

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

FINAL REPORT

(Adopted at the March 20, 2015 plenary session)

SUMMARY

This Report contains the comprehensive review of the implementation in The Bahamas of Article III, paragraph 9, of the Inter-American Convention against Corruption, covering “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts,” which was selected by the MESICIC Committee of Experts for the Fourth Round; and of the follow-up of the implementation of the recommendations formulated to The Bahamas during the First Round.

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 Fourth Round, including the criteria set out therein for guiding the review based on equal treatment for all the 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 taking into account The Bahamas’ response to the questionnaire and, as a new and important source of information, the on-site visit conducted between September 23 and 25, 2014, by Costa Rica, as a member of the review subgroup for The Bahamas, with the support of the Technical Secretariat. During that visit, the information furnished by The Bahamas was clarified and expanded and the opinions of civil society organizations, the private sector, professional associations and academics on issues of relevance to the review were heard. This provided the Committee with objective and complete information on those topics, assisting with the gathering of information on best practices.

The review of the oversight bodies was intended, in accordance with the terms of the methodology for the Fourth Round, to determine whether they have a legal framework, whether that framework is suitable for the purposes of the Convention, and whether there are any objective results; then, taking those observations into account, the relevant recommendations were issued to the country under review.

The following oversight bodies in The Bahamas are reviewed in this report: the Office of the Attorney General, the Public Disclosure Commission, the Department of the Auditor General, the Financial Intelligence Unit and the Compliance Commission.

Some of the recommendations formulated to The Bahamas for its consideration in connection with the aforementioned bodies are, among others, the following:

Regarding the oversight bodies in general, provide the proper resources needed for the proper performance of its functions.

With regard to the Office of the Attorney General, subject to its Constitution and the fundamental principles of its legal system, consider establishing an independent prosecutorial service; include in the Manual for Public Prosecutions an overview on practices and policies relevant to prosecution of acts of corruption, including that of transnational bribery; and implement mechanisms to ensure that there is adequate coordination between and oversight of police prosecutors by the Department of Public Prosecutions, in the event that police prosecutors are assigned to prosecute corruption offenses.

Regarding the Public Disclosure Commission, consider establishing provisions that set out that the Public Disclosure Commission is independent in exercising its functions under the Public Disclosure Act; establish and update on a periodic basis a website; implement electronic means for completing a declaration as well as for submission by those subject to the Public Disclosure Act; and consider

establishing the requirement for publication of an annual report by the Public Disclosure Commission on its activities carried out within a year.

Pertaining to the Department of the Auditor General, consider complying with the Financial Administration and Audit Act, 2010 by promulgating the Financial Regulations; provide the Department greater autonomy in the preparation and presentation of its budget; comply with the statutory timeframe for presenting an annual report by the Department of the Auditor General; and consider providing the Auditor General the legal basis to report an irregularity, such as fraudulent activity, to appropriate authorities, such as the Royal Bahamas Police Force and the Office of the Attorney General.

With respect to the Financial Investigation Unit, coordinate with other oversight bodies to provide training to governmental, private institutions, financial institutions and the general public in detecting acts of corruption as related to the work of the Financial Intelligence Unit; seek out training opportunities for the staff of the Financial Intelligence Unit on anti-corruption matters as it relates to its work, from international partners and organizations; and take steps to ensure that all financial institutions put in place appropriate risk management systems to determine whether a customer is a politically exposed person.

Regarding the Compliance Commission, allow the Compliance Commission to meet its human resource needs through external recruitment processes conducted by the Public Service Commission; prepare and publicize an annual report of its activities, containing information such as number of examinations and training activities carried out in a year, statistics on its work as well as other important information such as its work plan and budget expenditures; and place online the training materials the Compliance Commission utilizes to help guide the financial institutions on the implementations of adequate anti-money laundering standards.

The Bahamas also provided information on a best practice regarding the SWIFT Justice Initiative.

With regard to follow-up on the recommendations formulated to The Bahamas in the First Round and with respect to which the Committee, in the Second and Third Round reports, found required additional attention, based on the methodology for the Fourth 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, and which required reformulation. A list of those still pending was also prepared, and has been included in Annex I of the Report.

Among the progress related to the implementation of those recommendations, the following are noted: the introduction of a Civil Society Organization Bill, 2014 as well as implementation of a mechanism for channeling requests for cooperation on mutual legal assistance, as provided under the Convention.

Some of the recommendations formulated to The Bahamas in the First Round that are still pending or have been reformulated address issues such as: establishing or adapting and then implementing standards of conduct for those offices that currently do not fall under the purview of any controls, including adequate sanctions for violations of those standards; establish reporting requirements for those public officials and employees who are currently not required to report to appropriate authorities acts of corruption in the performance of public functions; enact a Freedom of Information Act that regulates and facilitates the access by the public to information in the control of public institutions; and notify the OAS General Secretariat formally of the designation of the central authority, pursuant to the prescribed formalities.

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

**FINAL REPORT ON IMPLEMENTATION IN THE BAHAMAS OF THE CONVENTION
PROVISION SELECTED FOR REVIEW IN THE FOURTH ROUND, AND ON FOLLOW-UP
TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN THE FIRST
ROUND¹**

INTRODUCTION

1. Content of the Report

[1] This Report presents, first, a comprehensive review of The Bahamas' implementation of the provision of the Inter-American Convention against Corruption that was selected for review by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the Fourth Round. That provision appears in Article III (9) of the Convention, pertaining to "Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts."

[2] Second, the report will examine the best practices that The Bahamas has voluntarily expressed its wish to share in regard to the oversight bodies under review in this Report.

[3] Third, as agreed by the Committee of Experts of the MESICIC at its Eighteenth Meeting, in compliance with recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC, this report will address the follow-up of implementation of the recommendations that the Committee of Experts of MESICIC formulated to The Bahamas in the First Round and that it deemed to require additional attention in the reports it adopted for that country in the Second and Third Rounds, which may be consulted at the following web page: www.oas.org/juridico/english/bhs.htm

2. Ratification of the Convention and adherence to the Mechanism

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

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

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of The Bahamas

[6] The Committee wishes to acknowledge the cooperation that it received, throughout the review process from The Bahamas and in particular from the Office of the Attorney General, which was evidenced, inter alia, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents, and in the support for the on-site visit to which the following paragraph of this

¹ This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 20, 2015, at its Twenty-Fifth meeting, held at OAS Headquarters, March 16 – 20, 2015.

report refers. Together with its response, The Bahamas sent the provisions and documents it considered pertinent. The Response as well as the provisions and documents may be consulted at the following webpage: www.oas.org/juridico/english/mesicic4_bhs.htm

[7] The Committee notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-Site Visits*.² As a member of the preliminary review subgroup, the representative of Costa Rica conducted the on-site visit from September 23 – 25, 2014, with the support of the MESICIC Technical Secretariat. The information obtained on that visit is included in the appropriate sections of this report, and its agenda of meetings is appended thereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[8] For its review, the Committee took into account the information provided by The Bahamas up to September 25, 2014, as well as that furnished and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*; and the *Methodology for Conducting On-Site Visits*.

2. Information received from civil society organizations and/or, *inter alia*, private sector organizations; professional associations; academics and researchers

[9] The Committee did not receive any documents from civil society organizations within the time period established by the Committee in the schedule, in accordance with Article 34(b) of the Committee's *Rules of Procedure*.

[10] Nonetheless, during the on-site visit to The Bahamas, information was gathered from civil society and private sector organizations, who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the *Methodology for Conducting On-Site Visits*. A list of invitees is included in the agenda of the on-site visit, which has been annexed to this report. This information is reflected in the appropriate sections of this report.

II. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS ON THE IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISION SELECTED FOR THE FOURTH ROUND:

OVERSIGHT BODIES, WITH A VIEW TO IMPLEMENTING MODERN MECHANISMS FOR PREVENTING, DETECTING, PUNISHING, AND ERADICATING CORRUPT ACTS (ARTICLE III (9) OF THE CONVENTION)

[11] The Bahamas has a set of oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts, among which the following are highlighted: the Office of the Attorney General, the Public Disclosure Commission, the Department of the Auditor General, the Financial Intelligence Unit, the Compliance Commission and the Royal Bahamas Police Force.

[12] The following is a brief description of the purposes and functions of the five bodies selected by The Bahamas that are to be examined in this report:

² Document SG/MESICIC/doc.276/11 rev. 2, which may be consulted at the following webpage: http://www.oas.org/juridico/english/met_onsite.pdf

[13] The Office of the Attorney General, which is generally responsible for prosecuting criminal offences, including corruption-related offences, and primarily responsible for providing timely legal advice to the government and statutory bodies; providing the most efficient and effective legal representation for the government in national and international matters; drafting legislation; and promoting access to justice for all and transparency in the legal system.

[14] The Public Disclosure Commission, which is responsible for receiving and examining annual financial disclosure from Members of Parliament, Senators, Senior Public Officers and Public Appointees in accordance with the Provisions of the Public Disclosure Act, 1976.

[15] The Department of the Auditor General, which is the national supreme audit institution, responsible for financial audits of all government departments and corporations.

[16] The Financial Intelligence Unit, which is responsible for receiving, analyzing, obtaining and distributing suspicious transactions reports.

[17] The Compliance Commission, which supervises financial institutions in relation to the conduct of financial transactions and to ensure compliance with provisions of the Financial Transactions Reporting Act.

1. OFFICE OF THE ATTORNEY GENERAL

1.1. Existence of a legal framework and/or other measures

[18] The Office of the Attorney General has a set of provisions in its legal framework and other measures concerning, among others, the following:

[19] With respect to its objectives and functions, Article 78(1) of the Constitution of The Bahamas provides that the Attorney General has the power to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of The Bahamas; to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and to discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by the Attorney General or any other person or authority.³

[20] Article 78(4) of the Constitution further provides that in the exercise of these powers, the Attorney General is not subject to the direction or control of any other person or authority. Moreover, Article 78(2) provides that these powers may be exercised by the Attorney General or through other persons acting under and in accordance with the Attorney General's general or specific instructions. In this respect, the Office of the Attorney General has a Department of Public Prosecutions which has been authorized by the Attorney General to execute the constitutional and legal responsibility for the commencement and cessation of criminal prosecutions in The Bahamas.⁴ It is this Department that is responsible for the prosecution of all criminal matters before the Supreme Court and the general oversight of magisterial prosecutions.⁵ In addition, a practice group on corruption has been established in this Department, and

³ Constitution of The Commonwealth of The Bahamas, https://www.oas.org/juridico/mla/en/bhs/en_bhs-int-text-const.pdf

⁴ Response to the Questionnaire of the Fourth Round of Review by The Bahamas, pg. 6, http://www.oas.org/juridico/pdfs/mesicic4_bhs_reply.pdf

⁵ *Ibid.*

during the on-site visit, mention was made that this consists of 4 lawyers and the focus is on financial crimes.⁶

[21] The Attorney General is appointed by the Governor General, acting on the advice of the Prime Minister, and is a member of Cabinet. The Attorney General can be appointed from either a member of the House of Assembly or the Senate.⁷ In this respect, the Attorney General shall vacate the office when any person is appointed or re-appointed as Prime Minister; if for any reason other than a dissolution of Parliament, the Attorney General ceases to be a member of the House from among the members he or she was appointed; or if the appointment is revoked by the Governor General acting in accordance with the Prime Minister.⁸ Moreover, a person appointed as Attorney General shall cease to perform this office if as a member of the House of Assembly or Senate, he or she is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt or convicted or reported guilty of a corrupt or illegal practice at elections.⁹ Moreover, as the Attorney General is appointed from a member of the House of Assembly or Senate, he or she is also subject to the disqualifications for election or appointment to these legislative posts.¹⁰

[22] The Director of Public Prosecutions is appointed by the Governor General, on the advice of the Judicial and Legal Service Commission.¹¹ As such, this official is subject to the Judicial and Legal Service Commission Regulations and the provisions on appointment, termination of appointment and discipline contained within these norms.¹² Moreover, the Director is subject to the General Orders¹³ of the Public Service Commission, which contains rules of conduct and policies that govern those that fall under the Judicial and Legal Service Commission.¹⁴ In this respect, these Orders include rules that prevent corruption, conflicts of interest and limit political participation by certain public officers.¹⁵

[23] Likewise, the legal officers that work in the Office of the Attorney General are also appointed by the Governor General, on the advice of the Judicial and Legal Service Commission. These officers are subject to the provisions of the Judicial and Legal Service Commission Regulations, which set out the manner they are appointed, the manner those appointments are terminated and contains a disciplinary regimen. In addition, in its Response to the Questionnaire, the country under review notes that formal requirements for counsel include admission to The Bahamas Bar, as found in the Legal Profession Act 1992, they are selected on merit and vetted by the Security and Intelligence Branch of the Royal Bahamas Police Force.¹⁶ Moreover, they are subject to the General Orders of the Public Service. The

⁶ See 2011 Attorney General's Report, pg. 12, http://www.oas.org/juridico/english/mesicic4_bhs.htm

⁷ Articles 72(2) and 73 of the Constitution, *supra* nota 3.

⁸ Article 74(3) of the Constitution, *ibid.*

⁹ Articles 43(3) and 49(2) of the Constitution, *ibid.*

¹⁰ Articles 42 and 48 of the Constitution, *ibid.*

¹¹ Article 116 of the Constitution, *ibid.* See also the Judicial and Legal Service (Prescribed Public Offices) Act.

¹² Judicial and Legal Service Commission Regulations,

¹³ General Orders, <https://www.bahamas.gov.bs/wps/wcm/connect/d9ee329f-64a8-410e-88dd-c796c0f32b46/General+Orders.pdf?MOD=AJPERES>.

¹⁴ The General Orders state, under its Definitions section, that "The Public Service Commission" or "Commission" shall be read in those places where it is appropriate, as The Police Service Commission; or The Judicial and Legal Service Commission, General Order 100(6).

¹⁵ The General Orders define this term as,

"(a) a person who holds a pensionable office within the meaning of any Act relating to the pensions or gratuities of persons employed in the public service;

(b) a person who is employed in the public service whose employment is not of a casual nature and whose whole time is employed in the public service."

¹⁶ Response to the Questionnaire, pg. 8, *supra* note 4.

total complement of attorneys at the Office of the Attorney General, as of the dates of the on-site visit, is seventy one.¹⁷

[24] With respect to manuals and other documents that describe the functions of its personnel, in its Response to the Questionnaire, the country under review notes that it has a manual for Public Prosecutions and Civil Litigation, which outlines the court procedures in those particular sections and the policies of the Office of the Attorney General in that respect.¹⁸ Moreover, during the on-site visit, the representatives from the Office stated that there is also an employee's manual for this oversight body.

[25] Regarding training, in its Response to the Questionnaire, the country under review states that this is carried out on-site and off-site in various departments and on various legal skills.¹⁹ These disciplines include drafting, policy development and prosecutions.²⁰ As further noted, during the on-site visit, this type of training is carried out on an ad hoc basis. The country under review also notes that training is both internal and external, involving workshops and specialized seminars, and that exchange programs are also in place, predominantly in collaboration with the Federal Bureau of Investigation and Justice Department of the United States. Moreover, training is provided by CARICOM, the United Nations and the Organization of American States.²¹

[26] With respect to quality improvement actions, the country under review notes that an Annual Confidential Report (ACR or Employee Performance Appraisal Record) is an assessment, designed by the Department of Public Service, which records, rates and discusses the performance of all public officers, including that of the legal officers in the Office of the Attorney General. This assessment is expected to be completed on an annual basis by Supervisors and forms part of the officer's Personal Records, and subsequently, becomes instrumental in determining whether or not an officer will be promoted or receive gratuity at the end of his or her public service.²²

[27] Regarding the manner in which the general public is provided with information about their objectives and functions, the Office of the Attorney General has a website which is located at <http://www.bahamas.gov.bs/attorneygeneral>. This webpage provides an overview of the Ministry of Legal Affairs and the Office of the Attorney General, as well as contact information and a web page to provide feedback. It also provides a section for "Frequently Asked Questions", as well as an "About Us" section, which helps inform the public of its objectives and functions.

[28] Regarding mechanisms for dealing with claims, complaints, or allegations related to the pursuit of their objectives and the performance of their personnel, the country under review, during the on-site visit, noted that complaints related to the performance of legal officers are made to the Director or Deputy Director of each section of the Office of the Attorney General. These complaints may then be brought forward to the attention of Senior Management in weekly matters and matters of serious misconduct are then forwarded to the Judicial and Legal Services Commission for their review.²³ Mention was also made of the disciplinary arm of The Bahamas Bar Association, which also investigates and recommends disciplinary action where complaints are made against legal officers.

¹⁷ See On-Site Visit Presentation of the Office of the Attorney General, pg.8, http://www.oas.org/juridico/english/mesicic4_bhs.htm

¹⁸ Response to the Questionnaire, pg. 8, *supra* note 4.

¹⁹ *Ibid.*

²⁰ See On-Site Presentation of the Office of the Attorney General, pg. 16, *supra* note 17.

²¹ *Ibid.*

²² *Ibid.*, pg. 15.

²³ *Ibid.*, pg. 14.

[29] With respect to the budgetary resources needed for their operations, during the on-site visit, the representatives of the oversight body noted that ordinarily, in March/April of each year, senior managers convene to determine the budgetary and human resource needs for the various Departments.²⁴ The financial year ends on June 30, and the new budgetary period commences on July 1. The budget expended for prosecutions for the past five years is the following:²⁵

Budget for Prosecutions²⁶					
	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014
Salary and Allowances – Prosecutions	800 282.88	893 215.35	1 342 722.25	1 429 394.31	1 507 153.89
Transportation for Witnesses	58 363.38	76 696.07	69 723.20	65 33.10	101 851.72
Accommodations and Meals - Witnesses	103 772.62	112 500.36	164 111.70	102 621.22	176 871.27
Accommodations and Meals – Prosecutors	14 607.35	21 480.14	12 187.68	14 543.24	18 835.58
Total Expended for Prosecutions	977 026.23	1 103 891.92	1 588 744.83	1 612 191.87	1 804 712.46
Percentage of Overall Budget	10%	11%	13%	13%	15%

[30] Regarding coordination mechanisms for harmonizing their functions, during the on-site visit, the representatives of the Office of the Attorney General noted that it receives from the Public Disclosure Commission a list of persons who are not in compliance with the Public Disclosure Act. As well, the Office receives from the Royal Bahamas Police Force a police pile for consideration of appropriate charges, after an investigation of a suspicious transaction report from the Financial Intelligence Unit. Moreover, a National Task Force has been established, consisting of the Financial Intelligence Unit, the Compliance Commission, the Insurance Commission, the Securities Commission, the Central Bank, the Gaming Board, the Department of Cooperatives, the Royal Bahamas Police Force, the Drug Enforcement Unit, the Director of Public Prosecutions and the International Legal Cooperation Unit of

²⁴ *Ibid.*, pg. 9.

²⁵ *Ibid.*, pgs. 10 – 12.

²⁶ 1 Bahamas Dollar = 1 US Dollar.

the Office of the Attorney General. This Task Force is a team of regulators with diverse responsibilities charged with, among other things, the facilitation of rules to prevent and detect acts of corruption in the Financial Services Sector.²⁷

[31] With respect to accountability mechanisms applicable to the performance of their duties, the country under review, in its Response to the Questionnaire, notes that an annual report is published in hard copy and online.²⁸ Moreover, during the on-site visit, the representatives of this oversight body noted that public statements of the Attorney General are published on the website of the Office of the Attorney General and that at the openings of the legal year of the Supreme Court and the Court of Appeal, the Chief Justice, the President of the Court of Appeal, the Attorney General and the President of The Bahamas Bar Association, respectively, provide to the public comprehensive overviews of the work of the Judiciary, the Office of the Attorney General and The Bahamas Bar Association.²⁹

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

[32] The Office of the Attorney General has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 1.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures.

[33] First, the Committee notes that the Attorney General, under the Constitution, is a member of government with two separate roles in the country under review. In the first place, there is a government role, whereby this position is a member of Cabinet, which is responsible for the general direction and control of the government, and is appointed in the same manner as other Ministers of government.³⁰ In addition, the person to be named to this position has to be chosen from the members of the House of Assembly or Senate. The Attorney General, however, is also constitutionally responsible for initiating, ceasing or taking over criminal proceedings. Under this role, the Constitution provides that in carrying out this responsibility, it shall not be subject to the direction or control of any other person or authority. As noted by the Attorney General in her remarks to a Constitutional Commission in June 2013, she referred to this situation as “*her dual roles as a member of the Executive (cabinet minister) – the dual (and sometimes opposable) roles imposed on an Attorney General under the Westminster system, as both guardian of the Constitution and chief law minister of the Crown.*”³¹

[34] The Constitution further provides that the Attorney General may also delegate the authority to initiate proceedings, which it has done so to the Department of Public Prosecutions. The Committee observes, however, that the Attorney General is ultimately constitutionally responsible for criminal proceedings in The Bahamas, even with this delegation of authority. The Department of Public Prosecutions, though carrying out this function, is directly dependent on the Attorney General for all matters, and subject to its direction and control. Moreover, the Committee also observes that the Constitution also provides that the Attorney General has the sole authority to overtake or cease a proceeding.

²⁷ On-Site Presentation of the Office of the Attorney General, pg. 13, *supra* note 17.

²⁸ Response to the Questionnaire, pg. 8, *supra* note 4.

²⁹ See On-Site Presentation of the Office of the Attorney General, pgs. 14 and 16, *supra* note 17.

³⁰ See for example Article 72(1) of the Constitution, *supra* note 3.

³¹ 2013 Attorney General’s Report, pg. 20, http://www.oas.org/juridico/english/mesicic4_bhs.htm

[35] The Committee notes that the Criminal Procedure Code of The Bahamas also emphasizes that ultimate control over the conduct of all proceedings vests with the Attorney General, even when, under Section 56 of this Code, another person has been delegated to institute or conduct the proceeding:³²

[36] *[A]ny such person shall at all times in respect thereof be subject to the directions of the Attorney-General who may in any case himself institute or conduct any criminal proceedings or may take over and continue, or direct any legal officer subordinate to him to take over and continue in accordance with his instructions, any criminal proceedings instituted or undertaken by any such person.*

[37] Moreover, the Attorney General, not the Director of Public Prosecutions, has the discretion to decide whether a proceeding is to be carried out for violation of two important anti-corruption laws in place in The Bahamas: the Prevention of Bribery Act and the Public Disclosure Act.³³

[38] This issue of the role of the Attorney General as a political member of Government while continuing to exercise the prosecutorial functions of the state is one that has been considered by the country under review in the past. For example, in 2002, a compendium of bills to amend the Constitution was tabled and passed in both Houses, but did not become law as they failed to attain the required majority at the ensuing referendum.³⁴ One of these bills, The Bahamas Constitution (Amendment) (No. 3) Act, 2002 (No. 12 of 2002), sought to transfer the Attorney General's power relating to criminal proceedings to the Director of Public Prosecutions.³⁵ Moreover, a Commission appointed in 2012 by the Prime Minister of The Bahamas to conduct a comprehensive review of the Constitution and to recommend changes, in its report, has recommended, among others, the removal of "*the responsibility for criminal prosecutions from a political Attorney General and transfer it to a Director of Public Prosecutions with constitutional autonomy and independence.*"³⁶ The Commission further noted that:

[39] *"The position of a political Attorney General as the person ultimately responsible for criminal prosecutions is an anachronism in a democratic system and a contradiction of the separation of powers doctrine. The Constitution's attempt to make the Attorney General "not subject to the direction and control of any other person or authority" in the performance of his quasi-judicial functions is not something likely to engender public confidence in the independence and impartiality of the Attorney-General, no matter how scrupulous and well-intentioned any individual holder of that office may be."*³⁷

³² Criminal Procedure Code of The Bahamas, section 56, http://laws.bahamas.gov.bs/cms36/images/LEGISLATION/PRINCIPAL/1968/1968-0038/CriminalProcedureCodeAct_1.pdf

³³ See section 23 of the Prevention of Bribery Act, http://laws.bahamas.gov.bs/cms36/images/LEGISLATION/PRINCIPAL/1976/1976-0009/PreventionofBriberyAct_1.pdf and section 14 of the Public Disclosure Act, http://laws.bahamas.gov.bs/cms36/images/LEGISLATION/PRINCIPAL/1976/1976-0012/PublicDisclosureAct_1.pdf

³⁴ Report of the Constitutional Commission into a Review of The Bahamas Constitution, July 2013, pg. 61, http://www.bahamas.gov.bs/wps/wcm/connect/7c2fe440-cb66-4327-9bf3-432131510cc4/Constitution+Commission+Report+2013_8JULY2013.pdf?MOD=AJPERES

³⁵ *Ibid*, pg. 62. In addition, the country under review notes that The Bahamas Constitution (Amendment) (No. 3) Act, 2002 had the effect and the purpose of the alteration of the Constitution. In this respect, Act No. 12 of 2002 sought to define the functions of the Attorney-General, while Act No. 13 of 2002 established the Office of the Director of Public Prosecutions and sought to define its powers. These Acts were passed but have not been brought into force.

³⁶ *Ibid*, pg. 183.

³⁷ *Ibid.*, pg. 179.

[40] Before this Commission, the current Attorney General supported the transference of criminal functions to an independent Director of Public Prosecutions, which was also noted in the 2013 Attorney General's Report.³⁸

[41] Regarding this issue, the representatives of the Office of the Attorney General, during the on-site visit, stated that it is engaging in consultancy arrangements with the Commonwealth Secretariat to proffer advice on the structure and administration of a model independent Director of Public Prosecutions Department, one that meets international standards.³⁹

[42] The Committee believes that the country under review should continue to consider establishing measures that help entrench an independent prosecutorial service, one that is not under the direction or control of an Attorney General, subject to its Constitution and the fundamental principles of its legal system. Such measures may also include measures that do not require Constitutional action, such as establishing guidelines that safeguard the perception of prosecutorial independence, such as establishing parameters on when the Attorney General is to be consulted on important matters of general interest, which should be published on line and in the Official Gazette of The Bahamas in order to promote transparency in the process, and if the Attorney General does intervene, he may do so, but through written directives to the Director of Public Prosecutions.

[43] These measures should be considered by the country under review, especially given that the consent of the Attorney General is required before initiating prosecutions that involve bribery and other acts of corruption or for the failure by members of the House of Assembly or Senate to provide a statutory declaration, or in providing a false statement to these declarations, the perception of possible political interference in such a decision is not, as stated by The Bahamas Constitutional Commission, "*likely to engender public confidence in the independence and impartiality of the Attorney-General, no matter how scrupulous and well-intentioned any individual holder of that office may be.*" The Committee will formulate a recommendation. (see Recommendation 1.4.1 in Section 1.4 of Chapter II of this Report)

[44] Second, the Committee notes that during the on-site visit, the representatives mentioned the steps being taken to address backlog of serious criminal matters and inefficiencies in the Supreme Court due to the chronic under resourcing of the Supreme Court.⁴⁰ For example, mention was made that the number of criminal courts in place would increase from 6 to 10, and that legislation would increase the number of judges from fourteen to twenty. Mention was also made that legislation would be introduced that would reform the criminal process by which video conferencing and the use of technology is enabled. It was stated that these changes would require increased staff in the Office of the Attorney General to meet the increased volume of work. In this respect, the representatives noted that \$800 000 of additional funds have been allocated to the Office of the Attorney General for hiring of more staff.

[45] However, during the visit, mention was also made that one of the difficulties facing the Office of the Attorney General is in the under-resourcing of the Public Prosecutions Department, and mention was made of other issues of resources within the Office, such as using the staff from the Law Reform Commission to help out with legal drafting, as there is a shortage of draftsmen.⁴¹ The Committee notes that there are 71 attorneys currently in this oversight body, which is a drop of 12 lawyers since 2011.⁴²

³⁸ *Ibid.*, pg. 180 and 2013 Attorney General's Report, pg. 21, *supra* note 31.

³⁹ See On-Site Presentation of the Office of the Attorney General, pg. 24, *supra* note 17.

⁴⁰ *Ibid.*, pg. 20.

⁴¹ *Ibid.*

⁴² *Ibid.*, pg. 8 and see 2011 Attorney General's Report, pg. 8, http://www.oas.org/juridico/english/mesicic4_bhs.htm

Though there has been a steady increase in budgetary resources provided to the Department, the Committee believes that the country under review should consider ensuring that the Office of the Attorney General, in particular the Department of Public Prosecutor, has the sufficient personnel and material resources to carry out its functions, especially in light of competing needs for resources, such as the plan to expand the use of technology, such as videoconferencing, is put into place, for example. The Committee will formulate a recommendation. (see Recommendation 1.4.2 in Section 1.4 of Chapter II of this Report)

[46] Similarly, the Committee notes that one of the difficulties presented during the on-site visit was the need for more staff on Case Management, Integrated Justice, Calendaring and Management of Files.⁴³ In this respect, in 2011, Criminal Case Management was introduced within the Department, a unit composed of 5 law officers whose responsibility includes reviewing cases for trial readiness before they come on for trial. Moreover, the Office has also created a division whose sole responsibility is the administration of criminal cases.⁴⁴ These initiatives are put in place in order to address the backlog of cases within the Department of Public Prosecutions. This division conducted an audit and found the following:⁴⁵

[47] *“Its audit of matters in OAG [Office of the Attorney General] from 2002 to date reveals that the number of matters outstanding in OAG is such that if twelve judges of the Supreme Court sat hearing only criminal matters for all of 2013 the backlog of cases would not be cleared by the end of 2013. This audit does not include matters before 2002.”*

[48] The Committee believes the country under review should provide the necessary resources to address the backlog of cases. In this regard, resources should be provided to strengthen the unit and division responsible for case management within the Department of Public Prosecution. The backlog of cases is one that can only undermine the effectiveness of this Department in conducting prosecutions.⁴⁶ The Committee will formulate a recommendation. (see Recommendation 1.4.2 in Section 1.4 of Chapter II of this Report)

[49] Third, the Committee observes that, in the Response to the Questionnaire, the country under review noted that there is a Manual for Public Prosecutions, which outlines the court procedures in those particular sections and policies of the Office of the Attorney General.⁴⁷ It was also noted during the on-site visit that this manual is outdated, a difficulty also set out in the presentation carried out by this oversight body during the visit, and is currently being revised and updated.⁴⁸ The Committee was also informed during the visit that a recent amendment had been enacted to the Prevention of Bribery Act. This amendment, which came into force on May 1, 2014, criminalized transnational bribery in The Bahamas.⁴⁹ It is hoped that when the manual is updated, it takes into account to reflect these new amendments and that it include an overview of the practice and policies relevant for prosecution of

⁴³ On-Site Presentation of the Office of the Attorney General, pg. 20 *supra* note 17.

⁴⁴ 2013 Attorney General’s Report, pg. 5, *supra* note 31.

⁴⁵ *Ibid.*

⁴⁶ The country under review notes that in the Budget for June 2015, full consideration will be given to the overall increase of staff. The Director of Public Prosecutions and Director of Legal Affairs will be invited to provide a comprehensive recommendation of the staffing requirements of their particular sections taking into consideration the recommendations of the MESICIC.

⁴⁷ Response to the Questionnaire, pg. 8, *supra* note 4.

⁴⁸ On-Site Presentation of the Office of the Attorney General, pg. 20, *supra* note 17.

⁴⁹ Prevention of Bribery (Amendment) Act, 2014, <http://laws.bahamas.gov.bs/cms36/images/LEGISLATION/AMENDING/2014/2014-0003/PreventionofBriberyAmendmentAct2014.pdf>

acts of corruption, such as those set out in the Prevention of Bribery Act. Given the foregoing, the Committee considers that the Office of the Attorney General should update its guides and Manual, which would include relevant updates on anti-corruption legislation, practices and policies.⁵⁰ The Committee will formulate recommendations. (see Recommendation 1.4.3 and 1.4.4 in Section 1.4 of Chapter II of this Report)

[50] Fourth, The Committee observes that in the Response to the Questionnaire, the country under review notes that the Office of the Attorney General is primarily responsible for the prosecution of indictable offences and has delegated the responsibility of the prosecution of summary offences to the Royal Bahamas Police Force.⁵¹ However, the Committee also notes that the Prevention of Bribery Act provides that a person can be found guilty on summary conviction for violation of the acts of corruption contained within the Act, including that of transnational bribery.⁵²

[51] Pursuant to the foregoing, the Committee observes that is it conceivable for police prosecutors to be responsible for prosecuting not only minor offenses, but also serious crimes involving the corruption of public officials. Given the importance of adequately prosecuting corruption offenses, the Committee considers it important for the country under review to implement mechanisms to ensure that there is adequate coordination and oversight of police prosecutors by the Department of Public Prosecutions, in the event that police prosecutors are called upon to prosecute corruption offenses, and helping to avoid a mismatch of legal expertise between highly trained criminal defense counsel and that of legally untrained police prosecutor, a view shared by the representatives of the oversight body during the on-site visit.⁵³ The Committee will formulate a recommendation. (See Recommendation 1.4.5 in Section 1.4 of Chapter II of this Report)

[52] In this respect, the Committee notes that in the aforementioned 2013 Report of the Constitutional Commission into a Review of The Bahamas Constitution, it was observed that while many Caribbean countries have relied on police prosecutors to prosecute summary trials, as a means to compensate for the shortage of public prosecutors, among other things, it was the view of this Commission that this system should be phased out and that all prosecutions in the magistrates' courts be conducted by the Department of Public Prosecutions.⁵⁴

[53] Fifth, the Committee observes that the website of the Office of the Attorney General is one that was launched on December 1, 2010, the first ever for this oversight body.⁵⁵ It was established “*in furtherance of a commitment to better serve the public by the provision of information.*”⁵⁶ The Committee notes however that important information is not easily accessible online, namely the activities reports issued by the Attorney General, although during the on-site visit, paper copies of these reports for the years 2010, 2011 and 2013 were provided. Rather than providing these reports in an easily and accessible manner on the front page of the Office, such as a link for publications, they are found in a

⁵⁰ The country under review notes that the Manual for Public Prosecutions is currently being updated, which will include relevant updates on transnational bribery, prosecution of acts of corruption and the newly updated “Palermo”;(The United Nations Convention Against Transnational Organized Crime, 2002), anti-corruption legislation.

⁵¹ Response to the Questionnaire, pg. 5, *supra* note 4.

⁵² Section 10 of the Prevention of Bribery Act, *supra* note 33.

⁵³ The country under review notes that the Attorney General has invited the Director of Public Prosecutions to coordinate and have oversight over police prosecutors. Moreover, the Attorney-General and the Minister of National Security will be invited to consider the implementation of a joint police/prosecution advisory team dedicated to eradicate acts of corruption.

⁵⁴ Report of the Constitutional Commission into a Review of The Bahamas Constitution, pg. 188, *supra* note 34.

⁵⁵ 2010 Report of the Attorney-General and Minister of Legal Affairs, pg. 8, http://www.oas.org/juridico/english/mesicic4_bhs.htm

⁵⁶ *Ibid.*

page of an overview description of this oversight body.⁵⁷ These reports are an important step in providing transparency in the work conducted by this oversight body, a manner for which the public may become aware of the activities undertaken by the Office of the Attorney General. The Committee will formulate a recommendation. (See Recommendation 1.4.6 in Section 1.4 of Chapter II of this Report)

[54] Sixth, the Committee also observes that there is no legislation in place that mandates an annual report of the activities of the Office of the Attorney General. However, in 2010, the Attorney General at that time first published an Annual Report of the Attorney General and the Minister of Legal Affairs, in furtherance of the Attorney General's commitment to transparency and accountability in the exercise of his functions.⁵⁸ The Committee commends the country under review for this important initiative. However, the Committee notes that the publication of this report has not been made on an annual basis since 2010. While reports have been furnished for 2011 and 2013, it appears no such report was produced for 2012. Moreover, the Committee notes that the content of this report has changed from what was included in 2010 and 2011, and that with 2013. While in the earlier versions included information on the activities carried out by Department, human resources, budget, and provided highlights on measures taken by Department, including an organizational chart of the Office, the latest iteration does not provide this information. The Committee encourages the country under review to consider providing this type of information in the future, and consider strengthening its content by establishing uniform criteria and parameters in respect of the basic contents of the annual reports of the Office, while highlighting other aspects that might be included in future reports, such as: a budget broken down as presented during the on-site visit and referred to in section 1.1 of this Report; statistics on its work, such as the number of prosecutions carried out during the year, by offense, as well as numbers that are pending, for example; and the training activities undertaken by its personnel.⁵⁹ The Committee will formulate recommendations. (See Recommendations 1.4.7 and 1.4.8 in Section 1.4 of Chapter II of this Report)

[55] Seventh, the Committee further notes that during the on-site visit, a representative of the Royal Bahamas Police Force made a presentation on the work of this government body in its fight against corruption. In particular, it was mentioned that the Police Force Act, 2009 establishes a Complaints and Corruption Branch, to receive complaints on police conduct from the public.⁶⁰ However, there is no dedicated Unit for receiving and investigating all reports and allegations of corruption against government officials and public servants. The establishment of a unit dedicated to investigating acts of corruption committed by government officials would help with the mandate of the Office of the Attorney General in prosecuting these offenses, especially the practice group on corruption established within the Department of Public Prosecutions.⁶¹ The Committee will formulate a recommendation. (See Recommendation 1.4.9 in Section 1.4 of Chapter II of this Report)

[56] Eighth, the Committee also notes that section 35 of the Financial Administration and Audit Act, 2010 establishes an internal audit department in the Ministry of Finance, and that the Financial Secretary

⁵⁷ [Overview of the Ministry of Legal Affairs and the Attorney General, Law Revision](#). The country under review notes that Office of the Attorney General Information Technology Department/Pilot Project will be instituted to load the Attorney General's Annual Report on-line in a user friendly manner.

⁵⁸ 2010 Report of the Attorney General, pg. 3, *supra* note 55.

⁵⁹ The country under review notes that the Government is committed to providing a detailed Annual Report of the activities of the Office and that the Attorney-General will direct that the Office of the Attorney-General reports be issued annually containing relevant statistics duly informing the public of the work of the office, training and where relevant, financial expenditures.

⁶⁰ Police Force Act, 2009, section 81, http://www.royalbahamaspolice.org/aboutus/police_act_2009.pdf

⁶¹ The country under review notes that the Minister of National Security will be invited to create an Anti-Corruption Unit to be established within the Royal Bahamas Police Force.

may also establish them within Ministries and departments.⁶² The purpose of this Unit is to enhance efficiency, accountability and transparency in the management of Government resources. The Committee believes that such a unit should also be established within the Office of the Attorney General, as it appears that there is no internal audit unit, or even an accounting unit established within the Office.⁶³ The Committee will formulate a recommendation in this regard. (see Recommendation 1.4.10 in Section 1.4 of Chapter II of this Report)

[57] Ninth, during the on-site visit, the representatives of the Office of the Attorney General stated that the Government is working on an anti-corruption action plan which will build on existing initiatives and include key pillars, such as: a review of the legislative framework to modernize and keep pace with international developments and standards; the introduction of new specific anti-corruption legislation creating an anti-corruption body; strengthening institutional capacity in all arms and institutions of Government, especially improving the judicial procedure to fight corruption; improving public management systems and accountability, focusing on strengthening the public procurement system, the Office of the Auditor General, and the enforcement of a Code of Conduct and Ethics for all levels of the Public Service and Public Administration; and the establishment of an Inter-Ministerial Committee to monitor implementation of this Plan.⁶⁴ In this respect, given that the country under review is in the process of drafting this plan, the Committee considers that it would be useful to consider adopting a timetable setting out priorities, actions to be undertaken, deadlines for their execution, and annual targets to be reached for this Plan, and to publicize that timetable so that the public can appreciate the efforts by the country under review to move forward with its implementation.⁶⁵ The Committee will formulate a recommendation. (see Recommendation 1.4.11 in Section 1.4 of Chapter II of this Report)

[58] Tenth, the Committee notes, as set out under section 1.1, complaints related to the performance of legal officers are made to the Director or Deputy Director of each section of the Office of the Attorney General, which may then be brought forward to the attention of Senior Management in weekly matters and matters of serious misconduct are then forwarded to the Judicial and Legal Services Commission for their review. However, the Committee observes that the webpage of the Office of the Attorney General does not provide a section to submit complaints by the public. The Committee will formulate a recommendation. (see Recommendation 1.4.12 in Section 1.4 of Chapter II of this Report)

[59] Eleventh, during the on-site visit, mention was made of the collaboration with other government bodies, such as receiving from the Public Disclosure Commission a list of persons who are not in compliance with the Public Disclosure Act and receiving from the Royal Bahamas Police Force matters that warrant consideration based on a Suspicious Transaction Report from the Financial Intelligence Unit.⁶⁶ However, it is unclear if the Office of the Attorney General communicates to these government agencies, on the outcome of their referrals or investigations, such as if it led to a prosecution. The

⁶² See pg. 2 of the Memorandum of Understanding between the Department of the Auditor General and the Internal Audit Section of the Ministry of Finance, http://www.oas.org/juridico/english/mesicic4_bhs.htm, and the Financial Administration and Audit Act, 2010, http://laws.bahamas.gov.bs/cms36/images/LEGISLATION/PRINCIPAL/2010/2010-0026/FinancialAdministrationandAuditAct2010_1.pdf

⁶³ The country under review notes that consideration is being given, as a matter of policy to the establishment of an internal audit unit within the Office of the Attorney-General and/or other government ministries. Staff of the Auditor-Generals Department will be invited to assist in the conduct of an external audit.

⁶⁴ On-Site Presentation of the Office of the Attorney General, pg. 25, *supra* note 17.

⁶⁵ The country under review notes that a Government National Anti-Corruption Action Plan is to be prioritized and the Director of Legal Affairs will prepare a timetable on the way forward. The Public will be informed on the Office of the Attorney-General's website.

⁶⁶ *Ibid.*, pg. 13.

country under review should consider establishing a mechanism or arrangement for the Office of the Attorney General so that it may coordinate and provide feedback on the outcome of the reports made to this Office by these bodies.⁶⁷ The Committee will formulate a recommendation in this regard. (see Recommendation 1.4.13 in Section 1.4 of Chapter II of this Report)

[60] Twelfth, the Committee observes that during the on-site visit, the representatives of the Office of the Attorney General stated that there is frequent interaction between prosecutors and the police on the issue of evidence. Mention was also made that there is coordination as well with respect to evidence received from suspicious transaction reports. Moreover, the Committee observes that in the 2011 Attorney General's Report, it is noted that a prosecutors and police advisory teams have been organized to advise the police early in the investigative stages of all serious and complex cases, including fraud, which has improved the quality of case preparation by the police.⁶⁸ However, the Committee notes that, in the Response to the Questionnaire, one of the difficulties encountered is the importance of obtaining cogent evidence for the detection of corrupt acts.⁶⁹

[61] To address this difficulty, the Committee believes that the country under review may also consider expanding these advisory teams to improve coordination and case preparation for other acts of corruption, such as bribery. For example, with the passage of the recent amendments to the Prevention of Bribery Act, transnational bribery is also an offence which will require greater collaboration with the police. It may also consider conducting an analysis of the causes that could be underlying difficulties in obtaining the cogent evidence required to detect corrupt acts, with a view to identifying challenges and implementing corrective measures, as necessary. The Committee will formulate recommendations in this regard. (see Recommendations 1.4.14 and 1.4.15 in Section 1.4 of Chapter II of this Report)

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

[62] In its Response to the Questionnaire, the country under review reports that for the period January 2013 – December 2013, there were 3 cases of fraud/stealing by reason/forgery and related offences. Of these, two were found guilty and one not guilty.⁷⁰

[63] The Committee observes that these results do not provide an overview of the manner corruption cases are being carried out, and further information should be maintained, in a broken down manner, in order to identify challenges and recommend corrective measures: total number of cases investigated that were ready for a decision to be adopted; the number of decisions adopted in connection with them; the number of those decisions in which responsibilities were established or penalties were imposed; and the number of those decisions in which no responsibilities were found or acquittals were given. Moreover, these results should differentiate which cases were prosecuted as indictable offenses, and which ones as summary conviction.⁷¹ The Committee will formulate recommendations in this regard. (see Recommendations 1.4.16 and 1.4.17 in Section 1.4 of Chapter II of this Report)

⁶⁷ The country under review notes that the Office of the Attorney-General will consider providing feed-back to government bodies on the Suspicious Transaction Reports referred by the Financial Intelligence Unit and the outcome of the list of persons who were non-compliant by the Public Disclosure Commission.

⁶⁸ 2011 Attorney General's Report, pgs. 11 – 12, *supra* note 42.

⁶⁹ Response to the Questionnaire, pg. 29, *supra* note 4.

⁷⁰ *Ibid.*, pg. 26.

⁷¹ The country under review notes that since 2013, the Office of the Attorney General has been keeping statistical data of relevant cases, including indictable offences. The Royal Bahamas Police Force is to be invited to provide and maintain statistical data in the new anti-corruption unit of cases investigated, summary and electable matters, so that they can be consistently reviewed by a new joint task force.

[64] The Committee also notes that under the Financial Administration and Audit Act, the Office of the Attorney General is responsible for recovering surcharges levied on a person employed in the service of the Government that has a) failed to collect any moneys owing to the Government for the collection of which such person is or was at the time of such employment responsible; b) is or was responsible for any improper payment of public moneys or for any payment of such moneys which is not duly vouched; or c) is or was responsible for any deficiency in, or for the loss or destruction of, any public money, public stores or other Government property. The Committee believes that the country under review should also consider maintaining records on the surcharges recovered by the Office of the Attorney General. In addition, a record of the fines imposed by the Court for violation of the Prevention of Bribery Act and the Public Disclosure Act, and the amount recovered should also be maintained. The Committee will formulate a recommendation in this regard. (see Recommendations 1.4.18 and 1.4.19 in Section 1.4 of Chapter II of this Report)

1.4. Conclusions and recommendations.

[65] Based on the comprehensive review conducted with respect to the Office of the Attorney General in the foregoing sections, the Committee offers the following conclusions and recommendations:

[66] The Bahamas has considered and adopted measures intended to maintain and strengthen the Office of the Attorney General, as an oversight body, as described in Chapter II, Section 1 of this Report.

[67] 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 Subject to its Constitution and the fundamental principles of its legal system, consider establishing an independent prosecutorial service. (See section 1.2 of Chapter II of this Report)
- 1.4.2 Provide the Department of Public Prosecutions with the human and material resources needed for the proper performance of its functions, within available resources. (See section 1.2 of Chapter II of this Report)
- 1.4.3 Update the Manual for Public Prosecutions. (See section 1.2 of Chapter II of this Report)
- 1.4.4 Include in the Manual for Public Prosecutions an overview on practices and policies relevant to prosecution of acts of corruption, including that of transnational bribery. (See section 1.2 of Chapter II of this Report)
- 1.4.5 Implement mechanisms to ensure that there is adequate coordination between and oversight of police prosecutors by the Department of Public Prosecutions, in the event that police prosecutors are assigned to prosecute corruption offenses. (See Section 1.2 of Chapter II of this Report).
- 1.4.6 Make more easily available online the annual reports of the Office of the Attorney General. (See Section 1.2 of Chapter II of this Report)

- 1.4.7 Ensure that a report of the activities of the Office of the Attorney General is issued on a yearly basis. (See Section 1.2 of Chapter II of this Report)
- 1.4.8 Establish uniform criteria and parameters in respect of the basic contents of the annual reports of the Office of the Attorney General, while also ensuring that they contain relevant content that informs the public of the work undertaken by this oversight body, such as its budget allocation, expenditures, training provided as well as statistics on its work. (See Section 1.2 of Chapter II of this Report)
- 1.4.9 Establish an Anti-Corruption Unit within the Royal Bahamas Police Force to investigate reports and allegations of corruption against government officials and public servants. (See Section 1.2 of Chapter II of this Report)
- 1.4.10 Establish an internal audit unit within the Office of the Attorney General. (See section 1.2 of Chapter II of this Report)
- 1.4.11 Adopt a timetable for the implementation of the Anti-Corruption Action Plan, setting out priorities, actions to be carried out, deadlines for executing them, and annual targets to be met, and disseminate that schedule so that the public can appreciate the efforts by the country under review to move forward with its implementation. (See section 1.2 of Chapter II of this Report)
- 1.4.12 Establish on the webpage of the Office of the Attorney General a section for receiving complaints by the public on the work carried out by this oversight body. (See section 1.2 of Chapter II of this Report)
- 1.4.13 Implement a mechanism whereby the Office of the Attorney General provides feedback to government bodies regarding the outcome of the referrals and investigations of wrongdoing received by this Office. (See section 1.2 of Chapter II of this Report)
- 1.4.14 Establish a prosecutor and police advisory team for acts of corruption, so as to improve coordination and case preparation on these offenses. (See section 1.2 of Chapter II of this Report)
- 1.4.15 Conduct an analysis of the causes that could be underlying difficulties in obtaining the cogent evidence required to detect corrupt acts, with a view to identifying challenges and implementing corrective measures, as necessary. (See section 1.2 of Chapter II of this Report)
- 1.4.16 Maintain results indicating the total number of cases investigated that were ready for a decision to be adopted; the number of decisions adopted in connection with them; the number of those decisions in which responsibilities were established or penalties were imposed; and the number of those decisions in which no responsibilities were found or acquittals were given; in order to identify challenges and recommend corrective measures for

the Office of the Attorney General. (See section 1.3 of Chapter II of this Report)

- 1.4.17 Maintain results that differentiate between cases prosecuted as indictable offenses and those as summary conviction. (See section 1.3 of Chapter II of this Report)
- 1.4.18 Maintain statistics on the surcharges recovered by the Office of the Attorney General as a result of a violation of the Financial Administration and Audit Act. (See section 1.3 of Chapter II of this Report)
- 1.4.19 Maintain statistics on the fines recovered as a result of a violation of the Prevention of Bribery Act and the Public Disclosure Act. (See section 1.3 of Chapter II of this Report)

2. PUBLIC DISCLOSURE COMMISSION

2.1. Existence of a legal framework and/or other measures

[68] The Public Disclosure Commission has a set of provisions in its legal framework and other measures concerning, among others, the following:

[69] With respect to its objectives and scope of functions, section 6 of the Public Disclosure Act provides that the Public Disclosure Commission is to examine every declaration furnished to it by Members of Parliament, Senators, and Senior Public Officers and Public Appointees.⁷² It also has the power to request in writing from these Parliamentarians and Senior Public Officers and Public Appointees any further information or documents as it may require; require these officials to attend on the Commission; make independent inquiries and investigations with respect to these declarations; and summon witnesses, require the productions of documents and to do all such things as it considers necessary or expedient for the purpose of carrying out its functions.⁷³ It may also receive written complaints in relation to the published summary of the declarations.⁷⁴ In this respect, it may summon the complainant, hear the complainant and any witnesses of the complainant in support of the complaint.

[70] In carrying out its functions, in the Response to the Questionnaire, the country under review notes it is an independent agency, works independently and does not harmonize with any other

⁷² Section 6 of the Public Disclosure Act, *supra* note 33. See also the Public Disclosure Act (Application to Public Appointees and Public Officers) Notice, which makes the requirement to declare for all for all public appointees and public officers included in the attached Schedule to the Act,

http://laws.bahamas.gov.bs/cms36/images/LEGISLATION/SUBORDINATE/1980/1980-0020/PublicDisclosureActApplicationtoPublicAppointeesandPublicOfficersNotice_1.pdf

The list of public appointees and public officers are the Secretary of the Cabinet, the Financial Secretary, the Chairman of the Public Service Commission, the Permanent Secretary, the Director of Legal Affairs, the Auditor-General, the Director of Public Personnel, the Commissioner of Police, the Secretary of Revenue, the Deputy Permanent Secretary, the Deputy Financial Secretary, the Deputy Auditor-General, the Deputy Commissioner of Police, the Deputy Director of Public Personnel, the Head of Department, the Deputy Head of Department, the General Manager (by whatever name called) of any Corporation established by Act of Parliament for public purposes, the Governor of the Central Bank of The Bahamas and the Deputy Governor of the Central Bank of The Bahamas.

⁷³ Section 7, of the Public Disclosure Act, *ibid.*

⁷⁴ Section 7(b), *ibid.*

agency.⁷⁵ In this respect, during the on-site visit, the representatives specified that it acts independently in the examination of declarations.⁷⁶

[71] Regarding the manner in which decisions are adopted, pursuant to section 15 of the First Schedule of the Public Disclosure Act, decisions reached by the Commission are to be made by majority of votes, of a quorum of at least two Commissioners. The Chairman, in addition to having an original vote, shall also have the casting vote in any case in which the voting is equal. As noted during the on-site visit, the decisions of the Commission can be challenged and if the complainant disagrees with a decision by the Commission, the matter can then be referred to the Court.⁷⁷

[72] With respect to the selection of senior officers, the Commission is made up of three members appointed by the Governor-General, upon the recommendation of the Prime Minister after consultation with the Leader of the Opposition.⁷⁸ The Act further provides that if a declaration is to be made by a member of the Commission, the Commission shall be made up of the Prime Minister, the Leader of the Opposition and a member of the Commission other than the member making the declaration, appointed by the Governor-General.

[73] Members are appointed for a period not exceeding five years and they are eligible for reappointment.⁷⁹ The Governor-General appoints one of the members as Chairman of the Commission.⁸⁰ The Governor-General, after a recommendation of the Prime Minister after consulting the Leader of the Opposition, may at any time revoke the membership of any appointed member. The Governor-General, in revoking a membership, shall have regard to any representations made by a Senator or Member of Parliament, showing cause why a person should not remain a member of the Commission.⁸¹

[74] Regarding the identification of human resource needs and selection of personnel, section 13 of the First Schedule to the Act provides that the Commission shall appoint and employ a Secretary and such other officers and servants as it thinks necessary for the proper carrying out of its work. In the Response to the Questionnaire, in addition to the three Commissioners, the country under review notes that the Commission consists of three members, a part-time Secretary and two administrative staff, who are public officers.⁸²

[75] Moreover, in the Response to the Questionnaire, the country under review notes that the selection and identification of human resources are conducted in accordance with the Public Service Act and the Public Service Regulations and General Orders, and that it is the Public Service Commission that oversees the recruitment process of personnel in the Commission.⁸³ As such, the two administrative staff is subject to the provisions on appointment, termination of appointment and discipline contained within the Regulations, as well as the rules that prevent corruption, conflicts of interest and the limitation on political participation, as contained in the General Orders.

⁷⁵ Response to the Questionnaire, pg. 10, *supra* note 4.

⁷⁶ See also On-Site Presentation of the Public Disclosure Commission, pgs. 4 – 5, http://www.oas.org/juridico/english/mesicic4_bhs.htm

⁷⁷ *Ibid.*, pg. 10.

⁷⁸ Section 1 of the First Schedule to the Public Disclosure Act, *supra* note 33.

⁷⁹ Section 2 of the First Schedule, *ibid.*

⁸⁰ Section 4 of the First Schedule, *ibid.*

⁸¹ Section 7 of the First Schedule, *ibid.*

⁸² Response to the Questionnaire, pg. 9, *supra* note 4 and see On-Site Presentation of the Public Disclosure Commission, pg. 8, *supra* note 76.

⁸³ Response to the Questionnaire, pg. 9, *supra* note 4.

[76] With respect to manuals or other documents that describe the functions of their personnel, in the Response to the Questionnaire, the country under review notes that there are no specific manuals in place, but use is made of Public Service Regulations and General Orders, as well as job training programs.⁸⁴ During the on-site visit, the representatives of the Commission further stated that there are specific job descriptions for each of the staff member, and that on-job training is provided through the Public Service.⁸⁵ Moreover, on-the-job training is provided to ensure that all staff members are aware of the proper procedures for the examination of a declaration. In this respect, the Commission offers guidance for its staff during the processing of a declaration by a member, if circumstances arise where that staff member requires assistance.⁸⁶

[77] Regarding the manner in which the Commission addresses claims and complaints related to the pursuit of their objectives, the country under review, in its Response to the Questionnaire, notes that all complaints and allegations are dealt with by the Commission in accordance with the Public Disclosure Act.⁸⁷

[78] With respect to the manner in which budgetary needs are ensured, in its Response to the Questionnaire, the country under review notes that the funds for the Commission consist of amounts provided by Parliament and such other monies as may be lawfully paid to it.⁸⁸ Moreover, the Commission is to submit to the Prime Minister for approval, before December 31 in each year, its estimates for revenues and expenditures for the Government financial year that commences on July 1 each year.⁸⁹ In addition, during the on-site visit, the representatives of the Commission provided the following information regarding its budget for the past five fiscal years, which excludes the salaries of administrative staff:⁹⁰

Year	Budget (in Bahamas dollars)
2010/2011	40 000
2011/2012	40 000
2012/2013	40 000
2013/2014	40 000
2014/2015	40 000

⁸⁴ *Ibid.*

⁸⁵ On-Site Presentation of the Public Disclosure Commission, pg. 16, *supra* note 76.

⁸⁶ *Ibid.*

⁸⁷ Response to the Questionnaire, pg. 9, *supra* note 4.

⁸⁸ *Ibid.* See also section 10 of the First Schedule to the Public Disclosure Act, *supra* note 33.

⁸⁹ First Schedule to the Public Disclosure Act, section 12, *supra* note 33. See also the On-Site Presentation of the Public Disclosure Commission, pg. 19 *supra* note 76.

⁹⁰ On-Site Presentation of the Public Disclosure Commission, *ibid.*

[79] Section 11 of the First Schedule to the Act further provides that the Commission is to keep proper accounts of its receipts, payments, assets and liabilities and that these accounts are to be audited annually by an auditor appointed each year by the Commission with the approval of the Prime Minister. In its Response to the Questionnaire and during the on-site visit, it was mentioned that these accounts are audited by the Auditor General on an annual basis and included in the Central Government's Financial Statements, which are presented to Parliament annually.⁹¹

[80] With respect to coordination mechanisms, the Act provides that when a Parliamentarian fails to furnish to the Commission a declaration as required under the Act, or the Commission is not satisfied with the any aspect of a declaration, it is to report the matter to the Prime Minister and the Leader of the Opposition.⁹² For Senior Public Officers and Public Appointees, these are sent to the Prime Minister and the Attorney General.

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

[81] The Public Disclosure Commission has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 2.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures.

[82] Before entering into a review of this oversight body, the Committee notes that in the 2013 Report of the Constitutional Commission into a Review of The Bahamas Constitution, it was observed that, with respect to the Public Disclosure Commission:

[83] *“There can be no denying that there is a need for a body which would have the ability to ensure that Ministers, Parliamentarians, and other senior officials are accountable and exercise probity in their affairs. In recent times, however, under successive governments, the Public Disclosure Commission has become essentially dead letter.”*⁹³

[84] The Committee further notes that the Act itself dates from 1976 and has not been amended or updated since being enacted. During the on-site visit, the Secretary to the Commission mentioned that a review of this legislation, as it dates close to 40 years, would be ideal.⁹⁴ The Committee further observes that the Inter-American Convention against Corruption calls for State Parties to have in place oversight bodies with a view of implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts. As this legislation has not been reviewed in more than 40 years, the framework in place for receiving and reviewing the declarations of Parliamentarians and Senior Public officials is outdated. In this respect, the aforementioned Constitutional Commission recommends that some form of Integrity in Public Life Act be enacted, which creates a watchdog agency to enforce legislation.⁹⁵ It

⁹¹ Response to the Questionnaire, pg. 10, *supra* note 4 and On-Site Presentation of the Public Disclosure Commission, pg. 18, *ibid*.

⁹² Section 8(1) of the Public Disclosure Act, *supra* note 33.

⁹³ Report of the Constitutional Commission, pg. 162, *supra* note 34.

⁹⁴ See Presentation of the Public Disclosure Commission, pg. 22 *supra* note 76. The country under review notes that the Law Reform & Revision Commission of the Office of The Attorney-General has been invited to review the relevant legislation in conjunction with the Public Disclosure Commission to implement any required legislative updates and that the Public Disclosure Commission is to be invited to recommend if the Declaration Form needs to be revamped or updated.

⁹⁵ Report of the Constitutional Commission, pg. 162, *supra* note 34.

further observed that in this way, it would allow The Bahamas to transform the obligations under the Inter-American Convention against Corruption into domestic law and give effect to the Convention.⁹⁶

[85] With this in mind, the Committee notes that the Commission, as stated under section 1.1, stated that in reviewing and examining declarations, it works independently and does not harmonize with any other agency. However, the Committee notes that the legislation does not explicitly provide that the Commission is not subject to the control or direction of any person or authority. Moreover, during the on-site visit, it was noted that the Commission is a Unit of Cabinet Office, rather than an independent agency, headed administratively by the Secretary to the Cabinet which is under the Ministerial Portfolio of the Prime Minister of The Bahamas.⁹⁷ As such, both the budgetary and human resource functions are performed by the Officers at the Cabinet Office, not by the Commission. As noted during the on-site visit, with regards to human resources, the Commission is not involved in the recruitment and engagement of its staff, as this function is performed by the Human Resource Section of the Cabinet Office and the Public Service Commission. As a result, the two administrative staff are public officers employed by the Cabinet Office, not the Commission, and posted to this oversight body. The Finance Officer of the Cabinet Office is responsible for the Commission's accounting functions, and it is this Office that maintains proper records of the Commission's financial transactions, not the Commission as is set out under section 11 of the First Schedule to the Act. Importantly, the Commission's budget is submitted to the Prime Minister on an annual basis for approval by Parliament, and as a result, this oversight body does not have budgetary independence.

[86] Given that the Commission does the important work of receiving and reviewing declarations of Parliamentarians, including that of the Prime Minister, it is essential that it has independence to carry out its functions in reviewing the declarations submitted by members of the Cabinet and the Prime Minister. The Committee will formulate recommendations. (see Recommendations 2.4.1 and 2.4.2 in Section 2.4 of Chapter II of this Report)

[87] Moreover, not only does the Commission not have budgetary independence, the Committee also observes that the budget it does receive is not adequate for the proper functions of this oversight body and mention was made during the on-site visit that the Commission needs more funds.⁹⁸ As noted in section 2.1, the budget of the Commission has been set at \$40 000 for the past five years, excluding the salaries of its administrative staff. This amount has hampered the manner in which the Commission can undertake its work. For example, it has two administrative staff, however these are employees of the Cabinet Office, and the Commission is not able to hire additional staff it needs, such as personnel with a background in accounting, in addition to information technology.⁹⁹ This small budget has also led the Commission to lack in basic materials and tools, as it does not have a webpage, internet access or even an email address. The Committee will formulate a recommendation. (see Recommendation 2.4.3 in Section 2.4 of Chapter II of this Report)

[88] As noted, despite carrying out important functions to combat corruption in The Bahamas, this Commission lacks a website whereby the general public, and those subject to its regime, namely Parliamentarians, can access and consult on the work it carries out. The Committee observes that this

⁹⁶ *Ibid.*

⁹⁷ On-Site Presentation of the Public Disclosure Commission, pg. 4, *supra* note 76.

⁹⁸ *Ibid.*, pg. 22.

⁹⁹ *Ibid.*, pg. 12 and 22. The country under review notes that the Public Disclosure Commission should be provided with an adequate budget, human and material resources to service its needs. The additional Information and Technology support required by the department has been identified, was brought to the attention of the Committee at the on-site visit and will be addressed in the budget of July 2015. Any additional staff identified would be financially provided for at that time.

Commission does not appear in a search result the government website of The Bahamas, leading to this oversight body having no online presence. Recognizing the benefits that the internet currently offers to keep the public informed about the work of government institutions and to facilitate the consultation and accessibility of information of public interest, the Committee will formulate a recommendation for the country under review to consider taking the steps that it deems necessary to establish a web site and keep it updated.¹⁰⁰ It should contain basic information, such as its mandate, composition of the Commission and contact information. It should also contain statistics on its work, as well as provide information to Parliamentarians and those subject to Act on their obligations to provide statutory declarations and instructions on how to fill in the forms. The Committee will formulate a recommendation. (see Recommendation 2.4.4 in Section 2.4 of Chapter II of this Report)

[89] Related to the above recommendation, the Committee observes the Commission is responsible for receiving written complaints in relation to a summary of a declaration that has been published in the Gazette. However, not only does the Commission not have a website, the Committee could not find any contact information for this oversight body in the website for government of The Bahamas. It is therefore unclear to the Committee how this oversight body is carrying out its function effectively of receiving and investigating any alleged complaint against a Parliamentarian or person subject to the Public Disclosure Act. The Committee believes that the country under review should consider establishing and implementing an outreach program to inform individuals on the manner by which they may submit complaints to the Commission respecting the summarized declarations of Parliamentarians and the Senior Public Officials and Public Appointees, and to where such a complaint may be sent. The Committee will formulate recommendations. (see Recommendations 2.4.5 and 2.4.6 in Section 2.4 of Chapter II of this Report)

[90] The Committee observes that the Commission lacks technological tools to carry out its work. For example, the Commission receives and records the declarations manually and does not use electronic tools for this purpose. As noted in the presentation given during the on-site visit:¹⁰¹

[91] *“The following machines are used by the Commission in the execution of its functions: one adding machine, two Word Processors and a Fax Machine. The Commission does have an electronic system for receiving declarations and accordingly, there is no electronic database in use. Data is stored in our filing system.”*

[92] Notwithstanding that the topic of systems for registering income, assets and liabilities was reviewed in the First Round and recommendations were formulated, the country under review should consider using electronic means for completing a declaration as well as for submission, which may help facilitate review of the information provided. The Committee will formulate a recommendation. (see Recommendation 2.4.7 in Section 2.4 of Chapter II of this Report)

[93] In relation to this, the Committee was instructed, during the on-site visit, on the manner the declarations are examined. Since the declarations are received manually, the staff places the information received on a spreadsheet for the Commissioners. The Commissioners then examine them for reasonableness, and use their judgment to determine if further information is needed. It was noted that the Commissioners verify if the declaration is complete and the information provided notarized, such as

¹⁰⁰ The country under review notes that the establishment of a website is under active consideration for the budget of July, 2015. It was identified as a need during the on-site visit and has become a part of the budget projections.

¹⁰¹ *Ibid.*, pg. 17. The country under review notes that The Bahamas has recently upgraded the use of modern technology to upload documents at the Registrar Generals Department. A similar implementation of an electronic means of completing and submitting a declaration may be done on the same template.

bank statements. The Committee notes, however, that no mention was made to access to government databases on which the Commission may consult in verifying the content of these declarations. Other countries in the region, in the regime in place for verifying the content of declarations, have access to various databases, whether they are land or company registries or tax agencies. To this end, the Committee believes that the country under review may consider implementing measures that would allow the Commission to inspect and make copies of records and documents held by government departments and agencies. The Committee observes that under section 7(b)(iv) of the Public Disclosure Act, the Commission has the power to summon witnesses, require the production of documents and to do all such things as it considers necessary or expedient for the purpose of the carrying out its functions. However, it appears that the Commission is not provided with all the tools in place to verify the information contained in the declarations, thus this may hamper its work in verifying the content of the declarations. The Committee will formulate a recommendation. (see Recommendation 2.4.8 in Section 2.4 of Chapter II of this Report)

[94] Another difficulty mentioned during the on-site visit is the time period in which Commissioners are appointed to the Public Disclosure Commission. Under the Act, a person may be named for a period of up to five years, and are eligible for reappointment. During the on-site visit, it was mentioned that appointments are usually made for one to three years, and these terms are generally fixed.¹⁰² However, it was further noted that in general, appointments are made for a period of one year, and in the opinion of the members of the Commission, this is too short, and usually leads to a delay before the next appointment is received, in some cases up to 3 months.¹⁰³ Without these appointments, the Commission cannot operate, nor carry out the important functions that it undertakes. The Committee suggests that the country under review should consider establishing measures and a timeframes so that these appointments can be carried out in a timely manner so as to ensure continuity in the important work of the Commission. The Committee will formulate a recommendation. (see Recommendation 2.4.9 in Section 2.4 of Chapter II of this Report)

[95] The Committee further observes that the Public Disclosure Act contains no provisions to indicate under what circumstances the persons that make up the Commission may be removed as a Commissioner or disqualified to act in this office. The First Schedule to the Act solely provides that a Commissioner's appointment may be revoked by the Governor-General, after a recommendation of the Prime Minister after consulting the Leader of the Opposition, also having regard to any representations made by a Senator or Member of Parliament, showing cause why a person should not remain a member of the Commission. The Committee believes that the country under review may wish to consider enacting provisions that provide the parameters for dismissal, such as if a Commissioner is removed for inability to discharge the functions of the post, whether arising from infirmity of body or mind or any other cause; misbehavior; or due to a conflict of interest. Parameters for disqualifications to hold a post should also be set out, such as for reasons of an undischarged bankruptcy or having been convicted of an offence involving dishonesty or moral turpitude. By providing parameters, it may assist in providing transparency on the grounds for dismissal or removal and disqualification, as well as indicate to appointed members what conduct may come to question their eligibility as Commissioners. The Committee will formulate a recommendation. (see Recommendation 2.4.10 in Section 2.4 of Chapter II of this Report)

[96] The Committee further notes that this oversight body is not required to provide an annual report of its activities. Under the First Schedule to the Public Disclosure Act, the description to section 12 refers to

¹⁰² *Ibid.*, pg. 8.

¹⁰³ *Ibid.*, pg. 12.

annual reports and estimates. Nevertheless, the provision itself only provides the obligation by the Commission to submit its estimates of revenue and expenditure to the Prime Minister. In order to promote transparency and accountability, the Public Disclosure Commission should be required to prepare and publicize an annual report of its activities. In this way, the public may become aware of the work undertaken by this oversight body. This report can also serve as an accountability mechanism, and should include pertinent information, such as required number of declarations to be received in a year, number actually received, the names of those that have not complied, names that have been forwarded to the appropriate authorities, and their outcome, as well as the number of investigations initiated and their outcome. Other important information can include the number of declarations that were reviewed by the Commission and number of which the contents were verified. The Committee will formulate a recommendation. (See Recommendation 2.4.11 in Section 2.4 of Chapter II of this Report)

[97] The Committee notes that the Commission, during the on-site visit, stated that on-the-job training is provided to ensure that all staff members are aware of the proper procedures for the examination of a declaration, and that training is also provided through the Public Service.¹⁰⁴ However, no mention was made of training or awareness building provided to Parliamentarians, Senior Public Officers and Public Appointees of their duties to provide a declaration. Moreover, as the Commission does not have a website, it is unclear how Parliamentarians may be able to receive more information on their responsibilities under the Act. The Committee will formulate recommendations. (see Recommendation 2.4.12 in Section 2.4 of Chapter II of this Report)

[98] The Committee further observes that the Public Disclosure Act dates from 1976 and a review of the legislation is one that the Commission has considered necessary. In that respect, in conducting a review, the Committee considers that the declaration form should also be reviewed, to determine whether the information requested is adequate to ensure probity in public life. The Committee will formulate a recommendation. (see Recommendation 2.4.13 in Section 2.4 of Chapter II of this Report).

[99] In this respect, the Committee observes that the legislation and declaration form does not appear to contemplate that Parliamentarians and those subject to the Act declare their interests, such as directorships held in any company or corporate body, particulars of any contracts held with the State, or the name or description of any company, association or partnership in which the Parliamentarian is an investor, among other things. The Committee considers that the country under review should consider maintaining a register of interests, whereby those subject to the Act provide a list of these interests, whether pecuniary in nature or not, which may appear to raise a conflict between a declarant's private interest and his or her public duty. Such a register may help identify these possible conflicts of interest, which the Commission may then be able to address through suitable tools, such as requiring the creation of blind trusts. The Committee will formulate a recommendation. (see Recommendation 2.4.14 in Section 2.4 of Chapter II of this Report)

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

[100] With respect to results, the Public Disclosure Commission, during the on-site visit, noted the following:

[101] *“The Commission maintains results on the number of declarants required to submit a declaration together with the number not received. Presently, there are 38 Members of Parliament and 16 Senators. In addition, those Members of Parliament and Senators who are elected and appointed for the first time*

¹⁰⁴ *Ibid.*, pg. 16.

together with those who cease, are also required to disclose on the anniversary dates of their elections, appointments and cessation. A register to record these is maintained on a manual basis.”

[102] The Commission also elaborated that approximately 180 public appointees and public officers are required to submit a declaration. Moreover, it provided a description of the timeframe for receiving these declarations, the process of sending reminder letters, and that they are stamped and recorded manually in a register. Moreover, the incoming register is reviewed periodically, and those that have not sent a declaration would be sent a second reminder.

[103] Subsequent to the on-site visit, the country under review provided the following information:

MEMBERS OF PARLIAMENT					
Information Required	December 31, 2008	December 31, 2009	December 31, 2010	December 31, 2011	December 31, 2012
No. of Declarants required to Disclose	54 ¹⁰⁵	42	42	48	54
No. of Declarations Received	22	23	23	24	21
No. of Declarations Published	(18)	(12)	(20)	(23)	(20)
No. of Declarations not Published	(5)	(11)	(3)	(1)	(1)
No. of Declarants reported to the Prime Minister and Leader of the Opposition	32	19	19	24	23

SENATORS					
Information Required	December 31, 2008	December 31, 2009	December 31, 2010	December 31, 2011	December 31, 2012
No. of Declarants	29 ¹⁰⁶	16	17	24	30

¹⁰⁵ Number inclusive of cessation Members of Parliament and newly elected Members of Parliament for 2007 and 2013 General Elections.

¹⁰⁶ Number inclusive of cessation of Senators and Newly Elected Senators for 2007 and 2013 General Elections.

required to Disclose					
No. of Declarations Received	8	8	5	14	9
No. of Declarations Published	(6)	(5)	(5)	13	(9)
No. of Declarations not Published	(2)	(3)	(0)	13	(0)
No. of Declarants reported to the Prime Minister and Leader of the Opposition	21	8	12	10	20

SENIOR PUBLIC OFFICERS AND APPOINTEES					
Information Required	December 31, 2008	December 31, 2009	December 31, 2010	December 31, 2011	December 31, 2012
No. of Declarants required to Disclose	112	127	114	123	138
No. of Declarations Received	15	40	51	22	31
No. of Declarants reported to the Prime Minister and Attorney General	97 ¹⁰⁷	87	63	101	107

[104] The Committee observes the relatively low level of compliance by those subject to the Act to file their declarations on or before the legislatively mandated timeframe. In this respect, the Committee notes that one of the difficulties mentioned during the on-site visit is the delay in obtaining declarations from Members of Parliament, Senators, Senior Public Officers and Public Appointees.¹⁰⁸ The Committee notes that those persons subject to the Act that do not comply with their obligation to submit a declaration, are to be reported to the Prime Minister and Leader of the Opposition, in the case of a Member of Parliament or Senator, and in the case of a Senior Public Officer or Public

¹⁰⁷ There was no record found, however, the count of 97 came from the number of officers who submitted their declarations.

¹⁰⁸ On-Site Presentation of the Public Disclosure Commission, pg. 12, *supra* note 76.

Appointee, to the Prime Minister and the Attorney-General. This is also true in cases where the Commission conducts an investigation into a declaration. This is the only mechanism in place that the Commission has recourse. As such, the Commission is solely limited to reporting on non-compliance and the outcome of their investigations, with no ability to impose administrative sanctions. The Committee considers that the country under review may consider granting the Commission the power to impose a persuasive administrative penalty for the late or non-filing of a declaration. This may help encourage those persons subject to the Act to comply with its provisions. The Committee will formulate a recommendation. (see Recommendation 2.4.15 in Section 2.4 of Chapter II of this Report)

[105] Another measure that the country under review may consider is publicizing the names of the persons that have not submitted their declarations as required under the Public Disclosure Act, in addition to the report sent to the Prime Minister and Leader of the Opposition, or the Attorney General, depending if the person is a Parliamentarian or a Senior Public Officer or Public Appointee. As there is a difficulty in obtaining these declarations, publicizing names may prove useful in encouraging compliance of those that are in default. The Committee will formulate a recommendation. (see Recommendation 2.4.16 in Section 2.4 of Chapter II of this Report)

[106] The Committee also notes that under the Public Disclosure Act, the Commission, once it has examined a declaration and been satisfied that it has been fully made, shall publish a summary of that declaration in the Gazette. In this respect, the representatives of the Commission noted during the on-site visit that it waits to gather all declarations that are required to be submitted in a year so that it can publish them in a group in the Gazette. However, the representatives of the Commission stated if the declarations are not received, then the summaries are not published. The Committee observes that the Commission should consider establishing a timeline to publish all the declarations that they have examined and deemed satisfactory, regardless if all the required declarations have been received. Informing those that have not submitted their declarations that such a summary will be made public, and that they will not be included in the group may help encourage compliance with the Act. Moreover, rather than just limit to publishing them in the Gazette, they should also be published online so as to assure greater access to them by the public. The Committee will formulate recommendations. (See Recommendations 2.4.17 and 2.4.18 in Section 2.4 of Chapter II of this Report)

[107] The Committee further observes that under the Act, when a Parliamentarian fails to furnish to the Commission a declaration as required, or the Commission is not satisfied with the any aspect of a declaration, it is to report the matter to the Prime Minister and the Leader of the Opposition.¹⁰⁹ For Senior Public Officers and Public Appointees, these are sent to the Prime Minister and the Attorney General. These appear to be the only instances that the Commission works with other government bodies in fulfilling its mandate. In this respect, the Committee believes that under a strengthened legal regime for this Commission, the country under review will consider promoting further coordination mechanisms, by allowing it to report directly to the Attorney General or the Royal Bahamas Police Force, as appropriate, when it comes across alleged acts of corruption committed by those subject to the Public Disclosure Act. In addition it should maintain results on the outcome of those reports. (see Recommendations 2.4.19 and 2.4.20 in Section 2.4 of Chapter II of this Report)

[108] Finally, the Committee notes that the information provided in the tables is not available anywhere publicly, and as noted under section 2.2 of this report, a lack of website hinders the

¹⁰⁹ Section 8(1) of the Public Disclosure Act, *supra* note 33.

availability of this type of information. In the interests of transparency and integrity of the system in place, the country under review should make these statistics public; especially considering it involves the oversight of Parliamentarians and senior officials who have not complied with their statutory obligations to file a declaration. The Committee will formulate a recommendation. (see Recommendation 2.4.21 in Section 2.4 of Chapter II of this Report)

2.4. Conclusions and recommendations.

[109] Based on the comprehensive review conducted with respect to the Public Disclosure Commission in the foregoing sections, the Committee offers the following conclusions and recommendations:

[110] The Bahamas has not considered and adopted measures intended to maintain and strengthen the Public Disclosure Commission, as an oversight body, as described in Chapter II, Section 1 of this Report.

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

- 2.4.1 Consider establishing provisions that set out that the Public Disclosure Commission is independent in exercising its functions under the Public Disclosure Act. (See section 2.2 of Chapter II of this Report)
- 2.4.2 Ensure that the Public Disclosure Commission has budgetary independence. (See section 2.2. of Chapter II of this Report)
- 2.4.3 Provide the Public Disclosure Commission with the budgetary, human and material resources needed for the proper performance of its functions, within available resources. (See section 2.2 of Chapter II of this Report)
- 2.4.4 Establish and update on a periodic basis a website for the Public Disclosure Commission. (See section 2.2 of Chapter II of this Report)
- 2.4.5 Establish online a section for receiving complaints by the public on the work carried out by the Public Disclosure Commission. (See section 2.2 of Chapter II of this Report)
- 2.4.6 Implement outreach programs to inform the public on the manner in which they may submit complaints to the Public Disclosure Commission respecting the summarized declarations of Parliamentarians and the Senior Public Officials and Public Appointees, and to where such a complaint may be sent. (See section 2.2 of Chapter II of this Report)
- 2.4.7 Implement electronic means for completing a declaration as well as for submission by those subject to the Public Disclosure Act. (See section 2.2 of Chapter II of this Report)
- 2.4.8 Consider providing the Public Disclosure Commission the power to inspect and make copies of all records and documents of government departments and agencies. (See section 2.2 of Chapter II of this Report)

- 2.4.9 Consider establishing timeframes for the appointment of Commissioners so as to ensure continuity in the functions of the Public Disclosure Commission. (See Section 2.2 of Chapter II of this Report).
- 2.4.10 Consider establishing further provisions that set out the circumstances under which members to the Public Disclosure Commission may have their appointment revoked. (See section 2.2 of Chapter II of this Report)
- 2.4.11 Consider establishing the requirement for publication of an annual report by the Public Disclosure Commission on its activities carried out within a year. (See section 2.2 of Chapter II of this Report)
- 2.4.12 Establish a training program by the Public Disclosure Commission in order to ensure that permanent, ongoing training is provided to all those subject to the Public Disclosure Act regarding their duties and obligations. (See section 2.2 of Chapter II of this Report)
- 2.4.13 Review the declaration form contained in the Public Disclosure Act to determine whether the information requested is adequate to ensure probity in public life. (See Section 2.2 of Chapter II of this Report)
- 2.4.14 Implement a register of declared interests in order to help identify potential conflicts of interest between a declarant's private interests and his or her public duty. (See section 2.2 of Chapter II of this Report)
- 2.4.15 Consider providing the Public Disclosure Commission the ability to impose administrative sanctions for the late or non-filing of a declaration by those subject to the Public Disclosure Act. (See section 2.2 of Chapter II of this Report)
- 2.4.16 Consider publicizing the names of those persons that have not submitted their declarations as required under the Public Disclosure Act. (See section 2.2 of Chapter II of this Report)
- 2.4.17 Consider establishing a fixed yearly timeline for the publication of summarized declarations. (See section 2.3 of Chapter II of this Report)
- 2.4.18 Publicize the summarized declarations online so as to assure greater access to them by the public. (See section 2.3 of Chapter II of this Report)
- 2.4.19 Establish further mechanisms of coordination that would allow the Public Disclosure Commission to report directly to the Attorney General or the Royal Bahamas Police Force, as the case may be, when it comes across alleged acts of corruption committed by those subject to the Public Disclosure Act. (See section 2.3 of Chapter II of this Report)

- 2.4.20 Maintain results on the outcome of the reports made to the Prime Minister, Leader of the Opposition and the Office of the Attorney General, as appropriate, for failure to submit a declaration by those subject to the Public Disclosure Act, or when the Public Disclosure Commission is not satisfied with the any aspect of a declaration, in order to identify challenges and recommend corrective measures, as necessary. (See section 2.3 of Chapter II of this Report)
- 2.4.21 Make publicly available its statistical information with respect to the number of declarations required for submission in a year, number received, number that are outstanding, and number that have been referred to other bodies for further action, whether it is the Prime Minister, Leader of the Opposition and the Office of the Attorney General. (See section 2.3 of Chapter II of this Report)

3. DEPARTMENT OF THE AUDITOR GENERAL

3.1 Existence of a legal framework and/or other measures

[112] The Department of the Auditor General has a set of provisions in its legal framework and other measures concerning, among others, the following:

[113] With respect to its objectives and functions, article 136(1) of the Constitution of The Bahamas establishes that the Auditor General shall audit and report at least once every year on the accounts of the Supreme Court, the Senate, the House of Assembly, all departments and offices of the Government (but excluding the Department of the Auditor-General), the Public Service Commission, the Judicial and Legal Service Commission, the Police Service Commission and all Magistrates' Courts.¹¹⁰ In addition, article 136(7) empowers the Auditor General to perform such functions in relation to the accounts of the Government of The Bahamas and the accounts of other public authorities and other bodies administering public funds in The Bahamas as may be prescribed by or under any law in force in The Bahamas or; such other functions in relation to the supervision and control of expenditure from public funds in The Bahamas as may be prescribed. As noted in the Response to the Questionnaire, the country under review asserts that there is nothing in law, which limits the right of the Auditor General to audit the books of all Ministries, Departments and Agencies of Government.¹¹¹

[114] In addition, section 38 of the Financial Administration and Audit Act, 2010, provides, that the Auditor General, in performing his or her duties, shall ascertain, among other things, a) that all reasonable precautions have been taken to safeguard the collection of public moneys, and that the laws, directions and instructions relating to them have been duly observed; b) that all issues and payments are made in accordance with proper authority, that all payments are properly chargeable and are supported by sufficient vouchers or proof of payment; and c) that all public moneys expended or charged to an appropriation account are applied to the purpose or purposes for which the grants made by the House of Assembly are intended to provide and that the expenditure conforms to the authority which governs it.¹¹² Furthermore, the Auditor General is to carry out examinations into the

¹¹⁰ Constitution of The Bahamas, *supra* note 3.

¹¹¹ Response to the Questionnaire, pg. 15, *supra* note 4.

¹¹² Financial Administration and Audit Act, 2010, *supra* note 62.

economy, efficiency and effectiveness with which any department, authority or other body that has used its resources in discharging its functions.¹¹³

[115] The Auditor General, however, is prohibited from auditing its department accounts, in accordance with article 136(6) of the Constitution, as these are audited and reported on by the Minister of Finance.

[116] Pursuant to article 136(5) of the Constitution, the Auditor General, in the exercise of his or her functions, is not subject to the direction or control of any person or authority.

[117] Article 136(3) further provides that in carrying out its work, the Auditor General, as well as his or her subordinate staff, shall at all times be entitled to have access to all books, records, returns and reports relating to the accounts. Section 34(1) of the Financial Administration and Audit Act further expands on the powers of the Auditor General in this respect. For example, for the purpose of the examination of any account, the Auditor General is entitled to have access to all books, records, vouchers, documents, returns, cash, stamps, securities, stores or other Government property in the custody of any officer; to require production of any books, accounts, vouchers or papers under the control of any officer relating to or in any way concerning the public accounts; and to call upon any officer for any explanations and information.

[118] Article 136(2) provides that the Auditor General is to be appointed by the Governor General, on the recommendation of the Public Service Commission, after this Commission has consulted the Prime Minister. Article 136(8) of the Constitution further provides that the Auditor General may only be removed from office only for inability to discharge the functions of the office whether arising from infirmity of mind, body or any other cause, or for misbehavior. Furthermore, article 136(9) provides that the Auditor General may only be removed from office by the Governor General if the questions of removal from office has been referred to a tribunal, and this tribunal has recommended to the Governor General that the Auditor General ought to be removed for inability as aforesaid or for misbehavior.

[119] With respect to the staff of the Department, including that of the Senior Deputy Auditor General and Deputy Auditor General, these are hired as public servants.¹¹⁴ These appointments are made on recommendation by the Auditor General, and on the advice of the Public Service Commission.¹¹⁵ The Auditor General interviews the personnel, and if determined useful, will send requisite information to the Public Service indicating the desire to hire them.¹¹⁶ As public servants, they are subject to the provisions on appointment, termination of appointment and discipline contained within the Public Service Regulations, as well as the rules that prevent corruption, conflicts of interest and the limitation on political participation, as contained in the General Orders.

[120] With respect to the existence of manuals or documents for performing their tasks and describing their functions, the country under review, in its Response to the Questionnaire, states that it follows both the International Standards on Auditing and the International Organization of

¹¹³ Section 36, *ibid.* Section 37 further provides that if the Auditor General has reasonable cause to believe that any authority or body has in any of its financial years received more than half its income from public funds he or she may carry out an examination into the economy, efficiency and effectiveness with which it has in that year used its resources in discharging its functions.

¹¹⁴ Response to the Questionnaire, pg. 12, *supra* note 4.

¹¹⁵ On-Site Presentation of the Auditor General, pg. 6, http://www.oas.org/juridico/english/mesicic4_bhs.htm

¹¹⁶ Response to the Questionnaire, pg. 12, *supra* note 4.

Supreme Audit Institutions (INTOSAI) Auditing Standards.¹¹⁷ During the on-site visit, it further stated that it has documented procedures for Government Auditing Standards, Guidelines and Procedures established by the Financial Regulations 1975 and the Financial Administration and Audit Act 2010 and International Financial Reporting Standards.¹¹⁸ These documented procedures and standards include methods, practices, formulas, steps and fieldwork guides. In this respect, the MESICIC Technical Secretariat was provided with a copy of the Audit Manual, a Checklist on Policies and Procedures on Quality Controls and Worksheet on Risk Based Audit Program.¹¹⁹

[121] Regarding training, during the on-site visit, the Auditor General noted that he received upgrades by attending workshops put on by the INTOSAI Development Initiative, workshops and seminars sponsored by the Bahamas Institute of Chartered Accountants and Master Classes held by the Caribbean Supreme Audit Institutions (CAROSAI).¹²⁰ Moreover, training for public audit personnel is provided by both the local chapter of CAROSAI and INTOSAI.¹²¹ The Auditor General also indicated that training in the past three years consisted in areas such as risk based auditing, information technology training, performance auditing and value for money procurement training. Moreover, training is based on needs of the Department, taking into account the availability of training courses offered, such as those by the CAROSAI.

[122] The Auditor General also noted that the Department uses the Interactive Data Extraction Analysis (IDEA), a software audit tool, as an example of modern technologies to facilitate its work. Staff is also provided training on this software.

[123] With respect to the manner the general public is provided information with respect to their objectives and functions, the Department has a website which is located at <http://www.bahamas.gov.bs/auditorgeneral>. This webpage provides an overview of the oversight body, its mandate, relevant legislation and copies of its annual reports as well as contact information. In addition, the annual reports of the Department of the Auditor General are available to the general public once they are tabled in the House of the Assembly. A copy of the annual report is also given to the Treasurer of The Bahamas.¹²²

[124] With respect to the manner in which budgetary resources are needed for their operations, the country under review, in its Response to the Questionnaire, states that: “A budget is sent to finance, and money is given at the beginning of every budgeted period. The Office of the Auditor General maintains its own account. Every month a report is sent to a finance officer at the Ministry of Finance who deals with the Auditor General’s Office; it is an expenditure report only, as the office does not produce income.”¹²³

[125] With respect to the budget for the Department, the numbers provided in the budget online for The Bahamas are the following:¹²⁴

¹¹⁷ *Ibid.*

¹¹⁸ On-Site Presentation of the Auditor General, pg. 10, *supra* note 115

¹¹⁹ Audit Manual, Checklist on Policies and Procedures on Quality Controls and Worksheet on Risk Based Audit Program are available at http://www.oas.org/juridico/english/mesicic4_bhs.htm

¹²⁰ On-Site Presentation of the Auditor General, pg. 9, *supra* note 115.

¹²¹ *Ibid.* See also Response to the Questionnaire, pg. 12, *supra* note 4.

¹²² On-Site Presentation, pg. 10, *ibid* and Response to the Questionnaire, pg. 12, *supra* note 4.

¹²³ Response to the Questionnaire, *ibid.*

¹²⁴ Numbers found in the Recurrent Expenditure Summary for each fiscal year at the website of the [National Budget](#).

Fiscal Year	Budget (in Bahamas dollars)
2014/2015	2 205 159
2013/2014	1 773 899
2012/2013	2 015 628
2011/2012	2 029 969
2010/2011	1 981 793

[126] Regarding coordination mechanisms for harmonizing functions, the country under review, in its Response to the Questionnaire, notes that it requires the cooperation of all Governmental bodies.¹²⁵ In this respect, a Memorandum of Understanding between the Office of the Auditor General and the Internal Audit Department of the Ministry of Finance that outlines an agreement for their operations is currently being negotiated.¹²⁶ A copy of this draft Memorandum was provided during the on-site visit.¹²⁷

[127] With respect to internal control mechanisms, the country under review notes that an Annual Confidential Report is an assessment designed by the Public Service to record and discuss the rating of each individual employee.¹²⁸ This evaluation also provides employees to voice their concerns, complaints and allegations, and for their supervisors to do the same.¹²⁹

[128] Regarding accountability mechanisms, the country under review notes that it includes the production of reports at the end of an audit, as well as a time frame for producing said reports. There is also a requirement to properly document and account for the time spent on all audits. Finally, the public may access the Annual Report of the Auditor General once it is tabled in the House of the Assembly.¹³⁰

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

[129] The Department of the Auditor General has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 3.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures.

¹²⁵ Response to the Questionnaire, pg. 12, *supra* note 4.

¹²⁶ *Ibid.* See also On-Site Presentation, pg. 13 *supra* note 115.

¹²⁷ Memorandum of Understanding between the Department of the Auditor General and the Internal Audit Section of the Ministry of Finance, *supra* note 62.

¹²⁸ Response to the Questionnaire, pg. 12, *supra* note 4.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.* Subsequent to the on-site visit, the MESICIC Technical Secretariat received a copy of the annual reports for the years 2007, 2008, 2009, 2010, 2011 and 2012. These reports are on file with the MESICIC Technical Secretariat.

[130] The Committee notes that in the presentation made by the Auditor General during the on-site visit, mention was made of the Financial Administration and Audit Act, 2010. Reference was made to the Act as part of the documented procedures followed by the Department for performing tasks.¹³¹ Moreover, the Auditor General set out the timeframe found in this Act for when statements of account are to be sent to the Auditor General, and in turn, the time frame for the Auditor General to examine, certify and lay these statements before the House of Assembly.

[131] The Committee notes that this Act was enacted in order to modernize public financial administration and audit in The Bahamas.¹³² However, it appears that the corresponding Financial Regulations have not been enacted. These Regulations are important for providing further details on the proper administration, control and audit of public finances. For example, as noted under section 3.1, the Department relies on these Regulations as a documented procedure for carrying out its tasks. The Committee will formulate a recommendation (See Recommendation 3.4.1 in Section 3.4 of Chapter II of this Report)

[132] During the on-site visit, the Auditor General informed that it needs more staff to carry out its functions more effectively, an observation that is also found in the 2012 Report of the Auditor General, where it is noted that *[t]he Office of the Auditor General continue [sic] to operate with minimal staff. A number of staff has retired and there has not been any replacement.*¹³³

[133] The Auditor General did mention that certain steps have been taken to address this issue. For example, the Auditor General stated that the Department had just hired 9 new staff members, 5 contract workers and 4 interns. Moreover, he stated that the Department was provided \$500 000 to hire staff on contract, and is seeking to increase the number of professional staff by ten over the next 3 years.¹³⁴

[134] The Committee also observes that in comparing the staff composition found in the 2011 and 2012 Reports of the Auditor General, the complement of authorized staff increased from 61 to 78 persons.¹³⁵ Nevertheless, the Committee notes with concern that the number of staff employed by the oversight body in 2012 numbered 45, meaning there existed a vacancy of 33 positions, a significant amount affecting the work of this oversight body. Since the date of that report, during the on-site visit, the Auditor General noted there are now 39 persons employed in the Department, and that it had recently lost 4 qualified accountants, leaving only 3 qualified accountants, a number that included himself.

[135] The Committee notes that insufficient staff may place a limitation on the scope of audits, and increase the risk that audits may fail to identify fraudulent activities, as well as misstatements of Government accounts. It may also make it more difficult for the Audit Department to carry out other important duties, such as examinations into the economy, efficiency and effectiveness of which department, authority or other body has used government resources in discharging its functions.¹³⁶

¹³¹ On-Site Presentation of the Auditor General, pg. 10, *supra* note 115.

¹³² See [Ministry of Finance: Enhancing Accountability and Transparency in Public Financial Administration](#), pg. 4.

¹³³ On-Site Presentation of the Auditor General, pg. 15, *supra* note 115 and 2012 Report of the Auditor General, pg. 6, on file with the MESICIC Technical Secretariat.

¹³⁴ On-Site Presentation of the Auditor General, pg. 16, *ibid.*

¹³⁵ 2011 Report of the Auditor General, pg. 23 and 2012 Report of the Auditor General, pg. 24, on file with the MESICIC Technical Secretariat.

¹³⁶ Section 29 of the Financial Administration and Audit Act, 2010, *supra* note 62.

The Committee further notes that the Department is not able to carry out special audit assignments, as these are outsourced to accounting firms.¹³⁷

[136] Given the foregoing, the country under review should consider ensuring that the Department of the Auditor General has sufficient human resources to adequately carry out its functions, within available resources. In this respect, it should also consider adopting such measures as needed to ensure that the Department has the qualified accountants it needs for the proper performance of its functions. The Committee will formulate recommendations. (see Recommendations 3.4.2 and 3.4.3 see in Section 3.4 of Chapter II of this Report)

[137] Related to the issue of human resources, the Auditor General noted that he has difficulty in retaining personnel, when the remuneration of the private sector is more attractive. As noted earlier, the Department is losing people and not filling its vacancies in a timely manner.

[138] In this respect, the Auditor General is anticipating that the Department will be given funding to carry out hiring separate and apart from that of the Public Service Commission. The Committee also observes that in the aforementioned 2013 Report of the Constitutional Commission into a Review of The Bahamas Constitution, it is also recommended that the Auditor General be able to appoint and control its Staff, in order to strengthen the independence of this oversight body.¹³⁸

[139] The Committee considers that with greater autonomy over its human resources, this may be a step forward in providing this oversight body the ability to attract and retain personnel, providing competitive salaries than what is currently being offered, and thus better fulfill the human resource needs of this Department. The Committee will formulate a recommendation. (see Recommendation 3.4.4 in Section 3.4 of Chapter II of this Report)

[140] On this issue, during the on-site visit, the Chair of the Public Accounts Committee noted that in discussions between the Public Accounts Committee and the Auditor General, it was indicated that it was difficult to attract qualified staff, due to funding and the remuneration offered.

[141] With respect to the budget process for the Auditor General, it was noted that all budget submissions are to be made through the Ministry of Finance, the Minister being the Prime Minister as well, a situation by which the country under review has observed may affect the independence of the Auditor General. In the 2013 Report of the Constitutional Commission into a Review of The Bahamas Constitution, the following is noted:¹³⁹

[142] *“The Constitution attempts to make the Auditor-General completely independent of the Legislature and the Executive by securing his terms of service and making him irremovable except in accordance with a judicial procedure. Article 136(5) provides that “in the exercise of his functions...the Auditor General shall not be subject to the direction or control of any other person or authority.” That may well be so as a matter of constitutional principle, but the reality of the existence of the Office of the Auditor General is rather different. For one, this office depends on the Ministry of Finance for an operating budget, and the Constitution leaves the audit of the Office of the Auditor General in the hands of the Minister of Finance. Both situations have significant implications for the degree of independence that the Auditor General is able to exercise.”*

¹³⁷ See pg. 7 of the Office of the Auditor General Three Year Strategic Plan 2013 – 2015, http://www.oas.org/juridico/english/mesicic4_bhs.htm

¹³⁸ Report of the Constitutional Commission into a Review of The Bahamas Constitution, ps. 198 and 200, *supra* note 34.

¹³⁹ *Ibid*, pg. 198.

[143] The Auditor General, as well as the Chair of the Public Accounts Committee, during the on-site visit, mentioned that the budget process is an issue with respect to the operation of the Department, pointing out that it audits the accounts of the Ministry of Finance, while depending on this entity for its budget. One proposal by the Auditor General is to send the budget to an Independent Accounts Committee or the Public Accounts Committee for discussion and then forwarded to Cabinet for approval, thus eliminating the need to seek the approval from the Ministry of Finance,¹⁴⁰ a sentiment echoed by the Chair of the Public Accounts Committee during the on-site visit. The Committee believes the country under review should consider having the Department of the Auditor General present its budget to the Public Accounts Committee, and not present it to an entity subject to an audit, and thus strengthen the independence of this oversight body in fulfilling its mandate. To this end, the Auditor General cited a United Nations Resolution that emphasized the importance of an independent audit institution in managing its own budget without interference or control from the Executive.¹⁴¹ The Committee will formulate a recommendation. (See Recommendation 3.4.5 in Section 3.4 of Chapter II of this Report)

[144] During the on-site visit, the Chair of the Public Accounts Committee noted that it was his understanding that the most current report prepared and sent to the Speaker was the 2011 report, and that it had yet to be made public as approval from the Ministry of Finance was needed before being released. The Auditor General, in his meeting with the representatives of the MESICIC, noted that the 2012 report had just been prepared and submitted, a copy of which was provided to the Technical Secretariat subsequent to the visit.

[145] In this respect, the Auditor General noted that there is a statutory requirement for all statement of accounts to be submitted by the Treasurer within 3 months of the end of the financial year, that being June 30. These accounts are then transmitted to the Auditor General, who examines and certifies them, and the Minister of Finance is to table them to the House of Assembly before December 31 next following the end of the financial year, or, if the House of Assembly is not sitting, on any of the first fifteen days after the House next sits.¹⁴²

[146] The Committee observes, however, that it appears that the Auditor General is not preparing these reports in a timely manner, once they have received the statement of accounts. For example, during the on-site visit the Auditor General mentioned that the last report prepared and submitted by his office was for 2012. This being the case, it appears that the report for 2012/2013 financial year has yet to be prepared and submitted, though the deadline for laying this report was in December of 2013, in accordance to the timeframe set out by the Auditor General during the on-site visit.

[147] The Committee believes that the Auditor General should comply with the statutory timeframe for presenting its report by December 31 of a given year and it should also consider ensuring that once the report is tabled in the House of Assembly, it should be made available on its website. Currently, the website has annual reports up to 2011, and does not contain the one for 2012 that was provided to the Technical Secretariat subsequent to the on-site visit. The Committee will formulate recommendations. (see Recommendations 3.4.7 and 3.4.8 in Section 3.4 of Chapter II of this Report). (see Recommendations 3.4.6 and 3.4.7 in Section 3.4 of Chapter II of this Report)

¹⁴⁰ On-Site Presentation of the Auditor General, pg. 16, *supra* note 115.

¹⁴¹ Resolution A/RES/66/209, "Promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions," http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/66/209. This Resolution recognized the work of the International Organization of Supreme Audit Institutions and its Mexico Declaration on Supreme Audit Institutions Independence of 2007.

¹⁴² See sections 32 and 33 of the Financial Administration and Audit Act, 2010, *supra* note 62.

[148] In relation to the reports of the statement of accounts prepared and submitted by the Auditor General, it was noted during the on-site visit that not all financial statements are submitted in a timely fashion, as required by law, so that they may then be forwarded to the Auditor General by the Financial Secretary for examination and certification by the Auditor General.¹⁴³ This situation may delay the Auditor General in submitting the report on the statement of accounts of the government for a given year. The Committee notes that there appears to be no sanctions in place for failure or delay in submitting a statement of account, other than perhaps being called to the Public Accounts Committee for questioning.¹⁴⁴ Neither the Constitution or the Financial Administration and Audit Act provide for any sanctions for failing to submit a statement of account to the Treasurer within the statutory timeframe.

[149] The country under review should consider sanctions that can be levied by the Treasurer or Auditor General, as deemed appropriate on those persons or agencies responsible for submitting these statements, in order to encourage compliance. In addition, the Auditor General should also consider listing, in the annual reports, those government ministries, departments and agencies that have not submitted their statements of accounts. The Committee considers that making public the list of government departments that are in non-compliance may encourage action on their part. The Committee will formulate recommendations. (see Recommendations 3.4.8 and 3.4.9 in Section 3.4 of Chapter II of this Report)

[150] It is noted that during the on-site visit, an academic representative from Civil Society Bahamas, a civil society organization, observed that there appeared to be no consequences for failing to submit the statement of accounts.

[151] In addition, an obstacle to the work of the Department is a lack of access to audit information and documents within some government departments and ministries, which has been raised in the Audit Reports of the Auditor General. As noted in the 2012 Report:¹⁴⁵

[152] *“Some Public Officials appeared unaware of the provision of the Financial Administration and Audit Act, which entitles the Office of the Auditor General (OAG) to have access to all books, records, returns and reports related to Government accounts. As a result, the work of the OAG was impeded in some cases due to the lack of cooperation by Officials of various Ministries and Departments.”*

[153] The Committee observes that this requirement to provide access to information maintained by government departments and ministries is also a competence found in the Constitution of The Bahamas, whereby article 136(3) states that the Auditor General and his subordinate staff shall at all times to be entitled have access to all books, records, returns and reports relating to the accounts of departments and ministries.¹⁴⁶

¹⁴³ Section 32, *ibid*.

¹⁴⁴ During the on-site visit, the Auditor General mentioned that auditors visit the relevant departments, collect information, and produce reports, which are reviewed by the Public Accounts Committee and further debated once they are tabled in the House of the Assembly. Moreover, the Public Accounts Committee may then question the government bodies as well, On-Site Presentation of the Auditor General, pg. 5, *supra* note 115. The country under review further notes that the Auditor-General has agreed, in the year 2015, to launch a public information campaign to inform individuals and government agencies of their responsibilities under the Financial Administration and Audit Act, 2010.

¹⁴⁵ 2012 Report of the Auditor General, pg. 6, on file with the MESICIC Technical Secretariat.

¹⁴⁶ Constitution of The Bahamas, *supra* note 3.

[154] The Committee notes, however, that the Financial Administration Audit Act does not impose an administrative and/or criminal sanction on those who do not comply with this constitutional and statutory requirement. The Committee considers that the country under review should consider imposing such a sanction, on those that do not provide access to audit information and documents. The Committee will formulate a recommendation. (see Recommendation 3.4.10 in Section 3.4 of Chapter II of this Report)

[155] The Committee observes that during the on-site visit, the Auditor General stated the following:¹⁴⁷

[156] *“In the event that fraudulent activity is discovered, the Office will send a report to the Financial Secretary and the Permanent Secretary of the particular Ministry or Department; along with recommendations that the matter be forwarded to the Royal Bahamas Police Force or the Office of the Attorney General.”*

[157] However, it appears to the Committee that the only legal basis by which the Auditor General may report an irregularity, such as fraudulent activity, is what is found under section 36 of the Financial Administration and Audit Act. This provision provides that if it appears to the Auditor General that a) any irregularity in the collection, custody or expenditure of public moneys or in accounting for the same; b) any irregularity in the receipt, custody, issue, sale, transfer or delivery of any public stores or in accounting for the same; or c) any loss of or damage to Government property has occurred, and this same irregularity, loss or damage has not been reported to the Minister of Finance, the Auditor General is to notify the Minister of this fact.

[158] In this respect, the country under review may consider providing the Auditor General with the legal basis to report an irregularity to other appropriate authorities for further action, such as the Royal Bahamas Police Force or the Office of the Attorney General.¹⁴⁸ The Committee also observes that this may further strengthen the independence of the Auditor General, given that the current legal framework provides that the Auditor General is to inform the Minister of Finance, who is also the Prime Minister of The Bahamas and determines the budget of this oversight body, of an irregularity discovered in the accounts of this same Ministry. The Committee will formulate a recommendation. (see Recommendation 3.4.11 in Section 3.4 of Chapter II of this Report)

[159] The Committee notes that the Public Accounts Committee is responsible for oversight of governmental financial matters.¹⁴⁹ It plays a fundamental role in the control of public finances, as set out in the 2013 Report of the Constitutional Commission into a Review of The Bahamas Constitution:¹⁵⁰

[160] *“The current system for the control of public finances, erected by the Constitution and legislation, envisions a process that starts and ends with Parliament, which may be conveniently set out as follows: (i) Parliament debates and approves the annual budget; (ii) the Ministry of Finance and the Treasurer supervise disbursement of funds, along with the Central Tenders Board; (iii) the Auditor General receives financial statements from the Ministry of Finance and conducts his audits*

¹⁴⁷ On-Site Presentation of the Auditor General, pg. 14, *supra* note 115. See also Response to the Questionnaire, pg. 27, *supra* note 4.

¹⁴⁸ The country under review notes that there are relevant provisions in the Penal Code on this issue, such as section 86 on the abetment of an offence and section 235 on the withholding of public money by a public officer, see Penal Code, http://laws.bahamas.gov.bs/cms3/images/LEGISLATION/PRINCIPAL/1873/1873-0015/PenalCode_1.pdf

¹⁴⁹ See [About the Parliament](#)

¹⁵⁰ 2013 Report of the Constitutional Commission, pg. 197, *supra* note 34.

of various department of government; and (iv) the Auditor General submits his reports to Parliament (via the Speaker) for the scrutiny of the Public Accounts Committee and debate in Parliament. It is clear that the Constitution, however, recognizes the Auditor General as the primary means of the control of public finances, and the mechanism by which any irregularities are brought to the attention of the House.”

[161] In this respect, the Auditor General, during the on-site visit, reiterated this role, noting in his presentation that the Public Accounts Committee reviews the reports prepared by the Department, and they are further debated once tabled in the House of Assembly.¹⁵¹

[162] Despite the important role conducted by this Committee, it appears that it does not meet on a regular basis. As stated during the on-site visit, the Chair of the Public Accounts Committee observed that in the past, it would meet if there was a crisis or public outcry, or before an election. He stated that he wanted the Public Accounts Committee to meet on a weekly basis, but this has not been possible due to lack of quorum. The Committee notes that in accordance with the Rules of the House of Assembly, the Public Accounts Committee is made up 5 members, and that quorum is a majority of the members, which in this case, would be 3.¹⁵²

[163] The Committee observes that without the Public Accounts Committee meeting on regular basis to review and the reports of the Department, it appears to deprive The Bahamas of a mechanism for following-up on the recommendations issued by the Department on any of its audit reports and for calling upon accounting officers and other relevant public servants to explain their stewardship of the public affairs and resources assigned to them. As a result, compliance with the recommendations of the Department may remain unaddressed and unresolved and lead to public officers not being held accountable for their actions. To this end, in the Reports of the Auditor General, he laments this lack of accountability:¹⁵³

[164] *“Some public officers are not being held accountable for their actions, which result in loss or wastage of government funds.*

[165] *The belief of public accountability is generally construed as the obligation to answer for the discharge of responsibilities entrusted to government officials/workers. When accountability is present, an organization operates more efficiently, effectively and economically. In addition, the environment is more conducive to positive growth.”*

[166] The Committee does observe that during the on-site visit, the Auditor General stated that the 2010 Financial Administration and Audit Act, as well as that of the Financial Regulations,¹⁵⁴ impose penalties on accounting officers that do not carry out the recommendations found in the reports of the Department. The Committee notes, however, that the Act and the Financial Regulations, which was repealed with the enactment of the Act, do not appear to have any provisions in place that impose any obligations on these officers to comply with the recommendations of the audit reports, or impose any penalties for failure to do so.

¹⁵¹ On-Site Presentation of the Auditor General, pg. 5, *supra* note 115.

¹⁵² Rules 24 and 26 of the Rules of the House of Assembly, http://laws.bahamas.gov.bs/cms36/images/LEGISLATION/SUBORDINATE/1962/1962-0012/RulesoftheHouseofAssembly_1.pdf

¹⁵³ 2013 Report of the Auditor General, pg. 7. This observation is also found, for example, in the 2012 Report of the Auditor General at pg. 9 and the 2011 Report of the Auditor General at pg. 6. These reports are on file with the MESICIC Technical Secretariat.

¹⁵⁴ Financial Regulations. http://www.oas.org/juridico/english/mesicic4_bhs.htm

[167] The Committee considers that in light of the important work being carried out by the Department, it is extremely important for the country under review to consider taking the necessary steps to ensure that a functioning mechanism is implemented to ensure adequate follow-up and compliance with the recommendations issued by the Department. The Committee will formulate recommendations. (see Recommendations 3.4.12 and 3.4.13 in Section 3.4 of Chapter II of this Report)

[168] The Committee observes that one of the important functions of the Department of the Auditor General is the detection of irregularities when conducting an audit, which it informs the Minister of Finance. In this respect, the Financial Administration and Audit Act, 2010 provides that the Financial Secretary, upon a report by the Treasurer, may apply a surcharge to any person who is or was an officer,¹⁵⁵ when it appears that this officer has: a) failed to collect any money owing to the Government; b) responsible for any improper payment of public funds or any payment that is not duly vouched; or c) is responsible for any deficiency in, or for the loss or destruction of, public moneys, stamps, securities, stores or other Government property.¹⁵⁶ In this case, the Financial Secretary may then levy this surcharge, or a lesser amount, against the officer for the amount not collected or such improper payment, payment not duly vouched, deficiency, loss or the value of the property destroyed, as the case may be, if, within a period specified, a satisfactory explanation is not submitted. The Act further states that no surcharge can be made after the expiration of a period of seven years from the date of the questioned act and that the Financial Secretary should notify the Auditor General and the principal accounting officer of the department concerned of any surcharge made under the Act. The principal accounting officer, upon being notified, is to notify the person surcharged and recover the amount from that person.

[169] The Committee notes that it is unclear on what basis the Treasurer issues its report informing the Financial Secretary for the imposition of a surcharge. It would appear that under the legislative framework, it is the Auditor General, through its reports, who is in a position to make a recommendation for the levying of surcharges. Given the foregoing, the country under review should allow the Auditor General to make recommendations for the levying of surcharges, based on the audits it carries out. The Committee will formulate a recommendation. (see Recommendation 3.4.14 in Section 3.4 of Chapter II of this Report)

[170] Moreover, if for any reason the Financial Secretary imposes a lesser surcharge than the total loss, it should be a requirement that this be made in writing with stated reasons. (see Recommendations 3.4.15 in Section 3.4 of Chapter II of this Report)

[171] The Committee observes that one of the reasons that the Financial Administration and Audit Law, 2010 was introduced, was to modernize the financial administration and audit process in The Bahamas, allowing it to implement modern information technology in the public financial system.¹⁵⁷ As part of this process, it was noted that a careful assessment will be made of user needs, including that of the Department of the Auditor General, from which a decision will follow on which information technology and computer system best meets the needs of The Bahamas.¹⁵⁸ In this respect, the Committee notes that in the Reports of the Auditor General, one of the recommendations he has

¹⁵⁵ Defined as any person employed in the service of the Government, section 2(1) of the Financial Administration and Audit Act, 2010, *supra* note 62.

¹⁵⁶ Section 27, *ibid.*

¹⁵⁷ See Ministry of Finance: Enhancing Accountability and Transparency in Public Financial Administration, pg. 5, *supra* note 122.

¹⁵⁸ *Ibid.*

made is the implementation of an International Financial Management System (IFMIS), which would help the Department in meeting its increasing workload and improve accounting recording and reporting practices as well as in producing automatic bank reconciliations.¹⁵⁹ The Auditor General further notes that:

[172] “*Much documented evidence exists to support the use of IFMI, as a main component of financial reforms to promote efficiency, security of data management and comprehensive financial reporting.*”

[173] The Committee considers that the country under review should consider the implementation of modern information technology, such as the IFMIS, in order help modernize the financial administration and audit process in The Bahamas. The Committee will formulate a recommendation. (See Recommendation 3.4.16 in Section 3.4 of Chapter II of this Report).

[174] Finally, the Committee takes note that section 35 of the Financial Administration and Audit Act, 2010 provides for the establishment of an internal audit department in the Ministry of Finance. In addition, the Financial Secretary may also direct the establishment of internal audit units within Ministries and departments. The Committee considers that the country under review should begin establishing such units as a rule, rather than leave it to the discretion of the Financial Secretary, as they assist in enhancing efficiency, accountability and transparency in the management of Government resources and thus the work of the Department of the Auditor General.¹⁶⁰ The Committee will formulate a recommendation (See Recommendation 3.4.17 in Section 3.4 of Chapter II of this Report).

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

[175] The Committee notes that the outcome of the audits by the Department is provided in its annual reports.¹⁶¹ These documents provide detailed information on the public accounts of the country under review.

[176] The Committee observes, however, that during the on-site visit, the Auditor General stated that individual reports on the audits of the statement of accounts are sent to the individual departments as well, which might highlight material findings. These would include any detection of potential fraudulent activity, as set out in the Response to the Questionnaire, which presumably be forwarded to the Royal Bahamas Police Force or the Office of the Attorney General for further action.¹⁶² However, with no other information available to it at its disposal, it is difficult to determine what the outcomes of these referrals are. The country under review, in its Response to the Questionnaire, noted that it was currently compiling the total number of investigations that are ongoing; however, this information has not been provided.¹⁶³ The Committee will formulate a recommendation. (see Recommendation 3.4.18 in Section 3.4 of Chapter II of this Report)

[177] In addition, the Committee considers that the country under review may begin providing, in its reports, statistics on detected irregularities, such as information on improper or unapproved payments and the like, broken down by Ministry, Department or Agency. Moreover, the country under review

¹⁵⁹ See for example the 2012 Report of the Auditor General, pg. 7 – 8, on file with the MESICIC Technical Secretariat.

¹⁶⁰ The country under review notes that the Auditor-General has agreed to establish an internal audit department for all ministries and departments, to audit the relevant agencies on an annual basis.

¹⁶¹ The Audit Reports for 2007, 2008, 2009, 2010, 2011 and 2012 were provided to the MESICIC Technical Secretariat subsequent to the on-site visit and are on file.

¹⁶² Response to the Questionnaire, pg. 27, *supra* note 4.

¹⁶³ *Ibid.*

should consider maintaining statistics on the amounts ordered to be paid back to the State in these cases, and amount actually received. As noted under section 3.3, surcharges are levied against an officer for failure to collect any money owing to the Government; for improper payments; or for deficiency in the loss or destruction of Government property. In these cases, the Auditor General should consider identifying in its reports the Ministry, Department or Agency for which a surcharge was laid, the amount ordered to be applied by the Financial Secretary, and the amount received. By including this information in its annual reports, and therefore making it public, it may encourage action on the part of those owing a surcharge. The Committee will formulate a recommendation. (see Recommendation 3.4.19 in Section 3.4 of Chapter II of this Report).

[178] The Committee also believes it is useful for the Auditor General to report on the compliance by the government departments and ministries, on the recommendations issued by the Auditor General in its audit reports. The Committee will formulate recommendations. (see Recommendation 3.4.20 in Section 3.4 of Chapter II of this Report)

[179] The Committee further observes that the Auditor General can expand the information provided with respect to the administration and personnel section of the reports. Currently, it consists of appointments, retirements and transfers undertaken during the year as well as providing a list of training activities and meetings. Information is also provided on its expenditures for the fiscal year and the complement staff. The Committee considers that the Department of the Auditor General should also consider provide more information on its performance and operation, which can act as a work plan and program for a financial year, indicating matters such as the objectives and goals met during the year by each division within the Department. The Committee will formulate a recommendation. (see Recommendation 3.4.21 in Section 3.4 of Chapter II of this Report)

[180] Finally, in the interest of transparency and accountability, the country under review should also consider publicizing the outcome of the audits of its own accounts, as set out under article 136(6) of the Constitution. This information should be made available in both its annual reports, and online. The Committee will formulate a recommendation. (see Recommendation 3.4.22 in Section 3.4 of Chapter II of this Report)

3.4. Conclusions and recommendations.

[181] Based on the comprehensive review conducted with respect to the Department of the Auditor General in the foregoing sections, the Committee offers the following conclusions and recommendations:

[182] The Bahamas has considered and adopted measures intended to maintain and strengthen the Department of the Auditor General as an oversight body, as described in Chapter II, Section 1 of this Report.

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

- 3.4.1 Comply with the Financial Administration and Audit Act, 2010, by promulgating the Financial Regulations. (See section 3.2. of Chapter II of this Report)

- 3.4.2 Ensure that the Department of the Auditor General has the human resources needed for the proper performance of its function, within available resources. (See section 3.2 of Chapter II of this Report)
- 3.4.3 Adopt such measures as are needed to ensure that the Department of the Auditor General has the qualified accountants it needs for the proper performance of its functions, within available resources. (See section 3.2 of Chapter II of this Report)
- 3.4.4 Provide the Department of the Auditor General with greater autonomy over the hiring of personnel. (See section 3.2 of Chapter II of this Report)
- 3.4.5 Provide the Department of the Auditor General greater autonomy in the preparation and presentation of its budget, so that it can be made through the Public Accounts Committee. (See section 3.2 of Chapter II of this Report)
- 3.4.6 Comply with the statutory timeframe for presenting an annual report by the Department of the Auditor General. (See section 3.2 of Chapter II of this Report)
- 3.4.7 Publicize online all the reports prepared by the Department of the Auditor General, so that they are easily accessible to the general public. (See section 3.2 of Chapter II of this Report)
- 3.4.8 Provide the Auditor General or Treasurer, as deemed appropriate, with the competence to impose administrative sanctions on those government agencies that fail to submit their statements of accounts for the financial year, as well as on those persons within those agencies and bodies that are responsible for preparing and submitting them on their behalf. (See section 3.2. of Chapter II of this Report)
- 3.4.9 Publicize the list of ministries, departments and agencies that do not submit their financial statements for the financial year within the timeframe established by law, in the Annual Reports of the Auditor General. (See section 3.2 of Chapter II of this Report)
- 3.4.10 Consider establishing administrative and/or criminal sanctions, as deemed appropriate, on those government agencies that fail to provide access to the Department of the Auditor General to relevant information, such as its books, records, returns and reports, as well as on those persons within those agencies and bodies that are responsible for providing this information. (See section 3.2. of Chapter II of this Report)
- 3.4.11 Consider providing the Auditor General the legal basis to directly report an irregularity, such as fraudulent activity, to appropriate authorities, such as the Royal Bahamas Police Force and the Office of the Attorney General. (See section 3.2 of Chapter II of this Report)
- 3.4.12 Take the necessary steps to ensure that the Public Accounts Committee meets on a periodic basis so that adequate follow-up on the recommendations issued by the

Department of the Auditor General can be carried out. (See section 3.2 of Chapter II of this Report)

- 3.4.13 Take the necessary steps to ensure there is adequate compliance with the recommendations issued by the Department of the Auditor General. (See section 3.2 of Chapter II of this Report)
- 3.4.14 Allow the Auditor General to make recommendations for the levying of surcharges, based on the audits it carries out. (See section 3.2 of Chapter II of this Report)
- 3.4.15 Provide that the Financial Secretary is to put in writing with stated reasons for a decision to impose a lesser surcharge than recommended by the Treasurer. (See section 3.2 of Chapter II of this Report)
- 3.4.16 Implement a modern information technology, such as the Integrated Financial Management System, in order help modernize the financial administration and audit process in The Bahamas. (See section 3.2 of Chapter II of this Report)
- 3.4.17 Establish internal audit units within Ministries and departments. (See section 3.2 of Chapter II of this Report)
- 3.4.18 Establish, as appropriate, an exchange of information mechanism for the Department of the Auditor General so that it receives formal feedback on the outcome of reported irregularities sent to the Royal Bahamas Police Force and the Office of the Attorney General. (See section 3.3 of Chapter II of this Report)
- 3.4.19 Maintain statistics by the Department of the Auditor General on the surcharges recommended by the Treasurer, broken down by government agency, amount ordered to be paid back, amount ordered to be levied the Financial Secretary as well as the amounts actually received, in order to identify challenges and recommend corrective measures, as necessary. (See section 3.3 of Chapter II of this Report)
- 3.4.20 Report on the level of compliance by government departments and ministries on the recommendations issued by the Auditor General in its audit reports. (See section 3.3 of Chapter II of this Report)
- 3.4.21 Publish an annual report on the performance and operations of the Department of the Auditor General that includes the objectives and goals met for the year. (See section 3.3 of Chapter II of this Report)
- 3.4.22 Publicize the outcome of the audits carried out of its own accounts. (See section 3.3 of Chapter II of this Report)

4. FINANCIAL INTELLIGENCE UNIT

4.1. Existence of a legal framework and/or other measures

[184] The Financial Intelligence Unit (FIU) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[185] With respect to its objectives and functions, section 4(1) of the Financial Intelligence Unit Act provides that it is the agency responsible for receiving, analyzing, obtaining and disseminating information, which relates to or may relate to the proceeds of offences specified in the Second Schedule of that Act, that being those offences under the Proceeds of Crime Act and the Anti-Terrorism Act.¹⁶⁴ In this respect, the Proceeds of Crime Act, which empowers the Police, Customs and the Courts in relation to money laundering, search, seizure and confiscation of the proceeds of crime, provides that criminal conduct covered by the Act include those found in the Prevention of Bribery Act.¹⁶⁵ In this respect, section 14 of the Financial Transactions Reporting Act¹⁶⁶ provides that financial institutions that know, suspect or has reasonable grounds to suspect a transaction or proposed transaction involves the proceeds of a criminal conduct as defined in the Proceeds of Crime Act, or attempt to avoid the enforcement of any provision of the Act, are to report this transaction to the FIU.

[186] The Financial Intelligence Unit Act also provides that the FIU shall have the competence, among other things for: receiving all disclosures of information as required under the Proceeds of Crime Act; upon receipt from a foreign FIU or law enforcement authority, including the Commissioner of Police of The Bahamas, order any person to freeze a person's bank account for a period not exceeding five days; require the production of information, subject to legal professional privilege; retain a record of all information that it received for a minimum of five years; provide information to the Commissioner of Police where the information may relate to the commission of an offence set out in the Second Schedule of the Act; provide information relating to the commission of a crime of an offence specified in the Second Schedule to any foreign FIU; informing the public and financial and business entities of their obligations to detect, prevent and deter the commission of the offences set out in the Second Schedule of the Act.¹⁶⁷

[187] Regarding the autonomy in pursuing its functions, the representatives of the FIU, during the on-site visit, in their presentation, cited section 4(1) of the Financial Intelligence Unit Act, which provides that the FIU is the agency responsible for receiving, analyzing, obtaining and disseminating information with respect to proceeds of crime.¹⁶⁸ They also cited section 3(1) of the Act as a measure that safeguards its operational independence, which states that the FIU is to have perpetual succession and a common seal with powers to enter into contracts and to do all such things necessary for its functions. In addition, the following is found in the presentation made by this oversight body during the on-site visit:¹⁶⁹

[188] *“It is to be noted that neither the Minister, or anyone else has any authority to compel or demand information of intelligence, receipt, analysis, or dissemination of STRs [Suspicious Transaction Reports], or any other information received by the FIU as a result of its legal mandate. On the other hand the FIU is not required by law, or otherwise to provide to the Minister, or anyone else any intelligence, operational information, and suspicious transaction reports received, analyzed, or disseminated, or any other information in any form as a result of the work of the FIU.”*

[189] Regarding the manner in which decisions are adopted, the country under review, in its Response to the Questionnaire, notes that the decisions of the Director of the FIU are dependent on

¹⁶⁴ Financial Intelligence Unit Act, http://www.oas.org/juridico/english/mesicic4_bhs.htm

¹⁶⁵ See section 3 and the lone Schedule to the Proceeds of Crime Act, http://www.oas.org/juridico/english/mesicic4_bhs.htm

¹⁶⁶ Financial Transactions Reporting Act, http://www.oas.org/juridico/english/mesicic4_bhs.htm

¹⁶⁷ Financial Intelligence Unit Act, section 4(2), *supra* note 164.

¹⁶⁸ On-Site Presentation of the Financial Intelligence Unit, pg. 8, http://www.oas.org/juridico/english/mesicic4_bhs.htm

¹⁶⁹ *Ibid.*, pg. 10.

the nature of the suspicious transaction report received and the resulting analytical process, and not on any individual or entity outside of the FIU.¹⁷⁰

[190] With regard to the personnel that make up the FIU, section 3(2) of the Financial Intelligence Unit Act provides that the Minister of Finance appoints the Director, who is the chief executive officer, and is responsible for the day-to-day management and operation of the FIU. The First Schedule of this Act further provides that the Director is to hold and vacate the office in accordance with the terms of appointment, and is eligible for reappointment. This appointment shall not be a period exceeding five years. This Schedule also sets out that the Director is to not hold any other office or employment, whether remunerated or not without the prior approval of the Minister (see section 2(1) of this Schedule), and also provides that subject to subparagraph 1) of this paragraph, the following cannot be appointed to the post of Director: a member of either House of Parliament; a public officer; or a director, officer or servant of, or has a controlling interest in, any financial institution. Moreover, the Minister of Finance may declare the office of the Director vacant if the Minister is satisfied that the Director has: become bankrupt or made arrangements with his creditors; is incapacitated by physical or mental illness; or is otherwise unable or unfit to discharge the functions of a director.

[191] Regarding the senior officers of the FIU, section 3(2) also provides that it shall have a counsel and attorney; a public accountant; consultants, having suitable qualifications and experience; number of police officers appointed by the Commissioner of Police, on the recommendation of the Director; and such other personnel as the Director considers necessary. As with the Director, the positions of counsel and attorney, public accountant and consultants are all appointed in writing by the Minister of Finance; while the Director has authority to hire other senior officers in consultation with this Minister.¹⁷¹ Moreover, senior police officers are appointed by the Commissioner of Police to the FIU, on the recommendation of the Director. These senior officers are accountable to the Director.

[192] Other personnel, other than the aforementioned senior officers, are hired through a process of advertisement, vetting through the Royal Bahamas Police Force and interviews.¹⁷² Educational qualifications, prior job experience, and aptitude of candidate to perform in the advertised position are some of the requirements that are sought.¹⁷³ Other than the Director, all staff members are subject to discipline rules and procedures contained in the FIU Employee's Manual.¹⁷⁴

[193] With respect to the existence of manuals or documents for performing their tasks and describing their functions, the country under review provided a FIU Staff Regulations, which contains provisions on recruitment, selection and appointment; disciplinary rules; and rules of conduct.¹⁷⁵ Moreover, the FIU has produced the Suspicious Transactions Guidelines relating to the Prevention of Money Laundering and the Financing of Terrorism, which provides information on the procedures for performing the FIU's work.¹⁷⁶ The country under review further notes in its Response to the Questionnaire that institutional strengthening or quality improvement actions implemented and

¹⁷⁰ Response to the Questionnaire, pg. 10, *supra* note 4.

¹⁷¹ *Ibid.*, pg. 16.

¹⁷² *Ibid.* See also On-Site Presentation of the Financial Intelligence Unit, pg. 12, *supra* note 168.

¹⁷³ *Ibid.* See also FIU Staff Regulations, Chapter 3, Recruitment, Selection & Appointment, http://www.oas.org/juridico/english/mesicic4_bhs.htm

¹⁷⁴ FIU Staff Regulations, Chapter 4, Disciplinary Rules, *ibid.* See also Chapter 8, Rules of Conduct.

¹⁷⁵ *Ibid.*

¹⁷⁶ [Suspicious Transactions Guidelines relating to the Prevention of Money Laundering and the Financing of Terrorism](#)

the implementation of systems or modern technologies to facilitate the work of the FIU is delineated in the Director's weekly management and staff meeting agendas.¹⁷⁷

[194] Regarding training, in its Response to the Questionnaire, the country under review noted the following:¹⁷⁸

[195] *“Officers benefit from a number of training initiatives, both locally and internationally in anti-money laundering, combating the financing of terrorism, anti-corruption, and confidentiality matters, Information Technology, proficiency in accounting, analysis and other areas of expertise are also related to the operation of the FIU.”*

[196] In addition, during the on-site visit, the representatives of the FIU stated that there is an established permanent training program, and the staff participates in seminars and workshops, both locally and internationally.¹⁷⁹ Some of the institutions that provided training include the Egmont Group of Financial Intelligence Units, the Caribbean Financial Action Task Force, Offshore Alert, Multijurisdictional Counterdrug Task Force, Money Laundering Alert, the Meeting of the Expert Group for the Control of Money Laundering, ACAM Annual International Money Laundering Conference, AICPA National Forensic Accounting Conference, among others.¹⁸⁰

[197] Moreover, during the on-site visit, the representatives of the FIU stated that it also provides anti-money laundering and combating the financing of terrorism (AML/CFT) training to financial institutions and other agencies throughout The Bahamas, and provides anti-corruption training and awareness to members of the Royal Bahamas Police Force through its training college.¹⁸¹

[198] Regarding the manner the general public is provided with information about their objectives and functions, the country under review, in its Response to the Questionnaire, notes that:¹⁸²

[199] *“[T]he FIU’s website www.bahamas.gov.bs/fiu, as well as the FIU’s Annual Report, Suspicious Transactions Guidelines 2007, public announcements via print media, regular lectures to financial sector and other groups allow the FIU to routinely inform the general public concerning its operation.”*

[200] The website also provides a link setting out the manner a suspicious transaction report may be carried out, setting out the process and the manner to contact the FIU.¹⁸³

[201] With respect to mechanisms for internal control and for dealing with claims, complaints, or allegations related to the pursuit of their objectives and to the performance of personnel, the country under review notes, in its Response to the Questionnaire, that section 4(2)(c) of the Financial Intelligence Unit Act provides that an aggrieved person may challenge, via a judge in chambers, an order of the FIU to freeze a persons' bank account for a period not exceeding five days.¹⁸⁴ In addition, during the on-site visit, the representatives of the FIU stated that the Director, assisted by the Deputy Director and the Management team of the unit, uses the Financial Intelligence Unit Act,

¹⁷⁷ Response to the Questionnaire, pg. 17, *supra* note 4.

¹⁷⁸ *Ibid.*, pg. 16.

¹⁷⁹ On-Site Presentation of the Financial Intelligence Unit, pg. 29, *supra* note 168.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*, pg. 30.

¹⁸² Response to the Questionnaire, pg. 17, *supra* note 4.

¹⁸³ [Reporting Suspicious Financial Transactions](#)

¹⁸⁴ Response to the Questionnaire, pg. 17, *supra* note 4.

the Employee Manual, or any other applicable means available to ensure that internal controls are maintained.¹⁸⁵ In this respect, the Employee Manual provides sanctions from warning or reprimand for minor breaches of discipline to dismissal for major infractions.¹⁸⁶

[202] Regarding the manner in which budgetary resources needed for their operations are ensured, section 11 of the Financial Intelligence Unit Act provides that the funds and resources of the FIU are to consist of any moneys as may from time to time be provided by Parliament. The budget process was described as thus during the on-site visit:¹⁸⁷

[203] *“The budget estimates for the FIU is prepared by the Director of the unit as the Chief Accounting Officer. The Director is assisted by the Deputy Director, as well as the Financial Officer, who is a Certified Public Accountant. Input from managers, as well as relevant staff members are also obtained. When calculating the annual budget and the essential needs of the FIU, personal emoluments, inclusive of new hire, proposed capital expenditure, past trends, fixed cost, such as rent and other variables, proposed training needs, both local and international, proposed promotions/reclassification, acquisition of additional human and other resources when needed, along with other important matters are all factored in. The Financial Officer is responsible for compiling the estimate budget for final review by the Director. Once approved the budget estimate is then submitted to the Ministry of Finance for approval.”*

[204] In addition, during the on-site visit, the representatives of the FIU provided the following information regarding its budget:¹⁸⁸

Fiscal Year	Budget (in Bahamas dollars)
2014/2015	1 150 000
2013/2014	1 000 000
2012/2013	880 000
2011/2012	900 000
2010/2011	700 000
2009/2010	1 513 206

¹⁸⁵ On-Site Presentation of the Financial Intelligence Unit, pg. 23, *supra* note 168.

¹⁸⁶ *Ibid.*, pg. 24. See also the FIU Staff Regulations, *supra* note 173.

¹⁸⁷ *Ibid.*, pg. 15.

¹⁸⁸ *Ibid.*, pg. 16.

[205] Regarding coordination mechanisms, the country under review, in its Response to the Questionnaire, notes that the FIU meets regularly with the Group of Financial Services Regulators (GFSTRs), which assists the FIU and regulators with coordinating AML/CFT efforts for The Bahamas.¹⁸⁹ In addition, the FIU works closely with the Task Force of The Bahamas, which is chaired by the Attorney General and brings together various stakeholders in legal, law enforcement, and regulatory agencies. The FIU is responsible for reviewing and recommending amendments to laws that enable The Bahamas to be compliant with the Financial Action Task Force revised recommendations.

[206] In addition, the country under review, during the on-site visit, noted that section 4(2)(f) of the Financial Intelligence Unit Act provides that the FIU is to provide information, subject to such conditions as may be determined by the Director, to the Commissioner of Police where the information may relate to the commission of an offence specified in the Second Schedule of that Act, inclusive of acts of corruption.¹⁹⁰ The representatives also further observed the following in a presentation provided during the on-site visit:¹⁹¹

[207] *“The FIU is also able to request information from other oversight bodies, inclusive of the Royal Bahamas Police Force, Bahamas Customs Department, Bahamas Immigration Department and other law enforcement entities where necessary. Additionally, the FIU is also able to request information and coordinate with all of the regulatory and other important agencies in The Bahamas, including the Securities Commission of The Bahamas, Compliance Commission, Public Disclosure Commission, Auditor General’s Department, Insurance Commission of The Bahamas, Gaming Board, Central Bank of The Bahamas, the Office of the Attorney General and other important Government agencies.”*

[208] With respect to accountability mechanisms, the country under review notes that section 4(2)(c) of the Financial Intelligence Unit Act provides that an aggrieved person may challenge, via a judge in chambers, an order of the FIU to freeze a persons’ bank account for a period not exceeding five days.¹⁹² Moreover, during the on-site visit, the representatives stated that another accountability mechanism is the annual report that it is required to prepare under section 10 of the Financial Intelligence Unit Act. This report provides information on the functions of the FIU, a definition of money laundering and other criminal conduct, number of suspicious transactions and other reports received, analyzed and disseminated, international assistance requested and received, training received, training given to financial institutions and typologies reports.¹⁹³

[209] Moreover, section 13 of the Financial Intelligence Unit Act provides that the FIU is to keep proper accounts and other records and prepare for each financial year a statement of accounts. These accounts are to be audited by an auditor appointed by the Director with the approval of the Minister of Finance, and as soon as they have been audited, a copy is to be submitted to the Minister, as well as any report made by the auditor. A copy of these audited accounts is to be laid before each House of Parliament, as well as any report made by the auditor on the accounts.

¹⁸⁹ Response to the Questionnaire, pg. 17, *supra* note 4. See also On-Site Presentation of the Financial Intelligence Unit, pg. 18, *supra* note 168.

¹⁹⁰ On-Site Presentation of the Financial Intelligence Unit, pg. 20, *ibid.*

¹⁹¹ *Ibid.*, pg. 21.

¹⁹² Response to the Questionnaire, pg. 17, *supra* note 4.

¹⁹³ On-Site Presentation of the Financial Intelligence Unit, pg. 25, *supra* note 168.

[210] Finally, section 10 also provides that the Director shall, from time to time, advise the Minister of Finance on the work of the FIU and in particular on matters that could affect public policy or the priorities to be set by the FIU.

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

[211] The FIU has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 4.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

[212] The Committee notes that the representatives of the FIU, during the on-site visit, in their presentation, emphasized the autonomy that this oversight body carries out its functions.¹⁹⁴ As set out under section 4.1, they cited, for example, section 4(1) of the Financial Intelligence Unit Act, which provides that the FIU is the agency responsible for receiving, analyzing, obtaining and disseminating information with respect to proceeds of crime, and section 3(1), which states that the FIU is to have perpetual succession and a common seal with powers to enter into contracts and to do all such things necessary for its functions. Moreover, it was noted that neither the Minister nor anyone else has any authority to compel or demand information received by the FIU, nor is the FIU required by law to provide the Minister or anyone else, any intelligence, operational information and suspicious transaction report, as a result of the work of the FIU.¹⁹⁵

[213] The Committee notes however that in certain instances, the Minister of Finance, who is also the Prime Minister of The Bahamas, under section 5, has the discretion to provide the FIU with directions in writing of a general nature as to the policy to be followed by this oversight body in the performance of its functions, as appears to the Minister to be requisite in the public interest. The provision further provides that the FIU is to give effect to those directions.¹⁹⁶

[214] Moreover, the Committee further notes that the Minister of Finance takes on a significant role in determining both the human and budgetary resources of the FIU. Virtually all the senior posts of the FIU, including that of the Director, are appointed in writing by this Minister. Moreover, all budget submissions are presented to the Ministry of Finance for approval.

[215] The Committee observes that during the on-site visit, there was no indication that the autonomy of this oversight body was an issue, given the important role the Minister of Finance plays in its operations. Nevertheless, in order to strengthen the important work that the FIU carries out, and help ensure the integrity of this work, the Committee believes that the country under review should consider enacting provisions that make it clear that this oversight body is independent in the exercise of its functions under the Financial Intelligence Unit Act. The Committee will formulate a recommendation. (see Recommendation 4.4.1 of Chapter II of this Report)

[216] The Committee notes that one difficulty identified by the representatives of the FIU during the on-site visit is budgetary constraints.¹⁹⁷ As noted above, the Committee observes that the budget, as provided during the on-site visit and set out under section 4.1 of this Report, indicates a significant

¹⁹⁴ *Ibid.*, pgs. 7 – 10.

¹⁹⁵ *Ibid.*, pg. 10.

¹⁹⁶ The country under review notes that this direction is limited and does not confine or inhibit the FIU in the performance of its functions nor make it subject to the control or direction of any person or authority in the day-to-day management of its affairs.

¹⁹⁷ *Ibid.*, pg. 33.

reduction for the past six years, in particular from the fiscal year 2009/2010 to 2010/2011, where the budget was cut by more than half. During the on-site visit, the representatives of the FIU stated that they were advised that due to a global recession, the budget would be reduced. They also noted that although the budget has been steadily increasing, it has not received the full amount requested for the last two years. As a result, one example in which it has affected its operation is that the FIU has had to be selective with regarding training opportunities for its personnel.

[217] The representatives also indicated that it is planning to hire 5 analysts in the near future and that it will need more of them in order to comply with a recommendation issued by the Caribbean Financial Action Task Force, whereby The Bahamas is to put in place measures that cover domestic, cross border and non-routine wire transfers as well as a legal framework requiring the reporting of international wire transfers.¹⁹⁸ Moreover, the Committee observes that the FIU has not been able to review all suspicious transaction reports it receives in a given year. For example, the 2012 Annual Report of the FIU notes that of 167 of these reports received, 16 were forwarded to the Commissioner of Police for investigation, 20 were analyzed and closed, while 131 remained pending.¹⁹⁹ The 2013 Annual Report of the FIU indicates that there was an increase of approximately 62% of these reports received, whereby of a total of 270 suspicious transaction reports, 33 were forwarded to the Commissioner of Police, 41 were analyzed and closed, while 196 remain pending.²⁰⁰ The Committee observes that this is a significant number of reports that remain pending and may result in alleged acts of corruption remaining undetected. An increase in analysts may help address this backlog.

[218] Given the foregoing, the Committee observes that the country under review should consider providing the FIU with the budgetary and human resources needed for the proper performance of its function, within available resources. The Committee will formulate a recommendation. (see Recommendation 4.4.2 in Section 4.4.4 of Chapter II of this Report)

[219] As mentioned under section 4.1, the FIU carries out various AML/CFT training activities to financial institutions and other agencies. During the on-site visit, the representatives of the FIU mentioned that in 2009, this oversight body trained over four hundred people, a number which more than doubled for 2012 when 892 individuals received training.²⁰¹ The 2013 Annual Report of the FIU attests to these numbers and also provides that in 2013, this number was 814.²⁰²

[220] However, the Committee notes that one of the difficulties mentioned during the on-site visit was the lack of governmental, private institutions, financial institutions and the general public in identifying and reporting acts of corruption.²⁰³ In this respect, the Committee believes that the FIU should consider providing training to the aforementioned institutions in order to assist them to detect suspicious activities with regard to the possible proceeds of corruption.²⁰⁴ To this end, it should also consider coordinating with other oversight bodies in The Bahamas, in particular the Royal Bahamas

¹⁹⁸ See for example the [Caribbean Financial Action Task Force Sixth Follow-Up Report for The Bahamas](#). In addition, the country under review notes that it will need an additional five (5) trainee Analysts, two (2) data entry clerks and one (1) document imaging clerk is needed to ensure that the unit adequately addresses the backlog of suspicious transaction and other reports received for analysis. Moreover, the FIU will also require the acquisition of additional budgetary resources to pay the increased staff and to purchase necessary computers and other equipment for their work.

¹⁹⁹ 2012 Annual Report of the Financial Intelligence Unit, pg. 16, http://www.oas.org/juridico/english/mesicic4_bhs.htm

²⁰⁰ 2013 Annual Report of the Financial Intelligence Unit, pg. 20, http://www.oas.org/juridico/english/mesicic4_bhs.htm

²⁰¹ On-Site Presentation of the Financial Intelligence Unit, pg. 30, *supra* note 168.

²⁰² 2013 Annual Report of the Financial Intelligence Unit, pg. 18, *supra* note 200.

²⁰³ On-Site Presentation of the Financial Intelligence Unit, pg. 33, *supra* note 168.

²⁰⁴ On this point, see the Egmont Group White Paper: The Role of Financial Intelligence Units in Fighting Corruption and Recovering Stolen Assets, pg. 19, <http://www.egmontgroup.org/library/download/229>.

Police Force and the Office of the Attorney General, on developing a training program on detecting acts of corruption, that not only could benefit the staff of the FIU, but also the staff of these other oversight bodies. The Committee noted that during the on-site visit, it was stated that it would be beneficial to have joint training, especially between the police and attorneys, which would assist in better investigations.²⁰⁵ The Committee will formulate a recommendation. (see Recommendation 4.4.3 in Section 4.4.4 of Chapter II of this Report)

[221] Related to this, the representatives also noted that the staff of the FIU itself lacks adequate training in the area of anti-corruption and that there is a lack of training provided by local and international agencies on this matter.²⁰⁶ The Committee believes that the country under review should seek internationally at organizations that work on AML/CFT issues to develop training programs for its staff on anti-corruption matters as it relates to the work of an FIU. The Committee notes that the Egmont Group has produced a white paper, the Role of Financial Intelligence Units in Fighting Corruption and Recovering Stolen Assets, which provides guidance on how FIUs may assist in the fight against corruption and which might prove of assistance.²⁰⁷ The Committee will formulate a recommendation. (see Recommendation 4.4.4 in Section 4.4.4 of Chapter II of this Report)

[222] The Committee notes that the country under review, during the on-site visit, noted that it has an established permanent training program. However, as set out earlier, due to budget constraints, the FIU has been selective in the training opportunities being afforded to its staff, which might undermine any training program it has in place. In this respect, the Committee notes that the 2012 and 2013 Annual Reports set out the overseas training activities for which the staff has participated. In 2012, it appears that there were 4 training events attended by 7 staff members of the FIU, while in 2013, this amounted to 5 events attended by 8 staff members.²⁰⁸ The Committee notes that training events offered locally are not set out in these Annual Reports, and therefore it makes it difficult to determine what training has been offered in The Bahamas itself to the staff of the FIU.

[223] The Committee believes that the country under review should strengthen and consolidate the training program in place by increasing the training opportunities that can be offered to the staff of the FIU, both locally and internationally. Moreover, it should begin to set out the local training activities that the staff of the FIU has participated in this regard in its Annual Reports.²⁰⁹ The Committee will formulate recommendations. (see Recommendations 4.4.5 and 4.4.6 in Section 4.4.4 of Chapter II of this Report)

²⁰⁵ In addition, the country under review noted that the Financial Intelligence Unit in conjunction with the Royal Bahamas Police Force and other stakeholders will enhance the AML/CFT training presently given to governmental, as well as private financial and non financial entities in The Bahamas to include anti corruption matters. The unit will also use its website to advise the general public of their role to report any acts of corruption they may be aware of.

²⁰⁶ On-Site Presentation of the Financial Intelligence Unit, pg. 33, *supra* note 168.

²⁰⁷ Egmont Group White Paper: The Role of Financial Intelligence Units in Fighting Corruption and Recovering Stolen Assets, *supra* note 204. The country under review notes that the Financial Intelligence Unit will meet with the Egmont Group's regional representatives for the Americas and the Caribbean Financial Action Task Force Law Enforcement Expert and request that enhanced AML/CFT training, inclusive of anti corruption training be regularly included in the respective agencies training schedules. Additionally the FIU will continue to work with the Task Force of The Bahamas and other relevant agencies, inclusive of the Royal Bahamas Police Force to develop a joint training program with focus on anti corruption matters.

²⁰⁸ See pg. 15 of the 2012 Annual Report of the Financial Intelligence Unit, *supra* note 199 and pg. 19 of the 2013 version of this report, *supra* note 200.

²⁰⁹ The country under review notes that the annual reports going forward will reflect local training received by staff of the FIU, as well as those given by the Training Officers at the FIU to governmental, financial and non financial entities in the Bahamas.

[224] Another difficulty mentioned during the on-site visit is the lack of adequate and sustained public announcements to sensitize the general public on their duty to recognize and report acts of corruption.²¹⁰ The Committee observes that the FIU has a website in place that provides information to the general public on its functions. As previously stated under section 4.1, the representatives of the FIU during the on-site visit noted, in its presentation:²¹¹

[225] “[T]he FIU’s website www.bahamas.gov.bs/fiu, as well as the FIU’s Annual Report, Suspicious Transactions Guidelines 2007, public announcements via print media, regular lectures to financial sector and other groups allow the FIU to routinely inform the general public concerning its operation.”

[226] The Committee observes that the country under review should use its website to disseminate to the general public, and to financial institutions as well, information on the importance of detecting and reporting acts of corruption as it relates to the work of the FIU, and utilize the print media and regular lectures to the financial sector and other groups on this issue. In addition, the Committee believes that the country under review should consider establishing outreach programs to the general public so that they can be made aware of the important work the FIU undertakes.²¹² The Committee will formulate a recommendation. (see Recommendation 4.4.7 in Section 4.4 of Chapter II of this Report)

[227] Moreover, in order to encourage transparency in the operations of the FIU, the oversight body should consider placing on its website the audited statement of accounts, as well as any reports made by the auditor. The Committee will formulate a recommendation. (see Recommendation 4.4.8 in Section 4.4 of Chapter II of this Report)

[228] Finally, the Committee notes that one of the recommendations issued by the Financial Action Task Force (FATF), which touches upon the functions of the FIU in combating corruption, are to put provisions in place that address politically exposed persons. As noted by FATF Guidance on Politically Exposed Persons (PEP):²¹³

[229] “A politically exposed person (PEP) is defined by the Financial Action Task Force (FATF) as an individual who is or has been entrusted with a prominent public function. Due to their position and influence, it is recognized that many PEPs are in positions that potentially can be abused for the purpose of committing money laundering (ML) offences and related predicate offences, including corruption and bribery, as well as conducting activity related to terrorist financing (TF).”

[230] In this respect, the Caribbean Financial Action Task Force (CFATF),²¹⁴ in its Mutual Evaluation Report for The Bahamas and in 6 subsequent Follow-Up Reports, have recommended that The Bahamas expand the institutions required to perform normal due diligence measures, as

²¹⁰ On-Site Presentation of the Financial Intelligence Unit, pg. 33, *supra* note 168.

²¹¹ Response to the Questionnaire, pg. 17, *supra* note 4.

²¹² The country under review notes that the Financial Intelligence Unit has commenced discussions with the Department of Information Technology to ensure greater use of its webpage to sensitize the general public on matters as it relates to reporting acts of corruption in the Bahamas. The unit will also work along with The Bahamas Information Services and other entities to ensure that appropriate advertisements are sent out to the general public. Additional lectures as stated above will also be undertaken by the FIU and other stake holders.

²¹³ FATF Guidance, Politically Exposed Persons (Recommendations 12 and 22), pg. 3, <http://www.fatf-gafi.org/media/fatf/documents/recommendations/guidance-pep-rec12-22.pdf>

²¹⁴ The CFATF is an organization of twenty-seven states of the Caribbean Basin, which have agreed to implement common countermeasures to address the problem of criminal money laundering and monitor the implementation of the FATF Recommendations, see CFATF Overview, <https://www.cfatf-gafic.org/index.php/cfatf-home/cfatf-overview>

currently, only banks, trust companies and non-bank money transmission businesses are required to put in place appropriate risk management systems to determine whether a customer is a PEP and implement clear policy and internal guidelines, procedures and controls regarding such business relationships.²¹⁵ For example, in the CFATF Sixth Follow-Up Report for The Bahamas, it was noted that enforceable requirements concerning PEPs are applicable only to banks and trust companies, and that there are no requirements for senior management approval to continue a relationship with a customer who is subsequently found to be a PEP or who subsequently becomes a PEP.²¹⁶ The Committee believes that the country under review should address these concerns. As noted by the Central Bank of The Bahamas AML/CFT Guidelines for Licensees on the Prevention of Money Laundering & Countering the Financing of Terrorism:

[231] “*Business relationships with PEPs and with related parties (e.g. immediate family members, close associates or related companies) may expose Licensees [banks and trust companies] to significant reputational and/or legal risk. The risk occurs when such persons abuse their public powers for either their own personal benefit and/or the benefit of others through illegal activities such as the receipt of bribes or fraud.*”

[232] The Committee believes that the country under review should consider expanding the financial institutions required to put in place appropriate risk management systems to determine whether a customer is a PEP and implement requirements for senior management approval to continue a relationship with a customer who is subsequently found to be a PEP or who subsequently becomes a PEP. Moreover, the Committee believes the country under review should consider highlighting in its training courses to financial institutions on the obligation to put in place these controls with respect to PEPs.²¹⁷ The Committee will formulate recommendations. (see Recommendations 4.4.9 and 4.4.10 in Section 4.4 of Chapter II of this Report)

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

[233] The country under review, during the on-site visit, provided the following results:²¹⁸

Statistics on Suspicious Transaction Reports (STRs) Received for the Past Five Years					
2009	2010	2011	2012	2013	2014 (up to 9/11/14)
138	142	183	167	270	150

²¹⁵ See, for example, pg. 16 of the Caribbean Financial Action Task Force Sixth Follow-Up Report for The Bahamas, *supra* note 198.

²¹⁶ *Ibid.* See also the Central Bank of The Bahamas AML/CFT Guidelines for Licensees on the Prevention of Money Laundering & Countering the Financing of Terrorism, <http://www.centralbankbahamas.com/download/042373900.pdf>

²¹⁷ The country under review notes that the Financial Intelligence Unit will increase its training programs to ensure that all financial and non-financial institutions are aware of the requirements of the FATF recommendations 12 & 22 as it relates to politically exposed persons (PEPs). The FIU attends all regional meetings of the Caribbean Financial Action Task Force, which is the regional body that complements the Financial Action Task Force. The task force encourages member states to be compliant with all requirements that enforce anti-corruption measure.

²¹⁸ On-Site Presentation of the Financial Intelligence Unit, pgs. 31 – 32, *supra* note 168.

Number of STRs Received relating to Corruption for the Period 2009 – 2013					
Year	Number of cases received	Forwarded to police for investigation	Open and pending	Closed	Total overall STRS received
2009	2	2	0	0	138
2010	0	0	0	0	142
2011	7	2	2	3	183
2012	1	0	1	0	167
2013	7	1	6	0	270
Total	17	5	9	3	900

[234] The Committee also notes that in the Annual Reports provided by the FIU, there are statistics that set out the offences suspected by a financial institution of having been committed at the times the reports were submitted, which include corruption, and the offences suspected by the FIU of having been committed upon completion of an analysis of a report. For example, the 2013 Annual Report sets out that it received 7 suspected reports of corruption from financial institutions, and the FIU found, upon completion of an analysis of the reports, or upon receipt of other financial or criminal intelligence, that in 2 instances, there are suspected cases of corruption.²¹⁹ The Committee notes that there is a discrepancy in the numbers provided during the on-site visit, and what is found in the Annual Report for the year 2013, however the Committee believes that the number found in the above table are an update of the ones found in the Annual Report.

[235] Given the foregoing, the Committee finds that the above information serves to demonstrate that corrupt acts have been detected in the country under review, and that those acts were referred to the Royal Bahamas Police Force for investigation.

[236] However, the Committee observes that there is a high number of STRs for cases of corruption that still have to be analyzed by the FIU, as compared to the number received, which in some cases, are approximately 3 years old. In general, the Committee notes there appears to be a significant backlog of STRs that needs to be addressed by the FIU. For 2013 alone, this amounts to 196 STRs that still need to be analyzed, while in 2012, 131 reports. The Committee further notes that while the Annual Reports contain valuable statistics on the work of the FIU, it does not provide information on

²¹⁹ See pgs. 27 and 28 of the 2013 Annual Report of the Financial Intelligence Unit, *supra* note 199.

the total number of STRs that are still pending for analysis from past years. This information may prove enlightening as to the overall efficiency of the work of the FIU.

[237] Given the foregoing, the country under review should consider addressing this backlog as soon as possible, as well as provide statistics on the total number of STRs that are still pending overall, and not just for a given year. The Committee will formulate recommendations. (see Recommendations 4.4.11 and 4.4.12 in Section 4.4 of Chapter II of this Report)

[238] In addition, the Committee notes that neither these results, nor the information provided in the Annual Reports, provide any information on the outcome of the STRs forwarded to the Royal Bahamas Police Force for further investigation. The Committee considers that maintaining such results would assist in assessing the effectiveness not only of the FIU, but also of the Royal Bahamas Police Force. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.13 in Section 4.4 of Chapter II of this Report)

4.4. Conclusions and recommendations

[239] Based on the comprehensive review conducted with respect to the Financial Intelligence Unit in the foregoing sections, the Committee offers the following conclusions and recommendations:

[240] The Bahamas has considered and adopted measures intended to maintain and strengthen the Financial Intelligence Unit as an oversight body, as described in Chapter II, Section 4 of this Report.

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

- 4.4.1. Consider establishing legal provisions that make it clear that the Financial Intelligence Unit is independent in exercising its functions assigned to it by the Financial Intelligence Unit Act. (See section 4.2 of Chapter II of this Report).
- 4.4.2. Provide the Financial Intelligence Unit with the budgetary and human resources needed for the proper performance of its function, within available resources. (See section 4.2 of Chapter II of this Report)
- 4.4.3. Coordinate with other oversight bodies, such as the Royal Bahamas Police Force and the Office of the Attorney General, on developing a joint training program on detecting acts of corruption, for governmental, private institutions, financial institutions and the general public. (See section 4.2 of Chapter II of this Report)
- 4.4.4. Seek out training opportunities for the staff of the Financial Intelligence Unit on anti-corruption matters as it relates to its work, from international partners and organizations. (See section 4.2 of Chapter II of this Report)
- 4.4.5. Strengthen and consolidate the training program in place in order to increase the training opportunities offered to the staff of the Financial Intelligence Unit, both locally and internationally. (See section 4.2 of Chapter II of this Report)
- 4.4.6. Set out in its annual reports the local training received by the staff of the Financial Intelligence Unit. (See section 4.2 of Chapter II of this Report)

- 4.4.7. Utilize the website of the Financial Intelligence Unit and other measures to disseminate to the general public information on the importance of detecting and reporting acts of corruption as it relates to its work. (See section 4.2 of Chapter II of this Report)
- 4.4.8. Place the audited statement of accounts of the Financial Intelligence Unit, as well as any reports made by the auditor, on its website. (See section 4.2 of Chapter II of this Report)
- 4.4.9. Take steps to ensure that all financial institutions put in place appropriate risk management systems to determine whether a customer is a politically exposed person. (See section 4.2 of Chapter II of this Report)
- 4.4.10. Implement requirements for senior management approval to continue a relationship with a customer who is subsequently found to be a politically exposed person or who subsequently becomes one. (See section 4.2 of Chapter II of this Report)
- 4.4.11. Address the backlog with regard to suspicious transactions reports that have yet to be analyzed by the Financial Intelligence Unit, which includes suspected offenses of corruption. (See section 4.3 of Chapter II of this Report)
- 4.4.12. Provide statistics in the annual reports of the total number of suspicious transactions reports that have yet to be analyzed by the Financial Intelligence Unit, not just for a given year. (See section 4.3 of Chapter II of this Report)
- 4.4.13. Maintain results indicating the outcome of the referrals made by the Financial Intelligence Unit to the Royal Bahamas Police Force with respect to suspected acts of corruption detected by this Unit, in order to identify challenges and recommend corrective measures, as necessary. (See section 4.3 of Chapter II of this Report)

5. COMPLIANCE COMMISSION

5.1 Existence of a legal framework and/or other measures

[242] The Compliance Commission has a set of provisions in its legal framework and other measures concerning, among others, the following:

[243] With respect to its objectives and functions, section 39(1) of the Financial Transactions Reporting Act provides that it is the agency responsible for ensuring that designated lawyers, accountants, real estate brokers, credit unions, as well as The Bahamas Development Bank, The Bahamas Mortgage Corporation and the Post Office Savings Banks are in compliance with the provisions of the Act.²²⁰ To this end, it is to maintain a general review of these institutions in relation to the conduct of financial transactions; and when deemed necessary, to conduct on-site examinations of the business of these institution for the purpose of ensuring compliance with the provisions of the Act, appoint an auditor to conduct that examination and report thereon to the Commission.²²¹

²²⁰ See section 46 of the Financial Transactions Reporting Act, *supra* note 166, as well as the On-Site Presentation of the Compliance Commission, pg. 3, http://www.oas.org/juridico/english/mesicic4_bhs.htm. See also [Financial Institutions Supervised by the Commission](#).

²²¹ *Ibid.*, sections 43(a) and 43(b).

[244] During the on-site visit, it was stated, by the representatives of this Commission that the core function is in fulfilling its anti-money laundering mandate through on-site examinations.²²² There are four types of on-site examinations: routine, follow-up, random and special (investigative).²²³ These examinations are designed to assess the level of compliance with local, regional and global money laundering standards, covering areas such as customer verification procedures; maintenance of transaction procedures; suspicious transaction reporting procedures; staff anti-money laundering training procedures; and appointment of a money laundering reporting officer.²²⁴

[245] In carrying out its functions, the Commission may at all reasonable times require that the institutions under its purview produce for examination its records as well as require them to supply such information or explanation as required by the Commission to perform its functions.²²⁵

[246] The country under review, in its Response to the Questionnaire, states that it is an autonomous body and like all financial service regulatory agencies, falls within the portfolio of the Minister of Finance.²²⁶ In addition, during the on-site visit, the representatives noted that while the Commission does fall within the portfolio of the Minister of Finance, it is able to perform its statutory duties without interference and it is not involved in the daily operations of the Commission.²²⁷

[247] Regarding the manner in which the Commission adopts its decisions, the country under review, in its Response to the Questionnaire, notes the following:²²⁸

[248] *“The decisions relative to the proper functioning of the Commission lie with the three Commissioners appointed to direct the operations of the Commission. The body is led by the Chairman. The daily operations of the Commission are overseen by the Commission’s Inspector who is the Administrative Head of the Commission. Most decisions required for the orderly functioning of the Commission are made by the Inspector who consults with the Commission (as necessary) on various matters.”*

[249] Section 40 of the Financial Transactions Reporting Act sets out that the Commission consists of three members appointed by the Governor-General in writing, being persons that have wide experience in and have shown capacity in financial and commercial matters, industry, law or law enforcement. These persons may be appointed for a term of three years and be eligible for reappointment.²²⁹ Section 42 of the Act further provides that a person may not be appointed as a member of the Commission who is a member of either House of Parliament, or is a director, officer or servant of, or has a controlling interest in, any financial institution.

[250] Regarding the manner in which human resources needed for its operations are identified and how personnel are selected, the country under review, in its Response to the Questionnaire, states that most of the staff currently serving with the Commission are employed by the Ministry of Finance and assigned to the Commission. In this respect:²³⁰

²²² On-Site Presentation of the Compliance Commission, pg. 4, *supra* note 220.

²²³ *Ibid.*

²²⁴ *Ibid.*, pg. 5.

²²⁵ Financial Transactions Reporting Act, section 44(1), *supra* note 166.

²²⁶ Response to the Questionnaire, pg. 13, *supra* note 4.

²²⁷ On-Site Presentation of the Compliance Commission, pgs. 7 and 14 *supra* note 220.

²²⁸ Response to the Questionnaire, pg. 13, *supra* note 4.

²²⁹ Financial Transactions Reporting Act, section 41, *supra* note 166.

²³⁰ Response to the Questionnaire, pg. 13, *supra* note 4.

[251] “*The Inspector plays a role in recruitment of prospects and helps to determine their suitability. The employees are permanent employees of the Government of The Bahamas and enjoy the rights and privileges of such persons. All disciplinary actions including suspension and termination are conducted upon recommendation of the Inspector and/or Commissioners.*”

[252] *The Inspector determines the human resource needs of the Commission along with all other resources required for the Commission’s proper functioning.*”

[253] In addition, the country under review notes that all the employees enjoy a comprehensive career path, which is merit based and transparent, and that each position in the Commission requires certain minimum academic requirements as well as relevant experience, which determines the salaries and benefits offered.²³¹ During the on-site visit, it was stated that most of the staff have attained certification in Anti-Money Laundering.²³² The country under review also notes that each employee of the Commission has a specific tailored job description that provides for the obligations of the employee, and all employees are expected to avail themselves of relevant training on an annual basis to facilitate their assigned tasks.²³³ Finally, the employees of the Commission, as public servants, are subject to the provisions on appointment, termination of appointment and discipline contained within the Public Service Regulations, as well as the rules that prevent corruption, conflicts of interest and the limitation on political participation, as contained in the General Orders.

[254] With respect to the existence of manuals or documents for performing their tasks and describing their functions, the country under review, in its Response to the Questionnaire, states that all aspects of the Commission’s operation are directed by an Operating Policies and Procedures Manual, which dictates specific protocols for each task the Commission is called upon to perform, which are: Duty of Confidentiality and Disclosure of Information, Communications, Registration, On-Site Examinations, Legal Proceedings, and Customer Relations.²³⁴ Subsequent to the on-site visit, a copy of this Manual was provided to the MESICIC Technical Secretariat.²³⁵

[255] Regarding training, during the on-site visit, the representatives of the Compliance Commission stated that training sessions are organized for all relevant stakeholders, which are mostly industry-specific, although some are general in scope.²³⁶ It also notes that the Inspector of the Commission is regularly called upon to speak at various anti-money laundering seminars both locally and abroad, and has facilitated workshops for regulatory authorities in Jamaica, the British Virgin Islands and Barbados on the proper regulation of designated non-financial businesses and professions.²³⁷

[256] Regarding the manner in which the general public is provided with information about their objectives and functions, the Commission has a website at <http://www.bahamas.gov.bs/compliance>. This website provides contact information, provides a background on its mandate as well as the institutions that fall under its purview, as well as providing information on the industry codes of practice. It also provides information on training sessions that the Commission carries out for agents that carry out the on-site examinations. It also provides links to guidelines and codes of practices the

²³¹ *Ibid.*

²³² On-Site Presentation of the Compliance Commission, pg. 11, *supra* note 220.

²³³ Response to the Questionnaire, pg. 14, *supra* note 4 and On-Site Presentation of the Compliance Commission, pg. 12, *ibid.*

²³⁴ Response to the Questionnaire, pgs. 13 – 14, *supra* note 4.

²³⁵ Operating Policies and Procedures Manual, on file with the MESICIC Technical Secretariat.

²³⁶ On-Site Presentation of the Compliance Commission, pg. 13, *supra* note 220.

²³⁷ *Ibid.* See also Response to the Questionnaire, pg. 14, *supra* note 4.

Commission has developed for the financial institutions it supervises, such as a Cooperatives Money Laundering Guidelines and Code of Practice for Lawyers, among others.²³⁸

[257] In addition, during the on-site visit, the representatives also emphasized that the Commission begins each year with a work program and a series of consultative meetings with industry leaders.²³⁹

[258] Regarding the manner in which budgetary resources needed for their operations are ensured, the representatives of the Commission, during the on-site visit, provided the following information regarding its budget:

Year	Budget (in Bahamas dollars)
2014	0
2013	125 120
2012	227 324
2011	241 789

[259] Regarding coordination mechanisms, the country under review, in its Response to the Questionnaire, notes that the Commission participates in the Group of Financial Services Regulators (GFSRs).²⁴⁰ The Group's purpose is to establish and maintain close collaboration and coordination among financial service regulators in matters such as fitness and propriety for individuals and businesses participating in the sector. It also considers matters, which require a collaborative approach such as joint sanctioning and disciplinary actions.

[260] During the on-site visit, the Commission also stated that there is close collaboration between the Commission and the governing bodies of its registrants, such as The Bahamas Bar Association, The Bahamas Institute of Chartered Accountants, The Bahamas Real Estate Association, and The Bahamas Cooperative Credit Union League Limited.²⁴¹

5.2 Adequacy of the legal framework and/or other measures

[261] The Compliance Commission has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 5.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

²³⁸ [Publications, Reports and other Resources](#)

²³⁹ On-Site Presentation of the Compliance Commission, pg. 13, *supra* note 220.

²⁴⁰ Response to the Questionnaire, pg. 13, *supra* note 4. See also On-Site Presentation of the Compliance Commission, pg. 8, *supra* note 220.

²⁴¹ On-Site Presentation of the Compliance Commission, pg. 16, *supra* note 220.

[262] The Committee notes that during the on-site visit, the representatives of the Commission explained that The Bahamas is in a process of consolidating the government bodies responsible for regulating the financial services industry, and it appears this process of consolidation has been occurring for over 4 years. For example, in the Mid Year Budget Statement for 2009/2010, the then Prime Minister for The Bahamas stated the following:²⁴²

[263] *“The Government is also moving to streamline the regulation of non-bank financial services. Specifically, we intend to merge the Securities Commission, the Office of the Registrar of Insurance Companies and the Compliance Commission to create a new Financial Services Authority. The goal is to reduce burdens on the regulated financial sector by simplifying authorization requirements and data reporting requirements. As well, efficiency gains will be achieved by ensuring joint operations in terms of on-site inspections, authorizations, information technology and human resources.*

[264] *A detailed plan of implementation is being developed with a view to having the new Authority operational this year. Already, the physical consolidation of these agencies has been achieved at Charlotte House and is advancing their ability to cooperate on some administrative and regulatory levels.”*

[265] It is for this reason that the budget for the Compliance Commission has steadily decreased to where it is non-existent. The representatives of the Commission stated that the budget overall for all financial services regulators is \$7.5 million dollars for 2014, and that currently, any financial needs are met by making a request from this budgetary pool.

[266] The Committee observes that although the country under review is in a process of consolidation of its financial services regulators, the Compliance Commission is still in operation and has not been merged into one authority with the Securities Commission and the Office of the Registrar of Insurance Companies as of yet. Moreover, the country under review still selected the Compliance Commission as an oversight body relevant for preventing, detecting, punishing and eradicating corrupt acts that trigger disciplinary, administrative, financial or civil and criminal responsibility. Giving the foregoing, the Committee considers that the Commission should be provided its own budget in order to carry out its important work.

[267] Related to the issue of the budget are the human resources at the disposal of the Commission. During the on-site visit, the representatives noted that the Commission has 5 personnel that work in this oversight body, 3 trainers and 2 examiners. In addition, it was stated that during the year, it had lost 3 employees who were transferred to other areas in the public service. A request had been made to replace those that left, as the representatives stated that it is a matter of urgency, but it has not occurred. The explanation given for the reluctance on part of the government to replace those that left was the aforementioned planned consolidation.

[268] The Committee observes that the diminishing personnel on hand can affect its objective of ensuring that the supervised financial institutions have adequate levels of compliance with anti-money laundering standards. Regarding its core function in fulfilling its anti-money laundering mandate through routine on-site examinations of these institutions, it relies on independent auditors appointed by the Commission to act as Agents to carry them out, rather than counting on

²⁴² 2009/2010 Mid-Year Budget Statement on the Six Months Ending 31st December 2009, pg. 4, http://www.oas.org/juridico/english/mesicic4_bhs.htm

Commission staff to conduct this work.²⁴³ In addition, as the Commission does not license the financial institutions it supervises; it carries out a yearly registration process for these institutions, which exceeds 1200, a significant amount to oversee for a small number of staff on hand.²⁴⁴

[269] Moreover, an important function of the Commission is the training it provides to the financial institutions it supervises. All these institutions are to develop policies and procedures for anti-money laundering staff training and ensure that all staff are exposed to such training at least once annually. The training provided by the Commission is to ensure that all participants are taught how to detect and prevent money laundering. The Committee notes, however, that it appears not all these institutions receive are able to receive training, as this depends on the availability of staff.²⁴⁵

[270] Given the foregoing, the Committee believes that the country under review should consider providing an adequate budget allocated to the Compliance Commission, ensuring it has the necessary human and financial resources to carry out its important work. The Committee will formulate a recommendation. (see Recommendation 5.4.1 in Section 5.4 of Chapter II of this Report)

[271] Another challenge related to human resources identified by the representatives of the Commission is the practice of assigning staff from the Ministry of Finance to this oversight body, rather than allowing it to conduct external vacancy announcements and draw from the general public for suitable candidates. The representatives noted that at times it is difficult to find persons with a suitable background in the public service to be transferred to the Commission. The Committee believes that the country under review should consider allowing external recruitment opportunities conducted by the Public Service Commission to help meet the human resource needs of the Commission.²⁴⁶ The Committee will formulate a recommendation. (see Recommendation 5.4.2 in Section 5.4 of Chapter II of this Report)

[272] The Committee further observes that the Commission sets out that it is an autonomous body and like all financial service regulatory agencies, falls within the portfolio of the Minister of Finance. Moreover, it is able to perform its statutory duties without interference and it is not involved in the daily operations of the Commission. However, as noted regarding its budgetary and human resources, the Ministry of Finance undertakes a significant role in its operations, by determining what funds can be provided, as it does not have its own budget to rely on, and transfers staff from its ranks to work in the Commission. A further instance of the important role the Minister plays on the operations of the Commission are found in the Response to the Questionnaire. The country under review notes that the Commission is accountable to the Minister of Finance in the performance of its statutory duties and that all reporting protocols are made to this Minister who determines how much information is disseminated.²⁴⁷

²⁴³ On-Site Presentation of the Compliance Commission, pg. 4, *supra* note 220.

²⁴⁴ *Ibid.*, pg. 6.

²⁴⁵ See [Compliance Commission: Anti-Money Laundering Training](#).

²⁴⁶ The country under review notes that the Commission is able to recruit externally from the private sector however this process takes longer than the recruitment process for persons already engaged in the public service. An external recruit must first be approved and appointed as a public servant assigned to the Ministry of Finance by Order of the Governor General before assuming duties at the Commission. Whereas, a person already engaged as a public servant would only be required to apply for transferred to the Commission from another government Ministry. The Commission has also found that identifying qualified recruits from the public service also takes a longer time because the pool of persons in the public service with qualifications in AML/CFT is smaller than the pool of persons from the private sector.

²⁴⁷ Response to the Questionnaire, pg. 14, *supra* note 4.

[273] The Committee observes that during the on-site visit, there was no indication that the autonomy of this oversight body was an issue, given the important role the Minister of Finance plays in its operations. Nevertheless, in order to strengthen the important work that the Commission carries out, and help ensure the integrity of this work, the Committee believes that the country under review should consider enacting provisions that make it clear that this oversight body is independent in the exercise of its functions. The Committee will formulate a recommendation. (see Recommendation 5.4.3 of Chapter II of this Report)

[274] The Committee further observes that the Financial Transactions Reporting Act contains no provisions to indicate under what circumstances that the persons that make up the Commission may be removed from his or her post, and only provides that members of either House of Parliament, or a person who is a director, officer or servant of, or has a controlling interest in, any financial institution may not be appointed as a Commissioner. The Committee believes that the country under review may wish to consider enacting provisions that provide the parameters for dismissal, such as if a Commissioner is removed for inability to discharge the functions of the post, whether arising from infirmity of body or mind or any other cause; misbehavior; or due to a conflict of interest. Other parameters for disqualifications to hold a post may include reasons of an undischarged bankruptcy or having been convicted of an offence involving dishonesty or moral turpitude. By providing parameters, it may assist in providing transparency on the grounds for dismissal or removal and disqualification, as well as indicate to appointed members what conduct may come to question their eligibility as Commissioners.²⁴⁸ The Committee will formulate a recommendation. (see Recommendation 5.4.4 in Section 2.4 of Chapter II of this Report)

[275] The Committee notes that there appears to be no provisions in the Financial Transactions Reporting Act that requires the Commission to provide an annual report of its activities. In order to promote transparency and accountability, the Commission should be required to prepare and publicize an annual report of its activities. In this way, the public may become aware of the work undertaken by this oversight body. This report can also serve as an accountability mechanism, and should include pertinent information, such as the number of examinations carried out in a year, number of training activities carried out, and received, statistics on its work as well as other important information such as its budget expenditures. Other important information may include a work plan and program for a financial year, indicating matters such as the objectives and goals met during the year by the Commission. The Committee will formulate a recommendation. (See Recommendation 5.4.5 in Section 5.4 of Chapter II of this Report)

[276] Finally, as set out under section 5.1, one of the important functions of the Commission is to provide training to the financial institutions it supervises on anti-money laundering standards. Though it was stated that training sessions are organized for all relevant stakeholders, the Committee could not find on its website or the material presented for the Fourth Round of Review, any further descriptions of the training provided, or its content. The Committee considers that the training materials should be placed online. As noted earlier, there are human resource limitations on the number of training courses the Commission can provide to a financial institution due to staff

²⁴⁸ The country under review notes that the removal of a Commissioner for inability to discharge the functions of the post, whether arising from infirmity of body or mind or any other cause; misbehavior; or due to a conflict of interest, a bankruptcy or having been convicted of an offence involving dishonesty or moral turpitude are standard to any employment contract, having regard to the common law (that is, the decided case law from the Courts) of The Bahamas. Non-performance of any of these implied contractual terms could constitute grounds for dismissal. Such provisions do not need to be expressly stated in a contract for employment and the absence of these expressed provisions do not vitiate the employment contract.

limitations. By placing these materials online, it may help to guide these institutions on the implementation of adequate anti-money laundering standards.²⁴⁹ The Committee will formulate a recommendation. (See Recommendation 5.4.6 in Section 5.4 of Chapter II of this Report)

5.3 Results of the legal framework and/or other measures

[277] The country under review, during the on-site visit, provided the following results regarding the number of on-site examinations carried out, and follow-up visits to address any deficiencies detected in the anti-money laundering standards arising from these examinations:

On-Site Examinations		
Year	Routine	Follow-Up
2014 (up to September)	32 (1 offsite) ²⁵⁰	14
2013	26	0
2012	28	6
2011	37 (3 offsite)	3

[278] The Committee notes that the Commission, through the use of Agents, has been carrying out routine examinations to assess the level of compliance of financial institutions with local, regional and global anti-money laundering standards, and it is the Commission that conducts the follow-up examinations. It was also explained that the increase in follow-up examinations for 2014 is due to changes in the Financial Action Task Force standards.

[279] In this respect, the Committee notes that, as set out under section 5.1, the Commission also carries out two other types of examinations: random and special (investigative). Random on-site examinations test the routine examination process. The assessment process is the same as that for a routine on-site examination, though this is done by the Commission, rather than an Agent. A special

²⁴⁹ The country under review notes that The Commission conducts AML/CFT training for various types of financial institutions each year. The training conducted by the Commission is stated in the Annual Reports that are issued to the Minister of Finance and the Cabinet of the Bahamas from time to time. The Commission has also issued Codes of Practice to the financial institutions it supervises to provide guidance on implementing AML standards. The Commission plans to update its website to include more guidance to financial institution on implementing AML standards.

²⁵⁰ It was explained during the on-site visit that offsite examinations are generally carried out for sole-proprietorships that had in the past has been determined to have complied with anti-money laundering standards through an on-site visit and the institution has not increased its clients by more than 25% since its last examination. In these cases, the a senior officer from this institution completes the examination form in-house and forward it onto the Commission's office for evaluation by the Commission's staff in the same manner as a return for an on-site examination. Any concerns from this examination will then be communicated to the firm.

(investigative) examination is one where, based on cause, a determination is made whether there has been an infraction of the anti-money laundering standards and the extent of the violations.²⁵¹

[280] In these cases, it would be important to maintain statistics on the number of these examinations carried out in a year, in order to identify challenges and recommend corrective actions, where applicable. The Committee will formulate a recommendation. (see Recommendation 5.4.7 in Section 5.4 of Chapter II of this Report)

[281] Moreover, the Committee observes that the information provided during the on-site visit is not available online and thus not available to the general public. In that regard, the Committee considers that the country under review would benefit from making this information easily available to the general public. The Committee will formulate a recommendation. (see Recommendation 5.4.8 in Section 5.4 of Chapter II of this Report)

[282] The Committee also observes that one of the important mandates of the Commission is to issue codes of practice for the financial institutions it supervises, that provide guidance as to the duties, requirements and standards to be complied with and the procedures and best practices to be observed by them, such as verification, record keeping, and reporting of suspicious transactions.²⁵² Violation of these codes would subject the financial institution to sanctions. In this respect, presumably, the special (investigative examinations) that the Commission carries out would detect these violations, and sanctions would be applied. In these cases, the Commission should also maintain statistics on the number of violations found in the course of these investigations and the outcome, such as the sanction applied.²⁵³ The Committee will formulate a recommendation. (see Recommendation 5.4.9 in Section 5.4 of Chapter II of this Report)

[283] Finally, the Committee observes that the Commission supervises over 1200 financial institutions, of which 230 are required to submit routine examinations. Nevertheless, in the information provided to the Committee, as noted in the table above, it carries out 26 – 37 examinations in a given year. The country under review should review whether the number of on-site examinations carried out in a year is sufficient to ensure that these institutions are sufficiently complying with the anti-money laundering laws and standards in place.²⁵⁴ The Committee will formulate a recommendation. (see Recommendation 5.4.10 in Section 5.4 of Chapter II of this Report).

5.4 Conclusions and recommendations

[284] Based on the comprehensive review conducted with respect to the Compliance Commission in the foregoing sections, the Committee offers the following conclusions and recommendations:

²⁵¹ See for example pg. 20 and Section 9 of the [Handbook and Code of Practice for Accountants](#)

²⁵² Section 47(1)(a) of the Financial Transactions Reporting Act, *supra* note 166.

²⁵³ The country under review notes that The Commission will further revise its examination policies and procedures to maintain statistics for the number of violations, directives (outcomes) and sanctions imposed for special (investigative) examinations. Currently, examiners issue written reports to the Inspector of the Commission outlining violations and recommendations for corrective action or sanctions as necessary for special (investigative) examinations. The Inspector is then required to issue directives to the institution based on the written report.

²⁵⁴ The country under review notes that the work of the Compliance Commission in carrying out examinations has been limited due to a constitutional challenge to the Financial Transactions Reporting Act, which has yet to be settled. See *Ingraham & Ors v. Glinton & Anor (The Bahamas)* [2006] UKPC 40 (24 July 2006), <http://www.bailii.org/uk/cases/UKPC/2006/40.html>

[285] The Bahamas has considered and adopted measures intended to maintain and strengthen the Compliance Commission as an oversight body, as described in Chapter II, Section 4 of this Report.

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

- 5.4.1 Provide the Compliance Commission with the budgetary and human resources needed for the proper performance of its function, within available resources. (See section 5.2 of Chapter II of this Report)
- 5.4.2 Allow the Compliance Commission to meet its human resource needs through external recruitment processes conducted by the Public Service Commission. (See section 5.2 of Chapter II of this Report)
- 5.4.3 Consider establishing provisions that make it clear that the Compliance Commission is independent in exercising its functions under the Financial Reporting Transactions Act. (See section 5.2 of Chapter II of this Report).
- 5.4.4 Consider establishing provisions that set out the circumstances under which the appointed members to the Compliance Commission may be removed or dismissed from their position, as well as the parameters for disqualifications. (See section 5.2 of Chapter II of this Report).
- 5.4.5 Consider the possibility of adopting legal provisions requiring the Compliance Commission to issue and publicize an annual report on the results of its activities, containing information such as number of examinations and training activities carried out in the year, statistics on its work, its work plan and budget expenditures. (See section 5.2 of Chapter II of this Report).
- 5.4.6 Place online the training materials the Compliance Commission utilizes to help guide the financial institutions on the implementations of adequate anti-money laundering standards. (See section 5.2 of Chapter II of this Report)
- 5.4.7 Maintain statistics on the number of routine on-site, follow-up, random and special (investigative) examinations carried out by the Compliance Commission, in order to identify challenges and recommend corrective actions, where applicable. (See section 5.3 of Chapter II of this Report)
- 5.4.8 Make publicly available its statistical information with respect to the number of routine on-site, follow-up, random and special (investigative) examinations carried out by the Compliance Commission, in a manner that is more readily available to the general public. (See section 5.3 of Chapter II of this Report)
- 5.4.9 Maintain statistics on the number of violations found in the course of a special (investigative) examination and the outcome of these examinations, such as the imposition of a sanction, in order to identify challenges and recommend corrective actions, where applicable. (See section 5.3 of Chapter II of this Report)

- 5.4.10 Review whether the number of routine on-site examinations carried out in a year is sufficient to ensure that financial institutions are complying with anti-money laundering laws and standards in place, in order to identify challenges and recommend corrective measures, as necessary. (See section 5.3 of Chapter II of this Report).

III. BEST PRACTICES

[287] In accordance with Section IV of the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round* and the *Format* adopted by the Committee for the Reports of said Round, reference is made to the best practices identified by the country under review, which it has expressed its wish to share with the other member States of the MESICIC, as it could be beneficial to them:

[288] With respect to the Office of the Attorney General:

[289] The SWIFT Justice Initiative incorporates detection, investigative, prosecutorial and punishment elements. It seeks to facilitate collaboration between the institutions and agencies within the justice system, and includes the Office of the Attorney General, the Royal Bahamas Police Force, the Registrar of the Supreme Court, Representatives from Her Majesty's Prison, Representatives from Social Services, the Public Hospital Authority, and on occasion, representatives of families of victims.²⁵⁵

[290] More information is available on page 30 of the Response to the Questionnaire.

IV. FOLLOW-UP ON PROGRESS AND NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST ROUND OF REVIEW²⁵⁶

[291] The Committee will refer below to the progress, information, and new developments made by The Bahamas in relation to the recommendations and measures suggested by the Committee for implementation in the Report of the First Round, and with respect to which the Committee deemed that additional attention was required in the Reports from the Second and Third Rounds,²⁵⁷ and shall, as appropriate, 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 pursuant to section VI of the Methodology adopted by the Committee for the Fourth Round of Review.

[292] The Committee will also take note in this section of the Report of the difficulties in implementing the aforementioned recommendations and the measures to which the country under review has drawn attention, as well as of its technical cooperation needs to that end.

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

²⁵⁵ On-Site Presentation of the Office of the Attorney General, pg. 17, *supra* note 17.

²⁵⁶ The list of recommendations that still require additional attention or which have been reformulated following this analysis, have been included as Annex 1 to this Report.

²⁵⁷ These Reports are available at: <http://www.oas.org/juridico/english/bhs.htm>

1.1. Standards of conduct to prevent conflicts of interest and mechanisms to enforce them

Recommendation:

Ensure that the laws concerning conflicts of interest are fully in effect, that they support recommendation 7.1 when appropriate, and that they are applicable to all public officials and employees, so as to permit practical and effective application of a public ethics system.

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

Establish or adapt and then implement standards of conduct for those offices that currently do not fall under the purview of any controls, including adequate sanctions for violations of those standards. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[293] With respect to the aforementioned measure, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²⁵⁸

[294] – Of the 27 persons hired by the Governor-General’s Office, nine were reclassified as permanent and pensionable public servants, and thus falling under the General Orders. Eighteen others are currently under consideration for permanent and pensionable status.

[295] – The Judiciary is bound by the Bangalore Principles of Judicial Conduct, 2002, whereby a judge is to observe international standards of independence, impartiality, integrity, propriety, and equality and be competent and diligent. Failure to observe these standards could result in a judge being removed from judicial office.

[296] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that there are offices that currently do not fall under the purview of any controls, such as the majority of the staff of the Governor-General, and those employed by the Ministry of Tourism.

[297] Moreover, as noted in the Report of the First Round of Review adopted for The Bahamas:²⁵⁹

[298] “These are not the only offices that do not form part of the Public Service and therefore not fall under the General Orders. All political offices, the office of the members of the Public Service Commission and permanent commissions, members of boards, committees or similar bodies established by law and other offices specified not to be public offices for the purpose of the constitutional provisions also are exempt from these controls. These exceptions present a means to undermine the system in place to prevent conflicts of interest and corruption and standards should be put in place to monitor and regulate the actions of those offices.”

[299] Finally, the Committee notes that while the Bangalore Principles of Judicial Conduct represents a best practice at the international level, it is unclear the manner by which they have been adopted by the Judiciary domestically. (see measure a) of section 1.1 of Annex 1 to this Report)

²⁵⁸ See Completion of Additional Questionnaire, pgs. 2 – 4, http://www.oas.org/juridico/english/mesicic4_bhs.htm.

²⁵⁹ Report of the First Round of Review, pg. 9, http://www.oas.org/juridico/english/mec_rep_bhs.pdf

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

Implement a code of ethics for Senators and Members of the House of Assembly, including sanction mechanisms for violations. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[300] With respect to the aforementioned measure, in its Response, the country under review refers to Part VIII of the Powers and Privileges (Senate and House of Assembly Act), Article 42 of the Constitution as well as the Code of Ethics for Ministers and Parliamentary Secretaries.²⁶⁰

[301] In this respect, the Committee notes that the information provided was considered and reviewed for the Report of the First Round of Review adopted for The Bahamas. The Committee notes that a Manual of Cabinet and Ministry Procedure was provided during the on-site visit, providing further provisions on the proper conduct of Ministers and Parliamentary Secretaries.²⁶¹ However, this Manual, as well as the Code of Ethics for Ministers and Parliamentary Secretaries, do not apply to Senators or Members of the House of Assembly who do not form part of the Cabinet of The Bahamas. Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure b) of section 1.1 of Annex 1 to this Report)

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

Apply conflict of interest restrictions for an appropriate period following government service. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[302] With respect to the aforementioned measure, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²⁶²

[303] - Lawyer and accountants employed by the public service are bound by their professional code of ethics from engaging in a conflict of interest immediately following employment in the government service for an appropriate period. As well, engineers and architects employed by the Ministry of Public works are prohibited from engaging in matters involving a conflict of interest upon leaving the public service.

[304] – A recommendation will be made to amend the Manual of Cabinet and Ministry Procedure to include a prohibition of persons who have left public life from engaging in matters that create a conflict of interest.

[305] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure c) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that there are no explicit rules contemplated, of general application, for preventing conflicts of interest subsequent to exiting public office, such as a ban on

²⁶⁰ See Completion of Additional Questionnaire, pg. 4, *supra* note 258 and Response to the Questionnaire, pg. 35, *supra* note 4.

²⁶¹ Manual of Cabinet and Ministry Procedure, http://www.oas.org/juridico/english/mesicic4_bhs.htm.

²⁶² See Completion of Additional Questionnaire, pgs. 4 – 5, *supra* note 258.

former public officers in intervening in official matters that they participated in during their time in office or dealing with institutions they were recently connected with, and, in general, other situations that might lead to improper exploitation of one's status as a former public officer. (see measure c) of section 1.1 of Annex 1 to this Report)

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

Ensure that there are mechanisms in place that provide transparency in the cases where the Prime Minister decides to allow a Minister to hold any contractual relationships with, to hold directorships of, or to hold equities in, companies that have contractual relationships with the Government. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[306] With respect to the aforementioned measure, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²⁶³

[307] – *“The Code of Ethics for Ministers and Parliamentary Secretaries is instructive in this regard; Ministers and Parliamentary Secretaries are to avoid any conflict- real or perceived-between their private interests and their public duties. A Minister was asked to resign due to lack of transparency after giving contracts to a company to which the Minister held directorship.”*

[308] – The Manual of Cabinet and Ministry Procedure expressly prohibits Senators and Members of Parliament from entering into contractual relationships, which place them in a conflict of interest. In this respect, sections 37, 38, 39, 40(a), (b) and (c), 41 and 45 expressly prohibits a conflict of interest of a Cabinet Minister of his or her spouse.

[309] The Committee takes note that the provisions in place in the Manual of Cabinet and Ministry Procedure, as well as the Code of Ethics for Ministers and Parliamentary Secretaries set out provisions to avoid conflicts of interest. In particular, the Committee notes that the Code of Ethics provides that Ministers are to divest of their shares or equity in companies that have contractual relationships with the Government, and if it is impractical to do so, they are to be placed in a blind trust.

[310] The Committee notes, however, that this Code still allows the Prime Minister the discretion to allow a Minister to hold shares in public companies that have contractual relationships with the Government, without requiring that they be sold or placed in a blind trust, where in the view of the Prime Minister the shares are not of significant value. However, there appear to be no provisions in place regulating the manner in which the Prime Minister makes this determination.

[311] Given the foregoing, the Committee considers the reformulation of measure d) of the recommendation of section 1.1 of Chapter IV of this Report, as follows:

[312] Ensure that there are mechanisms in place that provide transparency in the cases where the Prime Minister decides to allow a Minister to hold shares in public companies that have contractual relationships with the Government, without requiring that they be sold or placed in a blind trust. (see measure d) of section 1.1 of Annex 1 to this Report)

²⁶³ See Completion of Additional Questionnaire, pgs. 5 – 6, *ibid.*, and Response to the Questionnaire, pg. 36, *supra* note 4.

1.2. Standards of conduct and mechanisms to ensure the proper conservation and use of resources entrusted to government officials

Recommendation suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Strengthen control systems within the public administration by developing enforceable written standards applicable to all public officials and employees to create a duty to conserve and properly use of the resources entrusted to them. (the basis for this measure is found in section 1.2.2 of Chapter II of the First Round Report)

[313] With respect to the aforementioned recommendation, in its Response, the country under review refers to provisions contained in the Constitution, the General Orders, the Financial Administrations and Audit Act, as well as the Penal Code.²⁶⁴

[314] In this respect, the Committee notes that the information provided was considered and reviewed for the Report of the First Round of Review adopted for The Bahamas. Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see sole recommendation of section 1.2 of Annex 1 to this Report)

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

Recommendation:

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

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

Establish reporting requirements for those public officials and employees who are currently not required to report to appropriate authorities acts of corruption in the performance of public functions. (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)

[315] With respect to the aforementioned measure, in its Response, the country under review refers to provisions contained in the General Orders:²⁶⁵

[316] – “*General Order 1111 provides that it is the duty of every supervising officer as soon as he observes any fault of short coming in a public officer subordinate to him, to give that person oral notice of the fault or shortcoming and bring it to the attention of the Head of Department. General Order 1112 further provides that once the head of Department is notified of the Officer’s unsatisfactory work or behaviour, the Head of Department must in writing inform the Officer the details do the default and require the officer to remedy same.*”

²⁶⁴ Response to the Questionnaire, pg. 40, *supra* note 4.

²⁶⁵ *Ibid.*, pg. 37 – 39.

[317] Moreover, the country under review notes that all Bahamians are encouraged to be law abiding citizens, and where there is evidence of corruption, they are expected to lodge an official report to the Royal Bahamas Police Force.

[318] During the on-site visit, the representatives of the Office of the Attorney General provided further information regarding this measure, citing various provision of the Penal Code that establishes sanctions for crimes relating to public offices.²⁶⁶

[319] In this respect, the Committee notes that the General Orders were examined during the Report of the First Round of Review adopted for The Bahamas, and that the provisions cited do not establish the obligation to report to appropriate authorities acts of corruption in the performance of public functions. Rather, they seem to address the work performance of a public officer. In addition, the provisions cited in the Penal Code do not establish this requirement either.

[320] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation a) of section 1.3 of Annex 1 to this Report)

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

Establish mechanisms that protect from official reprisal a person who, in good faith, reports acts of corruption. (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)

[321] With respect to the aforementioned measure, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:²⁶⁷

[322] – The establishment of anonymous reporting measures as well as mechanisms to prevent the identity of tipsters/witnesses. Reference is also made to the Witness Anonymity Investigatory Orders and Witness Anonymity Orders.

[323] – The Witness Protection Program and Web Conferencing including ability to give evidence without identity being revealed have been introduced.

[324] – Legislative amendments which allows for the safety of witnesses while they give evidence.

[325] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the foregoing recommendation. However, the Committee takes note that the issues of protection for public officials who report acts of corruption in good faith in order to protect them from the threats or reprisals that they may be subject as a result of carrying out this obligation is reviewed in a more comprehensive manner in the Second Round of Review and the country under review received similar recommendations in this respect. As such, The Bahamas will have an opportunity to provide more comprehensive information on the manner it is meeting this recommendation on the follow-up to this round of review. Given the foregoing, the Committee considers that measure b) of Recommendation 1.3 is no longer valid.

²⁶⁶ Completion of Additional Questionnaire, pgs. 7 – 11, *supra* note 258.

²⁶⁷ Response to the Questionnaire, pg. 37 – 39, *supra* note 4.

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

Provide appropriate training to officials and employees concerning the requirement to report acts of corruption and the protections for those who report. (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)

[326] With respect to the aforementioned measure, in its Response, the country under review notes that due to the fact that the majority of the public service is made up of the general public, there are many public appeals made via the media which call upon them to report acts of corruption to the various agencies. In addition, acts of corruption involving Police Officers are reported to the Police Corruption Unit and that there is a Crime Tipsters program.²⁶⁸

[327] Moreover, in a document submitted during the on-site visit, the country under review notes that it is in the view that training is not required, however protection is, which is provided.²⁶⁹

[328] In this respect, without further information provided, it is difficult to determine why The Bahamas is of the view that training is not required to officials and employees on the importance of reporting acts of corruption.

[329] The Committee takes note that the issues of protection for public officials who report acts of corruption in good faith in order to protect them from the threats or reprisals that they may be subject as a result of carrying out this obligation is reviewed in a more comprehensive manner in the Second Round of Review and the country under review received a general recommendation to provide training in this respect. As such, The Bahamas will have an opportunity to provide more comprehensive information on the manner it is meeting this recommendation on the follow-up to this round of review.

[330] Given the foregoing, the Committee considers the reformulation of measure d) of the recommendation of section 1.3 of Chapter IV of this Report, as follows:

[331] Provide appropriate training to officials and employees concerning the requirement to report acts of corruption. (see measure b) of section 1.3 of Annex 1 to this Report)

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

Recommendation:

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

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

Establish a method whereby, within a specific time period before or immediately after being appointed as a Senator or to a senior post listed under the Public Disclosure Act Application to Public Appointees and Public Officers) Notice, a person be required to make a declaration of their assets, liabilities and

²⁶⁸ Response to the Questionnaire, pg. 41, *ibid.*

²⁶⁹ Completion of Additional Questionnaire, pg. 11, *supra* note 258.

income as well as those of their spouse and children. Such declarations should then be used to help identify potential conflicts of interest and suggest measures to be taken by the person to avoid those conflicts as well as help identify other violations of law. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[332] With respect to the aforementioned measure, in its Response, the country under review notes that it has satisfied this provision as it is provided under the Public Disclosure Act.²⁷⁰

[333] The Committee notes that while the Public Disclosure Act provides that Senators are to submit a declaration within three months of being appointed, there appears to be no provisions in place requiring submission prior to an appointment, or when being considered for appointment. The Committee observes that in the cases of Members of Parliament, under the Parliamentary Elections Act, each person seeking a nomination as a candidate for any constituency is to provide a declaration of assets, income and liabilities, as well as that of the candidate's spouse and children, if any.²⁷¹ It is in this vein that the recommendation was formulated requiring a similar requirement for Senators, and those listed under the Public Disclosure Act (Application to Public Appointees and Public Officers) Notice, whereby prior to appointment, a declaration of assets, income and liabilities are provided. Moreover, it appears that section 9 of the Public Disclosure Act would allow a public appointee or public officer, upon given notice on March 2 of a year that his or her post is subject to the Act, not provide a declaration until March 1 of the following year. For these reasons measure a) of the foregoing recommendation was formulated by the Committee during the First Round of Review.

[334] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation a) of section 2 of Annex 1 to this Report)

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

Consider making declarations made by those appointed to senior posts accessible to the public, when appropriate. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[335] With respect to the aforementioned measure, in its Response, the country under review notes that it has satisfied this provision and refers to section 9(1) of the Public Disclosure Act and the Public Disclosure Act (Application to Public Appointees and Public Officers) Notice.²⁷²

[336] The Committee notes that the Public Disclosure Act, section 9(2) expressly prohibits the application of section 6(2) of the Act to Public Appointees and Public Officers, which provides for the publication of a summary of a declaration in the Gazette, in the case of a Senator or Member of Parliament. As there is no other provision allowing for a summary of these senior posts to be made publicly available, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation b) of section 2 of Annex 1 to this Report)

²⁷⁰ Response to the Questionnaire, pgs. 43 – 44, *supra* note 4.

²⁷¹ Parliamentary Elections Act, section 37,

http://laws.bahamas.gov.bs/cms3/images/LEGISLATION/PRINCIPAL/1992/1992-0001/ParliamentaryElectionsAct_1.pdf

²⁷² Response to the Questionnaire, pg. 44, *supra* note 4.

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

Recommendation 3.1:

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

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

Establish oversight bodies for those offices that currently do not fall under the purview of any controls. (the basis for this measure is found in section 3.2 of Chapter II of the First Round Report)

[337] With respect to the aforementioned measure, in its Response, the country under review notes that all of its oversight bodies have controls and therefore are accountable.²⁷³ Moreover, in a document submitted during the on-site visit, the country under review notes that the oversight body for the Judiciary is the Court, while that for the staff of the Governor-General is the Public Service Commission and the Public Service Appeal Board.²⁷⁴

[338] The Committee notes that the recommendation was made given that the General Orders do not apply to the conduct of personal staff of the Governor-General, the Justices of the Supreme Court and of the Court of Appeal and those employed by the Ministry of Tourism. In addition, all political offices, the office of the members of the Public Service Commission and permanent commissions, members of boards, committees or similar bodies established by law and other offices specified not to be public offices for the purpose of the constitutional provisions also do not fall under the purview of an oversight body.²⁷⁵ Moreover, while some of the staff of the Governor-General are public officials and fall under the purview of the Public Service Commission and the General Orders, as noted by the country under review for measure a) of recommendation 1.1, not all have been made public officials. Moreover, it is unclear how the Court acts as an oversight body if there are no provisions in place to regulate the conduct of the Judiciary.

[339] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 3.1 a) of section 3 of Annex 1 to this Report)

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

Consider establishing an oversight body in the Code of Ethics for Ministers and Parliamentary Secretaries to oversee their conduct. (the basis for this measure is found in section 3.2 of Chapter II of the First Round Report)

[340] With respect to the aforementioned measure, in its Response, the country under review notes that outside of the Public Disclosure Commission, there is no oversight body in the Code of Ethics

²⁷³ *Ibid.*, pg. 45.

²⁷⁴ Completion of Additional Questionnaire, pg. 11, *supra* note 258.

²⁷⁵ See pg. 17 of the Report of the First Round of Review, *supra* note 259.

for Ministers and Parliamentary Secretaries.²⁷⁶ The country under review, however, in a document submitted during the on-site visit, noted that the Public Accounts Committee serves this role.²⁷⁷

[341] The Committee observes that the Public Disclosure Commission receives the declarations from those subject to the Public Disclosure Act; however, it is not cited in the Code of Ethics for Ministers and Parliamentary Secretaries as an oversight body for this Code. The Public Accounts Committee as well does not serve as an oversight body over Ministers and Parliamentary Secretaries to ensure they comply with the Code of Ethics in place for them.

[342] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 3.1 b) of section 3 of Annex 1 to this Report)

Recommendation 3.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Establish a body, or provide additional authority to an existing body or bodies, in order to ensure appropriate monitoring of the mechanisms recommended in section 4, below (Article III, paragraph 11).

[343] With respect to the aforementioned recommendation, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:²⁷⁸

[344] – Quarterly meetings are held between elected members of The Bahamas Civil Society, an umbrella civil society organization representing private sector and non-governmental organizations, and the Office of the Attorney General.

[345] – Civil Society Bahamas is working on draft legislation to be submitted to the Office of the Attorney General.

[346] The Committee notes that it met with representatives from Civil Society Bahamas during the on-site visit and was provided a copy of the Civil Society Organization Bill, 2014.²⁷⁹ The representatives noted that it had a great deal of respect for the Office of the Attorney General and had been engaged with this Office in drafting the aforementioned Bill. As noted under the Objects and Reasons section of the Bill:²⁸⁰

[347] *“The Civil Society Organization Bill 2014 seeks to provide for the establishment and registration of Civil Society Organizations, promote and encourage the development of Civil Society Organizations, regulate the operations of Civil Society Organizations for the purposes of creating transparency and accountability, establish minimum standards which shall be observed by all Civil Society Organizations and provide for connected purposes.”*

²⁷⁶ Response to the Questionnaire, pg. 46, *supra* note 4.

²⁷⁷ Completion of Additional Questionnaire, pg. 12, *supra* note 258.

²⁷⁸ Response to the Questionnaire, pg. 47, *supra* note 4.

²⁷⁹ Civil Society Organization Bill, 2014, http://www.oas.org/juridico/english/mesicic4_bhs.htm

²⁸⁰ *Ibid.*, pg. 17.

[348] The Bill, under section 15, would establish an umbrella organization or apex body of civil society organizations, Civil Society Bahamas, which would encourage and support the development of civil society organizations, keep a list of all civil society organizations in the country, both registered and unregistered, and be a clearinghouse for information from the Government of The Bahamas. Section 17 would establish a Civil Society Secretariat within the Office of the Prime Minister, which, among other things, would coordinate the transfer of information to and from Civil Society Bahamas and the Government of The Bahamas and organize monthly meetings with Civil Society Bahamas and agents of the Government of The Bahamas. Moreover, section 8 of this Bill provides that Ministries are to coordinate activities of, and the relationship between, Civil Society Organizations and the Government with a view to establishing procedures for consultation and other related matters affecting sustainable human, environmental or economic development in The Bahamas.

[349] In addition, in a document submitted during the on-site visit, the country under review notes the following regarding the Civil Society Organization Bill 2014.²⁸¹

[350] *“We have drafted and circulated the Bill, a bill for an Act to establish and register civil society organizations, promote and encourage the development of civil society to regulate their operations in order to create transparency, accountability and to establish minimum standard which shall be observed by all civil society organizations. Over the last two years and three months we have engaged in meetings with the Bahamas Christian Council and other stakeholders in The Bahamian society to garnish support for a wide range of legislation. We have at these meetings encouraged persons who have attended to discourse on the problems confronting the different communities and our public outreach has covered a number of anti-corruption measures. We have sought to encourage public/private partnership.”*

[351] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto, bearing in mind that the Civil Society Organization Bill, 2014 has not yet been enacted. (see recommendation 3.2 of section 3 of Annex 1 to this Report)

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

4.1. General participation mechanisms

Recommendation suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Develop additional systems of transparent procedures that allow nongovernmental organizations and civil society to participate more effectively in efforts to prevent corruption. (the basis for this measure is found in section 4.1.2 of Chapter II of the First Round Report)

[352] With respect to the aforementioned recommendation, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:²⁸²

²⁸¹ Completion of Additional Questionnaire, pg. 13, *supra* note 258.

[353] – Mention is made of the efforts by Civil Society Bahamas at enacting legislation to recognize, regulate and strengthen civil society organizations. In addition, through its participation on national committees to influence national policy and government’s accountability, Civil Society Bahamas will be in a position to act as the central spokesperson for national contribution at all levels of society, in government, education, industry and international relations. Reference is also made at the participation by Civil Society Organizations in national treaty commitment exercises, such as the Inter-American Convention against Corruption, through consultation. The country under review also mentions the establishment of a national task force as an excellent idea for community feedback in relation to the Convention and other treaties.

[354] – The country under review also mentions that legislation is currently being considered, the Civil Society Organization Bill, 2014.

[355] The Committee notes that during the First Round of Review for The Bahamas, there was a concern that there were no formal mechanisms in place to provide for: access to information by civil society and nongovernmental organizations; consultation with such entities; active participation by such entities in public administration and in the follow-up thereof.²⁸³ The Committee notes that these formal mechanisms are still not in place, and although the Civil Society Organization Bill, 2014, represents a step towards this goal, it has yet to be enacted.

[356] Given the foregoing, the Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto. (see recommendation 4.1 of section 4 of Annex 1 to this Report)

4.2 Mechanisms for access to information

Recommendation 4.2.1:

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

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

Establish clear written standards as to the types of information that will be provided under the system. (the basis for this measure is found in section 4.2 of Chapter II of the First Round Report)

[357] With respect to the aforementioned measure, in its Response, the country under review notes that a draft Freedom of Information Act was introduced into Parliament and this legislation was distributed to various members of civil society for their commentary and consultation.²⁸⁴ Subsequently, a Freedom of Information Act was passed in 2011 however it has not been brought into force.

[358] During the on-site visit, the representatives from the Office of the Attorney General noted that there is dissatisfaction with some aspects of the law, which was copied from the legislation in place from the Cayman Islands. As a result, it is conducting a more extensive review of other models and the Law Reform Commission has been tasked to look at the legislation in place for New Zealand,

²⁸² Response to the Questionnaire, pgs. 48 – 49, *supra* note 4.

²⁸³ Report of the First Round of Review, pg. 19, *supra* note 259.

²⁸⁴ Response to the Questionnaire, pg. 50, *supra* note 4.

Singapore and Australia. Moreover, it has established an Inter-Ministerial Task Force comprising representatives of the Ministry of Education, Ministry of Finance and the Office of the Attorney General to review the Freedom of Information Act to this end.²⁸⁵

[359] The Committee also observes that the country under review, in its Response, stated that implementation of the Freedom of Information Act will require additional training for public officers and a staggered approach to bringing all of its various provisions into effect.²⁸⁶

[360] The Committee notes that in the Report of the First Round of Review adopted for The Bahamas, the country under review had stated that there are no mechanisms in place that regulate and facilitate the access of civil society and nongovernmental organizations to information in the control of public institutions. The Committee observes that this situation still persists, despite having a law passed by Parliament in 2011, and has yet to be enacted.

[361] In this respect, the representatives of The Bahamas Chamber of Commerce as well as Civil Society Bahamas, during the on-site visit, expressed their concern that the Freedom of Information Act had passed, but has not yet been enacted. In particular, the representatives of Civil Society Bahamas noted that without this legislation enacted, there are no policies and procedures in place on this matter and there is not mechanism to request information, and no obligation to receive a response from government.

[362] Given the foregoing, the Committee considers the reformulation of measure a) of the recommendation for section 4.2 of Chapter IV of this Report, as follows:

[363] Enact a Freedom of Information Act that that regulates and facilitates the access by the public to information in the control of public institutions. (see measure a) of recommendation 4.2.1 of section 4 of Annex 1 to this Report)

[364] Establish clear written standards as to the types of information that will be provided under the Freedom of Information Act. (see measure b) of recommendation 4.2.1 of section 4 to this Report)

[365] Implement training and dissemination programs about the Freedom of Information Act, in order to make it easier for public servants and citizens to understand the mechanisms provided in the Law. (see measure c) of recommendation 4.2.1 of section 4 to this Report)

[366] Establish a timetable for the implementation of the provisions of the Freedom of Information Act, setting out priorities and actions to be carried out, deadlines for executing them, and annual targets to be met, and disseminate that schedule so that the public can appreciate the efforts by The Bahamas to move forward with implementation of the Act. (see measure d) of recommendation 4.2.1 of section 4 to this Report)

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

Establish standards recognizing the right of all persons to request information or to consult or obtain copies of documents in the possession, or under the control of public institutions concerning official

²⁸⁵ See On-Site Visit Presentation by the Office of the Attorney General, pg. 19, *supra* note 17.

²⁸⁶ Response to the Questionnaire, pg. 50, *supra* note 4.

actions, except for legally protected cases. (the basis for this measure is found in section 4.2 of Chapter II of the First Round Report)

[367] With respect to the aforementioned measure, in its Response, the country under review notes that the Government of the Bahamas recognizes this right of all citizens and is the process of consultation with civil society, business and religious institutions on the implementation of the Freedom of Information Act.²⁸⁷ In addition, the country under review notes that the major difficulty is that the Act has not yet been brought into force.

[368] Given the foregoing, and the observations of the country under review under measure a) of the recommendation as well, the Committee considers the reformulation of measure b) of the recommendation for section 4.2 of Chapter IV of this Report, as follows:

[369] Establish standards in a Freedom of Information Act that recognizes the right of all persons to request information or to consult or obtain copies of documents in the possession, or under the control of public institutions concerning official actions, except for legally protected cases. (see measure e) of recommendation 4.2.1 of section 4 to this Report)

Recommendation 4.2.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Establish a requirement that all government entities, to the extent practicable publicize their procedures and other relevant information through the use of such communication methods as publications, dissemination centers, mass media and Internet web sites. (the basis for this measure is found in section 4.2 of Chapter II of the First Round Report)

[370] With respect to the aforementioned recommendation, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:²⁸⁸

[371] - The Government of The Bahamas has an official website at www.bahamas.gov.bs, and it has sought to embrace technology by introducing e-government Transactions may be conducted online, such as for the submission of passport applications, obtaining of police records, search of deeds and documents of the Registrar General, renewal of driver's licence.

[372] – Mention is also made of the establishment of a website by the Office of the Attorney General, which contains information on its work, including the Departments of Legal Affairs and Public Prosecutions respectively. It also records the legislative agenda and states which Bills are currently before Parliament. The country under review also observes that law students will benefit from information as to the functions of different parts of the Office of the Attorney General and practitioners will find it a convenient place to see what legislative bills are expected to be brought to Parliament, those that are currently before Parliament, and be able to connect directly to the Laws Online to access the Statute Laws of The Bahamas.

[373] – The Department of Information Technology prompts Government agencies to submit information for the Bahamas Government Official website.

²⁸⁷ *Ibid.*, pg. 51.

²⁸⁸ *Ibid.*, pgs. 52 – 53.

[374] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that the efforts to publicize the procedures and other relevant information of government entities through the use of such communication methods as publications, dissemination centers, mass media and internet web sites appear to be carried out on an ad hoc basis, rather than a policy requirement established by the Government. For example, important oversight bodies, such as the Public Disclosure Commission and the Department of the Auditor General, do not have websites in place. (see recommendation 4.2.2 of section 4 of Annex 1 to this Report)

4.3. Mechanisms for consultation

Recommendation 4.3.1 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Establish consultation mechanisms to enable civil society and non-governmental organizations to provide opinions and proposals to be taken into account in preventing, detecting, investigating and punishing corruption. (the basis for this measure is found in section 4.3 of Chapter II of the First Round Report)

[375] With respect to the aforementioned measure, in its Response, the country under review notes that there are only ad hoc information consultation mechanisms in place and there are currently no formal consultative mechanisms in place.²⁸⁹

[376] In addition, in a document submitted during the on-site visit, the country under review notes the following regarding the Civil Society Organization Bill 2014.²⁹⁰

[377] *“We have drafted and circulated the Bill, a bill for an Act to establish and register civil society organizations, promote and encourage the development of civil society to regulate their operations in order to create transparency, accountability and to establish minimum standard which shall be observed by all civil society organizations. Over the last two years and three months we have engaged in meetings with the Bahamas Christian Council and other stakeholders in The Bahamian society to garnish support for a wide range of legislation. We have at these meetings encouraged persons who have attended to discourse on the problems confronting the different communities and our public outreach has covered a number of anti-corruption measures. We have sought to encourage public/private partnership.”*

[378] Moreover, during the on-site visit, the representatives of the Office of the Attorney General stated that bills have been made available online in order to receive opinions and views by civil society.

[379] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto, bearing in mind that the Civil Society Organization Bill, 2014 has not yet been enacted. (see recommendation 4.3.1 of section 4 of Annex 1 to this Report)

Recommendation 4.3.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

²⁸⁹ *Ibid.*, pg. 53.

²⁹⁰ Completion of Additional Questionnaire, pg. 13, *supra* note 258.

Design and implement programs to publicize the consultation mechanisms and, when appropriate, to train and to provide the necessary tools to effectively implement such mechanisms. (the basis for this measure is found in section 4.3 of Chapter II of the First Round Report)

[380] With respect to the aforementioned measure, in its Response, the country under review notes that The Bahamas Information Services publishes the results of consultations and that consultation is informal.²⁹¹

[381] In addition, in a document submitted during the on-site visit, the country under review notes the following regarding the Civil Society Organization Bill 2014.²⁹²

[382] *“We have drafted and circulated the Bill, a bill for an Act to establish and register civil society organizations, promote and encourage the development of civil society to regulate their operations in order to create transparency, accountability and to establish minimum standard which shall be observed by all civil society organizations. Over the last two years and three months we have engaged in meetings with the Bahamas Christian Council and other stakeholders in The Bahamian society to garnish support for a wide range of legislation. We have at these meetings encouraged persons who have attended to discourse on the problems confronting the different communities and our public outreach has covered a number of anti-corruption measures. We have sought to encourage public/private partnership.”*

[383] Moreover, during the on-site visit, the representatives of the Office of the Attorney General stated that bills have been made available online in order to receive opinions and views by civil society.

[384] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto, bearing in mind that the Civil Society Organization Bill, 2014 has not yet been enacted, and it is unclear what steps have been taken to publicize the consultation mechanisms in place as well as any training provided in this regard. (see recommendation 4.3.2 of section 4 of Annex 1 to this Report)

4.4. Mechanisms to encourage participation in public administration

Recommendation:

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

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

Establish mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption. (the basis for this measure is found in section 4.4 of Chapter II of the First Round Report)

²⁹¹ Response to the Questionnaire, pg. 54, *supra* note 4.

²⁹² Completion of Additional Questionnaire, pg. 13, *supra* note 258.

[385] With respect to the aforementioned measure, in its Response, the country under review notes that it consults civil society on issues of national importance in the form of town hall meetings and the feedback provided is utilized in crafting legislation and policy.²⁹³ In addition it states that it carries these consultations on a quarterly basis.

[386] In addition, in a document submitted during the on-site visit, the country under review notes the following regarding the Civil Society Organization Bill 2014.²⁹⁴

[387] *“We have drafted and circulated the Bill, a bill for an Act to establish and register civil society organizations, promote and encourage the development of civil society to regulate their operations in order to create transparency, accountability and to establish minimum standard which shall be observed by all civil society organizations. Over the last two years and three months we have engaged in meetings with the Bahamas Christian Council and other stakeholders in The Bahamian society to garnish support for a wide range of legislation. We have at these meetings encouraged persons who have attended to discourse on the problems confronting the different communities and our public outreach has covered a number of anti-corruption measures. We have sought to encourage public/private partnership.”*

[388] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto, bearing in mind that the Civil Society Organization Bill, 2014 has not yet been enacted, and it is unclear what steps have been taken to establish mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption, such as the establishment of government guidelines or policy for this purpose. (see measure a) of recommendation 4.4 of section 4 of Annex 1 to this Report)

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

Promote public awareness of available corruption prevention mechanisms. (the basis for this measure is found in section 4.4 of Chapter II of the First Round Report)

[389] With respect to the aforementioned measure, in its Response, the country under review notes that it carries out advertisements, town hall meetings seminars and training sessions and utilizes media, Government websites, newspapers, The Bahamas Laws On-Line, radio/television and social media.²⁹⁵ In addition it states that it carries these consultations on a quarterly basis.

[390] In addition, in a document submitted during the on-site visit, the country under review notes the following regarding the Civil Society Organization Bill 2014.²⁹⁶

[391] *“We have drafted and circulated the Bill, a bill for an Act to establish and register civil society organizations, promote and encourage the development of civil society to regulate their operations in order to create transparency, accountability and to establish minimum standard which shall be observed by all civil society organizations. Over the last two years and three months we have engaged in meetings with the Bahamas Christian Council and other stakeholders in The Bahamian*

²⁹³ Response to the Questionnaire, pg. 55, *supra* note 4.

²⁹⁴ Completion of Additional Questionnaire, pg. 13, *supra* note 258.

²⁹⁵ Response to the Questionnaire, pg. 56, *supra* note 4.

²⁹⁶ Completion of Additional Questionnaire, pg. 13, *supra* note 258.

society to garnish support for a wide range of legislation. We have at these meetings encouraged persons who have attended to discourse on the problems confronting the different communities and our public outreach has covered a number of anti-corruption measures. We have sought to encourage public/private partnership.”

[392] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto, bearing in mind that the Civil Society Organization Bill, 2014 has not yet been enacted, and it is unclear what steps have been taken to promote public awareness of available corruption prevention mechanisms, such as the establishment of government guidelines or policy for this purpose. (see measure b) of recommendation 4.4 of section 4 of Annex 1 to this Report)

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

Recommendation:

Establish mechanisms to encourage civil society and nongovernmental organizations to participate in the follow up of public administration and generate opinions and proposals to be taken into account in preventing, detecting, investigating and punishing corruption.

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

Promote methods, where appropriate, to allow, facilitate, and assist civil society and nongovernmental organizations in developing activities in the follow up of public administration and prevent corruption. (the basis for this measure is found in section 4.5 of Chapter II of the First Round Report)

[393] With respect to the aforementioned measure, in its Response, the country under review notes that in town hall meetings, civil society is encouraged to develop follow up mechanisms for proper public administration and the prevention of corruption.²⁹⁷

[394] In addition, in a document submitted during the on-site visit, the country under review notes the following regarding the Civil Society Organization Bill 2014.²⁹⁸

[395] *“We have drafted and circulated the Bill, a bill for an Act to establish and register civil society organizations, promote and encourage the development of civil society to regulate their operations in order to create transparency, accountability and to establish minimum standard which shall be observed by all civil society organizations. Over the last two years and three months we have engaged in meetings with the Bahamas Christian Council and other stakeholders in The Bahamian society to garnish support for a wide range of legislation. We have at these meetings encouraged persons who have attended to discourse on the problems confronting the different communities and our public outreach has covered a number of anti-corruption measures. We have sought to encourage public/private partnership.”*

[396] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto, bearing in mind that the Civil Society Organization Bill, 2014 has not yet been

²⁹⁷ Response to the Questionnaire, pg. 57, *supra* note 4.

²⁹⁸ Completion of Additional Questionnaire, pg. 13, *supra* note 258.

enacted, and it is unclear what steps have been taken to promote methods, where appropriate, to allow, facilitate, and assist civil society and nongovernmental organizations in developing activities in the follow up of public administration and prevent corruption, such as the establishment of government guidelines or policy for this purpose. (see measure a) of recommendation 4.5 of section 4 of Annex 1 to this Report)

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

Design and implement specific programs to publicize the mechanisms for encouraging participation in the follow up of public administration. (the basis for this measure is found in section 4.5 of Chapter II of the First Round Report)

[397] With respect to the aforementioned measure, in its Response, the country under review notes that it consulted with civil society, business and religious organizations and the general public on a proposed constitutional referendum.²⁹⁹

[398] In addition, in a document submitted during the on-site visit, the country under review notes the following regarding the Civil Society Organization Bill 2014.³⁰⁰

[399] *“We have drafted and circulated the Bill, a bill for an Act to establish and register civil society organizations, promote and encourage the development of civil society to regulate their operations in order to create transparency, accountability and to establish minimum standard which shall be observed by all civil society organizations. Over the last two years and three months we have engaged in meetings with the Bahamas Christian Council and other stakeholders in The Bahamian society to garnish support for a wide range of legislation. We have at these meetings encouraged persons who have attended to discourse on the problems confronting the different communities and our public outreach has covered a number of anti-corruption measures. We have sought to encourage public/private partnership.”*

[400] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto, bearing in mind that the Civil Society Organization Bill, 2014 has not yet been enacted, and it is unclear what steps have been taken to design and implement specific programs to publicize the mechanisms for encouraging participation in the follow up of public administration, such as the establishment of government guidelines or policy for this purpose. (see measure b) of recommendation 4.5 of section 4 of Annex 1 to this Report)

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

Recommendation 5.1.1 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Design and implement a comprehensive program for informing and training competent authorities and public servants on provisions related to mutual legal assistance provided for in the Inter- American Convention Against Corruption and in other treaties signed by The Bahamas. (the basis for this measure is found in section 5.1.2 of Chapter II of the First Round Report)

²⁹⁹ Response to the Questionnaire, pg. 58, *supra* note 4.

³⁰⁰ Completion of Additional Questionnaire, pg. 13, *supra* note 258.

[401] With respect to the aforementioned recommendation, in its Response, the country under review provides information on the process for mutual legal assistance in The Bahamas.³⁰¹ In this respect, the Committee notes that the information provided was considered and reviewed for the Report of the First Round of Review adopted for The Bahamas.³⁰² The country under review also notes the enactment of the Anti-Terrorism (Amendment) Act and the Prevention of Bribery (Amendment) Act. Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 5.1.1 of section 5 of Annex 1 to this Report)

Recommendation 5.1.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Disseminate to the competent authorities of those countries with which The Bahamas maintains close or ongoing mutual cooperation relations, the requirements which must be fulfilled in preparing petitions, as well as the documentation that should be attached. (the basis for this measure is found in section 5.1.2 of Chapter II of the First Round Report)

[402] With respect to the aforementioned recommendation, in its Response, the country under review notes that The Bahamas has published a procedures manual on the OAS website, and The Bahamas Government website, in relation to international procedures for assistance. In addition, the International Legal Cooperation Unit of the Office of the Attorney General has been established to deal with all international requests.³⁰³

[403] In this respect, the Committee notes that the information provided was considered and reviewed for the Report of the Second Round of Review adopted for The Bahamas.³⁰⁴ In addition, the Committee could not find online on the Government website the international procedures for assistance. Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 5.1.2 of section 5 of Annex 1 to this Report)

Recommendation 5.2.1 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Review comprehensively the specific areas in which The Bahamas might need or could usefully receive mutual technical cooperation to prevent, detect, investigate, and punish acts of corruption; and that based on this review, a comprehensive strategy be designed and implemented that would permit The Bahamas to approach other States Parties and non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs. (the basis for this measure is found in section 5.2.2 of Chapter II of the First Round Report)

[404] With respect to the aforementioned recommendation, in its Response, the country under review notes that The Bahamas has a number of agreements with non-Treaty parties by which means they are approached and that these agreements are under a continuing review to ascertain necessary improvements.³⁰⁵ Given the foregoing, the Committee takes note of the need for the country under

³⁰¹ Response to the Questionnaire, pgs. 59 – 60, *supra* note 4.

³⁰² Report of the First Round, pgs. 20 – 21, *supra* note 259.

³⁰³ Response to the Questionnaire, pg. 61, *supra* note 4.

³⁰⁴ Report of the Second Round of Review, pg. 34, http://www.oas.org/juridico/english/mesicic_II_inf_bhs_en.pdf

³⁰⁵ Response to the Questionnaire, pg. 62, *supra* note 4.

review to give additional attention to implementation thereto. (see recommendation 5.2.1 of section 5 of Annex 1 to this Report)

Recommendation 5.2.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Promote the efforts of technical cooperation exchange with other State Parties on the effective ways and methods to prevent, detect, investigate and punish acts of corruption. (the basis for this measure is found in section 5.2.2 of Chapter II of the First Round Report)

[405] With respect to the aforementioned recommendation, in its Response, the country under review notes that The Bahamas has attended and participated in various meetings, forums and seminars, such as the MESICIC, the Caribbean Financial Action Task Force and that of the United Nations Convention against Corruption.³⁰⁶ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 5.2.2 of section 5 of Annex 1 to this Report)

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation 6.1 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Notify the OAS General Secretariat formally of the designation of the central authority, pursuant to the prescribed formalities. (the basis for this measure is found in section 6.1 of Chapter II of the First Round Report)

[406] With respect to the aforementioned recommendation, in its Response, the country under review provides information that was reviewed in the Report of the First Round of Review adopted for The Bahamas.³⁰⁷ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto, as the OAS General Secretariat has not received formal designation that the Office of the Attorney General is the central authority for The Bahamas for channeling requests for mutual assistance mutual technical cooperation for the purposes of the Inter-American Convention against Corruption. (see recommendation of section 6 of Annex 1 to this Report)

Recommendation 6.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Implement a mechanism for channeling requests for cooperation on mutual legal assistance, as provided under the Convention. (the basis for this measure is found in section 6.1 of Chapter II of the First Round Report)

[407] With respect to the aforementioned recommendation, in its Response, the country under review notes that The Bahamas channels requests for cooperation on mutual legal assistance through diplomatic note.³⁰⁸

³⁰⁶ Response to the Questionnaire, pgs. 62 – 63, *supra* note 4.

³⁰⁷ *Ibid.*, pgs. 63 – 64. See also Report of the First Round, pg. 22, *supra* note 259.

³⁰⁸ Response to the Questionnaire, pg. 64, *supra* note 4.

[408] Moreover, the Committee notes that a procedure is in place for receiving requests for mutual legal assistance and cooperation, as set out in its Response to the Questionnaire.³⁰⁹

[409] The Committee takes note of the satisfactory consideration by the country under review of Recommendation 6.2.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Encourage ongoing review and enhancement of provisions regulating public officials and employees, and adapt them, as appropriate, to prevent and punish improper conduct of public officials and employees, at all levels, as well as to establish clear obligations in the performance of their duties.

[410] With respect to the aforementioned recommendation, in its Response, the country under review notes that the Department of Public Service is the agency that issues provisions, which are called General Orders and the Public Service Regulations, which are continually under review. These Orders and Regulations are used to regulate public officials and employees conduct and establish clear obligations in the performance of their duties.³¹⁰

[411] The Committee notes that while the Orders and Regulations are under review, other information is not provided whether other standards in place, such as the Code of Ethics for Ministers and Parliamentary Secretaries and the Manual of Cabinet and Ministry Procedure are under a similar review. Moreover, there is no information if the provisions in place have been enhanced and adapted to assist in preventing, and punishing improper conduct of public officials and employees at all levels.

[412] Given the foregoing, the Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto. (see recommendation 7.1 of section 7 of Annex 1 to this Report)

Recommendation 7.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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

[413] With respect to the aforementioned recommendation, in its Response, the country under review notes that the Department of Public Service publishes opportunities for training and solicits participation therein. Additionally, the country under review notes that advertising is ongoing by circular, media, newspaper advertisements, and through the Government website and that the services of the National Training Agency are available to the public.³¹¹

[414] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto, bearing in mind that no information was provided on

³⁰⁹ *Ibid.*, pgs. 59 – 60.

³¹⁰ *Ibid.*, pgs. 65 – 66.

³¹¹ *Ibid.*, pgs. 66 – 67.

the content of the training provided to determine the extent it touches upon anti-corruption matters. (see recommendation 7.2 of section 7 of Annex 1 to this Report)

Recommendation 7.3 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Select, develop, and report to the Technical Secretariat of the Committee, procedures and indicators that make it possible to monitor the recommendations established in this report.

[415] With respect to the aforementioned recommendation, in its Response, the country under review notes that it is responding to regular requests for information on the implementation of the Convention; as well as answering questionnaires.³¹²

[416] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 7.3 of section 7 of Annex 1 to this Report)

³¹² *Ibid.*, pg. 67.

ANNEX I

**OUTSTANDING AND REFORMULATED RECOMMENDATIONS REGARDING THE
TOPICS REVIEWED IN THE FIRST ROUND**

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

1.1. Standards of conduct to prevent conflicts of interest and mechanisms to enforce them

Recommendation:

Ensure that the laws concerning conflicts of interest are fully in effect, that they support recommendation 7.1 when appropriate, and that they are applicable to all public officials and employees, so as to permit practical and effective application of a public ethics system.

Suggested Measures:

- a) Establish or adapt and then implement standards of conduct for those offices that currently do not fall under the purview of any controls, including adequate sanctions for violations of those standards.
- b) Implement a code of ethics for Senators and Members of the House of Assembly, including sanction mechanisms for violations.
- c) Apply conflict of interest restrictions for an appropriate period following government service.
- d) Ensure that there are mechanisms in place that provide transparency in the cases where the Prime Minister decides to allow a Minister to hold shares in public companies that have contractual relationships with the Government, without requiring that they be sold or placed in a blind trust.

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

Recommendation:

Strengthen control systems within the public administration by developing enforceable written standards applicable to all public officials and employees to create a duty to conserve and properly use of the resources entrusted to them.

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

Recommendation:

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

Suggested Measures:

- a) Establish reporting requirements for those public officials and employees who are currently not required to report to appropriate authorities acts of corruption in the performance of public functions.
- b) Provide appropriate training to officials and employees concerning the requirement to report acts of corruption and the protections for those who report.

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

Recommendation:

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

Suggested Measures:

- a) Establish a method whereby, within a specific time period before or immediately after being appointed as a Senator or to a senior post listed under the Public Disclosure Act (Application to Public Appointees and Public Officers) Notice, a person be required to make a declaration of their assets, liabilities and income as well as those of their spouse and children. Such declarations should then be used to help identify potential conflicts of interest and suggest measures to be taken by the person to avoid those conflicts as well as help identify other violations of law.
- b) Consider making declarations made by those appointed to senior posts accessible to the public, when appropriate.

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

Recommendation 3.1:

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

Suggested Measures:

- a) Establish oversight bodies for those offices that currently do not fall under the purview of any controls.
- b) Consider establishing an oversight body in the Code of Ethics for Ministers and Parliamentary Secretaries to oversee their conduct.

Recommendation 3.2:

Establish a body, or provide additional authority to an existing body or bodies, in order to ensure appropriate monitoring of the mechanisms recommended in section 4, below (Article III, paragraph 11).

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11)

4.1. General participation mechanisms

Recommendation 4.1:

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

4.2 Mechanisms for access to information

Recommendation 4.2.1:

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

Suggested Measures:

- a) Enact a Freedom of Information Act that regulates and facilitates the access by the public to information in the control of public institutions.
- b) Establish clear written standards as to the types of information that will be provided under the Freedom of Information Act.
- c) Implement training and dissemination programs about the Freedom of Information Act, in order to make it easier for public servants and citizens to understand the mechanisms provided in the Law.
- d) Establish a timetable for the implementation of the provisions of the Freedom of Information Act, setting out priorities and actions to be carried out, deadlines for executing them, and annual targets to be met, and disseminate that schedule so that the public can appreciate the efforts by The Bahamas to move forward with implementation of the Act.
- e) Establish standards in a Freedom of Information Act that recognizes the right of all persons to request information or to consult or obtain copies of documents in the possession, or under the control of public institutions concerning official actions, except for legally protected cases.

4.3. Mechanisms for consultation

Recommendation 4.3.1:

Establish consultation mechanisms to enable civil society and non-governmental organizations to provide opinions and proposals to be taken into account in preventing, detecting, investigating and punishing corruption.

Recommendation 4.3.2:

Design and implement programs to publicize the consultation mechanisms and, when appropriate, to train and to provide the necessary tools to effectively implement such mechanisms.

4.4. Mechanisms to encourage participation in public administration

Recommendation:

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

Suggested Measures:

- a) Establish mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption.
- b) Promote public awareness of available corruption prevention mechanisms.

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

Recommendation:

Establish mechanisms to encourage civil society and nongovernmental organizations to participate in the follow up of public administration and generate opinions and proposals to be taken into account in preventing, detecting, investigating and punishing corruption.

Suggested Measures:

- a) Promote methods, where appropriate, to allow, facilitate, and assist civil society and nongovernmental organizations in developing activities in the follow up of public administration and prevent corruption.
- b) Design and implement specific programs to publicize the mechanisms for encouraging participation in the follow up of public administration.

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

Recommendation 5.1.1:

Design and implement a comprehensive program for informing and training competent authorities and public servants on provisions related to mutual legal assistance provided for in the Inter-American Convention against Corruption and in other treaties signed by The Bahamas.

Recommendation 5.1.2:

Disseminate to the competent authorities of those countries with which The Bahamas maintains close or ongoing mutual cooperation relations, the requirements which must be fulfilled in preparing petitions, as well as the documentation that should be attached.

Recommendation 5.2.1:

Review comprehensively the specific areas in which The Bahamas might need or could usefully receive mutual technical cooperation to prevent, detect, investigate, and punish acts of corruption; and that based on this review, a comprehensive strategy be designed and implemented that would permit The Bahamas to approach other States Parties and non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs.

Recommendation 5.2.2:

Promote the efforts of technical cooperation exchange with other State Parties on the effective ways and methods to prevent, detect, investigate and punish acts of corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation:

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

7. GENERAL RECOMMENDATIONS

Recommendations:

7.1 Encourage ongoing review and enhancement of provisions regulating public officials and employees, and adapt them, as appropriate, to prevent and punish improper conduct of public officials and employees, at all levels, as well as to establish clear obligations in the performance of their duties.

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

7.3 Select, develop, and report to the Technical Secretariat of the Committee, procedures and indicators that make it possible to monitor the recommendations established in this report.

ANNEX II**AGENDA OF THE ON-SITE VISIT TO
THE BAHAMAS**

<u>Monday, September 22, 2014</u>	
15:00 hrs. – 16:00 hrs. <i>Office of the Attorney General</i>	Coordination meeting between the representatives of the country under review and the Technical Secretariat.
19:30 hrs. – 20:00 hrs. <i>British Colonial Hilton Hotel</i>	Coordination meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
<u>Tuesday, September 23, 2014</u>	
9:00 hrs. – 11:00 hrs. <i>Office of the Attorney General</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers.
	Topic:
	<ul style="list-style-type: none"> • Private sector participation in initiatives to combat corruption.
	Participants:
	<i>The Bahamas Bar Association</i> Mr. Elsworth Johnson, President
	<i>The Bahamas Institute of Chartered Accountants</i> Mr. Darnell Osbourne, President
	<i>The Bahamas Chamber of Commerce</i> Mr. Gowan Bowe, Vice Chairman
11:00 hrs. – 11:45 hrs.	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers. (<i>continuation</i>)

	<p>Topics:</p> <ul style="list-style-type: none"> • Civil society perspectives on government oversight bodies that prevent, detect, punish and eradicate corrupt acts. • Efforts to address Follow-Up Recommendations.
	<p><u>Participant:</u> <i>Civil Society Bahamas</i> Ms. Olivia Saunders, Lecturer, College of The Bahamas</p>
11:45 hrs. – 12:30 hrs.	Public Accounts Committee
	<p>Topic:</p> <ul style="list-style-type: none"> • Perspectives on government oversight bodies that prevent, detect, punish and eradicate corrupt acts.
	<p><u>Participant:</u> Mr. Hubert Chipman, M.P., Chair</p>
12:30 hrs. – 14:00 hrs.	Lunch
14:00 hrs. – 18:00 hrs.	Office of the Attorney General
14:00 hrs. – 15:00 hrs.	<p>Panel 1:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Autonomy of Functions. • Determination of budget and human resources.
	<p><u>Participants:</u> Mr. Damian Gomez, Minister of State, Legal Affairs Ms. Deborah Fraser, Director of Legal Affairs Mr. Garvin Gaskin, Acting Director of Public Prosecutions Ms. Cheryl Bethel, Deputy Commissioner, Law Reform Commission Mr. Franklyn Williams, Deputy Director of Public Prosecutions</p>

15:00 hrs. – 16:00 hrs.	<p>Panel 2:</p> <ul style="list-style-type: none"> • Coordination with other Government bodies in compliance with its mandates. • Internal controls and accountability mechanisms. • Selection of senior officers and human resources. <p><u>Participants:</u> Mr. Damian Gomez, Minister of State, Legal Affairs Ms. Deborah Fraser, Director of Legal Affairs Mr. Garvin Gaskin, Acting Director of Public Prosecutions Ms. Cheryl Bethel, Deputy Commissioner, Law Reform Commission Mr. Franklyn Williams, Deputy Director of Public Prosecutions</p>
16:00 hrs. – 17:00 hrs.	<p>Panel 3:</p> <ul style="list-style-type: none"> • Training. • Results and best practice. • Difficulties. <p><u>Participants:</u> Mr. Damian Gomez, Minister of State, Legal Affairs Ms. Deborah Fraser, Director of Legal Affairs Mr. Garvin Gaskin, Acting Director of Public Prosecutions Ms. Cheryl Bethel, Deputy Commissioner, Law Reform Commission Mr. Franklyn Williams, Deputy Director of Public Prosecutions</p>

17:00 hrs. – 18:00 hrs.	<p>Panel 4:</p> <ul style="list-style-type: none"> • Follow-Up to the Recommendations of the First Round. <ul style="list-style-type: none"> - Standard of conduct intended to prevent conflicts of interest - Standards requiring government officials to report acts of corruption - Oversight Bodies - Mechanisms to encourage participation in public administration - Access to Information - Assistance and Cooperation <p><u>Participants:</u> Mr. Damian Gomez, Minister of State, Legal Affairs Ms. Deborah Fraser, Director of Legal Affairs Mr. Garvin Gaskin, Acting Director of Public Prosecutions Ms. Cheryl Bethel, Deputy Commissioner, Law Reform Commission Mr. Franklyn Williams, Deputy Director of Public Prosecutions</p>
18:30 hrs.	<p>Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.</p>
<u>Wednesday, Wednesday September 24, 2014</u>	
09:00 hrs. – 11:30 hrs.	Public Disclosure Commission
09:00 hrs. – 10:00 hrs.	<p>Panel 5:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Autonomy of functions and coordination with other government bodies. • Budgetary and human resources.

	<p><u>Participant:</u> Mr. Garnet Knowles, Secretary Mr. Philip B. Stubbs, Member Ms. Paulamae Russell, Finance Officer, Cabinet Office Ms. Katherina Smith, Senior Assistant Secretary, Cabinet Office Ms. Lorraine P. Taylor, Assistant Secretary, Cabinet Office</p>
10:00 hrs. – 11:00 hrs.	<p>Panel 6:</p> <ul style="list-style-type: none"> • Manuals and training. • Use of technology. • Internal controls and accountability mechanisms.
	<p><u>Participant:</u> Mr. Garnet Knowles, Secretary Mr. Philip B. Stubbs, Member Ms. Paulamae Russell, Finance Officer, Cabinet Office Ms. Katherina Smith, Senior Assistant Secretary, Cabinet Office Ms. Lorraine P. Taylor, Assistant Secretary, Cabinet Office</p>
11:00 hrs. – 11:30 hrs.	<p>Panel 7:</p> <ul style="list-style-type: none"> • Difficulties. • Results and systematization of data. • Follow-Up to Recommendations of the First Round <ul style="list-style-type: none"> - System for registering income, assets and liabilities
	<p><u>Participant:</u> Mr. Garnet Knowles, Secretary Mr. Philip B. Stubbs, Member Ms. Paulamae Russell, Finance Officer, Cabinet Office Ms. Katherina Smith, Senior Assistant Secretary, Cabinet Office Ms. Lorraine P. Taylor, Assistant Secretary, Cabinet Office</p>
11:30 hrs. – 12:30 hrs.	<p>Meetings with civil society organizations and/or, inter alia, private sector organizations, professional organizations, academics or researchers. (continuation)</p>

	<p>Topics:</p> <ul style="list-style-type: none"> • Civil society perspectives on government oversight bodies that prevent, detect, punish and eradicate corrupt acts. • Efforts to address Follow-Up Recommendations.
	<p><u>Participant:</u> <i>Civil Society Bahamas</i> Mr. Anthony Hamilton, President Mr. A.L. Archer, Vice President Ms. Sharmaine Adderley, Assistant Secretary</p>
12:30 hrs. – 14:00 hrs.	Lunch
14:00 hrs. – 16:00 hrs.	Auditor General’s Department
	<p>Panel 8:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Scope of functions, coordination with other Government bodies, Recovery of public property.
	<p><u>Participant:</u> Mr. Terrance Bastian, Auditor General</p>
15:00 hrs. – 16:00 hrs.	<p>Panel 9:</p> <ul style="list-style-type: none"> • Manuals and other documents, Training and Technology. • Accountability Mechanisms in handling citizen complaints. • Budgetary and human resources.
	<p><u>Participant:</u> Mr. Terrance Bastian, Auditor General</p>
16:00 hrs. – 17:30 hrs.	Follow-Up to the Recommendations of the First Round

	<p>Panel 10:</p> <ul style="list-style-type: none"> • Standards of Conduct for the Correct, Honorable, and Proper Fulfillment of Public Functions <ul style="list-style-type: none"> - Post-Employment Restrictions - Prime Ministerial Discretion - Duty to Properly Conserve and Use of Government Resources • Oversight Bodies <ul style="list-style-type: none"> - Establishment of oversight bodies • Mechanisms for Consultation, Mechanisms to Encourage Participation, and Mechanisms for Participation in the Follow-Up of Public Administration
	<p><u>Suggested Participants:</u> Mr. Damian Gomez, Minister of State, Legal Affairs Ms. Deborah Fraser, Director of Legal Affairs Ms. Cheryl Bethel, Deputy Commissioner, Law Reform Commission Mr. Franklyn Williams, Deputy Director of Public Prosecutions</p>
17:30 hrs.	<p>Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.</p>
<p><u>Thursday, September 25, 2014</u></p>	
09:30 hrs. – 12:30 hrs.	<p>Financial Intelligence Unit</p>
09:30 hrs. – 10:30 hrs.	<p>Panel 11:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Autonomy of Functions. • Determination of budget and human resources.
	<p><u>Participants:</u> Inspector Basil Collie, Deputy Director Ms. Joann Creary, Legal Counsel Superintendent Clement Lightbourne, Royal Bahamas Police Force</p>

10:30 hrs. – 11:30 hrs.	<p>Panel 12:</p> <ul style="list-style-type: none"> • Coordination with other Government bodies in compliance with its mandates. • Internal controls and accountability mechanisms. <p><u>Participants:</u> Inspector Basil Collie, Deputy Director Ms. Joann Creary, Legal Counsel Superintendent Clement Lightbourne, Royal Bahamas Police Force</p>
11:30 hrs. – 12:30 hrs.	<p>Panel 13:</p> <ul style="list-style-type: none"> • Training. • Results. • Difficulties. <p><u>Participants:</u> Inspector Basil Collie, Deputy Director Ms. Joann Creary, Legal Counsel Superintendent Clement Lightbourne, Royal Bahamas Police Force</p>
12:30 hrs. – 14:00 hrs.	Lunch
14:00 hrs. – 16:30 hrs.	Compliance Commission
14:00 – 15:00 hrs.	<p>Panel 14:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Autonomy of Functions. • Determination of budget and human resources. <p><u>Participant:</u> Mr. Stephen Thompson, Inspector Ms. Dominique Toote, Chief Examiner</p>

15:00 hrs. – 16:00 hrs.	<p>Panel 15:</p> <ul style="list-style-type: none"> • Coordination with other Government bodies in compliance with its mandates. • Internal controls and accountability mechanisms. • Human resources.
	<p><u>Participant:</u> Mr. Stephen Thompson, Inspector Ms. Dominique Toote, Chief Examiner</p>
16:00 hrs. – 16:30 hrs.	<p>Panel 16:</p> <ul style="list-style-type: none"> • Training. • Results.
	<p><u>Participant:</u> Mr. Stephen Thompson, Inspector Ms. Dominique Toote, Chief Examiner</p>
16:30 – 17:00 hrs.	<p>Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.</p>
17:00 hrs	<p>Final meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat.</p>

**CONTACT AUTHORITY FROM THE COUNTRY UNDER REVIEW FOR COORDINATION
OF THE ON-SITE VISIT, REPRESENTATIVES OF THE MEMBER STATES OF THE
PRELIMINARY REVIEW SUBGROUP AND THE MESICIC TECHNICAL SECRETARIAT**

COUNTRY UNDER REVIEW:

THE BAHAMAS

Franklyn Williams

Lead Expert to the Committee of Experts of the MESICIC
Deputy Director of Public Prosecutions

MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP:

COSTA RICA

Tatiana Gutierrez Delgado

Lead Expert of Costa Rica to the Committee of Experts of the MESICIC
Public Ethics Prosecutor
Attorney General's Office

GUYANA³¹³

Gail Teixeira

Lead Expert to the Committee of Experts of the MESICIC
Presidential Advisor on Governance

TECHNICAL SECRETARIAT OF THE MESICIC

Rodrigo Silva

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

³¹³ Prior to the on-site visit, the representative of Guyana informed the Technical Secretariat that due to unforeseen circumstances, she would not be able to participate in the visit.