



UNODC

United Nations Office on Drugs and Crime

*Regional Office for Central America and
the Caribbean in Panama (ROPAN)*

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24 August 2018

To the Clerk of Parliament,

On behalf of the United Nations Office on Drugs and Crime (UNODC), please allow me to present my compliments and to address you in the context of the *Integrity in Public Life Bill 2018*, which has been introduced in the Parliament of Barbados.

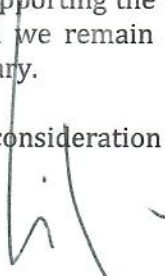
UNODC would like to commend the Government of Barbados for the invitation to the public to actively participate in the development of this new legislation. In this regard, we are pleased to take this opportunity to submit our observations and recommendations on the legislation to the Joint Select Committee on the Integrity in Public Life Bill 2018. We hope that this submission will contribute to the country's overall objective of deterring corruption in public life in Barbados, while allowing for effective prosecution of this scourge when it does occur.

These comments, which have been attached to this letter, have been prepared by UNODC Anti-Corruption Advisors for Central America and the Caribbean, based at the UNODC Regional Office for Central America and the Caribbean in Panama (UNODC ROPAN), as well as the UNODC Corruption and Economic Crime Branch at UNODC Headquarters in Vienna.

The Government of Barbados signed the United Nations Convention against Corruption (UNCAC) in 2003 and, as UNODC continues to support Barbados on its journey toward the ratification of this instrument, the comments and observations presented herein, have largely been prepared in line with the UNCAC and its Implementation Review Mechanism (IRM).

We hereby reaffirm our commitment to supporting the Government of Barbados in your efforts to strengthen anti-corruption legislation and we remain at your full disposal to provide technical assistance, whereby it is so deemed necessary.

Please accept the assurance of our highest consideration and esteem.


José Vila del Castillo
Regional Representative

The Clerk of Parliament
Parliament Buildings
Heroes Square
Bridgetown, Barbados

JVdC/bsh

UNODC Observations, Comments and Recommendations on the Integrity in Public Life Bill 2018.

24 August 2018

INTEGRITY IN PUBLIC LIFE ACT 2018	CORRESPONDING UNCAC ARTICLE	UNODC OBSERVATION/RECOMMENDATION
<p>"assets", in relation to a person, means all property, including any right or interest in property, and money held by the person in Barbados or elsewhere;</p>		<p>May consider:</p> <p>"assets", in relation to a person, is anything of monetary value owned by the person; including money, property, rights and interests, in Barbados or elsewhere.</p>
<p>"property" includes money and all property, real or personal and things in action</p>	<p>"property" includes assets of every kind, whether corporeal or in corporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets</p>	<p>May consider the use of the definition provided in the United Nations Convention Against Corruption (UNCAC).</p>
<p>"public body" includes:</p> <ul style="list-style-type: none"> (a) Parliament and the Cabinet; (b) Ministries and departments of Government; (c) statutory bodies and subsidiary companies of such bodies; and (d) any other bodies which receive any payment of monies under an Appropriation Act within the meaning of the <i>Financial Management and Audit Act</i>, Cap. 5; 		<p>In the spirit of the broad definition of "public official" provided by the UNCAC, Barbados should endeavor to ensure that the most ample definition of "public body" is adopted so as to include all legislative, executive, administrative or judicial offices of the State.</p>
<p>"public officer" has the meaning assigned to it by section 2 of the <i>Public Service Act</i>, Cap. 29</p> <p style="text-align: center;"><i>"public officer" or "officer" means the holder of any public office and includes any person appointed to act in that office;</i> <i>Public Service Act</i>, Cap. 29</p>	<p>"Public official" shall mean:</p> <ul style="list-style-type: none"> (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic 	<p>State Parties of the UNCAC are obliged as a minimum to incorporate the definitions that contain all elements as they stand in the Convention. National legislation may include broader definitions, but should, as a minimum, cover what is required.</p> <p>The definition of "public official" requires therefore thorough consideration to ensure that the entire range of persons defined by article 2 of the UNCAC as "public officials" is adequately covered under national legislation.</p>
<p>"public official" means a public officer or another person who is a member, officer or other employee of a public body, as the case may be;</p>		

law of the State Party and as applied in the pertinent area of law of that State Party;
(iii) any other person defined as a “public official” in the domestic law of a State Party.
However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

For example, the provisions of the Convention regarding “public officials” cover anyone so defined by the domestic law of a State party. In the event that these are not included in domestic definitions, for the purposes of the Convention a “public official” is also anyone “holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority” (art. 2, sub-paragraph. (a) (i)) as well as “any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party” (art. 2, sub-paragraph. (a) (ii)).⁵

However, for the purpose of some measures included in chapter II of the Convention,⁶ “public official” “may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party” (art. 2, sub-paragraph. (a)).

An interpretative note indicates that, for the purpose of defining “public official”, each State party shall determine who is a member of the categories mentioned in subparagraph (a) (i) of article 2 and how each of those categories is applied (A/58/422/Add.1, para. 4).

A number of additional interpretative notes indicate the following:
(a) The word “executive” is understood to encompass the military branch, where appropriate (A/58/422/Add.1, para. 2). Another interpretative note indicates that the term “office” is understood to encompass offices at all levels and subdivisions of government from national to local. In States where subnational governmental units (for example, provincial, municipal and local) of a self-governing nature exist, including States where such bodies are not deemed to form a part of the State, “office” may be understood by the States

		concerned to encompass those levels also (A/58/422/Add.1, para. 3);
4.1 The functions of the Commission are:	<p style="text-align: center;">UNCAC Chapter II: Preventive measures</p> <p>Article 5. Preventive anti-corruption policies and practices Article 6. Preventive anti-corruption body or bodies</p>	<p>May consider including some of the functions associated with the prevention of corruption (Articles 5 and 6 of the UNCAC), such as:</p> <ul style="list-style-type: none"> (a) develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability; (b) establish and promote effective practices aimed at the prevention of corruption; (c) to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption; (d) to collaborate with other States and with relevant international and regional organizations in promoting and developing anti-corruption measures; (e) to increase and disseminate knowledge about the prevention of corruption.
4.1. (a) to receive and keep on record all declarations, statements of registrable interests and reports of gifts forwarded by persons in public life;		<p>Consider including the word "specified" in section 4.1. (a), in keeping with definitions provided in Part 1.2. of the Integrity in Public Life Bill.</p> <p>Furthermore, the obligation to disclose assets does not have to be linked formally to the rank of an official, but rather to the extent of decision-making authority and managerial powers of officials, and the related risks of conflict of interest and abuses of office. (Asset Declarations for Public Officials: a Tool to Prevent Corruption, OECD 2011)</p> <p>In this sense, the leadership of the State and/or the three branches of the government is usually at the top of the list.</p> <p>Public officials in areas of particular corruption risks could also be included in this list.</p>

4.3. The Governor-General may, in writing, request the Commission to investigate any matter falling within the functions of the Commission		May wish to add at the end ‘...in particular in those instances when he or she is the recipient of the declaration of assets or there are public allegations of corruption by a person in public life.
7.1 The Commission shall have such funds as may be appropriated to it by Parliament.		<p>The UNCAC requires the guarantee of an annual budget as a conventional obligation. Therefore, the Government of Barbados may consider establishing such a guaranteed annual budget.</p> <p>This measure could help protect the Commission from budget downsizing and ensure adequate funding.</p> <p>Moreover, it could contribute to safeguarding the Commission's independence.</p> <p>Independence is a key issue in the design of Anti-Corruption Commissions. This must not be regarded as absence of reporting or external control, but as the capacity to carry out its mission without political interference. Independence is also linked to other guiding principles such as impartiality, objectivity, fairness, accountability, a clear, legally defined remit and, above all, structural and operational autonomy. (Anti-Corruption Agencies as Central Pieces in a National Integrity System, Luis De Sosa)</p>
7.4. A copy of the report together with the Auditor-General's Report shall be laid before Parliament.		<p>In keeping with the efforts of the Government of Barbados to ensure public participation in all aspects of political life, consider the publication of a report online, including statistics about the Commission's activities and results.</p> <p>The trust of society is a fundamental factor for an Anti-Corruption Commission to function properly; it is key for the reception of information and complaints.</p> <p>Public reporting will strengthen the institution's credibility, accountability and independence.</p>
8.5 In subsection (3) “appropriate authority”, in relation to any public officer or other employee of the Government, means the person or authority vested by law with power to appoint such public officer or		May consider including a provision on the competitive recruitment of employees, vetting of agents, specialized training.

<p>other employee of the Government to the position he holds at the time when his service is sought to be utilised by the Commission.</p>		
<p>10. 3 The Commission may, if it thinks fit, receive oral or written evidence, but it is not bound by the rules of evidence in the <i>Evidence Act</i>, Cap. 121, and it may take into account opinion evidence and such facts as it considers relevant and material.</p>		<p>May consider defining "opinion evidence" to limit discretionary powers.</p>
<p style="text-align: center;">PART III: INVESTIGATIONS <i>Powers of Investigative Officers</i></p> <p>Power of arrest</p> <p>15.1 An investigative officer has, in carrying out his functions, the powers of a constable to arrest any person whom he reasonably suspects has committed an offence punishable by imprisonment under this Act or under any other enactment that assigns responsibility for investigations to the Commission.</p> <p>15.2 An investigative officer shall, after making an arrest, deliver the person arrested to the custody of a member of the Police Force who shall, as soon as practicable, bring the person before a magistrate.</p> <p>Power of search and seizure</p> <p>17.1 Where, on an application made by an investigative officer, a judge in Chambers is satisfied that</p> <ol style="list-style-type: none"> a. there are reasonable grounds for suspecting that an offence has been committed under this Act or any other enactment that assigns responsibility for investigations to the Commission; b. there is material on premises specified in the application that is likely to be of substantial value to the investigation of the offence, whether by itself or together with other material; c. the material <ol style="list-style-type: none"> i. is likely to be admissible in evidence at a trial for an offence referred to in paragraph (a); and ii. does not consist of or include privileged material; and d. any of the conditions specified in subsection (2) applies, 		<p>In general, Barbados should make sure the Commission's special powers don't enter into conflict with the Constitution.</p>

<p>the judge may issue a warrant authorising an investigative officer to enter and search the premises for the material and to seize and retain any material, that, in the opinion of the investigative officer, is of the kind described in paragraphs (b) and (c).</p> <p>17.2 The conditions mentioned in subsection (1)(d) are that</p> <ol style="list-style-type: none"> a. a production order has been made in respect of the material and has not been complied with; b. a production order in respect of the material would be unlikely to be effective because there are reasonable grounds to suspect that such a production order would not be complied with; c. the material involved cannot be identified or described with sufficient particularity to enable a production order to be made; d. it is not practicable to communicate with any person entitled to grant entry to the premises; e. it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence; f. entry to the premises will not be granted unless a warrant is produced; or g. the investigation for the purposes of which the application is made might be seriously prejudiced unless the investigative officer is granted immediate access to the material without notice of any person. <p>17.3 An investigative officer may seize and retain anything for which a search has been authorised under subsection (1).</p>		
<p>19.1 A person may address a complaint in writing to the Commission in respect of the conduct of an investigative officer in the performance of his functions where the person:</p> <ol style="list-style-type: none"> a. has been personally affected by the conduct; b. has witnessed the conduct; c. has a substantial and direct interest in the complaint; or 		<p>Should consider allowing anonymous complaints and establishing a hot-line (telephone, on-line, e-mail...)-</p>

<p>d. has been authorised by a person referred to in paragraph (a), (b) or (c) to make a complaint in that person’s name.</p>		
<p>20. The Governor-General may appoint an <i>ad hoc</i> panel consisting of:</p> <ul style="list-style-type: none"> a. a judge or magistrate or a retired judge or magistrate, who shall be the chairman; b. the Commissioner of Police, who shall hold office <i>ex officio</i>; c. and a person, other than a member or former member of the Police Force, to represent the public, <p>to hear and adjudicate a complaint made under section 19.</p>		<p>May consider that (c) be a person who is a leader in civil society, publicly renowned for upholding a high level of integrity.</p>
<p>22.2. The complaint resolution report referred to in subsection (1) shall contain</p> <ul style="list-style-type: none"> a. a summary of the complaint; b. the results of the investigation; c. a summary of any action that has been or will be taken with respect to resolution of the complaint; d. and a statement that the complainant may refer the complaint to the panel for review, within 60 days of the receipt of the complaint resolution report, where he is not satisfied with the disposition of the complaint by the Commission. <p>22.3 A complainant who is not satisfied with a direction under section 21(1) or with the disposition of the complaint by the Commission under subsection (1), may refer the complaint to the panel in writing within 15 days after the date on which he receives notice of the direction or the complaint resolution report.</p>		<p>It is not clear whether the complainant has 60 or 15 days to refer the complaint to the panel for review, when he or she is not satisfied with the resolution report.</p>
<p>22.4 The panel shall review every complaint referred to it under subsection (3).</p>		<p>Should consider establishing a limited period of time for the review.</p>
<p>23.2 Where, after reviewing a complaint, the panel is not satisfied with the disposition of the complaint by the Commission or considers that further inquiry is warranted, the panel may take any or all of the following measures:</p> <ul style="list-style-type: none"> a. send a report to the Commission indicating the reasons for its dissatisfaction; b. request the Commission to conduct a further investigation into the complaint; c. make such inquiries as it deems necessary in the circumstances; 		<p>May consider re-writing 23.2 (a) as follows:</p> <p>(...) or considers that further inquiry is warranted, the panel shall send a report to the Commission indicating the reasons for its dissatisfaction and take any or several of the following measures: (...)</p> <p>May wish to establish a clearer differentiation between 23.2c and d.</p>

<ul style="list-style-type: none"> d. investigate the complaint further; e. institute a hearing to inquire into the complaint. 		<p>In addition, there seems to be no provision that puts an end to the procedure and thus the Commission and the Panel may send the file back and forth to each other in circles. Thus, it is advisable to integrate in the procedure a limit to this situation.</p> <p>Should consider establishing a limited period of time for this investigation. However, the time limits must be ample enough to allow for a complex investigation to be completed.</p>
<p>23.3 The panel shall, on completion of any further investigation, inquiry or hearing that it has ordered under subsection (2) send:</p> <ul style="list-style-type: none"> a. to the Commission, a complaint review report setting out: <ul style="list-style-type: none"> i. such findings with respect to the complaint as the panel sees fit; ii. and such recommendations, including disciplinary measures to be taken in regard to the investigative officer, as the panel sees fit; b. and to the complainant and the investigative officer, a report of the conclusion of the review, together with any finding or recommendations referred to in paragraph (a). 		<p>Should consider establishing a limited period of time for this investigation. However, the time limits must be ample enough to allow for a complex investigation to be completed.</p>
<p>25.1 A person who is a specified person in public life shall:</p> <ul style="list-style-type: none"> a. on or before the appointed day and every 2 years thereafter, on or before the biennial anniversary of that date; and b. where such person ceases to be a specified person in public life, within 90 days from the date on which he ceases to be a specified person in public life, <p>file, where he is not a member or staff member of the Commission, with the Commission or, where he is a member or staff member of the Commission, with the Governor-General, a declaration containing the particulars referred to in subsection (5).</p>		<p>25.1 The obligation to disclose assets does not have to be linked formally to the rank of an official, but rather to the extent of decision-making authority and managerial powers of officials, and the related risks of conflict of interest and abuses of office. (Asset Declarations for Public Officials: a Tool to Prevent Corruption, OECD 2011)</p> <p>In this sense, the leadership of the State or / and of the three branches of the government is usually at the top of the list. Public officials in areas where the risk of corruption is high could also be included in this list.</p> <p>Furthermore, in certain systems, declarations are also requested at a certain time after leaving the official duty. Barbados may also consider adding:</p> <p>(c) upon request of the Commission</p>

		In order to prevent corruption post-office, in particular trafficking in influence, it is advisable to require the public officer/official to present a declaration 5 years after the day he or she ceases to be a person in public life.
25.2 Without prejudice to subsection (1), every person shall, within 90 days from the date on which he becomes a specified person in public life, file, where he is not a member or staff member of the Commission, with the Commission or, where he is a member or staff member of the Commission, with the Governor-General, a declaration containing the particulars referred to in subsection (5) with reference to the date on which he becomes a specified person in public life; and any person required to file a declaration under this subsection in any year is not required to file another declaration under subsection (1) in the same year.		This paragraph seems to enter into conflict with subsection (1). It is not clear whether the declaration should be filed on or before the appointed day, or within 90 days of the appointment. Consider including indications for specified persons in public life that were appointed before the adoption of this Act.
25.3 The Commission may, in exceptional circumstances, grant to any person required to file a declaration under subsection (1) or (2), other than a member or staff member of the Commission, an extension of the period for filing the declaration of up to 6 months, beginning on the day that the declaration is required to be filed.		Should consider defining the "exceptional circumstances" to avoid abuse of discretionality.
25.4 The Governor-General may, in exceptional circumstances, grant to a member or staff member of the Commission required to file a declaration under subsection (1) or (2), an extension of the period for filing the declaration of up to 6 months, beginning on the day that the declaration is required to be filed.		Should consider defining the "exceptional circumstances" to avoid abuse of discretionality.
28.2 Where the Commission has reasonable grounds to believe that a specified person in public life is likely to contravene or has contravened this Act, the Commission may direct that person to place all or part of his assets in a blind trust on such terms and conditions as the Commission considers appropriate and to file a copy of the trust deed with the Commission.		Ensure that Constitutional rights are respected.
29. The Commission or the Governor-General, as the case may be, shall a. receive, examine and retain all declarations and documents filed with it or him under this Act; and b. make such inquiries as it or he considers necessary in order to verify or determine the accuracy of the financial affairs, as		Consider gender neutral language throughout: ... filed with it or him/her under.... As it or he/she considers...

<p>stated in the declarations, of persons who are required to file declarations under this Act.</p>		
<p>32.1 Where the Commission examines a declaration and any related information or documents, or conducts an inquiry into any declaration, and is not satisfied with any aspect thereof, the Commission may report the matter to the appropriate Service Commission, board or other authority and the Director of Public Prosecutions, setting out such details as it thinks fit.</p>		<p>It is advised that should the matter relate to the alleged commission of a criminal offence, the file should be referred to the DPP as a matter of principle, without leaving room to discretionary powers.</p>
<p>32.5. An inquiry shall not be commenced after 2 years from the date on which the person ceased to be in public life.</p>		<p>In order to avoid abuse of subsection (5), it may be considered to add: An inquiry "under this section" and / or "by the Commission" (...)</p> <p>The two-year deadline to initiate an inquiry after the person has ceased to be in public life directly contravenes article 29 of the UNCAC which requires the adoption of long statutes of limitations for corruption offences.</p>
<p>32.6. The Director of Public Prosecutions may</p> <ol style="list-style-type: none"> a. take action in relation to a report made pursuant to subsection (1) as he thinks appropriate in any particular case; b. authorise any person having an official duty under this Act to furnish information to any officer of the court, a member of the Police Force or any other person specified by the Director of Public Prosecutions. 		<p>Based on obligations under the UNCAC, consider adding:</p> <p>(c) take action as he or she thinks appropriate in any particular case, even if a declaration has not yet been examined, has been cleared or a report pursuant to subsection (1) has not been issued by the Commission.</p> <p>The importance of this suggested provision relates to the fact the prosecution services should have full freedom of investigation of any offence. It also serves as a way to avoid any abuse of discretionary powers in the Commission (checks and balances).</p>
<p>38.1 A statement of registrable interests shall contain the following information relating to the member of the House of Assembly or the Senate, his spouse and children:</p> <ol style="list-style-type: none"> a. particulars of any directorships held in any company or other corporate body; b. particulars of any contract made with the Government; 		<p>It may be considered to include grants, foundations, memberships, employment, consultancies, patent licensing.</p> <p>In addition, reference to declaring passive patrimony (debts, mortgages, credits, etc)</p>

<ul style="list-style-type: none"> c. the name or description of any company, partnership or association in which the person is an investor; d. a concise description of any trust to which the person is a beneficiary or trustee; e. any beneficial interest held in land; f. any fund to which the person contributes; g. particulars of any political, trade or professional association to which the person belongs; h. particulars relating to sources of income; i. and any other substantial interest, whether of a pecuniary nature or not, which the member considers may appear to raise a material conflict between his private interests and his public duty. 		
<p>42. The Commission shall not issue a determination that a member of the House of Assembly or the Senate has acquired a prohibited interest where;</p> <ul style="list-style-type: none"> a. the member has notified the Commission of the interest as required by this Act; and b. the Commission is of the opinion that the interest <ul style="list-style-type: none"> i. is unlikely to affect the member's obligations under the Code of Conduct; or ii. is likely to affect the member's obligations under the Code of Conduct but that the member, his spouse or child, as the case may be, has divested himself of the interest or has placed it in a blind trust on such terms and conditions as the Commission considers appropriate. 		<p>Consider defining "prohibited interest".</p>
<p>45.1 Every specified person in public life, other than a member or staff member of the Commission, who receives a gift worth more than \$1 000 shall make a report of that fact to the Commission in such form as may be prescribed stating the name and address of the donor, the description and approximate value of the gift and whether, in the opinion of the donee, the gift is a personal or an official gift.</p>		<p>It should be considered to prohibit receiving personal gifts, especially above a certain high value such as \$1,000.</p> <p>The \$1,000 value should be significantly lowered.</p>
<p>45.4 This section shall not apply to any personal gift received by a specified person in public life from a relative or friend.</p>		<p>The intention behind this section is understood but the wording could leave it open to manipulation.</p>

		<p>In practice, public officials who receive a “corruption” gift, will simply not report it. So only official legal gifts will end up being reported under this section.</p> <p>Examples of appropriate “official legal gifts” are per diems and flight tickets to participate in international trainings, protocol recognitions, international renowned awards...etc. For instance, one concrete example pertains to when Guatemala’s Attorney General won the Life Achievement Anti-Corruption Award from the UN (worth thousands of dollars).</p> <p>Consider wording that would “prohibit public officials from receiving gifts from the public”, and list a series of exceptions, such as protocol recognitions or awards from governments, international organizations or NGOs; DSAs and flight tickets to participate or to facilitate trainings, from governments, the academia, international organizations, NGOs.</p>
<p>51. A person commits an act of corruption where he</p> <ul style="list-style-type: none"> a. solicits or accepts, whether directly or indirectly, any article, money or other benefit for himself or another person for doing an act, or for omitting to do an act, in the exercise of his functions as a public official; b. performs or omits to perform, in the exercise of his functions as a public official, any of his duties in a public body for the purpose of obtaining any benefit for himself or another person; c. offers, promises or gives, directly or indirectly, to a pubic official any article, money or other benefit, for doing an act, or omitting to do an act, in the exercise of his functions as a public official; d. knowingly or recklessly allows his private interest to conflict with his public duties or to improperly influence his conduct in the exercise of his functions as a public official; 		<p>Please add:</p> <p>51. a. (...) other <u>undue</u> benefit for himself “or herself” or another person “or entity” (...)</p> <p>51.b Add the word ‘ undue’ before benefit and after a another person ‘ or entity’</p> <p>51.c: Typographical error <u>on</u> the Word “public”.</p> <p>51.c Consider adding: (...) money or other benefit, “for the official himself or herself or another person or entity”, (...). This element is held as mandatory under the UNCAC.</p> <p>51.d. Add ‘or her’ after word ‘his’</p>

<p>e. improperly uses for his benefit or that of a third party, any classified or confidential information obtained in the exercise of his functions as a public official;</p> <p>f. communicates to any person not authorised to receive it, any classified or confidential information obtained in the exercise of his functions as a public official with a view to assisting the person to obtain a benefit;</p> <p>g. improperly uses for his benefit or that of a third party, any property belonging to the Government or a statutory body or state-owned company to which he has access as a result of, or in the course of, the exercise of his functions;</p> <p>h. improperly influences the appointment of, or the dismissal or suspension of, or other disciplinary action against, a public official;</p> <p>i. hinders, delays or interferes with the exercise of a function of a public official with a view to obtaining any benefit for himself or another person;</p> <p>j. pursues, in the exercise of his functions as a public official, a course of conduct with respect to another public official which amounts to offensive sexual comments, gestures or physical contact or other conduct of a similar nature;</p> <p>k. pursues, in the exercise of his functions as a public official, a course of conduct by which he exploits his position or authority for his sexual gratification.</p>	<p style="text-align: center;">Article 18. Trading in influence</p> <p>Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:</p> <p>(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;</p> <p>(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.</p> <p style="text-align: center;">Article 21. Bribery in the private sector</p> <p>Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:</p> <p>(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order</p>	<p>51.e. Consider adding: (...) a third party "or entity", (...) (unless the wording 'third party' is interpreted via jurisprudence as inclusive of legal persons and others). Add 'or her' after word 'his'.</p> <p>51.f. Consider adding: (...) the person, "a third party or an entity" to obtain a benefit; (unless the wording 'third party' is interpreted via jurisprudence as inclusive of legal persons and others).</p> <p>51.g. Consider the following modification in this paragraph or another:</p> <p>commits embezzlement, misappropriation or other diversion for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value belonging to the State, the Government or a statutory body or state-owned company, to which he has access as a result of, or in course of the exercise of his or her functions;</p> <p>51.j. This is not an act of corruption as such, although it is highly inappropriate conduct that must be reflected in any code of ethics and conduct. Nevertheless, Barbados may wish to criminalize 'sextortion'</p> <p>51.k. Add 'or she' after word 'he' and 'or her' after word 'his'</p> <p>General Comment:</p> <p>Barbados should consider including other UNCAC offenses such as trading in influence (Art. 18), as well as bribery in the private sector (Art. 21) and embezzlement in the private sector (Art 22), Obstruction of Justice (Art 25), Liability of Legal Persons (Art 26)</p> <p>Note that the wording 'entity' intends to fulfill UNCAC requirements. The concept refers to legal persons and others.</p>
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that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

Article 22.

Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

Article 25.

Obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 26.
Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

52.1. A public official who, in relation to a contract for the procurement of any goods, works or services:

- a. accepts, agrees or offers to accept, whether directly or indirectly, any benefit for himself or for another person for awarding a tender to a particular person;
- b. gives, agrees or offers to give, whether directly or indirectly, any benefit to another person for the purpose of obtaining any benefit for himself or for another person as a reward for awarding a tender to a particular person; or
- c. gives to a person confidential information in order to enable that person to tender or not to tender in a particular manner in order to obtain an unfair advantage in tendering,

commits an act of corruption.

52.2. A person who, in relation to a contract for the procurement of any goods, works or services:

- a. offers to a public official, whether directly or indirectly, any benefit for himself or for another person for awarding a tender to a particular person; or
- b. offers to a public official, whether directly or indirectly, any benefit for the purpose of obtaining any benefit for himself or for another person as a reward for awarding a tender to a particular person,

commits an act of corruption.

Article 34.
Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

52.1.a Consider adding: (...) benefit for himself **or herself** or another person "**or entity**" (...). Substitute: 'accepts, agrees or offers to accept,..' for '**solicits or accepts**'

52.1.b: Add: (...) benefit for himself **or herself** or another person "**or entity**". Substitute: 'accepts, agrees or offers to accept,..' for '**solicits or accepts**'

52.1.c: Consider adding (...) in a particular manner "**and /or**" in order to obtain and unfair (...)

52.2.a and 52.2.b Consider adding:

"(...) any benefit for himself **or herself** or for another person **or entity** (...)

Consider:

- 52.2.a After 'offers' add '**promises or gives,..**'
- 52.2.b The word 'benefit' the word '**undue**'

Consider including a provision to annul or rescind a contract, withdraw a concession or take other remedial action to address consequences of corruption, in line with Art. 34 of the UNCAC.

<p>54.2 A person who possesses or is in control of any property knowing that the property or part of the property or proceeds from the property were obtained or derived, directly or indirectly, from the commission of an act of corruption, is guilty of an offence and is liable</p> <ol style="list-style-type: none"> a. on conviction on indictment to a fine of \$20 000 or to imprisonment for 5 years or to both; b. on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both; c. and to be disqualified from holding any public office for a period of 5 years from the date of conviction for the offence. <p>54.3 A person who:</p> <ol style="list-style-type: none"> a. aids, assists, is an accessory after the fact to, participates in any manner in the commission of or conspires to commit, an act of corruption; or b. procures the commission of an act of corruption or attempts or counsels another to commit, an act of corruption, <p>is guilty of an offence and is liable</p> <ol style="list-style-type: none"> i. on conviction on indictment to a fine of \$20 000 or to imprisonment for 5 years or to both; ii. on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both; iii. and to be disqualified from holding any public office for a period of 5 years from the date of conviction for the offence. 	<p style="text-align: center;">Article 24. Concealment</p> <p>Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.</p>	<p>Article 57.3 of this Bill states:</p> <p>In imposing a fine pursuant to subsection (2) on a person found guilty of an offence under that subsection, the court shall have regard to the value of the property or pecuniary resource in the possession of the person, which cannot be accounted for by his known sources of income or other lawful means of acquisition of property or pecuniary resources and the fine shall be equivalent to one and one half times the value of the property or pecuniary resource found to be in the possession of the person and for which no such account can be made.</p> <p>Consider the same fine relevant to Article 54.</p> <p>54.2.c. It is worthwhile to note that some jurisdictions are debating permanent disqualification.</p>
<p>60.1 A person who has reasonable grounds to believe that another person has contravened this Act may complain in writing to the Commission stating</p> <ol style="list-style-type: none"> a. the particulars of the contravention; b. the nature of the evidence that the complainant proposes to produce in support of the complaint; c. such other particulars as may be prescribed. 		<p>Consider allowing for Anonymous complaints and the establishment of a hotline.</p>

<p>60.2 A complaint to the Commission pursuant to this section may be presented in person or may be sent by registered post to the Chairman.</p>		
<p>62.1 Where the Commission receives a complaint, the Commission may, on examination of the complaint</p> <ul style="list-style-type: none"> a. reject the complaint where it considers that the complaint is frivolous or does not relate to a matter the Commission is empowered to address; b. hold an inquiry into the complaint, giving the person alleged to have contravened this Act an opportunity to be heard; a. on conclusion of the inquiry, forward the complaint, and any documents and report containing the recommendations of the Commission to the Director of Public Prosecutions where it considers that an offence may have been committed. 		<p>Consider defining a limited period of time for the investigation and conclusion which should be long enough to allow for complex investigations to take place.</p>
<p>64. Where an allegation is made in public that a specified person in public life has committed a contravention of this Act, a person desiring to make a complaint to the Commission relative to the alleged contravention shall lodge a complaint with the Commission not later than 3 months from the date on which the public allegation was first made.</p>		<p>Should use the term "public official" (inclusive of specified person in public life) instead of "specified person in public life".</p> <p>This provision breaches article 29 of the UNCAC on statutes of limitations. Any person should be able to present a complaint and the prosecution services should also have full freedom of investigation within long statutes of limitations. The proposed article 64 as it is, establishes a statute of limitation of 3 months since the date of a public allegation being made.</p>
<p>65.2 The Commission shall keep the Code of Conduct under review and may, after public consultation, amend or replace the code as it considers necessary or desirable.</p>		<p>May consider assigning additional functions to the Commission such as the publication and dissemination of the Code of Conduct, as well as the design of training programmes.</p> <p>Consider adding at the end of Article 65.2. '...in line with international standards'.</p>
<p>65.3 The Commission shall inquire into or investigate every contravention of the Code of Conduct by a public official where it receives a complaint or report of the contravention; or is satisfied that there are reasonable grounds for it to carry out an investigation on its own initiative.</p>		<p>Should allow for anonymous complaints.</p>

<p>67. 3 The Commission shall send a copy of the report, including copies of evidence and material documents submitted during the inquiry or investigation to</p> <ol style="list-style-type: none"> a. the public official who was subject to the inquiry or investigation; b. and the following persons in the following cases: <ol style="list-style-type: none"> i. the head of the Public Service and the Governor-General, in the case of an alleged contravention of the Code of Conduct by a public officer; ii. the Speaker of the House of Assembly or President of the Senate, as the case may be, and the Governor-General, in the case of an alleged contravention of the Code of Conduct by a member of the House of Assembly or the Senate; iii. the Governor-General, in the case of an alleged contravention of the Code of Conduct by the head of the Public Service or by the Speaker of the House of Assembly or the President of the Senate; and iv. the public body in relation to which the public official is a public official, in the case of an alleged contravention of the Code of Conduct by a public official other than a public official referred to in subparagraphs (i) to (iii). 		<p>May consider to also send a copy of the report to the reporting person.</p>
<p>67. 4 A person who receives a report from the Commission pursuant to subsection (3)(b) in which the Commission has determined that the public official subject to the inquiry or investigation contravened the Code of Conduct shall</p> <ol style="list-style-type: none"> a. decide without delay what measures shall be taken, if any, in response to the report, and shall implement such measures without delay; b. and inform the Commission, as soon as practicable, but not later than 30 days after receiving the report <ol style="list-style-type: none"> i. of the follow-up actions or disciplinary measures that will be or have been taken against the public official in response to the report; 		<p>Should consider to inform the reporting person about the measures taken.</p>

<ul style="list-style-type: none"> ii. that no further action is required to be taken against the public official in response to the report; or iii. that no decision has been made as to the measures to be taken in response to the report, of the reasons for the delay, and of the date by which a decision will be made and sent to the Commission. 		
<p>68.1 A public official shall benefit from the protections in sections 76 and 77 where he makes a protected disclosure, in good faith</p> <ul style="list-style-type: none"> 1. to a person referred to in section 69, 70, 71 or 72, of a kind described in that section; 2. of an exceptionally serious matter, in the circumstances described in section 73; or 3. in the circumstances described in section 74. <p>68.2 A protected disclosure is a disclosure that</p> <ul style="list-style-type: none"> a. an offence has been committed, is being committed or is likely to be committed; b. a person has failed, is failing or is likely to fail to comply with a legal obligation to which he is subject; c. a miscarriage of justice has occurred, is occurring or is likely to occur; d. the health or safety of an individual has been, is being or is likely to be endangered; e. the environment has been, is being or is likely to be damaged; f. or information tending to show a matter within any of paragraphs (a) to (e) has been, is being or is likely to be deliberately concealed. 	<p style="text-align: center;">Article 33. Protection of reporting persons</p> <p>Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.</p>	<p>68.1 May consider not limiting the protection to public officials only.</p> <p>68.1 Should consider including discloser to DPP.</p> <p>68.1 If “good faith” is used, it might make sense to clarify what is meant by this (e.g. reasonable belief that the information that was disclosed was substantially true and related to a potential reportable wrongdoing). Intentional false reporting would not warrant protection, but if the person did an “honest mistake” or the full investigation did not render sufficient evidence this should not be punished.</p> <p>68.2.a he has reasonable ground to believe a violation to this Act or the Code of Conduct has been, is being or is likely to be committed.</p> <p>Reporting channels:</p> <p>It is positive to cover not only corruption offences but also other matters including risks to health and safety or to the environment. However, this would mean that also other regulators (Health and Safety Regulators) should be recipients for the “external disclosure to a regulator or law enforcement” and not only the Commission as foreseen in Article 72. The Commission would presumably not have the power or capacities to investigate environmental risks or similar.</p>
<p>69 A public official may make a disclosure in connection with his employment to</p> <ul style="list-style-type: none"> a. his employer; or 		<p>It is not clear if Article 69 (b) refers to external disclosure of if it is an alternative internal disclosure channel.</p>

<p>b. another person, where the public official reasonably believes that the matter disclosed relates mainly to that person’s conduct or to another matter for which that person has legal responsibility.</p>		<p>With regard to internal disclosures for organisations of a certain number of staff, it would be useful to provide staff with alternative options. E.g. direct supervisor or reporting to a compliance officer or other designated person within the organisation.</p>
<p>73. A public official may disclose a matter of an exceptionally serious nature where:</p> <p>a. he reasonably believes that the information disclosed, and any allegation contained in it, are substantially true;</p> <p>b. he does not make the disclosure for the purposes of personal gain; and</p> <p>c. it is reasonable for him to make the disclosure, having regard in particular to the identity of the person to whom the disclosure is made.</p> <p>74. 1. Subject to subsection (2), a public official may make a disclosure in any of the following circumstances where</p> <p>a. he reasonably believes that if he were to make the disclosure to his employer, his employer would subject him to a detriment;</p> <p>b. he reasonably believes that</p> <p> i. he cannot make the disclosure to the Commission because the matter to be disclosed is not one that the Commission is willing or able to deal with; and</p> <p> ii. if he were to make the disclosure to his employer, it is likely that evidence relating to the matter would be concealed or destroyed;</p> <p>c. he has previously made a disclosure of substantially the same information to his employer or to the Commission.</p>		<p>73. May consider defining "exceptionally serious matter".</p> <p>Articles 73 and 74: To me it is not clear when article 73 applies. Is this for external disclosures e.g. to the media or public? If not, it would be useful to clarify which requirements need to be fulfilled for which type of disclosure <i>(a) internal, b) external to a regulator or law enforcement, c) external to the media or public</i>.</p>
<p>76.1 An employer or any person in authority over a public official who subjects the official to a detriment by reason only of his having made a protected disclosure pursuant to section 68 is guilty of an offence and is liable, on summary conviction, to a fine of \$15 000 or to imprisonment for 2 years or to both.</p>		<p>76.1 An employer or any person in authority over a public official who subjects the official to a detriment by reason only of the official having made a protected disclosure pursuant to section 68 is guilty of an offence and is liable, on summary conviction, to a fine of \$15 000 or to imprisonment for 2 years or to both.</p>

<p>76.2 A public official who makes a protected disclosure pursuant to section 68 does not break a duty of confidentiality to any person by reason only of having made the disclosure.</p>		<p>Furthermore, consider including the prohibition to dismiss an employee for making a protected disclosure, and his or her restitution and compensation if he or she was dismissed.</p> <p>Protection: The protection in this law is limited to criminalization of retaliatory measures. Whilst it can be considered an advanced approach to criminalise such behaviour, it should still be feasible for the whistle-blower to seek damages or be reinstated if he/she was fired, demoted or similar. In the case that the Labour Law of Barbados does not comprise relevant provisions which could be used by the whistle-blower for this purpose, this protection could be included herein...potentially even the possibility to get “interim” protection (such as an interim reinstatement whilst the case was in trial).</p> <p>It would also be useful to integrate provisions that deal with confidentiality into the law or regulations for the implementation of the law. Meaning that the receiving persons/entities should protect the identity of the reporting person.</p>
<p>1. The Commission shall consist of</p> <ol style="list-style-type: none"> a. a chartered or certified accountant of at least 7 years’ standing appointed by the Governor-General after consultation with any body which in his opinion represents chartered or certified accountants in Barbados; b. a person who holds or has held the office of judge in a superior court of record in any part of the Commonwealth, appointed by the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition. c. an attorney-at-law with at least 10 years’ standing whose name appears on the Roll of Attorneys-at-law pursuant to the <i>Legal Profession Act</i>, Cap. 370A, appointed by the Governor-General, after consultation with the Council of the Barbados Bar Association; 		<p>May consider involving civil society in the selection of the Members of the Commission.</p> <p>May include additional eligibility conditions, such as being recognized for their integrity by all segments of society.</p> <p>Perhaps it can be considered to remove “which in his opinion”.</p>

<ul style="list-style-type: none"> d. a member of the clergy, appointed by the Governor-General, after consultation with the Prime Minister and Leader of the Opposition; e. a person appointed by the Governor-General on the advice of the Prime Minister; f. and a person appointed by the Governor-General on the advice of the Leader of the Opposition. 		
<p>2. A person shall not be qualified to be appointed as a member of the Commission where</p> <ul style="list-style-type: none"> a. the person is a member of the House of Assembly or the Senate; b. has, at any time during the period of 3 years preceding the appointment, been a public officer; c. has, at any time during the period of 5 years preceding the appointment, held office in a political party; or d. would otherwise be disqualified in accordance with section 38 or 44 of the <i>Constitution</i>, as the case may be, to be a member of the House of Assembly or the Senate. 		<p>In line with the UNCAC, a judge is considered a public official.</p> <p>Consider including any person who has been convicted of corruption.</p>
<p>3. All members of the Commission shall be appointed by instrument in writing and, subject to paragraphs 2, 5 and 6, shall hold office for a period of 3 years and be eligible for re-appointment.</p>		<p>May consider a longer period of tenure, beyond the term of a government.</p>
<p>83. Regulations The Attorney-General may make Regulations generally for giving effect to this Act and, in particular, for any matter required to be prescribed by this Act; any matter in relation to any report, investigation or inquiry under this Act; and any matter concerning the procedure of the Commission.</p>		<p>Consider review to ensure that the independence of the Commission is not compromised.</p>