive bidding as well as provide a written justification for doing so.

[131] In its Response to the Questionnaire,⁴⁹ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

⁴⁸ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slide 5

⁴⁹ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 31-32
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

[132] - *“The Selective Tender shall satisfy conditions for Public Tender and may be identified, in the first instance, by the Project Officer on the basis of history of performance of the contractor, that has performed similar works.”*

[133] - *“The initial list is subject to administrative consideration by routing through the Head of Section, Deputy Director, Director of Public Works, Permanent Secretary and Minister. Changes to the list may be recommended by any of the administrative officers, with the final decision being made by the Minister responsible.”*

[134] - *“With the new proposed legislation namely the Public Procurement Bill section 24 outlines that a procuring entity shall, as part of the procurement planning process, select the most appropriate method of procurement for each requirement.”*

[135] - *“The choice of procurement method shall take into account:*

- (a) *the estimated value of the procurement, calculated in accordance with the valuation rules set out in the Second Schedule;*
- (b) *the potential sources for the procurement including:*
 - i. *the competitiveness of the national and international market for the goods, works or services; and*
 - ii. *the likely interest of potential national and international bidders, given the size and nature of the requirement;*
- (c) *the nature of the goods, works or services required; and*
- (d) *to add justification for selection of procurement method.*

[136] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance,⁵⁰ noted the following regarding the foregoing measure:

[137] - *“In Section 30 of the proposed Public Procurement Bill (2018)-Limited Bidding outlines and justifies the selection of sole contractor without competitive bidding.”*

[138] In light of the above, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (f) and reiterates the need to continue to give attention thereto given that, while a Bill exists, provisions have not yet been adopted that establish clear procedures for selecting a sole contractor without competitive bidding as well as written justification, as provided for in said measure. (see Recommendation 1.2.3.6 of Section 1.2.3 of Chapter II of this Report)

Measure g) suggested by the Committee that requires additional attention within the Framework of the Third Round:

⁵⁰ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slide 6

Implement provisions that provide for objective selection factors or criteria in the evaluation of bids, including those of public works.

[139] In its Response to the Questionnaire,⁵¹ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[140] -*“The specific steps that have been made to implement the recommendation, is the proposed enactment of the Public Procurement Bill, which provides at Part IV Section 49 to 56 for the criteria in the examination and evaluation of Bids.”*

[141] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance,⁵² noted the following regarding the foregoing measure:

[142] -*“The selection factors or criteria used for the evaluation of bids:*

- 1. Knowledge of work scoped*
- 2. Submission of all required documents*
- 3. Contractor is Tax Compliant*
- 4. Bid amount is in line with Ministry’s in-house estimates*
- 5. Historical performance of Contractor”⁵³*

[143] In addition, the Committee notes that the above information provided by the country under review mentions the factors or criteria used to evaluate tenders, which may be a practice in The Bahamas. However, it did not provide a legal norm or document containing that information.

[144] With respect to the above information, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (g) and reiterates the need to continue to give attention thereto given that, while a Bill exists, provisions have not yet been adopted that establish objective factors or criteria for evaluating bids, including public works bids, as provided for in said measure. (see Recommendation 1.2.3.7 of Section 1.2.3 of Chapter II of this Report)

Measure h) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implement provisions that require that the outcome of a bid evaluation is substantiated clearly and accurately, when applicable.

⁵¹ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 33
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁵² PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slide 7

⁵³ In its comments to the draft preliminary report, the country under review noted the following: *“The selection factors or criteria used for the evaluation of bids also includes: a Tax Compliance Certificate and Variance below/above 15%”*.

[145] In its Response to the Questionnaire,⁵⁴ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[146] -“*Tender Evaluations presented to the Tenders Board must contain a comparative analysis table, the selection criteria, scope of works, the experience and/or capability of the vendors, the in-house estimate, justification for the procurement of the services/goods, justification for the recommended vendor, and a Tax Compliance Certificate for the recommended vendor, if that vendor is local.*”

[147] With respect to the above information, the Committee notes that the country under review did not provide a legal norm or document containing it.

[148] In addition, the country under review indicates the following: -“*Sections 49-56 of the proposed Public Procurement Bill, 2018 outline the new provisions that clearly substantiate the examination and evaluation process for bids.*”

[149] -“*Registered Suppliers will receive notifications about procurement opportunities and complete all stages of the tendering process electronically.*”

[150] In light of the above, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (h) and reiterates the need to continue to give attention thereto given that, while a Bill exists, provisions have not yet been adopted that require clear and precise justification of the outcome of a bid evaluation, as provided for in said measure. (see Recommendation 1.2.3.8 of Section 1.2.3 of Chapter II of this Report)

Measure i) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Reevaluate the threshold of fifty thousand dollars that trigger the involvement of the Board in the tendering process.

[151] In its Response to the Questionnaire,⁵⁵ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[152] -“*Pursuant to the Financial Regulations found in Chapter 359 Section 21 of the Financial Administrative and Audit Act (Commencement 14th February, 1975) the threshold is \$50,000.*”

[153] -“*The proposed Procurement Bill maintains the threshold of \$50,000 but not exceeding \$250,000, for Government contracts, to be considered by the Tender committee, (section 17).*”

[154] -“*A recommendation has been submitted to the legal team to revise the Public Procurement Bill to increase the in-house (Government agencies) threshold to \$250,000 and the Procurement Board from \$251,000.*”

⁵⁴ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 34 http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁵⁵ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 35 http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

[155] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance,⁵⁶ noted the following regarding the foregoing measure:

[156] –*“The thresholds are under review under the following sections in the Public Procurement Bill (2018):*

- *Section 13 -Duties and powers of Board.*
- *Section 14 -Functions of procuring entities.”*

[157] With respect to the above information, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (i) and reiterates the need to continue to give attention thereto given that, while a Bill exists, the legal team is still in the process of reviewing the threshold in the Public Procurement Bill. (see Recommendation 1.2.3.9 of Section 1.2.3 of Chapter II of this Report)

Measure j) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implement provisions that require awards to be publicized in a sufficiently justified or substantiated announcement.

[158] In its Response to the Questionnaire,⁵⁷ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[159] –*“This recommendation has not been implemented as currently, the awarding of contracts are not published.”*

[160] –*“The new eProcurement system website will allow suppliers/vendors to obtain information and submit responses through the <https://suppliers.gov.bs/> website.”*

[161] –*“It is proposed that the supplier registry information system will automatically publish the award of all successful vendors.”*

[162] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance,⁵⁸ noted the following regarding the foregoing measure:

[163] –*“Currently no awards of contracts are published.”*

[164] –*“The system will automatically publish the successful vendors.”*

[165] The Committee likewise wishes to recall the reasons for the foregoing recommendation as set out in the Report of the Second Round,⁵⁹ which stated that:

⁵⁶ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slide 9

⁵⁷ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 36-37
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁵⁸ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slide 10

⁵⁹ See Report of The Bahamas from the Second Round, pg. 11,
http://www.oas.org/juridico/english/mesicic_II_inf_bhs_en.pdf

[166] - *“The Committee also notes that the legislation is silent regarding the publication of awards in a sufficiently justified or substantiated announcement, including aspects relating the selection decision, so that any person or any supervisory body may fully understand the essential justification for the selection of the bid, in order to lend objectivity, transparency and openness to the tendering process.”*

[167] In light of the above, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (j) and reiterates the need to continue to give attention thereto given that, while a Bill exists, provisions have not yet been adopted that require awards of contracts to be published and sufficiently justified in an announcement, as provided for in said measure. (see Recommendation 1.2.3.10 of Section 1.2.3 of Chapter II of this Report)

Measure k) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implement provisions that require prior planning sufficiently in advance of the launch of procurement process, such as preparing studies, designs and technical evaluations, and to assess the appropriateness and timeliness of the purchase.

[168] In its Response to the Questionnaire,⁶⁰ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[169] - *“In accordance with Section 22 & 23 of the proposed Public Procurement Bill, 2018, a procuring entity shall prepare a procurement plan for each individual procurement requirement.”*

[170] - *“The proposed Public Procurement Bill, 2018, in accordance with Part III Section 22 & 23 is anticipated to address the provisions that require prior planning in advance of the launch of the procurement process.”*

[171] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance,⁶¹ noted the following regarding the foregoing measure:

[172] - *“The Government of the Commonwealth of The Bahamas (GOB) has embarked on an initiative to modernize the Government’s procurement systems to be more aligned to regional and international standards including new provisions for promoting the participation of Micro, Small and Medium Enterprises (MSMEs).”*

[173] - *“Having received funding equivalent to US\$331,396 from the Inter-American Development Bank (IDB), the GOB contracted consulting services which prepared “AS-IS” and “TO-BE” structures, and prepare scope of works for the designs and implemented Electronic Procurement and Supplier Registry System.”*

[174] In light of the above, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (k) and reiterates the need to continue to give attention thereto given that, while a Bill exists, provisions have not yet been adopted that require prior planning

⁶⁰ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 38
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁶¹ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slide 11

well in advance of the launch of the procurement process, including the preparation of studies, design, and technical evaluations, or assessment of the appropriateness and timeliness of the purchase, as provided for in said measure. (see Recommendation 1.2.3.11 of Section 1.2.3 of Chapter II of this Report)

Measure l) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Establish a governing or administering authority responsible for the internal and external audit, control and oversight of the government procurement system.

[175] In its Response to the Questionnaire,⁶² the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[176] -*“The Constitution of The Bahamas, provides at Article 136 for the establishment of an office and functions of the Auditor General.”*

[177] -*“The FAAA Part III authorizes the Auditor General and the Director of Internal Audit to have oversight of the government’s audit activities.”*

[178] -*“At section 11 of the proposed Public Procurement Bill, 2018 there is the establishment of an authority for the accounts of Ministry’s and Departments, and for each financial year, to be audited annually by auditors appointed with the approval of the Minister, from among members of The Bahamas Institute of Chartered Accountants.”*

[179] In light of the above, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (l) and reiterates the need to continue give attention thereto given that, while a Bill exists, a governing or administering authority has not yet been established in The Bahamas to be in charge of internal and external audit, control and oversight of the government procurement system, as provided for in said measure. (see Recommendation 1.2.3.12 of Section 1.2.3 of Chapter II of this Report)

Measure m) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Develop and implement provisions that punish public officials in cases of non-compliance with the laws and regulations that govern public procurement, without prejudice to any other responsibilities under the existing system.

[180] In its Response to the Questionnaire,⁶³ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

⁶² See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 39

http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁶³ Ibid. pgs. 40-41

[181] - “Currently, there are no enforcement measures undertaken to punish public officers for non-compliance. However, Section 27 FAAA, outlines provisions for surcharge against any person in the relevant amount for non-compliance.”

[182] - “Section 20 of the proposed Integrity Commission Bill, 2017 is intended to correct this as the section provides for the creation of an offence in respect of procuring tenders:

20. (1) A public official who, in relation to a contract for performing any work, providing a service or supplying articles or material:

- (a) accepts, agrees or offers to accept, whether directly or indirectly, any benefit for himself or for another person for awarding a tender to a particular person;
- (b) gives, agrees or offers to give, whether directly or indirectly, any benefit to another person for the purpose of obtaining any benefit for himself or for another person as a reward for awarding a tender to a particular person;
- (c) gives confidential information to a person in order to enable that person to tender or not to tender in a particular manner in order to obtain an unfair advantage in tendering; or
- (d) receives, whether directly or indirectly, any benefit from a person who has submitted a tender or received any Government contract, commits an offence.’’

[183] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance,⁶⁴ noted the following regarding the foregoing measure:

[184] - “Section 74 of the proposed Public Procurement Bill, 2018 will outline measures for enforcement.”

[185] In light of the above, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (m) and reiterates the need to give attention thereto given that, while a Bill exists, provisions have not yet been developed and implemented that punish public officials in cases of non-compliance with the rules governing public procurement, without prejudice to any other responsibilities under the existing system, as provided for said measure. (see Recommendation 1.2.3.13 of Section 1.2.3 of Chapter II of this Report)

Measure n) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Strengthen and increase the scope of use of electronic communications, such as the internet for publicizing the tender opportunities, status of bids and awards and the progress in the execution of major projects.

⁶⁴ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slide 13

[186] In its Response to the Questionnaire,⁶⁵ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[187] -*“The e-Procurement and Supplier Registry website will be accessible to all government registered Vendors and the general public with an interest in government tendering activities.”*

[188] -*“It is important to note that full access to the website will be available for both buyers and suppliers. Registered Suppliers will receive notifications about procurement opportunities and will have the ability to complete all stages of the tendering process electronically.”*

[189] -*“This means of tendering bids will increase the number of users and enhance measures of customer satisfaction.”*

[190] -*“The electronic system will facilitate standardised procurement processes, including data collection, monitoring and maintenance. The eProcurement system will result in cost savings for the Government and thus result in a greater value for money.”*

[191] -*“The website is <https://suppliers.gov.bs/>.”*

[192] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance,⁶⁶ noted the following regarding the foregoing measure:

[193] -*“Status of bids and awards of contracts will also be published on the website.”*

[194] In light of the above, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (n) and reiterates the need to give attention thereto given that, while a Bill exists, use is not being made of electronic communications, such as the Internet, to publicize tender opportunities, along with the status of bids and awards and the progress made with the execution of major projects, as provided for in said measure. (see Recommendation 1.2.3.14 of Section 1.2.3 of Chapter II of this Report)

Measure o) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means.

[195] In its Response to the Questionnaire,⁶⁷ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[196] -*“The Government of the Commonwealth of The Bahamas (GOB) has embarked on an initiative to modernize the Government’s procurement systems to be more aligned to regional and*

⁶⁵ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 42

http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁶⁶ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slide 14

⁶⁷ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 44-45

http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

international standards, including new provisions for promoting the participation of Micro, Small and Medium Enterprises (MSMEs)."

[197] - *"The Government of The Bahamas will establish and implement the e-procurement and the Integrated Electronic Procurement supply registry, so that the acquisition of goods and services may be carried out through those means."*

[198] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance,⁶⁸ noted the following regarding the foregoing measure:

[199] - *"The eProcurement system will be utilized to procure goods and services throughout Government. This system will track all activities on procurement."*

[200] In light of the above, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (o) and reiterates the need to give attention thereto given that, while a Bill exists, both the e-procurement system and the integrated Electronic Procurement supply registry, provided for in said measure, are still being developed. (see Recommendation 1.2.3.15 of Section 1.2.3 of Chapter II of this Report)

Measure p) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Establish a centralized registry of contractors of works, goods or services, mandatory to all State bodies and dependencies, which contemplate the possibility to ensure that such registration also include a list of sanctioned contractors, in order to foster the principles of openness, equity and efficiency provided for in the Convention.

[201] In its Response to the Questionnaire,⁶⁹ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[202] - *"The electronic registry of suppliers and MSMEs is intended to respond to the expressed needs and expectations of public agencies and private sector stakeholders. Such stakeholder groups include, but are not limited to, officials in various government agencies from whom primary and secondary source data that relates to procurement was collected."*

[203] - *"In addition to the above, this project to create and adopt an electronic registry of suppliers and MSMEs will use information technology to integrate the GTB procurement processes, enhance transparency and ensure efficiency, and effectiveness throughout the system."*

[204] - *"The project will facilitate alignment of regional and international standards in the area of procurement. This supports also the MIF's prolonged efforts in promoting the competitiveness of MSMEs through building capacity, providing opportunities and removing barriers to entry."*

⁶⁸ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slide 15

⁶⁹ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 45-47
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

[205] - *“It is intended for the electronic supplier registry system to be user friendly; making it easy for the MSME’s to input the required information, and the Ministry of Finance, PPU, to meet its data collection mandate.”*

[206] - *“The system will integrate with the current Treasury Vendor ID system and the new VAT registration systems. Agencies will also encourage vendors to update or register in the e-supplier registry.”*

[207] In light of the above, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (p) and reiterates the need to give attention thereto given that, while a Bill exists, the e-supplier registry providing also for the possible inclusion of a list of sanctioned contractors is still being developed. (see Recommendation 1.2.3.16 of Section 1.2.3 of Chapter II of this Report)

Measure q) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implement a mechanism by legislative or administrative means to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons.

[208] In its Response to the Questionnaire,⁷⁰ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[209] - *“It is anticipated that the proposed Public Procurement Bill, 2018, Section 54-56, will provide that a procurement entity shall disqualify a bidder if the procuring entity finds that the information submitted in a bid concerning the bidder’s qualifications is false and misleading.”*

[210] - *“Section 55 Disqualification. states that:*

1. *A procuring entity shall disqualify a bidder if the procuring entity finds that the information submitted in a bid concerning the bidder's qualifications is false or misleading.*
2. *A procuring entity may disqualify a bidder if the procuring entity:*
 - a) *finds that the information submitted in a bid concerning the bidder's qualifications is materially inaccurate or materially incomplete; or*
 - b) *gives written notice to the bidder to remedy in writing, within ten days after the bidder's receipt of the notice, the material inaccuracies or material omissions in a bid concerning the bidder's qualifications and the bidder fails or refuses to do so within the time specified.”*

[211] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance,⁷¹ noted the following regarding the foregoing measure:

⁷⁰ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 47-49
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁷¹ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slide 17

[212] - *“In accordance with the proposed Public Procurement Bill , 2018 Section 54-56, a procurement entity shall disqualify a bidder if the procuring entity finds that the information submitted in a bid concerning the bidder’s qualifications is false and misleading, etc.”*

[213] In light of the above, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (q) and reiterates the need to give attention thereto given that, while a Bill exists, no mechanism exists to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons, as provided for in said measure. (see Recommendation 1.2.3.17 of Section 1.2.3 of Chapter II of this Report)

Measure r) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implement provisions that facilitate the participation of citizen overseers or watchdogs in monitoring the execution of contracts where the nature, importance or magnitude so warrants, in particular public works contracts.

[214] In its Response to the Questionnaire,⁷² the country under review provides the following information with respect to the above measure:

[215] – *“Currently, there are no provisions in the proposed Public Procurement Bill to facilitate the participation of citizen’s overseers or watchdogs in the monitoring of the execution of contracts. This recommendation will be submitted to the working team for their consideration to be included within the proposed Bill.”*

[216] In light of the above information, the Committee reiterates the need for the country under review to give additional attention to implementation of measure (r). (see Recommendation 1.2.3.18 in Section 1.2.3 of Chapter II of this Report)

Measure s) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implement specific provisions allowing for challenges to the procurement process at the administrative level, which detail the procedure to be followed by government entities in handling and responding to such challenges and appeals.

[217] In its Response to the Questionnaire,⁷³ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[218] – *“The proposed Public Procurement Bill, 2018, Part V Section 64 provides for complaints to be lodged by an aggrieved bidder or potential bidder, the provision is as follows:*

64. Complaints.

⁷² See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 49-50
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁷³ Ibid. Pgs. 51-52

- (1) *A potential or actual bidder who claims to have suffered, or to be likely to suffer, loss or injury due to a breach of a duty imposed on a procuring entity by this Act may at any stage apply by way of complaint to the procuring entity for a review of the procurement proceedings.*
- (2) *The procuring entity shall not process an application made pursuant to subsection (1) unless:*
- a) the complaint which is the subject of the application is made in writing;*
 - b) the complaint identifies the specific act of omission or commission alleged to contravene this Act and the bidding documents; and*
 - c) the complaint is made in respect of a contract award.*
- (3) *A procuring entity shall process a complaint by way of a review of the procurement proceedings where such complaint:*
- a) concerns alleged improprieties in the solicitation of bids or applications to pre-qualification; and*
 - b) such alleged improprieties were not apparent prior to bid opening but have come to light after bid opening.”*

[219] - *“Further, the proposed section 63, will establish the Procurement Review Tribunal to allow for challenges and appeals to the procurement process.”*

[220] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance,⁷⁴ noted the following regarding the foregoing measure:

[221] - *“Currently there is no provisions for responding to challenges and appeals.*

[222] - *“Section 59 in the proposed Public Procurement Bill (2018) to facilitate provision for a Procurement Review Tribunal.”*

[223] In light of the above, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (s) and reiterates the need to give attention thereto given that, while a Bill exists, there are still no specific provisions allowing for challenges to the procurement process at the administrative level, which detail the procedure to be followed by government entities in handling and responding to such challenges and appeals, as provided for in said measure. (see Recommendation 1.2.3.19 of Section 1.2.3 of Chapter II of this Report)

1.2.2. New developments with Respect to the provisions of the Convention on Government Systems for the Procurement of Goods and Services

1.2.2.1. New developments with Respect to the Legal Framework

⁷⁴ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slide 19

a) Scope

[224] In its Response to the Questionnaire,⁷⁵ the country under review points out that the Government of The Bahamas prepared a Public Procurement Bill, which is being reviewed in Parliament, covering all three branches of government. Its purpose is to specifically address the legal and regulatory framework for the procurement of goods and services, including:

[225] - *"The proposed Public Procurement Bill, 2018, (Regulation), Section 12 identifies the various associations, professional bodies, civil society and a nominee from the leader of the opposition party, who would constitute the Tender's Board."*

[226] - *"Part 111, Section 24-33 of the proposed Public Procurement Bill provides clear procedures for methods of procurement when selecting contractors for Public tendering process."*

[227] - *"With the new proposed legislation namely the Public Procurement Bill section 24 outlines that a procuring entity shall, as part of the procurement planning process, select the most appropriate method of procurement for each requirement."*

[228] - *"Section 49-56 of the proposed Public Procurement Bill, 2018 outlines the new provisions that will be adopted in the examination and evaluation of bids."*

[229] - *"Sections 49-56 of the proposed Public Procurement Bill, 2018 outline the new provisions that clearly substantiate the examination and evaluation process for bids."*

[230] - *"Registered Suppliers will receive notifications about procurement opportunities and complete all stages of the tendering process electronically."*

[231] - *"The New Public Procurement Bill, 2018 Section 13(a) revision has been submitted to the legal team to increase the in-house (Government agencies) threshold to \$250,000 and the Procurement Board from \$251,000."*

[232] - *"The proposed Public Procurement Bill, 2018, in accordance with Part III Section 22 & 23 is anticipated to address the provisions that require prior planning in advance of the launch of the procurement process."*

[233] - *"At section 11 of the proposed Public Procurement Bill, 2018 there is the establishment of an authority for the accounts of Ministry's and Departments, and for each financial year, to be audited annually by auditors appointed with the approval of the Minister, from among members of The Bahamas Institute of Chartered Accountants."*

[234] - *"Section 20 of the proposed Integrity Commission Bill, 2017 is intended to correct this as the section provides for the creation of an offence in respect of procuring tenders."*

[235] - *"The Public Procurement Bill, Part VII Section 73 addresses all measures pertaining to public officials non-compliance with the laws and regulations that governs public procurement."*

⁷⁵ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 24-53
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

[236] - *“Section 54-56, will provide that a procurement entity shall disqualify a bidder if the procuring entity finds that the information submitted in a bid concerning the bidder’s qualifications is false and misleading.”*

[237] - *“Part V Section 64 of the Public Procurement Bill, 2018 provides for complaints to be lodged by an aggrieved bidder or potential bidder.”*

[238] - *“Section 59 of the Public Procurement Bill, 2018 - The Procurement Review Tribunal shall:*

- a. be an independent, ad hoc tribunal;*
- b. exercise its functions, when required, by panels constituted in accordance with Regulations;*
- c. have an official seal that shall be judicially noticed;*
- d. consist of the President and such other members as may be prescribed by the regulations; and*
- e. develop its own rules of procedure.”*

[239] - *“The Tribunal shall have exclusive jurisdiction to hear and determine all appeals, matters and disputes referred to it under this Act or the regulations or conferred upon it by any other law.”*

[240] - *“An appeal from a decision of the Tribunal shall lie to the Supreme Court.”*

[241] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance reported that the enactment of the Bill is estimated for the end of this 2018 fiscal year.

[242] The following government agencies played an active part in the preparation of this Bill: i) the Ministry of Finance; ii) the Office of the Attorney General and Ministry of Legal Affairs; iii) the Ministry of Public Works; the Ministry of Education; and the Department of Information Technology.

b) Observations

[243] First, the Committee would like to recognize the new regulatory measures adopted by the country under review to continue to push forward with the creation, maintenance, and strengthening of its systems of government hiring as referred to in Article III (5) of the Convention.

[244] Having said that, it believes it useful to make a number of comments regarding the advisability of strengthening, developing, and/or adapting certain provisions that have to do with those new developments, notwithstanding the observations made by the Committee in Section 1.2.1. above in connection with the follow-up on implementation of the recommendations made to the country under review in the Report from the Second Round.

[245] As indicated earlier in paragraph [97], the country under review will implement a new legal framework for public sector procurement covering all three branches of government. The Committee notes that this Bill is currently being reviewed by the Parliament of The Bahamas. Therefore, currently The Bahamas does not have a sole comprehensive legal instrument governing public sector

procurement of goods and services. The legal framework for procurement is scattered over several legal instruments, such as the Financial Management and Audits Act, Financial Rules of Procedure, and the Supreme Court Act. The Committee also deems it useful to suggest that The Bahamas consider enacting a new comprehensive legal framework for public procurement that encompasses the whole legal system applicable to public procurement and whose provisions are based on the principles of openness, equity, and efficiency as set out in the Convention.

[246] In addition, when referring to difficulties encountered in implementing the aforementioned measures, the country under review noted in its Response to the Questionnaire,⁷⁶ that there have been delays in implementing these measures due to the fact that the Bill has not been approved, although initially it had been expected to become law during fiscal year 2017.

[247] Second, the Committee takes note that, during the on-site visit, representatives of the Ministry of Finance indicated that the latest version of the Bill was being reviewed by the Parliament of The Bahamas. That document has not been posted online, nor has it been shared with other sectors of civil society for analysis and comments. Bearing in mind the new Bill being proposed for the legal framework governing public procurement in The Bahamas, the Committee notes that the country under review should consider publishing the draft Bill so that interested parties can be better prepared. The Committee will make a recommendation in that regard. (see Recommendation 1.2.3.20 of Section 1.2.3 of Chapter II of this Report)

[248] Finally, the Committee notes that, during the on-site visit, the country under review mentioned the efforts undertaken to modernize and strengthen the new legal framework for public procurement and points to the importance of all interested parties being aware of the pending changes to come in The Bahamas once the comprehensive new procurement rules are adopted, including a new e-Procurement system and Suppliers Registry. In light of the above, the country under review should consider taking comprehensive sensitization and awareness-raising initiatives, subject to the availability of funds, to ensure that all interested parties are aware of the changes proposed in the new Bill. Moreover, within available resources, the country under review should consider providing government agencies with the human and material resources needed to facilitate extensive use of the new e-Procurement System. The Committee will make a recommendation in that regard. (see Recommendations 1.2.3.21 and 1.2.3.22 of Section 1.2.3 of Chapter II of this Report)

1.2.2.2. New Developments with Respect to Technology

[249] In its Response to the Questionnaire,⁷⁷ the country under review lists the following developments:

[250] -*“The Government of the Commonwealth of The Bahamas (GOB) has embarked on an initiative to modernize the Government’s procurement systems to be more aligned to regional and international standards, including new provisions for promoting the participation of Micro, Small and Medium Enterprises (MSMEs).”*

⁷⁶ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 27
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁷⁷ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 28-44
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

[251] - *“Under the ICT4GP grant from IDB, the Government is in the process of implementing a Supplier’s Registry and an e-procurement website.”*

[252] - *“The system is a centralised electronic registry of suppliers and Micro Small and Medium Enterprises (MSMEs) which will be managed and maintained by the Ministry of Finance, Procurement Unit, with access granted to Government Ministry’s and Departments.”*

[253] - *“These initiatives will allow online tendering and dispatch automated invitations to registered suppliers, along with web-based publication. However, the local media will still be utilized.”*

[254] - *“The new system eProcurement website (<https://suppliers.gov.bs/>) will allow suppliers/vendors to both obtain information and provide responses via the website.”*

[255] - *“It is proposed that the supplier registry information system will automatically publish the award of all successful vendors.”*

[256] - *“It is envisaged that vendors will be permitted to access the Electronic Registry and Supply system through the government’s website and at strategic locations throughout The Bahamas.”*

[257] - *“Since then, the project has been divided into several phases, these are as follows:*

- *Phase 1 (Inception, Research & Investigation) – completed.*
- *Phase 2.1 (Development and Implementation of the Software including Hardware Requirements) - completed.*
- *Phase 2.2 (Awareness Campaign Execution) – In progress*
- *Phase 3 (Installation of IT Infrastructure & Data Migration) – In progress*
- *Phase 4 (User Acceptance Testing) – In Progress*
- *Phase 5 (Training and Communication) – Pending”*

[258] The Committee notes that, during the on-site visit, the representatives of the Ministry of Finance,⁷⁸ noted the following:

[259] - *“The e-Procurement and Suppliers Registry was established in February 2018. At present 208 vendors are registered in the system. The website <https://suppliers.gov.bs/> is still under construction however the same is anticipated to be fully operational by the end of fiscal year 2018.”*

[260] - *“There is an active campaign for public awareness: i) Billboards; ii) Advertisements-PSA; iii) Social Media – Facebook, YouTube page; iv) Promotional items and v) publications⁷⁹.”*

[261] - *“Currently eight (8) Train the Trainers have been assigned to facilitate training with relevant stakeholders and government officials on the e-Procurement and Supplier Registry System.”*

[262] With regard to the above information, the Committee believes that the country under review should consider strengthening the Ministry of Finance, by assigning it the resources needed not only to complete the e-Procurement and Suppliers Registry <https://suppliers.gov.bs/>, but also to maintain it and thus be in a position to perform its functions appropriately, within the funds available. The

⁷⁸ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel3_annex34.pdf, slides 23-26

⁷⁹ Ibid. Slide 24

Committee, will make a recommendation in that regard. (see Recommendation 1.2.3.23 of Section 1.2.3 of Chapter II of this Report)

1.2.2.3. Results

[263] With respect to results, the Committee notes that, during the on-site visit, representatives of the Ministry of Finance ⁸⁰ provided the following information:

[264] - *“Statistical data is not publicly available on the award of contracts by public tendering, selective tendering or sole contractors.”*

[265] - *“Currently, the Tender documents are filed within the Ministry of Finance Registry by date of meetings and contract awards are listed and attached to each Tenders Board meeting file.”*

[266] Bearing in mind that the country under review did not provide information on results with regard to systems for government procurement of goods and services and that it considers that such information would be useful for identifying challenges and recommending any applicable corrective measures, the Committee will recommend that the country under review consider compiling detailed annual statistics on the results of said systems, with respect to such aspects as the procurement procedures used, the number and value of contracts awarded through competitive and non-competitive procedures, and the total number of contracts per year for the past five years. (see Recommendation 1.2.3.24 of Section 1.2.3 of Chapter II of this Report)

[267] Finally, the Committee deems it useful, for the aforementioned purposes, that the country under review consider compiling detailed statistics on an annual basis on results in terms of disqualifications or suspensions of contractors broken down according to the reason the sanction was imposed and identification of the contractor. Consideration could also be given to keeping and publishing a list of contractors/suppliers removed from the Registry, with a view to identifying challenges and recommending corrective measures, where necessary. Likewise, the country under review could consider publishing a list of the sanctions imposed as a way of increasing transparency in the system for government procurement of goods and services. The Committee will make a recommendation in that regard. (see Recommendations 1.2.3.25 and 1.2.3.26 of Section 1.2.3 of Chapter II of this Report)

1.2.3. Recommendations

[268] In light of the comments made in Sections 1.2.1 and 1.2.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

1.2.3.1. Consider enacting a new comprehensive legal and regulatory framework which encompasses all the branches and agencies of the State applicable to government procurement of goods, works, and services and embodies the principles of openness, equity, and efficiency upheld in the Convention. (see paragraph 97 in Section 1.2.1 of Chapter II of this Report)

1.2.3.2. Consider the appointment of a private individual outside of the public service and Government to the Government Tenders Board. (see paragraph 103 in Section 1.2.1 of Chapter II of this Report)

⁸⁰ Ibid. Slide 29

- 1.2.3.3.** Implement provisions outlining clear procedures for the selection of contractors when either public tendering or selective tendering procedures are utilized. (see paragraph 110 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.4.** Implement provisions that provide for the publication of tendering opportunities in appropriate media, their conditions for participation and the time, method and place for submission of bids. (see paragraph 121 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.5.** Study the possibility of publishing, when appropriate, pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereon. (see paragraph 130 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.6.** Implement provisions outlining clear procedures for the selection of a sole contractor without competitive bidding as well as provide a written justification for doing so. (see paragraph 138 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.7.** Implement provisions that provide for objective selection factors or criteria in the evaluation of bids, including those of public works. (see paragraph 144 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.8.** Implement provisions that require that the outcome of a bid evaluation is substantiated clearly and accurately, when applicable. (see paragraph 150 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.9.** Reevaluate the threshold of fifty thousand dollars that trigger the involvement of the Board in the tendering process. (see paragraph 157 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.10.** Implement provisions that require awards to be publicized in a sufficiently justified or substantiated announcement. (see paragraph 167 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.11.** Implement provisions that require prior planning sufficiently in advance of the launch of procurement process, such as preparing studies, designs and technical evaluations, and to assess the appropriateness and timeliness of the purchase. (see paragraph 174 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.12.** Establish a governing or administering authority responsible for the internal and external audit, control and oversight of the government procurement system. (see paragraph 179 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.13.** Develop and implement provisions that punish public officials in cases of non-compliance with the laws and regulations that govern public procurement, without prejudice to any other responsibilities under the existing system. (see paragraph 185 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.14.** Strengthen and increase the scope of use of electronic communications, such as the internet for publicizing the tender opportunities, status of bids and awards and the progress in the execution of major projects. (see paragraph 194 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.15.** Develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means. (see paragraph 200 in Section 1.2.1 of Chapter II of this Report)

- 1.2.3.16.** Establish a centralized registry of contractors of works, goods or services, mandatory to all State bodies and dependencies, which contemplate the possibility to ensure that such registration also include a list of sanctioned contractors, in order to foster the principles of openness, equity and efficiency provided for in the Convention. (see paragraph 207 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.17.** Implement a mechanism by legislative or administrative means to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons. (see paragraph 213 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.18.** Implement provisions that facilitate the participation of citizen overseers or watchdogs in monitoring the execution of contracts where the nature, importance or magnitude so warrants, in particular public works contracts. (see paragraph 216 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.19.** Implement specific provisions allowing for challenges to the procurement process at the administrative level, which detail the procedure to be followed by government entities in handling and responding to such challenges and appeals. (see paragraph 223 in Section 1.2.1 of Chapter II of this Report)
- 1.2.3.20.** Make public the Public Procurement Bill, 2018. (see paragraph 247 in Section 1.2.2 of Chapter II of this Report)
- 1.2.3.21.** Take steps to inform all stakeholders are aware of the changes to take place in The Bahamas once the new comprehensive regulations governing public procurement enter into force, including use of the new e-Procurement system and Suppliers Registry. (see paragraph 248 in Section 1.2.2 of Chapter II of this Report)
- 1.2.3.22.** Provide government agencies with the human and material resources needed to keep them at the level of preparedness required to facilitate, subject to the availability of funding, extensive use of the e-Procurement System and Suppliers Registry. (see paragraph 248 in Section 1.2.2 of Chapter II of this Report)
- 1.2.3.23.** Make all necessary arrangements to secure the human and financial resources needed to complete the new e-Procurement system and ensure that it is maintained so that it is able to perform its functions appropriately, subject to the availability of funding. (see paragraph 262 in Section 1.2.2 of Chapter II of this Report)
- 1.2.3.24.** Compile detailed statistics on an annual basis on procurement procedures used, specifying, for instance, the total number and value of contracts awarded per year, broken down by procurement value, quantity, and method, in such a way as to facilitate a comprehensive assessment of results obtained in this area, with a view to identifying challenges and recommending corrective measures, where necessary. (see paragraph 266 in Section 1.2.2 of Chapter II of this Report)
- 1.2.3.25.** Compile detailed annual statistics on disqualifications or suspensions of contractors/suppliers, broken down by categories specifying the reason for the sanction and identifying the contractor involved, along with a list of contractors/suppliers removed from the Registry, with a view to identifying challenges and recommending corrective measures, where necessary. (see paragraph 267 in Section 1.2.2 of Chapter II of this Report)

1.2.3.26. Publish the disqualifications or suspensions imposed on contractors, naming the contractor involved and with information broken down by reason for the imposition of the sanction, and publish the list of contractors/suppliers removed from the Registry. (see paragraph 267 in Section 1.2.2 of Chapter II of this Report)

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

2.1 Follow-up on implementation of the recommendations formulated in the Second Round

Recommendation suggested by the Committee that requires additional attention within the Framework of the Third Round:

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.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings.

[269] In its Response to the Questionnaire,⁸¹ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[270] -“ At present protection is afforded to persons who offer evidence in criminal proceedings of this nature through Sections 11(1) and 12(1) of the Criminal Evidence (Witness Anonymity) Act, 2011, Part III Anonymity in Criminal Proceedings provides as follows:

11. Witness anonymity order.

- 1. A court may make a witness anonymity order to ensure that the identity of the witness is not disclosed in or in connection with the criminal proceedings.*

12. Application for witness anonymity order.

- 1. An application for a witness anonymity order may be made to the court by the prosecutor or the defendant.”*

[271] -“Further, the Justice Protection Act, Chapter 64A was implemented to protect persons appearing as witnesses in judicial proceedings by providing for their participation in a programme designed for ensuring their safety as would enable them to carry out their civic duty as witnesses with

⁸¹ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 54-57, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

confidence when there is a threat to their safety or property arising from or related to their carrying out of that duty and to provide for matters incidental to judicial proceedings.”

[272] - *“When faced with such difficulty the Royal Bahamas Police Force in collaboration with the Attorney General will intervene in locating the Witness and placing he or she in Witness Protection pursuant to Section 9 of the Justice Protection Act, Chapter 64A which provides:*

“9. (1) The Minister in consultation with the Attorney General shall establish a programme to be known as the Justice Protection Programme for the purpose of providing to participants in accordance with this Act, protection and assistance.

(2) Without prejudice to subsection (3) and notwithstanding anything to the contrary in this Act the Minister responsible for Foreign Affairs in consultation with the Minister may enter into:

- (a) a reciprocal arrangement with the government of a foreign jurisdiction to enable a witness who is involved in activities of a law enforcement agency in that jurisdiction to be admitted to the programme;*
- (b) an arrangement with an international criminal court or tribunal to enable a witness who is involved in activities of that court or tribunal to be admitted to the programme;*
- (c) any Memorandum of Understanding or Agreement with representatives of a foreign state for the purpose of the carrying out of the programme.*

(3) No person may be admitted to The Bahamas pursuant to any such agreement or arrangement as is mentioned in subsection (2) without the consent of the Minister responsible for immigration nor admitted to the programme without the consent of the Minister.

(4) Any person who is admitted from abroad into the programme shall be required to enter into a witness undertaking and the provisions of this Act regarding any breach of terms and conditions pertaining to the programme shall mutatis mutandis apply to that person as they apply to a witness of an approved authority.”

[273] - *“The proposed Integrity Commission Bill, 2017, Section 25 provides for complaints to be lodged by a person with reasonable grounds to believe that a person in public life has committed an act of corruption, the section provides as follow:*

25. Complaints of acts of corruption.

- (1) Where a person has reasonable grounds to believe that a person in public life has committed an act of corruption, he may, orally or in writing and with or without disclosing his identity, make a complaint to the Commission.*

- (2) *The Commission may, where necessary, require a person who makes a complaint to produce supporting evidence or documentation.*
- (3) *No person shall be obligated or permitted to disclose the name or address of a person who makes a complaint, or state any matter which may lead to the identity of such person being known.*
- (4) *No action, suit, prosecution or other proceedings shall be instituted against a person who makes a complaint in good faith in pursuance of the provisions of this Act.*
- (5) *A person who takes any harmful action against another person, including interfering with the other person's lawful employment or occupation, on the ground that the person has made a complaint under this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years, or to both."*

[274] When alluding to the difficulties encountered in implementing measure (a), the country under review noted in its Response to the Questionnaire,⁸² that currently the recommendation has not been fully implemented because the legislation would come into effect with the promulgation of the proposed Integrity Commission Bill, 2017, which was expected to occur in early 2018.⁸³

[275] In light of the above, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (a) and reiterates the need to give attention thereto given that Sections 11(1) and 12(1) of Part III of the Criminal Evidence (Witness Anonymity) Act of 2011 refer only to protection of witnesses in judicial proceedings, without specifying the protection measures to be taken over and beyond protecting the anonymity of witnesses in general and not specifically those reporting acts of corruption. Moreover, no reference is made of protection of witnesses in administrative proceedings. While a bill does exist, a legal and regulatory framework has not yet been adopted that protects persons who, in good faith, reports acts of corruption and that includes, inter alia, protection for persons who report such acts subject to investigation in administrative or judicial proceedings, as envisaged in measure (a) of said recommendation. In addition, the Committee believes that it would be beneficial for the country under review to take as a guide for that purpose the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses adopted by the Committee.⁸⁴ For that reason, it deems it pertinent to reformulate the aforementioned recommendation. (See Recommendation 2.3.1 in Section 2.3 of Chapter II of this Report.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Third Round:

⁸² See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 56-57, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁸³ On June 4, 2018, the Technical Secretariat of the Committee noted that the proposed Integrity Commission Bill, 2017 had still not been enacted.

⁸⁴ Available at: http://www.oas.org/juridico/PDFs/model_law_reporting.pdf

Measures to protect not only the physical integrity of whistleblowers and their families, but also to provide protection in the workplace, especially when the person is a public official and the acts of corruption involve his superior or co-workers.

[276] In its Response to the Questionnaire,⁸⁵ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[277] -*“The proposed Integrity Commission Bill, 2017, Section 25 provides for complaints to be lodged by a person with reasonable grounds to believe that a person in public life has committed an act of corruption.”*

[278] -*“The Integrity Commission Bill, 2017 seeks to provide a general duty for “public officials” to report acts of corruption in accordance with section 27:*

[279] -*“The proposed Integrity Commission Bill, 2017, Section 27. Duty of public officials to report acts of corruption:*

(1) A public official who knows or suspects that another person has been, is, or is likely to be engaged in an act of corruption shall make a report to the Commission.

(2) A public official who fails to report his knowledge or suspicion as required by subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding six months, or to both.”

[280] -*“The proposed establishment of an Integrity Commission is the first of its kind in The Bahamas as it gives persons the opportunity to report acts of corruption to an independent agency that will investigate any act of corruption reported to them.”*

[281] -*“Section 25 (3) No person shall be obligated or permitted to disclose the name or address of a person who makes a complaint, or state any matter which may lead to the identity of such person being known; and”*

[282] -*“Section 25 (4) No action, suit, prosecution or other proceedings shall be instituted against a person who makes a complaint in good faith in pursuance of the provisions of this Act.”*

[283] -*“These provisions are intended to protect the person(s) who report acts of corruption providing for anonymity in respect of the information provided to the Commission.”*

[284] The “Integrity Commission Bill, 2017”, is available at the following link:
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp_annex3.pdf.”

[285] In light of the above, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (b) and reiterates the need to give attention thereto, since, although a bill exists, protection measures have not yet been adopted not just in respect of the bodily integrity of the whistleblower and his family but also to protect his job status, especially

⁸⁵ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 57-59,
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

when the person is a public official and the acts of corruption may involve superiors or co-workers. The Committee deems it worth re-framing this recommendation so as to make it clearer. (See Recommendation 2.3.2 in Section 2.3 of Chapter II of this Report.)

[286] It should be noted, in this regard, that subsequent to the on-site visit, representatives of the civil society organization “Organization for Responsible Governance”, sent the Technical Secretariat a document in which they provide analysis and recommendations for amending the proposed Integrity Commission Bill, 2017, to make it more comprehensive.⁸⁶

Measure c) suggested by the Committee that requires additional attention within the Framework of the Third Round:

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.

[287] In its Response to the Questionnaire,⁸⁷ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[288] - *“The proposed Integrity Commission Bill, 2017, Section 30 provides a mechanism for anonymous reporting and for complaints to be lodged by a person with reasonable grounds to believe that a person in public life has committed an act of corruption, the section provides as follow:*

[289] - *“Section 30 Action by Director of Public Prosecutions: The Director of Public Prosecutions shall, as soon as practicable after receiving any report and documents under this Act, in any case in which he considers that a person ought to be prosecuted for an offence, institute and undertake criminal proceedings against the person and shall inform:*

- (a) the Commission of any action taken following the receipt of a report from the Commission against a person in public life;*
- (b) the appropriate Service Commission where a report relates to a public officer;*
- (c) the appropriate commission, statutory board, public authority or body with which the person in public life is employed.”*

[290] In light of the above, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (c) and reiterates the need to give attention thereto given that, while a bill exists, existing mechanisms for reporting, such as anonymous reporting or protection of identity reporting, have not yet been expanded in such a way as to guarantee the personal security and the confidentiality of the identity of public servants and private citizens who in good faith report acts of corruption. (See Recommendation 2.3.3 in Section 2.3 of Chapter II of this Report.)

⁸⁶ Available at: www.oas.org/juridico/PDFs/IVinf_hemis_en.pdf

⁸⁷ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 59-60, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

Measure d) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it.

[291] The Committee notes that, neither in its Response to the Questionnaire⁸⁸ nor during the *on-site* visit, did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[292] In light of the above, the Committee reiterates the need for the country under review to give additional attention to implementation of measure (d). (See Recommendation 2.3.4 in Section 2.3 of Chapter II of this Report.)

Measure e) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens.

[293] In its Response to the Questionnaire,⁸⁹ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[294] -“ *The specific measure that has been implemented to provide protection to witnesses generally are available under the Justice Protection Act, Chapter 64A, specifically section 8 which provides for the safety of witnesses as outlined as follows:*

[295] -“*Where the Attorney General after consultation with the Director of Public Prosecutions and the Commissioner of Police determines that it would be in the interest of the safety of a witness that measures be taken to place the witness within an environment either within or without The Bahamas for the purpose of ensuring that safety and the attainment of the interest of justice during the relevant period, the Attorney General may, subject to subsection (2) refer the matter to the Administrative Centre to take such measures as it considers necessary for the purpose of placing the witness in the Justice Protection Programme.*”

[296] -“*The Attorney General shall ensure that prior to the reference to the Administrative Centre the witness has signed in the prescribed manner a written request for measures to be taken to secure his safety and that any measures to be taken are such that would enable compliance with any directions that may subsequently be given by a court.*”

[297] In light of the above, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (e) and reiterates the need to give attention thereto given that, while Justice Protection Act, Chapter 64A exists, protection mechanisms have not yet been incorporated that offer witnesses the same guarantees as public servants and private citizens. (See Recommendation 2.3.5 in Section 2.3 of Chapter II of this Report.)

⁸⁸ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 61, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁸⁹ Ibid. pg. 62

Measure f) suggested by the Committee that requires additional attention within the Framework of the Third Round:

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.

[298] In its Response to the Questionnaire,⁹⁰ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[299] -“ *The Justice Protection Act, Chapter 64A protects persons appearing as witnesses in judicial proceedings by providing for their participation in a programme designed for ensuring their safety as would enable them to carry out their civic duty as witnesses with confidence when there is a threat to their safety or property arising from or related to their safety or property arising from or related to their carrying out of that duty and to provide for matters incidental to judicial proceedings.*

[300] -“*Section 9(2) states: ‘ Without prejudice ... and notwithstanding anything to the contrary in this Act the Minister responsible for Foreign Affairs in consultation with the Minister may enter into:*

- a. a reciprocal arrangement with the government of a foreign jurisdiction to enable a witness who is involved in activities of a law enforcement agency in that jurisdiction to be admitted to the programme;*
- b. an arrangement with an international criminal court or tribunal to enable a witness who is involved in activities of that court or tribunal to be admitted to the programme;*
- c. any Memorandum of Understanding or Agreement with representatives of a foreign state for the purpose of the carrying out of the programme.’*

[301] -“*Further, section 9 (4) states: ‘Any person who is admitted from abroad into the programme shall be required to enter into a witness undertaking and the provisions of this Act regarding any breach of terms and conditions pertaining to the programme shall mutatis mutandis apply to that person as they apply to a witness of an approved authority.’”*

[302] In light of the above, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (f) and reiterates the need to give attention thereto given that, while Justice Protection Act, Chapter 64A exists, other forms of international cooperation have not yet been implemented to address this issue, such as the technical assistance and cooperation provided for by the Inter-American Convention, as well as exchanges of experiences, training, and mutual assistance. (See Recommendation 2.3.6 in Section 2.3 of Chapter II of this Report.)

Measure g) suggested by the Committee that requires additional attention within the Framework of the Third Round:

⁹⁰ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 63-64, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

A simplified whistleblower protection application process.

[303] The Committee notes that, neither in its Response to the Questionnaire⁹¹ nor during the *on-site* visit, did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[304] In light of the above, the Committee reiterates the need for the country under review to give additional attention to implementing measure (g). The Committee deems it worth reformulating the recommendation to make it clearer, to which end The Bahamas could be guided by the *Model Law to facilitate and encourage the reporting of acts of corruption and to protect whistleblowers and witnesses*, which is posted at the anti-corruption portal of the Americas.⁹² (See Recommendation 2.3.7 in Section 2.3 of Chapter II of this Report.)

[305] Regarding this measure, the Committee notes that Article 23 of the *Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses*, defines an application by a whistleblower and/or witness for a protection measure as follows:

[306] -“*An application for additional protective measures is an action whereby a whistleblower and/or witness of acts of corruption requests the granting of such measures, because he or she deems the physical and/or psychological integrity of his/her person, or that of his or her family group, or the safety of his or her property to be actually or potentially threatened, and/or where there is an undue alteration in his/her working conditions that suggest an intent to retaliate against and harm the whistleblower and/or witness*”

[307] In addition, Article 10 of that Model Law includes a series of administrative measures to facilitate the reporting of an act of corruption:

[308] -“*In order to ensure timely and confidential attention to reports of acts of corruption, the competent authority responsible for receiving them shall implement at least the following organizational and operational changes: 1. Appointment of specialized officers for receiving and dealing with the reports. 2. Document processing and secure storage procedures different from standard procedures. 3. Provision of a request form in accordance with the model attached to this law. 4. Assignment of a specific secure telephone hotline for receiving the reports. 5. Creation of a specific secure e-mail account for dealing with the reports. 6. Arrangements for reports through intermediaries, without revealing the whistleblower’s identity. Accordingly, said Model Law includes a Form for Reporting Acts of Corruption and Requesting Protective Measures for Whistleblowers and Witnesses of Acts of Corruption.*”

Measure h) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Provisions which provide for administrative and criminal sanctions for the failure to observe the rules and/or duties relating to protection.

⁹¹ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 64,65, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁹² Available at: http://www.oas.org/juridico/ley_modelo_proteccion.pdf

[309] In its Response to the Questionnaire,⁹³ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[310] -*“According to section 79 of the proposed Integrity Commission Bill, 2017, ‘An employer or any person in authority over a public official who subject that official to a detriment by reason only of his having made a protected disclosure under section 71 commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years, or both.”*

[311] -*“Section 24 of the Justice Protection Act outlines the offences related to the privacy of the programme and regulations:*

1. *‘A person who, without lawful authority, discloses information:*
 - a. *about the identity or location of a person who is or has been a participant;*
 - b. *that compromises the safety or security of a participant or the integrity of the Programme, commits an offence.*

2. *A person who is or has been a participant or a person who has undergone assessment for inclusion in the Justice Protection Programme and discloses:*
 - a. *the fact of such participation or assessment;*
 - b. *information as to the way in which the Programme operates;*
 - c. *information about any officer of the Administrative Centre who is or has been involved in the Programme;*
 - d. *the fact that he has signed a Witness Undertaking; or*
 - e. *any details of a Witness Undertaking that he has signed, commits an offence unless he has been authorised by the Centre to make the disclosure.*

3. *A person who:*
 - a. *offers a bribe or other inducement to any person employed in the administration of this Act, for the purpose of obtaining information which could prejudice the safety or security of a participant or the integrity of the Programme; or*
 - b. *(b) being a person employed in the administration of this Act, accepts any bribe or other inducement in exchange for the information referred to i paragraph (a), commits an offence.*

4. *A person who commits an offence under subsection (1), (2) or (3) is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for five years.*

⁹³ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 65-66, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf.

5. *A person who without reasonable excuse fails to return the documents referred to in section 21(5) in accordance with that section, commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three years.’’*

[312] In light of the above, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (h) and reiterates the need to give attention thereto given that, while Justice Protection Act, Chapter 64A exists, with provisions for criminal sanctions, provisions have not yet been adopted that envisage administrative sanctions for the failure to observe the rules and/or duties relating to protection. The Committee deems it worth re-framing the recommendation to make it clearer. (See Recommendation 2.3.8 in Section 2.3 of Chapter II of this Report.)

Measure (i) suggested by the Committee that requires additional attention within the Framework of the Third Round:

The respective competence of judicial and administrative authorities with respect to this area, clearly distinguishing one from the other.

[313] The Committee notes that, neither in its Response to the Questionnaire⁹⁴ nor during the *on-site* visit, did the country under review provide new information illustrating progress with implementing the aforementioned measure contained in the recommendation.

[314] The Committee observes that The Bahamas has a Justice Protection Act, Chapter 64A, establishing spheres of competence for judicial authorities. However, it is not currently clear which authority has competence in administrative proceedings.

[315] In light of the above, the Committee reiterates the need for the country under review to give additional attention to implementation of measure (i). (See Recommendation 2.3.9 in Section 2.3 of Chapter II of this Report.)

2.2 New developments regarding the provision in the Convention on systems for protecting public servants and private citizens who, in good faith, report acts of corruption

2.2.1 New developments with Respect to the Legal Framework

a. Scope

[316] In its Response to the Questionnaire,⁹⁵ the country under review mentioned the existence in The Bahamas of an Integrity Commission Bill, 2017, which the Committee already took note of in Section 2.1 of Chapter II of this report.

⁹⁴ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 67, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

⁹⁵ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pg. 56, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

[317] As mentioned above, in its Response to the Questionnaire,⁹⁶ the country under review noted that The Bahamas has a “*Criminal Evidence (Witness Anonymity) Act, 2011, Part III*”, Sections 11(1) and 12(1), *affording protection to persons who offer evidence in criminal proceedings.*

[318] Furthermore, in its Response to the Questionnaire,⁹⁷ the country under review mentioned that: “*The Justice Protection Act, Chapter 64A was implemented to protect persons appearing as witnesses in judicial proceedings.*”

[319] In addition, The Justice Protection Act, Chapter 64A, at section 12: offers protection or assistance or both to participants in Offences under the Prevention of Bribery Act, among others.

b) Observations

[320] With regard to new developments relating to the regulatory framework, the Committee already took note of the promulgation of the Justice Protection Act - Chapter 64A) of 2008, which was already analyzed in the section on follow-up to each of the corresponding measures in the recommendation.

2.2.2 New developments with respect to technological aspects

[321] The country under review neither in its Response to the Questionnaire nor during the on-site visit did not provide information regarding these kinds of developments.

2.2.3 Results

[322] The Committee notes that neither in its response to the questionnaire nor during the on-site visit did the country under review provide any information about objective results in relation to systems for protecting public servants and private citizens who in good faith report acts of corruption because it has no such systems.

2.3 Recommendations

[323] In light of the comments made in Section 2.1 and 2.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 2.3.1 Establish protection mechanisms for persons who report acts of corruption subject to investigation in administrative proceedings and specific judicial proceedings. (see paragraph 275 in Section 2.1 of Chapter II of this Report)
- 2.3.2 Adopt protection mechanisms for whistleblowers and their families, not just in respect of their bodily integrity but also with regard to their job status, especially when the person is a public official and the acts of corruption may involve superiors or co-workers. (see paragraph 285 of Section 2.1 of Chapter II of this Report)
- 2.3.3 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

⁹⁶ Ibid. pg. 54.

⁹⁷ Ibid. pgs. 54-62.

of public servants and private citizens who in good faith report acts of corruption. (see paragraph 290 of Section 2.1 of Chapter II of this Report)

- 2.3.4 Establish mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it. (see paragraph 292 of Section 2.1 of Chapter II of this Report)
- 2.3.5 Adopt witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens. (see paragraph 297 of Section 2.1 of Chapter II of this Report)
- 2.3.6 Adopt 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. (see paragraph 302 of Section 2.1 of Chapter II of this Report)
- 2.3.7 Establish a simplified, readily available process for filing applications for protection measures for whistleblowers and witnesses of acts of corruption. (See paragraph 304 in Section 2.1 of Chapter II of this Report.)
- 2.3.8 Adopt provisions which provide for administrative sanctions for the failure to observe the rules and/or duties relating to protection. (see paragraph 312 of Section 2.1 of Chapter II of this Report)
- 2.3.9 Establish the respective competence of judicial and administrative authorities with respect to this area, clearly distinguishing one from the other. (see paragraph 315 of Section 2.1 of Chapter II of this Report)

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

3.1. Follow up on Implementation of the Recommendations Formulated in the Second Round

Recommendation:

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

[324] In its Response to the Questionnaire,⁹⁸ the country under review provides the following information with respect to the above measure, which the Committee notes as a step that contributes to progress in its implementation:

[325] - *“The Integrity Commission Bill, 2017 is a bill for an act to provide for the establishment of a body to be known as the Integrity Commission which will promote and enhance ethical conduct for*

⁹⁸ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 68,69, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

Parliamentarians, Senators, Public Officials and other persons. This aim of this act is to provide measures for the prevention, detection and investigation of act of corruption.”

[326] - *“Section 19 of The Integrity Commission Bill, 2017 outlines twelve (12) instances where acts or omissions of a government official is an act of corruption. They are as follows:*

- a. *Solicits or accepts, whether directly or indirectly, any article, money or other benefit or advantage for himself or another person for doing an act in the performance of his duty as a public official,*
- b. *In the performance of his duty as a public official, performs or omits to perform any of his duties in an public body for the purpose of obtaining any benefit for himself or any other person;*
- c. *Offers, promises or gives directly or indirectly to a public official any article, money, or other benefit, for doing or omitting to do any act in the performance of his duties as a public official;*
- d. *solicit , demands, accepts, or receives, whether directly or indirectly, from any private or public corporation, including a transnational corporation or any individuals from another State, any payment, gift or other advantage, as undue consideration for performing or refraining from the performance of his duties in the conduct of international business as a public official;*
- e. *Knowingly or recklessly allows his private interest to conflict with his public duties or to improperly influence his conduct in the performance of his duties as a public official;*
- f. *Improperly uses for his benefit or that of a third party any classified or confidential information that he has obtained in this duties as a public official;*
- g. *Communicated to an unauthorized person any classified or confidential information obtained in the performance of his duties as a public official for the purpose of assisting that person in obtaining a benefit;*
- h. *Improperly uses for his benefit or that of a third party, any property belonging to the Government or any statutory body or government controlled company to which he has access as a result of or in the course of the performance of his functions;*
- i. *Improperly influences the appointment of, or dismissal, suspension or other disciplinary action against, a public official;*
- j. *Hinders, delays or interferes with the performance of a duty of a public official for the purpose of obtaining a benefit for himself or another person;*
- k. *During the performance of his official duties pursues a course of conduct with respect to another public officer which amounts to offensive sexual comments, gestures or physical contact or other conduct of that kind;*
- l. *Pursues a course of conduct by which he exploits his position or authority for his sexual gratification.”*

[327] In light of the above, the Committee takes note of the steps taken by the country under review to advance in its implementation of the recommendation and reiterates the need to give attention thereto given that, while a bill exists, provisions have not yet been adopted that criminalize other acts or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party other than as set out in Section 3.1 of Section 2 of this Report, pursuant to Article VI(1)(c) of the Convention. (See Recommendation 3.3.1 in Section 3.3 of Chapter II of this Report.)

3.2. New developments in respect of the Convention provision on acts of corruption

3.2.1. New developments in the legal framework

[328] In its Response to the Questionnaire,⁹⁹ the country under review mentioned the existence in The Bahamas of an Integrity Commission Bill, 2017, which the Committee already took note of in Section 3.1 of Chapter II of this report.

3.2.2. New developments with respect to technological aspects

[329] Neither in its Response to the Questionnaire nor during the on-site visit did the country under review provide any information on new developments relating to technological aspects.

3.2.3. Results

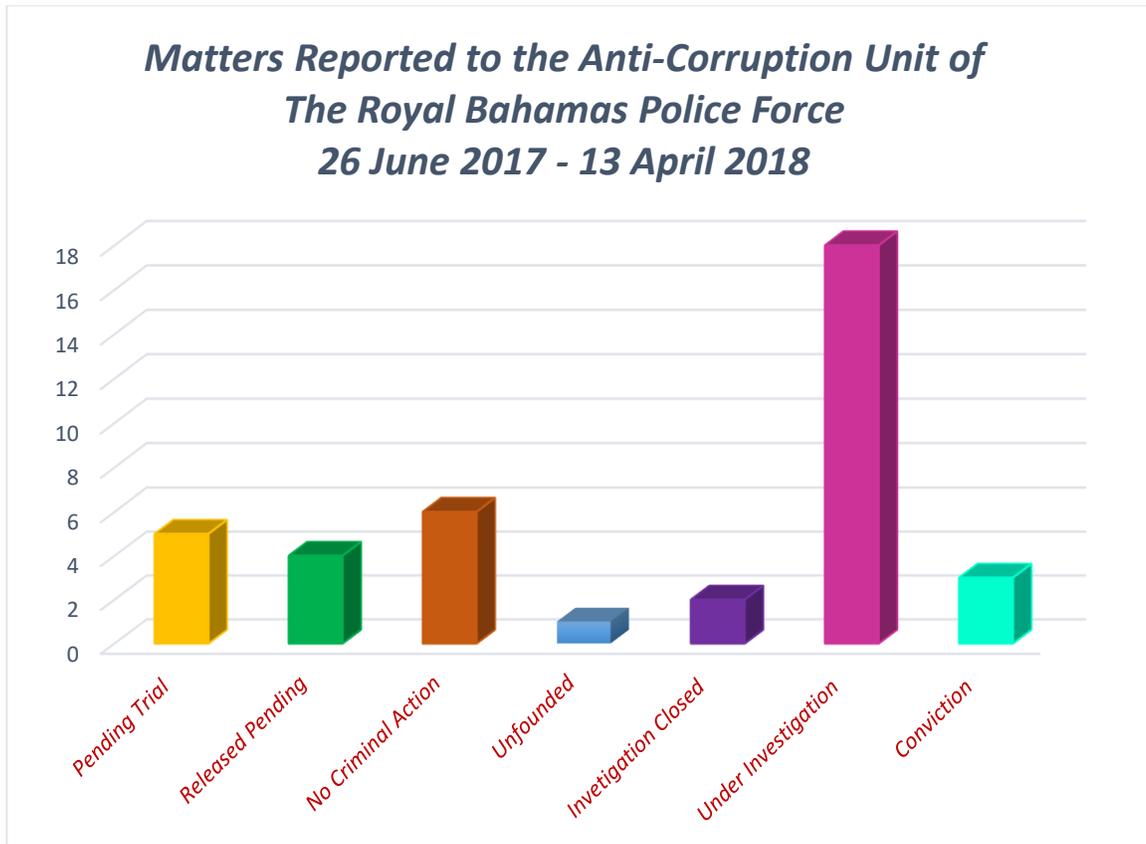
[330] In its Response to the Questionnaire, the country under review did not present results. Nevertheless, during the on-site visit, statistical data were provided on complaints investigated by the Anti-Corruption Unit of the Royal Bahamas Police Force.

[331] The Anti-Corruption Unit of the Royal Bahamas Police Force,¹⁰⁰ provided the following statistics regarding 39 complaints filed between June 26, 2017 and April 13, 2018, broken down as follows:

- *Five (5) or 12.8% of the complaints are pending trial.*
- *Four (4) or 10.2% of the complaints, persons were released pending.*
- *Six (6) or 15.3% of the complaints, there were no criminal action taken.*
- *One (1) or 2.6%, the complaint was discovered to be unfounded.*
- *Two (2) or 5.1% complaints, the investigations were closed.*
- *Eighteen (18) or 46.2% complaints under investigations.*
- *Three (3) or 7.7% complaints with convictions.*

⁹⁹ See Response of The Bahamas to the questionnaire for the Fifth Round of Review, pgs. 68-69, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

¹⁰⁰ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_public_royal_annex63.pdf, slide 3



[332] The Committee takes note of the statistics compiled by the Anti-Corruption Unit of the Royal Bahamas Police Force. The Committee observes that the country under review could consider keeping statistics broken down by type of act of corruption. It could, moreover, consider making statistics on corruption-related offenses readily and easily available to the general public. The Committee will formulate recommendations in that regard. (See Recommendations 3.3.2 and 3.3.3 in Section 3.3 of Chapter II of this Report.)

[333] Finally, the Committee notes that neither in its Response to the Questionnaire nor during the on-site visit did the country under review provide any information about results in relation to acts of corruption recognized at Article VI(1) of the Convention. Accordingly, it will make recommendations to the country under review in that regard. (See Recommendations 3.3.4 and 3.3.5 in Section 3.3 of Chapter II of this Report.)

3.3. Recommendations

[334] In light of the observations formulated in sections 3.1 and 3.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

3.3.1. Implement provisions which criminalize other acts or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of

illicitly obtaining benefits for himself or for a third party other than as set out in Section 3.1 of Section 2 of this Report, pursuant to Article VI(1)(c) of the Convention. (see paragraph 327 of Section 3.1 of Chapter II of this Report)

- 3.3.2.** Have the Department of Public Prosecution keep records of judgments, broken down by each act of corruption, in order to identify challenges and recommend corrective measures. (see paragraph 332 in Section 3.1 of Chapter II of this Report)
- 3.3.3.** Ensure that statistics compiled by the Anti-Corruption Unit of the Royal Bahamas Police Force are easy to access and readily available to the general public. (See paragraph 332 in Section 3.1 of Chapter II of this Report.)
- 3.3.4.** Compile detailed annual statistics on prosecutions initiated by the Department of Public Prosecution into acts of corruption, so as to determine how many have been suspended, how many have prescribed, how many have been archived, how many are ongoing, and how many have been referred to the competent authority for a decision, in order to identify challenges and, where necessary, recommend corrective measures. (See paragraph 333 in Section 3.1 of Chapter II of this Report.)¹⁰¹
- 3.3.5.** Compile detailed annual statistics on court matters related to acts of corruption, so as to determine how many are ongoing, suspended, prescribed, archived without a decision adopted, ready for a decision, or have had a decision adopted on merits, and whether the decision was to acquit or convict, in order to identify challenges and, where necessary, recommend corrective measures. (See paragraph 333 in Section 3.1 of Chapter II of this Report.)

4. GENERAL RECOMMENDATIONS

Recommendation 4.1 suggested by the Committee that requires additional attention within the framework of the Third Round:

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

[335] The Committee, bearing in mind that sections 1, 2, and 3 of Chapter II of this report contain an up-to-date, detailed analysis both of the follow-up on the recommendations made to The Bahamas in the Second Round and of the systems, standards, measures, and mechanisms to which the above recommendation refers, the Committee reaffirms the contents of those sections and, therefore, considers that this recommendation is redundant.

¹⁰¹ In its comments to the draft preliminary report, the country under review noted the following: “The Constitution (Amendment) Bill, 2017 was tabled and subsequently passed on 25th September 2017 to provide for a stand-alone Office of Public Prosecution, the first independent Director of Public Prosecutions was sworn in on June 11, 2018. This confirmation marked an important advancement in the country and aided in solidifying the transparent management of the public affairs of The Bahamas.”

Recommendation 4.2 suggested by the Committee that requires additional attention within the Framework of the Third Round:

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

[336] The Committee, bearing in mind that sections 1, 2, and 3 of Chapter II of this report contain an up-to-date, detailed analysis both of the follow-up on the recommendations made to The Bahamas in the Second Round and of the systems, standards, measures, and mechanisms to which the above recommendation refers, the Committee reaffirms the contents of those sections and, therefore, considers that this recommendation is redundant.

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

1. INSTRUCTIONS TO GOVERNMENT PERSONNEL TO ENSURE PROPER UNDERSTANDING OF THEIR RESPONSIBILITIES AND THE ETHICAL RULES GOVERNING THEIR ACTIVITIES (ARTICLE III, PARAGRAPH 3 OF THE CONVENTION)

[337] In accordance with the Methodology adopted by the Committee for the Fifth Round regarding the III implementation of Article, paragraph 3 of the Convention, which refer to measures that intended to establish, maintain and strengthen “*instruction[s] to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities,*” the country under review selected the Ministry of Finance and the Department of Public Service, based on their competencies and the fact that their personnel would be the most appropriate for the review.¹⁰²

[338] The following is a brief description of two bodies selected by The Bahamas that are to be examined in this section:

[339] -The Ministry of Finance is responsible pursuant to the Financial Administration and Audit Act, 2010 for the management of the Consolidated Fund and the supervision, control and direction of matters relating to the financial affairs of The Bahamas, which are not assigned to any other Ministry by any other law.

[340] -The Department of Public Service: The Ministry of Public Service plays a vital role in ensuring that the Public Service is properly managed and stable and that employees are available in sufficient numbers to meet the demands of the Service and any policy initiative or project of the Government.

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

[341] The Committee notes that, during the on-site visit, the country under review provided information regarding provisions and/or measures that provide instructions to government personnel

¹⁰² See Response of The Bahamas to the Questionnaire for the Fifth Round of Review, pg. 3, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

to ensure proper understanding of their responsibilities and the ethical rules governing their activities, among which the following are highlighted:

- Statutory and other legal provisions applicable to the personnel that fall under the purview of the Ministry of Finance, among which the following should be noted:

[342] Regarding provisions and/or measures for providing instructions to personnel that fall under the purview of the Ministry of Finance to ensure proper understanding of their responsibilities, during the on-site visit the representatives of the Ministry of Finance¹⁰³ noted that:

[343] - *“Information on rules governing activities is shared verbally, hard copy or on line. From time to time agencies like Ministry of the Public Service and Treasury may remind personnel of such rules, policy or procedures via circular. Circulars are issued hard copy and/or online via government website/government email system.”*

[344] In addition, the Committee observes that, during the on-site visit, the representatives of the Ministry of Finance,¹⁰⁴ pointed to the following legal instruments relating to instructions to personnel:

- *“General Orders*
- *Industrial Agreement*
- *Public Service Commission Regulations*
- *Bahamas Government Human Resource Policy Manual*
- *Financial Regulations*
- *Legislation/Rules relevant to particular agency”*

[345] With respect to the General Orders¹⁰⁵, the Committee notes that Rule 234 and 1601 state the following:

[346] - *Rule 234 The period of probation begins on the date of assumption of duty on probation in the appointment. During the period of probation the officer should be regarded as being on trial with a view to learning his work and being tested as to his suitability for it. He should therefore not only be given all possible facilities for acquiring experience in his duties but should be kept under continual and sympathetic observation and, so far as is practicable, should not be posted where such observation is impossible. It is the responsibility of Heads of Departments to pay special attention to the training of officers on probation. If at any time during the period of probation the officer should exhibit tendencies which render it any way doubtful that he will be suitable for permanent retention, he should at once be warned and given such assistance as may be possible to correct his faults.”*

[347] - *“Rule 1601: When an officer is required by The Government to undertake a course of training or study in the interest of The Public Service, he will be granted study leave on full salary and this will not count against his vacation leave, or; leave of absence eligibility. As a rule, such a course of training, or; study might be expected to last up to about six months, but should it be a longer course, the officer may be granted additional leave on full pay up to a maximum of twelve months in all to enable him to complete the course: provided that, exceptionally, and with the express*

¹⁰³ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel6y7_annex35.pdf

¹⁰⁴ Ibid.

¹⁰⁵ Available at: http://www.oas.org/juridico/PDFs/mesicic5_bhs_annex5.pdf

permission of The Deputy Prime Minister, additional leave for such a course may be granted with full pay beyond the period of twelve months.”

[348] Regarding the Industrial Agreement between the Government of The Bahamas and The Bahamas Public Service Union¹⁰⁶, Articles 28.1 and 28.4 refer to training courses for government personnel.

[349] As to the manner in which personnel are informed of their responsibilities and functions, indicating whether this is done verbally or in writing and whether records are kept of those instructions, during the on-site visit the country under review¹⁰⁷ noted that:

[350] *–“Personnel are informed of their responsibilities, duties and functions verbally and in writing. This information is provided as an attachment to employment letter or contained in the letter itself. Such communication refer to the need for them to adhere to the Rules and Regulations of the Public Service.”*

[351] *–“Public Officers are required to acknowledge receipt of document/acceptance of terms, therein.”*

[352] *–“Personnel are advised of responsibilities and functions prior to beginning/when begin/when there are changes. Verbally and/or in writing.*

[353] As regards the occasion(s) when personnel are informed of their responsibilities and functions, indicating whether this is done when they begin performing them or at a later point, when those functions change, or when functions change due to a change of post, the country under review noted the following, during the on-site visit.¹⁰⁸

[354] *–“Personnel are required to sign “Secrecy Act¹⁰⁹” document at the commencement of employment. Prior to/time of processing employment or transfer to ‘sensitive’ Ministry’s, personnel must complete “Security Questionnaire¹¹⁰.”*

[355] As to the existence of induction, training or instructional programs and courses for personnel on how to perform their responsibilities and functions properly and, particularly, for making them aware of the risks of corruption inherent in the performance of those functions, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[356] As to the use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[357] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly, no additional and relevant

¹⁰⁶ Available at: <http://www.bpsubahamas.org/files/BPSUGOVTAGREEMENT.pdf>

¹⁰⁷ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel6y7_annex35.pdf

¹⁰⁸ Ibid.

¹⁰⁹ Available at: http://www.oas.org/juridico/PDFs/mesicic5_bhs_minfinance_official_annex61.pdf

¹¹⁰ Available at: http://www.oas.org/juridico/PDFs/mesicic5_bhs_minfinance_security_annex62.pdf

information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[358] In terms of the existence of a governing organ, authority or body responsible for defining, steering, advising, or supporting the manner in which personnel are to be informed of their responsibilities and functions, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or measures in force in this regard, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[359] As to the manner in which personnel are informed of the ethical rules governing their activities, indicating whether this is done verbally or in writing and whether records are kept of those instructions, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[360] Regarding the occasion(s) when personnel are informed of ethical rules governing their activities, indicating whether this is done when they begin performing them or at some later point; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[361] As regards the existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities and, particularly, on the consequences of failure to abide by them for public institutions and for wrongdoers, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[362] As to the use of modern communication technologies to apprise personnel of the ethical rules governing their activities and to provide guidance as to their scope or interpretation, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[363] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of the ethical rules governing their activities, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[364] In terms of the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or measures in force in this regard, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

- Statutory and other legal provisions applicable to the personnel that fall under the purview of the Department of Public Service, among which the following should be noted:

[365] Regarding provisions and/or measures for providing instructions to personnel that fall under the purview of the Department of Public Service to ensure proper understanding of their

responsibilities, during the on-site visit the representatives of the Department of Public Service¹¹¹ noted the following:

[366] –*“Orientation courses are offered for graduate and non-graduate entrants separately, however, on the job training is offered when you report for duty at the respective ministry”.*

[367] As to the manner in which personnel are informed of their responsibilities and functions, indicating whether this is done verbally or in writing and whether records are kept of those instructions, during the on-site visit the country under review¹¹² noted the following:

[368] –*“In 1970, The Public Service Training Centre was established by The Bahamas Government. However, due to the expansion of its role in 1996, the name was changed to the Public Service Centre for Human Resource Development (PSCHRD). PSCHRD operates as the training arm of The Public Service.”*

[369] –*“The PSCHRD offers bi-annual orientation courses to persons who are new to the Department of Public Service”.*

[370] –*“The Department of Public Service has bi-annually, produced and circulated Circulars which focus on both centralized courses and upgrading courses. These Circulars are disseminated both electronically and via hard copy to various departments within the Public Service. These courses allow employees to obtain and enhance skills to maximize each employees’ potential”.*

[371] As regards the occasion(s) when personnel are informed of their responsibilities and functions, indicating whether this is done when they begin performing them or at a later point, when those functions change, or when functions change due to a change of post, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[372] As to the existence of induction, training or instructional programs and courses for personnel on how to perform their responsibilities and functions properly and, particularly, for making them aware of the risks of corruption inherent in the performance of those functions, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[373] As to the use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[374] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

¹¹¹ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_deppublic_annex29.pdf, slide 10

¹¹² See Response of The Bahamas to the Questionnaire for the Fifth Round of Review, pg. 22, http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp2.pdf

[375] In terms of the existence of a governing organ, authority or body responsible for defining, steering, advising, or supporting the manner in which personnel are to be informed of their responsibilities and functions, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or measures in force in this regard, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[376] As to the manner in which personnel are informed of the ethical rules governing their activities, indicating whether this is done verbally or in writing and whether records are kept of those instructions, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[377] Regarding the occasion(s) when personnel are informed of ethical rules governing their activities, indicating whether this is done when they begin performing them or at some later point; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[378] As regards the existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities and, particularly, on the consequences of failure to abide by them for public institutions and for wrongdoers, during the on-site visit the country under review gave the Technical Secretariat a leaflet about a training course entitled "Maintaining Ethical Standards in the Public Service", which had been conducted on October 17-19, 2017 by the Ministry of the Public Service and National Insurance, together with the Public Service Centre for Human Resources Development. The main topics addressed included: (i) Ethics as it applies to me; (ii) Implementing Ethics in the Workplace; (iii) What is Ethics; (iv) Five Principles of Ethical Power and (v) Public Sector vs Private Sector Ethics ... is there a difference.

[379] As to the use of modern communication technologies to apprise personnel of the ethical rules governing their activities and to provide guidance as to their scope or interpretation, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[380] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of the ethical rules governing their activities, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[381] In terms of the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or measures in force in this regard, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

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

[382] In light of the above, the Committee finds an absence of provisions and/or measures for providing instruction to personnel in the public-sector entities selected by the country under review to ensure proper understanding of their responsibilities and the ethical rules governing their activities.

[383] Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

- With respect to the provisions and/or other measures applicable to the personnel that fall under the purview of the Ministry of Finance, the Committee notes the following:

[384] The Committee notes that, although the General Orders and Industrial Agreements contain provisions that refer to training, there are no provisions and/or measures intended to give instructions to Ministry of Finance personnel to ensure proper understanding of their responsibilities. The Committee will formulate a recommendation. (See Recommendation 1.4.1 in Chapter III, Section 1.4 of this report.)

[385] The Committee further notes that The Bahamas does not have provisions and/or measures intended to provide instructions to personnel that fall under the purview of the Ministry of Finance to ensure proper understanding of the ethical rules governing their activities. The Committee will formulate a recommendation. (See Recommendation 1.4.2 in Chapter III, Section 1.4 of this report.)

[386] The Committee observes that for Ministry of Finance personnel training is not formally structured in such a way as to ensure mandatory participation in training and induction courses for recently hired personnel. The Committee deems it appropriate that the country under review consider conducting the courses offered, along with a timetable, indicating whether this is done when they begin performing them or at a later point, to ensure that they are taught, be it in face-to-face sessions or on line, so that all personnel have a sound understanding of their responsibilities and the functions they are expected to perform. It might also consider end-of-training evaluations. The Committee will formulate a recommendation. (See Recommendation 1.4.3 in Chapter III, Section 1.4 of this report.)

[387] The Committee also notes that the country under review lacks a formal training program for providing instructions to Ministry of Finance personnel regarding the ethical rules governing their activities. It therefore deems it useful that the country under review consider establishing a formal training program to provide instructions to the Ministry of Finance personnel regarding the ethical rules governing their activities, that includes the courses offered along with a timetable, indicating whether this is done when they begin performing them or at a later point, when those functions change due to a change of post, when a different set of ethical rules is to be applied, or when those rules are altered. It might also consider end-of-training evaluations. The Committee will offer a recommendation to the country under review in that regard. (See Recommendation 1.4.4. in Chapter III of this report.)

[388] The Committee further notes that the country under review lacks training and induction programs and courses or instructions to Ministry of Finance personnel on how to perform their responsibilities and functions properly and, particularly, for making them aware of the risks of corruption inherent in the performance of those functions. The Committee therefore deems it useful for the country under review to consider including in the training programs for personnel under the purview of the Ministry of Finance modules dealing with knowledge of the risks of corruption inherent in the performance of those functions, as well as with the consequences and sanctions for

those who commit acts of corruption. The Committee will formulate a recommendation. (See Recommendation 1.4.5. in Chapter III of this report.)

[389] The Committee likewise notes that the country under review lacks a governing body within the Ministry of Finance to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly. The Committee therefore deems it necessary for the country under review to consider establishing, within the Ministry of Finance, an authority to which personnel may turn for information and help with dispelling any doubts they may have about the appropriate performance of their responsibilities and functions. The Committee will formulate a recommendation. (See Recommendation 1.4.6. in Chapter III of this report.)

[390] The Committee likewise notes that the country under review lacks a governing body within the Ministry of Finance to which personnel can resort to obtain information or resolve doubts they may have regarding the ethical rules governing their activities. The Committee therefore deems it would be useful for the country under review to consider establishing, within the Ministry of Finance, an authority to which personnel may turn for information and help with dispelling any doubts they may have about the ethical rules governing their activities. The Committee will formulate a recommendation. (See Recommendation 1.4.7. in Chapter III of this report.)

[391] The Committee likewise notes that the country under review lacks a governing body within the Ministry of Finance responsible for establishing, directing, advising, or supporting mechanisms to ensure that personnel are informed of their functions and responsibilities, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or measures in force in this regard. The Committee therefore deems it important that the country under review consider establishing a governing body within the Ministry of Finance responsible for establishing, directing, advising, or supporting mechanisms to ensure that personnel are informed of their functions and responsibilities, and for overseeing that this is done thoroughly, along with measures or actions that can be taken to ensure compliance with the provisions and/or measures governing these matters. The Committee will formulate a recommendation. (See Recommendation 1.4.8. in Chapter III of this report.)

[392] Finally, the Committee notes that the country under review lacks a governing body within the Ministry of Finance responsible for establishing, directing, advising, or supporting mechanisms to ensure that personnel are informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or measures in force in this regard. The Committee therefore deems it important that the country under review consider establishing a governing body within the Ministry of Finance responsible for establishing, directing, advising, or supporting mechanisms to ensure that personnel are informed of the ethical rules governing their activities, and for overseeing that this is done thoroughly, along with measures or actions that can be taken to ensure compliance with the provisions and/or measures governing these matters. The Committee formulate a recommendation. (See Recommendation 1.4.9. in Chapter III of this report.)

- With respect to the provisions and/or other measures applicable to the personnel that fall under the purview of the Department of Public Service, the Committee notes the following:

[393] The Bahamas does not have provisions and/or measures intended to provide instructions to personnel that fall under the purview of the Department of Public Service to ensure proper

understanding of their responsibilities and functions. The Committee will formulate a recommendation. (See recommendation 1.4.10 in Section 1.4 of Chapter III of this report.)

[394] The Committee further observes that The Bahamas does not have provisions and/or measures intended to give instructions to personnel that fall under the purview of the Department of Public Service to ensure proper understanding of the ethical rules governing their activities. The Committee will formulate a recommendation. (See recommendation 1.4.11 in Section 1.4 of Chapter III of this report.)

[395] The Committee observes that for Department of Public Service personnel training is not formally structured in such a way as to ensure mandatory participation in training and induction courses for recently hired personnel. The Committee deems it appropriate that the country under review consider conducting the courses offered, along with a timetable, indicating whether this is done when they begin performing them or at a later point, to ensure that they are taught, be it in face-to-face sessions or on line, so that all personnel have a sound understanding of their responsibilities and the functions they are expected to perform. It might also consider end-of-training evaluations. The Committee will formulate a recommendation. (See recommendation 1.4.12 in Section 1.4 of Chapter III of this report.)

[396] The Committee also notes that the country under review lacks a formal training program for providing instructions to Department of Public Service personnel regarding the ethical rules governing their activities. It therefore deems it useful that the country under review consider establishing a formal training program to provide instructions to Department of Public Service personnel regarding the ethical rules governing their activities, that includes the courses offered along with a timetable, indicating whether this is done when they begin performing them or at a later point, when those functions change due to change of post, when a different set of ethical rules is to be applied, or when those rules are altered. It might also consider end-of-training evaluations. The Committee will formulate a recommendation. (See Recommendation 1.4.13 in Chapter III of this report.)

[397] The Committee further notes that the country under review lacks training and induction programs and courses or instructions to Department of Public Service personnel on how to perform their responsibilities and functions properly and, particularly, for making them aware of the risks of corruption inherent in the performance of those functions. The Committee therefore deems it useful for the country under review to consider including in the training programs for personnel under the purview of the Department of Public Service modules dealing with knowledge of the risks of corruption inherent in the performance of those functions, as well as with the consequences and sanctions for those who commit acts of corruption. The Committee will formulate a recommendation. (See Recommendation 1.4.14 in Chapter III of this report.)

[398] The Committee likewise notes that the country under review lacks a governing body within the Department of Public Service to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly. The Committee therefore deems it necessary for the country under review to consider establishing, within the Department of Public Service, an authority to which personnel may turn for information and help with dispelling any doubts they may have about the appropriate performance of their responsibilities and functions. The Committee will formulate a recommendation. (See Recommendation 1.4.15 in Chapter III of this report.)

[399] The Committee further notes that the country under review lacks a governing body within the Department of Public Service to which personnel can resort to obtain information or resolve doubts they may have regarding the ethical rules governing their activities. The Committee therefore deems it would be useful for the country under review to consider establishing, within the Department of Public Service, an authority (a person or an entity) to which personnel may turn for information and help with dispelling any doubts they may have about the ethical rules governing their activities. The Committee will formulate a recommendation. (See Recommendation 1.4.16 in Chapter III of this report.)

[400] The Committee likewise notes that the country under review lacks a governing body within the Department of Public Service responsible for establishing, directing, advising, or supporting mechanisms to ensure that personnel are informed of their functions and responsibilities, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or measures in force in this regard. The Committee therefore deems it important that the country under review consider establishing a governing body within the Department of The Public Service responsible for establishing, directing, advising, or supporting mechanisms to ensure that personnel are informed of their functions and responsibilities, and for overseeing that this is done thoroughly, along with measures or actions that can be taken to ensure compliance with the provisions and/or measures governing these matters. The Committee will formulate a recommendation. (See Recommendation 1.4.17 in Chapter III of this report.)

[401] The Committee also notes that the country under review lacks a governing body within the Department of Public Service responsible for establishing, directing, advising, or supporting mechanisms to ensure that the personnel are informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or measures in force in this regard. The Committee therefore deems it important that the country under review consider establishing a governing body within the Department of The Public Service responsible for establishing, directing, advising, or supporting mechanisms to ensure that Department of Public Service personnel are informed of the ethical rules governing their activities, and for overseeing that this is done thoroughly, along with measures or actions that can be taken to ensure compliance with the provisions and/or measures governing these matters. The Committee will formulate a recommendation. (See Recommendation 1.4.18 in Chapter III of this report.)

[402] Finally, the Committee notes that, during the on-site visit, the representatives of the Department of Public Service stated that the annual Public Service training budget in The Bahamas was one hundred fifty thousand US dollars (US\$150,000), an amount that covered training for 408 officers in 2017. Bearing in mind that The Bahamas has approximately twenty thousand (20,000) full time civil servants entitled to a pension and another one thousand (1,000) staff on contracts, the Committee will recommend to the country under review that, after taking into account the available resources available, it consider endowing the Ministry of Finance and the Department of Public Service with the budgetary, technological, and human resources they need to be able to provide face-to-face or online training and induction courses for all recently hired government personnel.

[403] In light of the above, the Committee deems it important that the country under review, bearing in mind the resources it has available, consider providing the budgetary, technological and human resources needed to be able to offer face-to-face or online training programs that ensure that

the Ministry of Finance and Department of Public Service personnel properly understand both their responsibilities and the ethical rules governing their activities. With the above in mind, the Committee will formulate recommendations. (See Recommendations 1.4.19 and 1.4.20 of Section 1.4 of Chapter III of this report).

1.3. Results

[404] Neither in its response to the questionnaire, nor during the on-site visit, did the country under review provide any information about results of instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities. With the above in mind, the Committee will formulate recommendations. (See Recommendations 1.4.21 and 1.4.22 of Section 1.4 of Chapter III of this report).

1.4. Conclusions and recommendations

[405] Based on the review conducted regarding the implementation by The Bahamas of Article III, paragraph 3 of the Convention, the Committee offers the following conclusions and recommendations:

[406] The Bahamas has considered and adopted some measures intended to establish, maintain and strengthen the instructions provided to government personnel by the bodies selected that ensure proper understanding of their responsibilities and the ethical rules governing their activities, as described in Chapter III, Section 1 of this Report.

[407] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 1.4.1. Adopt any measures needed to ensure instructions to Ministry of Finance personnel to ensure proper understanding of their responsibilities and provide a copy thereof or links to the websites where they can be consulted. (See paragraph 384 in Section 1.2 of Chapter III of this report.)
- 1.4.2. Adopt any measures needed to ensure instructions to Ministry of Finance personnel to ensure proper understanding of the ethical rules governing their activities and provide a copy thereof or links to the websites where they can be consulted. (See paragraph 385 in Section 1.2 of Chapter III of this report.)
- 1.4.3. Establish a formal training program for Ministry of Finance personnel, in order to ensure mandatory participation in face-to-face or online training or induction programs for recently hired personnel that should include the courses offered and a timetable so that all personnel can understand their responsibilities and the functions they are expected to perform. There should also be end-of-training evaluations conducted by the Ministry of Finance personnel at the end of the formal training program. (See paragraph 386 in Section 1.2 of Chapter III of this report.)
- 1.4.4. Establish a formal training program containing instructions on the ethical rules governing their activities for Ministry of Finance personnel, that should include the courses offered and a timetable to ensure that they are taught: when they take up office, whenever there is a change in their functions, when a different set of ethical rules is applied, or when those rules are altered. There should also be end-of-training evaluations conducted by the Ministry of

Finance personnel at the end of the formal training program. (See paragraph 387 in Section 1.2 of Chapter III of this report.)

- 1.4.5. Include in training programs for personnel under the authority of the Ministry of Finance modules dealing with knowledge of the risks of corruption inherent in the performance of their functions and with the consequences and sanctions for those involved in acts of corruption. (See paragraph 388 in Section 1.2 of Chapter III of this report.)
- 1.4.6. Appoint a person or entity within the Ministry of Finance to whom personnel can turn for information or to resolve any doubts they may have regarding the appropriate way to comply with their responsibilities and functions. (See paragraph 389 in Section 1.2 of Chapter III of this report.)
- 1.4.7. Appoint a person or entity within the Ministry of Finance to whom personnel can turn for information or to resolve any doubts they may have regarding the ethical rules governing their activities. (See paragraph 390 in Section 1.2 of Chapter III of this report.)
- 1.4.8. Establish a governing body responsible for establishing, directing, advising, or supporting mechanisms to ensure that Ministry of Finance personnel are informed of their responsibilities and functions, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to ensure compliance with the norms and/or measures in force in this regard. (See paragraph 391 in Section 1.2 of Chapter III of this report.)
- 1.4.9. Establish a governing organ responsible for defining, steering, giving guidance on, or supporting the manner in which Ministry of Finance personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to ensure compliance with the norms and/or measures in force in this regard. (See paragraph 392 in Section 1.2 of Chapter III of this report.)
- 1.4.10. Adopt any measures needed to ensure that instructions are given to Department of Public Service personnel to ensure proper understanding of their responsibilities and provide a copy thereof or links to the websites where they can be consulted. (See paragraph 393 in Section 1.2 of Chapter III of this report.)
- 1.4.11. Adopt any measures needed to ensure instructions to Department of Public Service personnel to ensure proper understanding of the ethical rules governing their activities and provide a copy thereof or links to the websites where they can be consulted. (See paragraph 394 in Section 1.2 of Chapter III of this report.)
- 1.4.12. Establish a formal training program for Department of Public Service personnel, in order to ensure mandatory participation in face-to-face or online training or induction programs for recently hired personnel that should include the courses offered and a timetable so that all personnel can understand their responsibilities and the functions they are expected to perform. There should also be end-of-training evaluations conducted by the Department of Public Service personnel at the end of the formal training program. (See paragraph 395 in Section 1.2 of Chapter III of this report.)

- 1.4.13. Establish a formal training program containing instructions on the ethical rules governing their activities for Department of Public Service personnel, that should include the courses offered and a timetable to ensure that they are taught: when they take up office, whenever there is a change in their functions, when a different set of ethical rules is applied, or when those rules are altered. There should also be end-of-training evaluations conducted by the Department of Public Service personnel at the end of the formal training program. (See paragraph 396 in Section 1.2 of Chapter III of this report.)
- 1.4.14. Include in training programs for personnel under the authority of the Department of Public Service modules dealing with knowledge of the risks of corruption inherent in the performance of their functions and with the consequences and sanctions for those involved in acts of corruption. (See paragraph 397 in Section 1.2 of Chapter III of this report.)
- 1.4.15. Appoint a person or entity within the Department of Public Service to whom personnel can turn for information or to resolve any doubts they may have regarding the appropriate way to comply with their responsibilities and functions. (See paragraph 398 in Section 1.2 of Chapter III of this report.)
- 1.4.16. Appoint a person or entity within the Department of Public Service to whom personnel can turn for information or to resolve any doubts they may have regarding the appropriate way to comply with the ethical rules governing their activities/. (See paragraph 399 in Section 1.2 of Chapter III of this report.)
- 1.4.17. Establish a governing body responsible for establishing, directing, advising, or supporting mechanisms to ensure that Department of Public Service personnel are informed of their responsibilities and functions, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to ensure compliance with the norms and/or measures in force in this regard. (See paragraph 400 in Section 1.2 of Chapter III of this report.)
- 1.4.18. Establish a governing organ responsible for defining, steering, giving guidance on, or supporting the manner in which the Department of Public Service personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to ensure compliance with the norms and/or measures in force in this regard. (See paragraph 401 in Section 1.2 of Chapter III of this report.)
- 1.4.19. Endow the Ministry of Finance, after taking into account the availability of resources, with the budgetary, technological, and human resources it needs to be able to provide the face-to-face or online training programs needed to ensure that its personnel have a proper understanding of their responsibilities and of the ethical rules governing their activities. (See paragraph 403 in Section 1.2 of Chapter III of this report.)
- 1.4.20. Endow the Department of Public Service, after taking into account the availability of resources, with the budgetary, technological, and human resources it needs to be able to provide the face-to-face or online training programs needed to ensure that its personnel have a proper understanding of their responsibilities and of the ethical rules governing their activities. (See paragraph 403 in Section 1.2 of Chapter III of this report.)

- 1.4.21. Compile detailed statistics on the results of instructions imparted to personnel of the Ministry of Finance to ensure proper understanding of their responsibilities and the ethical rules governing their activities, covering such aspects as: number of induction, training, or instruction programs and courses for that purpose; periodicity or frequency with which they are imparted and the number of civil servants taking part; number of handbooks for civil servants on the proper performance of their functions and their ethical rules, and to alert them to the risks of corruption inherent in the performance of the functions; number of inquiries by civil servants on the proper performance of their duties and on the ethical rules governing their activities answered, and use of modern communication technologies for that purpose; number of activities undertaken to ascertain if the objective of ensuring that those ethical rules are understood has been achieved; and number of measures or adopted by the authorities or bodies responsible for seeing that instruction is provided fully and for ensuring compliance with provisions and/or measures adopted in that regard. The purpose of the foregoing is to identify obstacles and recommend corrective measures, as necessary. (See paragraph 404 in Section 1.3 of Chapter III of this report.)
- 1.4.22. Compile detailed annual statistics on the results of instructions imparted to personnel of the Department of Public Service to ensure proper understanding of their responsibilities and the ethical rules governing their activities, covering such aspects as: number of induction, training, or instruction programs and courses for that purpose; periodicity or frequency with which they are imparted and the number of civil servants taking part; number of handbooks for civil servants on the proper performance of their functions and their ethical rules, and to alert them to the risks of corruption inherent in the performance of the functions; number of inquiries by civil servants on the proper performance of their duties and on the ethical rules governing their activities answered, and use of modern communication technologies for that purpose; number of activities undertaken to ascertain if the objective of ensuring that those ethical rules are understood has been achieved; and number of measures or adopted by the authorities or bodies responsible for seeing that instruction is provided fully and for ensuring compliance with provisions and/or measures adopted in that regard. The purpose of the foregoing is to identify obstacles and recommend corrective measures, as necessary. (See paragraph 404 in Section 1.3 of Chapter III of this report.)

2. STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE (ARTICLE 11, PARAGRAPH 12 OF THE CONVENTION)

2.1. STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE

[408] Neither in its Response to the Questionnaire, nor during the on-site visit, did the country under review provide information about studies on prevention measures that give due consideration to the relationship between equitable compensation and probity in public service. However, the country under review did provide the following document, attached to its Response to the

Questionnaire: “Government of The Bahamas – Salary Book, 2016,”¹¹³ containing civil service salary scales in The Bahamas.

2.2. ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT GUIDELINES FOR DETERMINING CIVIL SERVANT REMUNERATIONS

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

[409] During the on-site visit, the representative of the Ministry of Finance¹¹⁴ noted that:

[410] -*“Ministry of the Public Service and Public Service Commission are the agencies responsible for matters pertaining to salary, benefits, salary review and compensation. Issues related to salary and benefits are also addressed at time of negotiations with Union.”*

[411] -*“Salary Book is available on line; on Bahamas.gov.bs homepage, and Ministry of Public Service website.”*

[412] -*“Ministry of the Public Service and Public Service Commission are the agencies responsible for matters pertaining to salary review and compensation studies. They compile information regarding salary scales; post qualifications/requirements and career paths.”*

[413] Salaries in the Judiciary are determined by the Judge’s Remuneration and Pensions Act.¹¹⁵ Section 3 (Schedule) of this Act establishes the salaries of the (i) Chief Justice, (ii) Senior Justice, and (iii) every other Judge. Furthermore, that Committee point out that Section 4(1) of this Act establishes a Commission responsible for ascertaining whether the salaries are adequate, as well as other payments made in accordance with law and judges' benefits. This Commission is constituted every 3 years and presents a report three months after it is appointed, with recommendations to the Prime Minister. It is then forwarded to the House of Assembly.

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

[414] With respect to the provisions referring to the establishment of objective and transparent criteria for determining the compensation of public servants, the Committee notes there is a comprehensive system for establishing objective and transparent criteria for determining the remuneration of public servants.

2.2.3. Conclusions and recommendations

[415] Based on the review conducted in the above sections regarding the implementation by The Bahamas of Article III (12) of the Convention, the Committee offers the following conclusion:

[416] The Bahamas has considered and adopted measures intended to establish objective and transparent criteria for determining the compensation of public servants, as described in Chapter III, Section 2 of this Report.

¹¹³ Available at: http://www.oas.org/juridico/PDFs/mesicic5_bhs_annex4.pdf

¹¹⁴ PowerPoint presentation, http://www.oas.org/juridico/PDFs/mesicic5_bhs_finance_panel6y7_annex35.pdf

¹¹⁵ Available at: http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1988/1988-0004/JudgesRemunerationandPensionsAct_1.pdf

IV. BEST PRACTICES

[417] The country under review did not present best practices related to the Convention provisions selected for the Second and Fifth Rounds of Review.

ANNEX

AGENDA FOR THE ON-SITE VISIT TO THE BAHAMAS

<u>Monday, April 16, 2018</u>	
15:00 hrs. – 15:30 hrs. <i>Courtyard Nassau Downtown Hotel</i>	Coordination meeting between the representatives of the member states of the subgroup and the Technical Secretariat
15:30 hrs. – 16:00 hrs. <i>Courtyard Nassau Downtown Hotel</i>	Coordination meeting between the representatives of the country under review, the member states of the Subgroup and the Technical Secretariat
<u>Tuesday, April 17, 2018</u>	
9:00 hrs. – 12:30 hrs. <i>Office of The Attorney General, Paul L. Adderley Building, John F. Kennedy Drive, 3rd Floor Conference Room</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers

	<p><u>Session:</u></p> <p>Follow-Up of the Recommendations of the Second Round:¹¹⁶</p> <ul style="list-style-type: none"> • Systems of government hiring • Systems of government hiring and government procurement of goods and services • Protection for whistleblowers of acts of corruption • Acts of Corruption <hr/> <p><u>Participants:</u></p> <p><i>Organization for Responsible Governance</i></p> <p>Anthony Hamilton, Chairman Chauntez Dillet Wilson, Communications Coordinator</p> <p><i>Bahamas Chamber of Commerce and Employers Confederation</i></p> <p>Khrystle Rutherford-Ferguson, Vice Chair Emmanuel Komolafe, Director Nicole Burrows, Communications and Membership Liaison</p> <p><i>The Bahamas Public Service Union</i></p> <p>Kimsley Ferguson, President Ernest T. Burrows, Vice President O'Neil Thurston, Executive Vice President Cindira Bain, Secretary General</p>
12:30 hrs. – 14:00 hrs.	Lunch
14:00 hrs. – 17:30 hrs.	Follow Up to the Recommendations of the Second Round: Systems of government hiring

116. Annex I of the Response of The Bahamas to the Questionnaire on follow-up on implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round is available at:
http://www.oas.org/juridico/PDFs/mesicic5_bhs_resp_quest.pdf

14:00 hrs. – 16:00 hrs.	<p>Panel 1:</p> <ul style="list-style-type: none"> - Progress and new developments - Systems for filing challenges - Results <p><u>Participant:</u></p> <p>Elise Delancy, Permanent Secretary – Ministry of Public Service Lisa Hall, Deputy Permanent Secretary– Ministry of Public Service Sharon P. Pratt-Rolle, Deputy Permanent Secretary — Ministry of Public Service Prenell King-Rolle, Undersecretary – Ministry of Public Service</p>
16:00 hrs. – 17:30 hrs.	<p>Panel 2:</p> <p><u>Follow Up to the Recommendations of the Second Round: Systems of government hiring</u></p> <ul style="list-style-type: none"> - Progress and new developments - Systems for filing challenges - Results <p><u>Participants:</u></p> <p>James Moultrie, Chairman “Public Service Commission (PSC)” Ruth Miller, PSC Member Karen Turner, Secretary to PSC Velda Duncombe – FAS – Public Service Commission</p>
17:30 hrs. – 18:00 hrs.	<p>Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.</p>
<u>Wednesday, April 18, 2018</u>	
9:00 hrs. – 12:30 hrs. <i>Office of The Attorney General</i>	Follow Up to the Recommendations of the Second Round: Systems of Procurement of Goods and Services
	<p>Panel 3:</p> <ul style="list-style-type: none"> - Progress and new developments - Technical cooperation needs - Public Procurement Bill, 2018 - Results

	<p><u>Participants:</u></p> <p>Government Tenders Board and Ministry of Finance:</p> <p>Karen Hepburn, Senior Compliance Officer</p> <p>Tonya Ferguson, Senior Budget Analyst</p> <p>Kendra Pratt, Business Analyst</p> <p>Keresa Hall, Senior Budget Analyst</p> <p>Daniel S. Ferguson, Consultant -Procurement Officer</p> <p>Joycelyn Gilbert, Senior Director of Finance</p>
12:30 hrs. – 14:00 hrs.	Lunch
14:00 hrs. – 15:30 hrs.	Follow-up of the Second Round recommendations: Acts of corruption
	<p>Panel 4:</p> <ul style="list-style-type: none"> - Any new development in the “Prevention of Bribery Act”, or the “Penal Code”, regarding acts of corruption - Results
	<p><u>Participants:</u></p> <p>Garvin Gaskin, Director of Public Prosecutions - Office of the Attorney General</p> <p>Destiny McKinney, Assistant Counsel - Office of the Attorney General</p> <p>Paul A. Rolle, Assistant Commissioner – Royal Bahamas Police Force</p>
15:30 hrs. – 17:30 hrs.	Follow-up of the Second Round recommendations: Systems for Protecting Public Servants and Private Citizens who in Good Faith Report Acts of Corruption
	<p>Panel 5:</p> <ul style="list-style-type: none"> - New developments - Technical cooperation needs and good practices - Integrity Commission Bill, 2017 - Justice Protection Act - Results

	<p><u>Participant:</u></p> <p>Garvin Gaskin, Director of Public Prosecutions - Office of the Attorney General</p> <p>Destiny McKinney, Assistant Counsel - Office of the Attorney General</p>
17:30 hrs. – 18:00 hrs.	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
<u>Thursday, April 19, 2018</u>	
09:00 hrs. – 12:30 hrs. <i>Office of The Attorney General</i>	Ministry of Finance
	<p>Panel 6:</p> <ul style="list-style-type: none"> • Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities
	<p>Panel 7:</p> <ul style="list-style-type: none"> • Study of Preventive Measures that take into Account the Relationship between Equitable Compensation and Probity in Public Service
	<p><u>Participants:</u></p> <p>Joycelyn Gilbert, Senior Director of Finance</p> <p>Bridgette Stuart, Deputy Permanent Secretary</p>
12:30 hrs. – 14:00 hrs.	Lunch
14:00 hrs. – 16:00 hrs.	Department of Public Service
	<p>Panel 8:</p> <ul style="list-style-type: none"> • Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities
	<p>Panel 9:</p> <ul style="list-style-type: none"> • Study of Preventive Measures that take into Account the

	Relationship between Equitable Compensation and Probity in Public Service
	<u>Participant:</u> Elise Delancy, Permanent Secretary – Ministry of Public Service Bridgette Hepburn, Deputy Permanent Secretary– Ministry of Public Service
16:00 hrs. – 16:30 hrs.	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
16:30 hrs. – 17:00 hrs.	Final meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat.

OFFICIALS WHO ACTED AS CONTACTS IN THE COUNTRY UNDER REVIEW IN COORDINATING THE ON-SITE VISIT, AS WELL AS REPRESENTATIVES OF THE MEMBER STATES OF THE SUBGROUP AND OF THE MESICIC TECHNICAL SECRETARIAT WHO TOOK PART IN THE VISIT

COUNTRY UNDER REVIEW:

THE BAHAMAS

Kenrah Newry

Assistant Director of Legal Affairs, Office of the Attorney-General and Ministry of Legal Affairs

MEMBER STATES OF THE REVIEW SUBGROUP:

TRINIDAD AND TOBAGO

Ian Rampersad

Director of International Law and Human Rights unit, Ministry of the Attorney General and Lead Expert of the Committee of Experts of the MESICIC

COSTA RICA

Ronald Viquez

Public Ethics Prosecutor, Office of the Attorney General and Lead Expert of the Committee of Experts of the MESICIC

TECHNICAL SECRETARIAT OF THE MESICIC:

Eduardo Parada Deutsch

Legal Officer, Department of Legal Cooperation
OAS Secretariat for Legal Affairs

Rodrigo Silva

Legal Officer, Department of Legal Cooperation
OAS Secretariat for Legal Affairs