MECHANISM FOR FOLLOW-UP ON THE IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION
Thirty-Third Meeting of the Committee of Experts
September 9 - 12, 2019
Washington, D.C.

REPUBLIC OF TRINIDAD AND TOBAGO
FINAL REPORT
(Adopted at the September 12, plenary session)
SUMMARY

This Report contains a comprehensive review of the implementation of the recommendations that were formulated to Trinidad and Tobago in the Report of the Second Round with respect to paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption, which refer, respectively, to systems of government hiring and procurement of goods and services and for the protection of public servants and private citizens who, in good faith, report acts of corruption. Reference is also made, when appropriate, to new developments with respect to the implementation of these provisions.

In addition, the Report includes a comprehensive review of the implementation in Trinidad and Tobago of paragraphs 3 and 12 of Article III of the Convention, which refer, respectively, to measures intended to create, maintain and strengthen instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities; and a study of further preventive measures that take into account the relationship between equitable compensation and probity in public service. These provisions were selected by the MESICIC Committee of Experts for the Fifth 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 Fifth Round, including the criteria set out therein for guiding the review based on equal treatment for all states parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the states parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out mainly taking into account Trinidad and Tobago’s Response to the Questionnaire and information gathered during the on-site visit conducted between from April 2-4, 2019 by the representatives of Belize and St-Kitts and Nevis, with the support of the Technical Secretariat. During that visit, the information furnished by Trinidad and Tobago was clarified and supplemented with the opinions of civil society organizations.

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

With respect to systems of government hiring, all recommendations remain valid and some have been reformulated. Recommendations formulated to Trinidad and Tobago, include: consider expanding the mandatory requirement of competitive examinations for permanent appoints to all classes in the Civil Service; adopt mechanisms that guarantee that all vacancies open to the general public are advertised; adopt mechanisms that provide clearly defined criteria for the advertisement of hiring opportunities in the Public Service; adopt measures and criteria that ensure that appointments to the Judicial and Legal Service are based on the principle on merit; adopt provisions that determine the manner vacancies for offices in the Judicial and Legal Service are advertised; clarify and expand the selection criteria for positions on contract; strengthen the legal provisions regarding the Service Commissions so that they
have the necessary financial, human and technological resources to carry out their functions and ensure that the laws regarding the appointment process are followed; increase training programs for those who manage the selection and staffing processes in the Public Service, within available resources; increase training and induction programs for employees who have recently entered the Public Service, within available resources; adopt a database to identify the categories of judicial review cases and their results; adopt a control mechanism to address noncompliance in relation to the registration of contracted officers in the relevant databases; and compile and publish statistics regarding results on the selection processes for entry in the Public Service as well as on the administrative and judicial processes.

Some of the new recommendations formulated to Trinidad and Tobago include: ensure that the website of the Service Commissions Department is regularly and timely updated and provide the Public Service Academy with the necessary human, technological and financial resources, within available resources, for the proper performance of its functions.

With respect to systems of government procurement of goods and services, most of the recommendations remain valid and some have been reformulated. Reformulated recommendations include: consider bringing into force the outstanding provisions of the Public Procurement and Disposal of Public Property Act, 2015 (as amended) and adopting the corresponding regulations, such that the new procurement regulatory framework is fully proclaimed; implement provisions that provide for objective selection factors or criteria for the evaluation of bids; implement provisions that outline clear and uniform procedures for the selection of contractors when either public tendering or selective tendering procedures are used; implement provisions that require prior planning sufficiently in advance of the launch of procurement process to assess the appropriateness and timeliness of the purchase; strengthen existing mechanisms for the audit, control and oversight of the government procurement system; strengthen and increase the scope of use of electronic communications; establish a centralized registry of contractors that is mandatory for all State bodies and dependencies; implement a mechanism to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons; implement specific provisions to challenge the procurement process at the administrative level; and maintain and publish statistics on contracts awarded, including on judicial review applications regarding procurement processes.

Some of the new recommendations formulated include: ensure that the Office of Procurement Regulation has the necessary trained personnel and resources to carry out its functions; provide the Office of Procurement Regulation with the necessary human and financial resources for the maintenance and sustainability of its website; and prepare detailed statistics on sanctions and suspensions imposed on suppliers and contractors who infringe contracting rules.

In relation to the protection of public servants and private citizens who, in good faith, report acts of corruption, recommendations that remain valid include: adopt mechanisms for reporting, such as anonymous reporting that guarantee the personal security and the confidentiality of the identity of public servants and private citizens, without prejudice to the right of due process; establish mechanisms to report threats or reprisals against whistleblowers, stating the appropriate authorities to process such requests and provide protection; adopt a comprehensive legal and regulatory framework that provides integral protection to witnesses who, in good faith, report acts of corruption, including protection of their identities before, during and after administrative proceedings; establish mechanisms that facilitate international cooperation regarding the protection of whistleblowers and witnesses; establish a simplified application process for the protection of whistleblowers; adopt provisions that provide for administrative and criminal sanctions for failure to observe the rules and/or duties relating to the
protection of whistleblowers; adopt provisions that clearly delineate the respective competence of judicial and administrative authorities in relation to witness protection; and maintain results on the number of witnesses that request entry into the protection program established under the Justice Protection Act, Chap. 5:33 due to an inquiry, an investigation, or prosecution that involves an act of corruption.

A new recommendation was also formulated to ensure that the penalties and sanctions under the Integrity in Public Life Act, Chap. 22:01 do not discourage potential whistleblowers who may want to report acts they reasonably suspect to be misconduct under the Act or an offense under the Prevention of Corruption Act, Chap. 11:11, but whom may feel dissuaded to do so, should allegations be found not proven upon further investigation.

With respect to acts of corruption, some recommendations regarding the applicability of offences set out in Sections 45 and 46 of the Proceeds of Crime Act, Chap. 11:27 to public servants were deemed to have been satisfactorily considered, while other recommendations regarding the implementation of provisions that criminalize other acts or omission in the discharge of a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party other than as set out in Section 5 of the Prevention of Corruption Act, Chap. 11:27 pursuant to Article VI(1)(c) of the Convention, were considered to require additional attention. Some of the new recommendations formulated to Trinidad and Tobago, for its consideration are noted as follows: ensure that the Anti-Corruption Investigation Bureau maintains results on the outcome investigations, broken down by act of corruption, in order to identify challenges and recommend corrective measures; consider adopting or strengthening the institutional mechanisms necessary for the harmonious development of the functions between the different institutions involved in matters of corruption so as to allow for effective collaboration amongst them; implement a mechanism whereby the Office of the Director of Public Prosecutions provides feedback to government bodies regarding the outcome of the referrals of wrongdoings; maintain statistics, on the part of the Office of the Director of Public Prosecutions, on the outcome of rulings, broken down by act of corruption; maintain statistics, if possible, for the last five years, on the part of the Office of the Director of Public Prosecutions, on the number of cases investigated; as well as to maintain statistics, if possible, for the last five years on cases before courts in relation to acts of corruption.

For the review of the first provision selected for the Fifth Round that refer to instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as set out under Article III, paragraph 3 of the Convention, Trinidad and Tobago selected the Public Service Commission due to the important role it plays in central government as it relates to human resources.

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

Some of the recommendations formulated to Trinidad and Tobago, for its consideration, with respect to this topic, are noted as follows: consider making participation to induction trainings and programmes...
mandatory for all newly hired personnel; consider standardizing induction trainings to ensure that training is consistent across Ministries and Department; consider adopting provisions to ensure that personnel under the purview of the Public Service Commission are informed of their responsibilities and functions when those responsibilities and functions change, and that they receive the adequate training needed to perform those new functions; consider adopting the necessary measures, within available resources, to strengthen the Public Service Academy and ensure that it is provided with the necessary financial, technological, and human resources to perform its functions properly; ensure that Human Resources Units identify long-term training needs in their Ministries and Departments and plan accordingly, and adopt mechanisms to facilitate close coordination with the Public Service Academy with respect to training needs; consider adopting provisions in relation to instructions to personnel under the purview of the Public Service Commission to ensure the proper understanding of the ethical rules governing their activities; carry out training programs for persons exercising public functions regarding their responsibilities under the Code of Conduct in the Integrity in Public Life Act, Chap. 22:01; consider adopting the necessary provisions and/or measures to ensure that training to personnel under the purview of the Public Service Commission regarding the ethical rules that govern their activities, are not only offered when they begin performing their functions, but also when a change of duties calls for a comprehensive understanding of a different set ethical rules or when the aforesaid rules change or are amended; consider including provisions that clearly specify the governing body to which personnel may resort to obtain information in relation to doubts regarding the ethical rules governing their activities; consider adopting provisions that clearly specify the governing body responsible for defining, steering, giving guidance or supporting the manner in which personnel are informed of the ethical rules governing their duties, and for overseeing that this is done thoroughly; adopt the necessary measures to facilitate the use of technology in trainings so as to allow for the possibility of offering distance learning opportunities online; and compile detailed statistics on instructions imparted to personnel under the purview of the Public Service Commission to ensure proper understanding of their responsibilities and the ethical rules governing their activities.

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

1. Content of the Report

[1] As agreed upon by the Committee of Experts (hereinafter “Committee”) of the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) at its Twenty-Fourth Meeting,2 this Report will first refer to follow up on implementation of the recommendations formulated to Trinidad and Tobago in the Report of the Second Round, which the Committee found required additional attention in the Report of the Third Round.3

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

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

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

2. Ratification of the Convention and adherence to the Mechanism


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

I. SUMMARY OF INFORMATION RECEIVED

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1 This report was adopted by the Committee in accordance with the provisions of Articles 3 (g) and 25 of the Committee's Rules of Procedure, at the September 12, 2019 plenary session, within the framework of the Thirty-Third Meeting of the Committee, held at OAS headquarters in Washington, D.C., from September 9 to 12, 2019.

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

3 Reports for Trinidad and Tobago for all rounds of review may be found online, available at: http://www.oas.org/en/sla/dlc/mesicic/paises-pais.html?c=Trinidad%20and%20Tobago.
1. Response of Trinidad and Tobago

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

The Committee also notes that Trinidad and Tobago gave its consent for the on-site visit, in accordance with provision 5 of the Methodology for Conducting On-Site Visits. As members of the review subgroup, the representatives of Belize and Saint Kitts and Nevis conducted the on-site visit from April 2-4, 2019, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this Report, and the agenda of meetings is attached thereto, in keeping with provision 34 of the above-mentioned Methodology.

For its review, the Committee took into account the information provided by Trinidad and Tobago up to April 4, 2019, as well as that furnished and requested by the Technical Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure; the Methodology for Follow-up on the Implementation of the Recommendations Formulated and Provisions reviewed in the Second Round and for Analysis of the Convention Provisions Selected for the Fifth Round (hereinafter “Methodology adopted by the Committee for the Fifth Round”); and the Methodology for Conducting On-Site Visits.

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

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

Furthermore, in the course of the on-site visit, conducted in the country under review from April 2-4, 2019, information was collected from other civil society organizations, professional associations, and academics invited to participate in meetings to that end, in keeping with the provisions contained in provision 27 of the Methodology for Conducting On-Site Visits. A list of those persons is included in the agenda for that visit, which is appended hereto. Pertinent parts of this information are reflected in the appropriate sections of this Report.

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

8 Methodology for Conducting On-Site Visits, supra note 5.
9 Ibid.
[12] The Committee will first refer to progress made and new information and developments in Trinidad and Tobago with respect to the recommendations formulated and measures for their implementation suggested by the Committee in its Report of the Second Round, that were deemed to require additional attention in the Report of the Third Round, and it will proceed to take note of those that have been satisfactorily considered and those that require additional attention from the country under review, in which case it will refer to the ongoing relevance of those recommendations and restate or reformulate them, as applicable, in accordance Section V of the Methodology adopted by the Committee for the Fifth Round.

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

[14] Second, where applicable, it will refer to new developments in Trinidad and Tobago in respect of the provisions of the Convention selected for the Second Round regarding such matters as the legal framework, technological developments and outcomes, and formulate any observations and recommendations, as applicable.

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

1.1. SYSTEMS OF GOVERNMENT HIRING

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

Recommendation 1.1:

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

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

Assess the relevance of expanding the mandatory requirement of competitive examinations for permanent appointment to all classes in the Civil Service.

[15] With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review presented the following information:

"Under regulation 12(1) of the Public Service Commission Regulations, 1966, candidates for permanent appointment to public offices in the clerical or secretarial classes and to such other

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12 Methodology adopted by the Committee for the Fifth Round, supra note 7.
classes in the Public Service as the Public Service Commission may specify, are selected on the basis of written competitive examinations and interviews.”

[16] The Committee notes that the information was also presented and reviewed in the Report of the Second Round and that the said regulation served as the basis of the recommended measure.

[17] In that regard, the Committee wishes to recall the reasons for the foregoing recommendation, as set out in the Report of the Second Round:

“The Regulations further provide the method of entry into these Services, which in the case of the Civil Service, under Regulation 12(1), is based on written competitive examinations and interviews. However, this provision makes this method of entry mandatory for solely the clerical and secretarial classes, leaving discretion on its applicability to other classes such as the administrative, professional, scientific, technical and manipulative class (such as skilled and general laborers). The Committee therefore advises the Republic of Trinidad and Tobago to assess the relevance and necessity of applying this mandatory requirement to other posts within the public service. If the basis upon which the requirement was applied to the secretarial and clerical classes is the same for other classes, then the requirement should also be applied to those other classes, in the interest of equity and efficiency.”

[18] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to the implementation thereto. (See Recommendation 1.1.3.1 of Section 1.1.3 of Chapter II of this Report).

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

Ensure that when a position is open to the general public in the Civil Service, it is advertised to the general public and not left to the discretion of the Public Service Commission, as well as adopt, through the appropriate legislative or administrative procedures, mechanisms that provide clearly defined criteria for the advertisement of hiring opportunities for all vacancies within the public service that ensure use is made of the mass media (e.g. newspapers or web pages).

[19] With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review presented the following information:

“Employment is often not preceded by advertisements and the listing of qualifying criteria and expected duties.”

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16 Response to the Questionnaire, Section I, supra note 10, p. 5.
It is worth noting, from the outset, that the power to appoint persons to hold or act in offices, which Section 121(1) of the Constitution of the Republic of Trinidad and Tobago, 1976, vests with the Public Service Commission. In that regard, the responsibly to give notice of vacancies rests with the Director of Personnel Administration, the administrative head of the Service Commissions Department, whom, pursuant to Regulation 13(4) of the Public Service Commission Regulations (Amendment), “shall, from time to time, by circular memorandum or by publication in the Gazette,” give notice of such vacancies.

Notwithstanding Regulation 13(4), a Permanent Secretary or Heads of Department, may also, following the amendments to the Public Service Commission Regulations, 1966 and pursuant to Regulation 13(5), give notice of vacancies by circular memorandum and through publication in the Gazette. However, such notices are only limited to vacancies that exist in their particular Ministry or Department. They must additionally be carried out with the consent of the PSC and in consultation with the DPA.

In that respect, a Permanent Secretary or Head of Department may be authorized to advertise vacancies under Regulation 13(5) and applications for such vacancies, may be made directly to the Permanent Secretary or Head of Department pursuant to Regulation 13(6) instead of to DPA as provided by Regulation 11. While not a delegation so to speak—Ministries and Departments must still seek approval from the PSC to advertise—Permanent Secretaries and Heads of Departments seem to have been given a more extensive role in the recruitment process. In this context, the Committee considers this information in relation to advertisement in the Civil Service to be a new development.

The country under review also provided a Manual, prepared to assist Permanent Secretaries and Heads of Departments in the recruitment and selection of officers and persons for offices that are specific to their Ministries or Departments, entitled “Guidelines for the Selection of Candidates” (hereinafter, “Manual”). The Manual was developed in accordance with Regulations 13(5) to 13(7), 15 and 16(3) to (6) of the Public Service Commission Regulations, 1966 (as amended) and contains several sets of guidelines, as part of a series, on the different functions that Permanent Secretaries and Heads of Departments may be called to perform and authorized to exercise in relation to recruitment and selection, including the advertisement of vacancies for appointments in the Civil Service.

The guidelines additionally stress that authorized functions, such as advertising, screening, shortlisting and assessing candidates must be carried out and exercised in compliance with the specifications of the Public Service Commission provided in the guidelines, as appointments to the civil service, in keeping with its constitutional mandate, may only be made through the Public Service Commission, as per its constitutional mandate.

With respect to advertisement, the Manual contains two of sets of guidelines on the subject: “Guidelines for Obtaining the Approval of Public Service Commission to

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18 The Director of Personnel Administration is also the Principal Advisor and Chief Executive Officer of the Public Service Commission.
20 Ibid.
21 Ibid.
23 Ibid., p. 2.
Advertise/Screen/Shortlist/Assess for Offices Specific to Ministries and Departments”\textsuperscript{24} (hereinafter, “Guidelines for Obtaining Approval to Advertise”) and “Guidelines for the Issuance of a Notice of Vacancy and Advertisement for Offices specific to Ministries and Departments”\textsuperscript{25} (hereinafter, “Guidelines for the Issuance of a Notice of Vacancy and Advertisement”). Each set includes specimens of relevant documentation, templates and checklists to assist Permanent Secretaries and Heads of the Departments in their duties as they relate to advertisement and, as such, foster greater compliance with the said guidelines.

[26] The “Guidelines for Obtaining the Approval of Public Service Commission to Advertise/Screen/Shortlist/Assess for Offices Specific to Ministries and Departments” set out the procedure to obtaining approval from the Public Service Commission to advertise a vacancy as well as the conditions and requirements to obtain such approval. According to the guidelines, the obtain approval from the Public Service Commission, the following conditions/requirements must be satisfied:

\textit{“Conditions/Requirements}

\begin{enumerate}[i)]
\item There is no suitable candidate already in the Ministry/Department available for the recruitment to the office; if such incumbent(s) exists, they must be identified;
\item The office must be reflected in the Annual Estimates of Expenditure;
\item An approved Job Specification (as obtained from the Chief Personnel Officer) for the office which is advertised must be available;
\item and a *vacant office exist and is properly identified.”\textsuperscript{26}
\end{enumerate}

[27] Furthermore, the guidelines provide the procedure to obtain approval when a vacancy that is to be filled by competition arises:

\textit{“Principles and Procedures}

\begin{enumerate}[i)]
\item When a vacancy arises as provided for in Regulation 13(1) and the Permanent Secretary/Head of Department considers that the appointment is to be made by competition: he/she shall observe the following guidelines:
\item in consultation with the Director of Personnel Administration (DPA), request in writing the approval of the PSC to initiate the process of advertising, screening, shortlisting and assessing candidates for offices that are specific to the Ministry/Department;
\item indicate by memorandum, whether the Ministry/Department desires to have the office advertised within or outside of the Public Service and include a justification for the request. [A sample of such a recommendation/request (memorandum and statement) is at Appendix;]
\item obtain in writing (by memorandum) the consent of the PSC to either advertise, screen, shortlist and/or assess candidates within and/or outside of the Public Service; […].”\textsuperscript{27}
\end{enumerate}

[28] The list of the documentation that must be entered into the Ministry/Department’s file is also specified: a minute sheet to be endorsed by the PSC at every stage of the process; a copy of the request for

\textsuperscript{24} Guidelines for Obtaining the Approval of Public Service Commission to Advertise/Screen/Shortlist/Assess for Offices Specific to Ministries and Departments, available at: \url{http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic5_tto_annex2.pdf} (“Guidelines for Obtaining Approval to Advertise”).


\textsuperscript{26} Guidelines for Obtaining the Approval to Advertise, p. 2.

\textsuperscript{27} \textit{Ibid.}, p. 2.
the filing of a vacant office; and the memorandum from the DPA with the PSC’s approval. Monitoring mechanisms have also been created to ensure that requests meet the specified requirements and that approval from the PSC has been properly obtained “for advertisement of the office within the public service and/or outside the public service.”

[29] As for the latter set, the “Guidelines for the Issuance of a Notice of Vacancy and Advertisement for Offices specific to Ministries and Departments” (hereinafter “Guidelines for the Issuance of a Notice of Vacancy and Advertisement”) delineate the conditions/requirements that must be satisfied to advertise a vacant office and establish the principles and procedures for advertisement “within the public service or within and outside of the public service.”

[30] Advertisement within the public service is done through a Notice of Vacancy, and must be in keeping with the format and guidelines of the PSC. It may be circulated by circular memorandum and by publication in the Gazette, as per Regulation 13(5) of the Public Service Commission Regulations. The guidelines specify the content of the advertisement, along with the format that must be employed, and provide a timeline for publication.

[31] The guidelines also spell out the content and form for advertisements outside of the public service, as well as the timeframe for their publication:

“Advertisement:
Once the approval/consent of the PSC is obtained for the office to be advertised outside the Public Service, the Advertisement:

• must be approved by the Permanent Secretary in keeping with the format provided in these guidelines at Appendix III.
• must be published within 2 weeks of obtaining the Commission’s approval.
• must have the following elements:
  • the name of the Ministry/Department issuing the advertisement
  • the office being advertised
  • the salary
  • the minimum and maximum age for recruitment in the Public Service
  • the address of the Ministry/Department where applicants are to be sent/received/delivered
  • the closing date for the receipt of applications clearly stated. Applications must be received in the Ministry/Department by the closing date.
  • the link for and the location of application forms*, job specifications and application checklist at the Appendix II must be provided.
  • the experience and training requirements relevant to the office clearly stated in order to determine the applicant’s eligibility for the office.”

[32] Monitoring mechanisms and checklists have also been built in to promote compliance with the specifications of the said guideline. Relevant documentation, such as copies of approvals to issue a Notice

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28 Ibid., p. 3.
29 Ibid., p. 3.
30 Guidelines for the Issuance of a Notice of Vacancy and Advertisement, supra note 22, p. 2.
31 Ibid.
32 Ibid., p. 2.
33 Ibid.
34 Ibid.
36 Guidelines for Obtaining Approval to Advertise, supra note 21, p. 3-4.
of Vacancy or Advertisement, copies of the actual Notice of Vacancy and Advertisement, “as evidence that the advertisement has been given the widest circulation”\textsuperscript{37} and correspondence to the Government Printer transmitting the Notice for publication in the Gazette. Other safeguards include requiring that the Ministry/Department’s file and minute sheet are updated and readily available for inspection by the PSC, ensuring:

“Monitoring Requirements:

a. evidence of the approval of the Permanent Secretary/Head of Department as at 3.1.1
b. evidence that the Notice of Vacancy/Advertisement was gazetted.
c. that the Notice of Vacancy/Advertisement:
   - was accurate;
   - duration of Notice of Vacancy/Advertisement was adequate – a period of 3 – 4 weeks.
   - clearly states the closing date for receipt of applications.
   - clearly states the sender’s information.
   - states the office being advertised
   - clearly states the minimum experience and training requirements of the job as stated in the approved job specification.
   - states the salary
   - are accessible/widely circulated
d. advertisement was placed in at least two (2) Newspapers.”\textsuperscript{38}

[33] While the Committee notes that the guidelines provide additional clarification on the administrative procedure for obtaining approval to advertise vacancies in the Civil Service and instructions as to the manner such vacancies shall be advertised—the guidelines do set out criteria that define the content, the form, the timeframe and the means by which these advertisements shall be published, a step in the implementation of measure (b)—the Committee considers that the guidelines wherein these criteria are established are not binding in law and remain administrative in nature, though predicated on Regulations 13(5) to 13(7), 15, and 16(3) to 16(6).

[34] Moreover, the Committee observes that Regulation 15 of the Public Service Commission Regulations, 1966 which served as the basis for measure (b), has not been amended. As such, the Committee considers the observations it formulated in the Second Round in relation to Regulation 15 to be still valid: \textsuperscript{39}

“However, the provisions applicable to the Civil Service under Regulation 15 of the Public Service Commission Regulations state that when the Commission considers that there is no suitable candidate already in a particular service available for the filling of any vacancy or that having regard to those qualifications, experience and merit, it would be advantageous and in the best interest of the particular service that the services of a person not already in that service be secured, the Commission may authorize the advertisement of such vacancy. The Committee notes that the language in this provision is discretionary rather than obligatory, which does not guarantee that these vacancies, when they arise in these circumstances, are available to the general public.”\textsuperscript{40}

[35] Furthermore, the Committee notes that the concerns in relation discretion raised in the Report of the Second Round have not been fully addressed. For example, the Committee observes that “Guidelines for Obtaining Approval to Advertise” allows for Ministries and Departments to indicate whether they wish

\textsuperscript{37} Ibid., p. 4.
\textsuperscript{38} Ibid., p. 4-5.
\textsuperscript{39} Ibid.
\textsuperscript{40} Report of the Second Round, supra note 8, p. 4.
“to have the office advertised within or outside of the Public Service”\textsuperscript{41} in their memorandum to the PSC and include a justification with their request,\textsuperscript{42} leaving thus some room, ostensibly, for Ministries and Departments to exercise some discretion on the matter.

[36] The Committee also observes that neither the Public Service Commission Regulations nor the guidelines provide for the use of electronic means of publication. The guidelines only make reference to publication in two newspapers for advertisement outside the public service.\textsuperscript{43} Although the Committee notes that some vacancies open to the general public are advertised on the Service Commissions Department’s website,\textsuperscript{44} the Committee believes it could be beneficial for the country under review to include publication on websites in its guidelines, so as to ensure that vacancies in Ministries and Departments regularly advertised on the relevant websites.

[37] The Committee takes note of the steps taken by the country under review to implement the above recommendation and of the need that it continue giving attention to the implementation thereto, bearing in mind that, Trinidad and Tobago has not adopted provisions to ensure that when a position is open to the general public in the Civil Service, it is always advertised to the general public. The Committee also considers appropriate to reformulate the aforementioned measure of the recommendation so as to clarify that it is intended for vacancies open to the general public. Furthermore, bearing in mind that the guidelines are not binding in nature, the Committee takes note of the need for the country under review to continue giving attention to the implementation thereto. Moreover, the Committee notes that the recommendation contains two related, but independent elements and, as such, considers it advisable to reformulate the recommendation by breaking it down into two separate recommendations. (See Recommendations 1.1.3.2 and 1.1.3.3 in Section 1.1.3 of Chapter II of this Report.)

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

*Strengthen the existing administrative mechanism regarding the hiring of judicial and legal officers, in order to ensure that there is clearly defined selection criteria that reflects the principles of merit and equality and that there is a clearly defined procedure for advertisement.*

[38] With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review did not present any new information.

[39] The Committee however notes that the Judicial and Legal Service Commission adopted, *mutatis mutandis*, Public Service Commission Regulations, 1966 (as amended) to effectively carry out its duties, pending the promulgation of its own regulations, as *per* Section 129 (1) of the Constitution, which permits Service Commissions to adopt regulations to guide is own procedure.\textsuperscript{45} While the Public Service Commission Regulations, 1966 (as amended) do contain some provisions regarding applications for first appointment to the public service for several classes of employment, none seem to be explicitly directed at the hiring of judicial or legal officers in the Judicial and Legal Service. Given that the Judicial and Legal

\textsuperscript{41} Guidelines for Obtaining Approval to Advertise, *supra* note 21, p. 2.

\textsuperscript{42} *Ibid.*

\textsuperscript{43} Guidelines for the Issuance of a Notice of a Vacancy and Advertisement, *supra* note 22, p. 5.


\textsuperscript{45} Constitution of the Republic of Trinidad and Tobago, Chap. 1:01, 1976, *supra* note 14, Section 129(1).
Service Act, Chap. 6:01\(^{46}\) is also silent on the manner appointments are made to these offices, the Committee considers that there still a lack of legislation or regulations on the matter.

[40] Moreover, the Committee did not have access to manuals or guidelines that define the manner recruitment is conducted or how applicants are assessed, nor is it aware of the existence of administrative procedures or mechanisms that delineate the process of selecting and appointing judicial and legal officers.

[41] In the absence of such provisions, the Committee will reiterate the need for the country under review to consider adopting legislation that regulates the manner judicial and legal officers in the Judicial and Legal Service are appointed, including provisions that expressly states that hiring in the Judicial and Legal Service should be based on a system of merit and use objective selection methods in the process, such as competitive written examinations, practical examinations and impartial criteria for interviews.

[42] With respect to advertisement, Regulation 15 of the Public Service Commission Regulations, 1966 (as amended) also applies to the advertisement of vacancies of judicial and legal offices. The Committee reviewed Regulation 15 in for the purposes of measure (b) in this section of the report and considered it required additional attention for the purposes of the Convention. As a result, the Committee finds that the currently legal framework does not contain clearly defined criteria for the advertisements of vacancies in the Judicial and Legal Service.

[43] In light of the foregoing, the Committee considers pertinent to recall reasons for the recommendation, which dates to the Second Round of Review:

> “With respect to the Judiciary, while Section 111(4) of the Constitution provides that judicial and legal officers are required to possess legal qualifications, the Committee notes that there appears to be an absence of legislation regarding the manner those positions are appointed. While the Judicial and Legal Services Act, the governing legislation in regards to the establishment, classification, remuneration and entitlement of officers of a Judicial and Legal Service, does make reference to the modes by which an appointment may terminate, it is silent on the manner these officers are initially appointed. The Committee considers that the apparent lack of laws or regulations on the manner to conduct recruitment for these posts as well as for their advertisement may not properly assure the openness, equity and efficiency of the government hiring system.”\(^{47}\)

[44] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementation thereto. The Committee also recognizes that the recommendation contains two related, but separate elements and considers it advisable to reformulate the recommendation by breaking it down into two independent recommendations. (See Recommendations 1.1.3.4 and 1.1.3.5 of Section 1.1.3 of Chapter II of this Report).

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

> Clarify and expand, through the appropriate legislative or administrative procedures, the selection criteria for positions on contract as well as the manner to advertise their vacancies.

[45] With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review did not present any new information.


[46] However, during the on-site visit, the representatives Ministry of Public Administration, the entity responsible for granting the necessary approvals to fill in vacant positions on contract in Ministries and Departments, as part of government’s procurement process, informed the Committee that it develops job positions and job descriptions and determines staffing levels in relation to contract employment, although the terms and conditions of such employment is the responsibility of the Personnel Department. Furthermore, the Committee was informed that the Ministry of Public Administration complies with the Contract Employment Guidelines produced by the Personnel Department.48

[47] The Committee also takes note opportunities for employment by the government on contract are advertised on website of the Ministry of Finance through Tender Notices and prospective consultants may apply.49

[48] With respect to the “Guidelines for Contract Employment in Government Ministries, Departments and Statutory Authorities”, issued in Trinidad and Tobago’s Gazette50 and referred to in the Report of the Second Round, the Committee considers that given no new amendments have been brought forth, the observations formulated in the aforementioned report still remain valid:

“The Committee nevertheless observes that while the Notification provides that Ministers are to ensure, where applicable, that selection of the person to fill a contract position should be fair and transparent and through the conduct of interviews, it does not specify as to how this is to be undertaken, such as through merit based competitions. Moreover, while advertisements are to be conducted for the recruitment of these posts, the Notification does not specify as to how they are to be carried out, their scope and content, nor provide a timeframe.”51

[49] In light of the foregoing and bearing in mind the information gathered during the on-site visit, the Committee finds that the current legal framework does not contain clearly defined selection criteria for positions on contracts, nor did it find provisions or guidelines specifying how these vacancies for employment under contract are to be advertised. Therefore, the Committee reiterates the need for the country under review to give additional attention to the recommendation thereto. The Committee also deems appropriate to reformulate measure (d) of the recommendation by breaking it down into two separate recommendations as they contain two related, but independent elements. (See Recommendations 1.1.3.6 and 1.1.3.7 of Section 1.1.3 of Chapter II of this Report).

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

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48 During the preliminary meeting of the subgroup of review, held on September 6, 2019, the country under review stated that the Service Commissions Department Guidelines contain criteria that are generally accepted and used for the hiring of both permanent and contract workers. The country under review also indicated that a stakeholder consultation was held in 2018 to consider issues surrounding contract employment. The outcome document of the consultation is being considered by a joint select committee of Parliament. However, the information was not taken into account for this report because it was presented after the deadline set by the Committee for submitting the information under review.


51 Report of the Second Round, supra note 8, p. 5.
Strengthen the legal provisions regarding the Service Commissions, so that these authorities have the necessary financial, human and technological resources to carry out their functions so that they can ensure that the laws in place are being followed regarding the appointment process in the Republic of Trinidad and Tobago.

[50] With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review did not present any new information.

[51] The Committee however notes that the Service Commissions Department was selected as an oversight body for review during the Fourth Round of Review. In particular, the Public Service Commission and the Judicial and Legal Service Commission were reviewed in the Report on the implementation in Trinidad and Tobago of the Provisions of the Inter-American Convention Against Corruption Selected for Review in the Framework of the Fourth Round (hereinafter, “Report of the Fourth Round of Review”). In the Report, the Committee expressed concerns over lengthy delays in the appointment process,52 the lack of proper human resources to discharge functions53 and the need for an electronic management system to help streamline operations efficiently54—a need, which was also identified by the Public Service Commission in its annual reports.55 The Committee also recognized challenges facing the Service Commissions Department, including many relating to the institution’s capacity:

“As previously noted, the Committee observes that in several instances, the Service Commission Departments have not been able to carry out their work in service of the Public and Judicial and Legal Service Commissions in an efficient and timely manner due to limitations in their human resources. For example, lack of staffing has been cited in the lengthy delays in carrying out appointments and in carrying out disciplinary processes. Moreover, the Service Commissions Departments find that their heavy workload is increasing due to the following factors, among others: vast increase in the number of offices in the civil service; numerous requests for information through the Freedom of Information Act; increase in disciplinary matters; and the growth in High Court challenges by public officers against the Commissions.”56

[52] The Committee also observes that similar concerns were cited in the Report of the Second Round of Review:

“The Committee takes note of the observations by the Republic of Trinidad and Tobago, in its Response, to the challenges faced by the Service Commissions in carrying out their duties. Those stated include: delegation of functions by the Service Commissions to Permanent Secretaries are not properly exercised; failure of Ministries to strictly adhere to regulations; heavy workload due to, among others, the vast increase in the number of offices in the Civil Services and increase in the disciplinary matters arising out of allegations of misconduct in office made against public officers; slow response to clients needs; and delay in the confirmation of appointments. Moreover, these challenges have led to low customer satisfaction to the work of the Service Commissions. The Committee believes that the country under review should consider ensuring that these Commissions have the necessary financial, human and technological resources to carry out their functions so that they can ensure that the laws in place are being followed regarding the appointment process in the Republic of Trinidad and Tobago.”57

53 Ibid. Also see p. 31.
54 Ibid., p. 31.
55 Ibid., p. 29.
56 Ibid., p. 31.
57 Report of the Second Round, supra note 9, p. 5.
On another but related note, it is worth mentioning, that the Committee recommended, in the Report of the Fourth Round, that the country under review consider a proposal examining the possibly to delegate certain functions related to recruitment to Ministries and Departments, provided that clear guidelines on how to exercise those functions were given, in an effort to address the concerns over the lengthy delays in the appointment process raised and to continue to equip the public service with a capable workforce, but in a more efficient and timely manner: 58

“[T]he Committee believes that the country under review should consider modernizing its recruitment and selection practice so that it may continue providing to the public service a professional and capable workforce, but in a more efficient and timely manner, something that the Public Service Commission has acknowledged is needed in its Annual Reports. For example, the country under review should consider further the proposal to delegate the function of advertisement, short listing and interviews for positions in offices that are particular to a Ministry or Department, provided that such functions are conducted within clear guidelines and that a representative of the Commission or Service Commissions Department sits on the interviewing panel.” 59

The Committee notes that the Public Service Commission Regulations (Amendment) have been amended to include Regulations 13(5) and 13(6) and grant the required consent to allow Permanent Secretaries and Heads of Departments to advertise, screen, shortlist and interview candidates for positions that are peculiar to a Ministry or Department, as part of its a strategic objective to accelerate the hiring of personnel and tackle the lengthy delays in the appointment process.

The Committee additionally notes that the Public Service Commission published a Manual, “Guidelines for the Selection of Candidates” to assist Permanent Secretaries and Heads of Departments in the recruitment and selection of officers and persons for offices that are specific to their Ministries or Departments. In addition to the “Guidelines for Obtaining the Approval/Consent of the Public Service Commission to Initiate the Process of Advertising, Screening, Shortlisting and Assessing for Office that are Specific to Ministries/Departments” and the “Guidelines for the Issuance of a Notice of Vacancy and Advertisement” previously mentioned in relation to measure (b), the Public Service Commission also issued “Guidelines for the Receipt of Applications”60, “Guidelines for the Screening of Applications”61, “Guidelines for the Shortlisting of Applicants”62 and “Guidelines for the Assessment of Candidates”63, which provide instructions for the exercise of each function, as well as, specimens of relevant documents.

The Committee notes the steps the country under review has taken in relation to the said measure.

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58 Report of the Fourth Round, supra note 11, p. 28.
59 Ibid.
However, given that these concerns were raised in both, the Second and Fourth Rounds of Review, the Committee reiterates the need for the country under review to give additional attention to the recommendation thereto. (See Recommendation 1.1.3.8 of Section 1.1.3 of Chapter II of this Report).

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

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

[57] With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review presented the following new development:

> “The DPA\(^{64}\) has been consistent in the training programmes offered to those managing public service selections and staffing processes. Such programs are based on a Needs Gap Analysis and usually account for a significant portion of the financial vote. It must be noted that the Government has been forth coming with finances for these programs.”\(^{65}\)

[58] The Committee notes that while the country under review did provide some material subsequent to the on-site visit—including information on its “Ethics, Accountability and Good Governance” programme, which specifically targets senior officers, such as Permanent Secretaries and Heads of Departments—the country under review could benefit from further training for those who manage the public service selection and staffing processes.

[59] In light of the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementation thereto. (See Recommendation 1.1.3.9 of Section 1.1.3. of Chapter II of this Report).

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

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

[60] With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review presented the same information as the one provided for measure (f) in relation to the Director of Personnel Administration of the Service Commissions Department.

[61] On another note, during the on-site visit, the Committee met with representatives of the Public Service Academy, a division of the Ministry of Public Administration responsible for the training and human resource development needs of public servants as well as monitoring the quality of their training. The representatives of the Public Service Academy informed the Committee it maintains close relationships with the various Human Resource Units in Ministries and Departments with a view to build human resource capacity. In that respect, it offers workshop to human resource personnel in various Ministries and Departments on orientation programs designed to integrate new civil servants to the Civil Service.

\(^{64}\) The Committee notes that the Public Service Commission is supported administratively by the Service Commissions Department, which is managed by the Director of Personnel Administration (DPA).

\(^{65}\) Response to the Questionnaire, Section I, *supra* note 10, p. 8.
[62] More specifically, the Public Service Academy, provided the following information after the on-site regarding a workshop it offered, entitled “Designing Orientation Programmes”:

“Designing Orientation Programmes – this is a ‘Train the Trainer’ workshop that guides individuals/participants on how to develop their Orientation Agendas and Programme for in-house delivery to new employees joining their organisation. The role of the organisation is discussed as well as that of the various Divisions therein. The expectations of the new employees and the organisation are also addressed. We encourage participants to ensure new employees are informed of their role and how it contributes to meeting the objectives of the organisation.”

[63] The Public Service Academy additionally provided the following information regarding the training in relation to orientation programmes in the Judiciary and the Legislative branches:

“For specific agencies like the Judiciary and the Office of the Parliament and associated agencies, attention is focused on confidentiality and secrecy as it relates to the sensitive information that these employees may be exposed to in the course of discharging their duties. Not all officers are exposed to this type of intervention upon joining a new organisation.”

[64] The Public Service Academy cited the lack of resources as the reason why it cannot provide trainings to all those who should receive such trainings, given their functions. As a result, the Public Service Academy thus proceeds in series of successive rounds of trainings and publishes its schedule on its website.

[65] The Public Service Academy also mentioned that it is presently understaffed and does not have the capacity to monitor the quality of orientation programs offered by each Ministry and Department, nor to keep track of data in relation to the orientation programs that have been offered to new employees in all Ministries and Departments.

[66] Given the information provided by the country under review both, during and subsequently to the on-site visit, the Committee takes note of the steps taken by the country under review to implement measure (f) and its need to continue to address this recommendation, in light of the difficulties encountered. Moreover, and bearing in mind the challenges identified by the country under review with respect to capacity, understaffing and resources, the Committee will make a recommendation for the country under review to consider providing the Public Service Academy with the necessary human, technological and financial resources needed for the proper performance of its functions, within available resources. (See Recommendations 1.1.3.10 and 1.1.3.11 of Section 1.1.3. of Chapter II of this Report).

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

Adopt, through legislative or administrative procedures, a database to identify the categories of judicial review cases and their results in order to assess the efficiency regarding the measures for redress.

[67] With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review presented the following information:

67 Ibid.
“The Public Service Commission (PSC) discussed a document management system; the aim of this would be to track, what lead to the Judicial Review, why the PSC lost the case, how much money the PSC spends in Judicial Review. It is noteworthy, that the Director of Personnel Administration in an aim to develop further capacity in the area of Judicial Review has embarked upon a PhD program where an assessment would be carried out on how Judicial Review impacts on Human Resource Systems.”

[68] The Committee notes that it did not receive, over the course of the on-site visit, additional information on the status of the document management system that was the subject of discussions in the Public Service Commission and referred to in the country’s Response to the Questionnaire. Nor did it receive any other information subsequent to the on-site visit in relation to measure (h) that could permit the Committee to analyze the implementation of the said measure.

[69] In that regard, the Committee considers worth noting the reasons for measure (h) of recommendation 1.1.1, which originate from the analysis conducted in the Second Round of Review:

“On page 7 of its Response to the Questionnaire, the Republic of Trinidad and Tobago states that there are judicial review precedents in relation to pending cases. The Republic of Trinidad and Tobago could perhaps maintain data regarding these decisions, in order to demonstrate the efficiency or lack thereof of measures for redress. For example, specific data can be maintained in relation to the number of cases brought, the number of cases decided and a summary of the decisions made in relation to the government hiring process.”

[70] Based on the foregoing, and in the absence of additional information on the aforementioned document management system, the Committee reiterates the need for the country under review to give additional attention to the implementation thereto. (See Recommendation 1.1.3.12 in Section 1.1.3. of Chapter II of this Report).

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

*Adopt, through legislative or administrative procedures, a control mechanism to address noncompliance of the requirements to register all contracted officers on the relevant database.*

[71] With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review stated that there is currently no system to implement this measure, nor did it provide any additional information during or after the on-site visit.

[72] The Committee considers worth recalling the underlying reasons for measure (i), which date back to the Second Round of Review:

“Also on page 7 of its Response to the Questionnaire, the Republic of Trinidad and Tobago states that the figures noted in Appendix I as the total number of contracted officers may be marginally understated since, according to the Treasury Division, some Ministries do not always follow the requirement to register all contracted officers on the IHRIS database.”

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69 Response to the Questionnaire, Section I, *supra* note 10, p. 8.
in place to deal with non-compliance of the requirement to register all contracted officers on the relevant database.”

[73] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementation thereto. (See Recommendation 1.1.3.13 of Section 1.1.3. of Chapter II of this Report).

1.1.2. New Developments with respect to the Provisions of the Convention on Systems of Government Hiring

1.1.2.1. New developments with respect to the legal framework

[74] With regard to new developments relating to the legal framework, the country under review, presented the following initiatives, among which the Committee considers should be noted:

[75] – The establishment of a Selection Boards in 2011 to address challenges in the selection of candidates to fill vacancies in the Civil Service under Regulation 16 (1) of the Public Service Commission Regulations. Selection Boards are “comprised of retired public officers and private sector personnel with support where appropriate from resource persons from the Service Commissions Department.” The PSC further stated that it continues to “utilize this mechanism to interview candidates for the required positions.”

[76] – An assessment of the operations of the Recruitment Unit was carried out in 2015, which made several observations:

  “- Certain positions have exponentially higher application rates leading to a massive strain on the Service Commissions Department. Screening does not provide the required filtration in order to reduce the numbers of candidates for interviews.

- Peculiar positions with unique requirements pose certain difficulties to fill. The Recruitment Unit can spend up to 24 months trying to fill peculiar positions.

- The interface between Ministries and the SCD cannot support requests for filling vacancies, this leads to quality issues regarding requests in terms of accuracy, completeness and timeliness.”

[77] The country under review mentioned, in its Response to the Questionnaire, that the Service Commissions Department has “embarked upon a process of institutional strengthening”, stating that the “process will involve changes to the organizational structure and work processes” and that these changes are expected to address identified challenges.

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71 Ibid.
73 Public Service Commission Regulations (as amended), supra note 16, Regulation 16(1).
74 Ibid. Response to the Questionnaire, Section II, supra note 67, p. 2.
75 Ibid.
76 Ibid., p. 1.
77 Ibid.
78 Ibid.
The publication of a recruitment manual titled: “Guidelines for the Selection of Candidates” in December 2017. This Manual was prepared to assist “Permanent Secretaries and Heads of Departments in the recruitment and selection of officers/persons for offices that are specific to their respective Ministries/Departments in accordance with Regulations 13 (5) to (7); 15 and 16 (3) to (6) of the Public Service Regulations.” The Manual provides guidelines “for the exercise of each function, as well as, specimens of relevant documents” and additionally emphasizes that while Ministries and Departments are being authorized to advertise, screen, shortlist and assess candidates within the guidelines/specifications of the Public Service Commission, the power to make appointments and promotions still vests in the Public Service Commission.

1.1.2.2 New developments with respect to technology

The country under review did not provide any information on new developments with respect to technology in its Response nor during or subsequently after the on-site visit.

Notwithstanding the foregoing, the Committee takes note that the Service Commissions Department does have a website, which contains relevant information on the role and mission of the Public Service Commission and the Judicial Legal and Service Commission as well as interview and exam dates, employment opportunities, application forms and public service career guides, among others.

The Committee takes note of the aforementioned technological development by the country under review. Taking into consideration that the Committee has formulated recommendations in the preceding sections on the online advertisement of vacancies and the publication of other institutional information related to the systems of hiring public officials, the Committee believes that it would be beneficial that the country under review considers taking the necessary measures to ensure that the website of the Service Commissions Department is timely and updated, which would contribute to the transparency, efficiency and publicity of the systems for the selection of public servants. The Committee will formulate a recommendation in that regard. (See Recommendation 1.1.3.14 in Section 1.1.3 of Chapter II of this Report).

1.1.2.3 Results

Neither in its Response to the Questionnaire nor during the on-site visit did the country under review provide information regarding outcomes related to either the hiring of public servants or the challenges. In light of the above information, the Committee will make a recommendation for the country under review to compile and publish detailed annual statistics on the results of the selection processes for entry into the public service, in such a way as to show clearly the number and percentage of public servants for each of these modalities: external competitions, internal selection processes and the number of vacancy opportunities open to new entrants into the public service, in order to identify challenges and recommend corrective measures where appropriate. (See Recommendation 1.1.13.15 in Section 1.1.3 of Chapter II of this Report).

The Committee will also formulate a recommendation for the country under review to compile and publish detailed annual statistics on administrative and judicial processes in such a way as to show clearly the number and percentage of administrative and judicial complaints and appeals filed against decisions against the outcomes of selection processes, in order to identify challenges and recommend corrective measures where appropriate. (See Recommendation 1.1.13.16 in Section 1.1.3 of Chapter II of this Report).

79 Ibid.
80 Ibid.
81 Ibid.
1.1.3 Recommendations

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

1.1.3.1 Assess the relevance of expanding the mandatory requirement of competitive examinations for permanent appointments to all classes in the Civil Service. (See paragraph 18 in Section 1.1.1 of Chapter II of this Report)

1.1.3.2 Consider adopting, through the appropriate legislative or administrative procedures, mechanisms that guarantee the advertisement of all vacancies open to the general public in the Civil Service, through the use of mass media (e.g. newspapers) and the Internet (e.g. websites) so as to avoid the exercise of discretion in relation to decisions pertaining to the advertisement of hiring opportunities, taking into account the principles of openness and equity set forth in the Convention. (See paragraph 37 in Section 1.1.1 of Chapter II of this Report).

1.1.3.3 Adopt, through the appropriate legislative or administrative procedures, mechanisms that clearly define criteria for the advertisement of hiring opportunities for all vacancies open to the general public and the manner and the means (e.g. newspapers, relevant websites, etc.) by which such advertisement should be carried out. (See paragraph 37 in Section 1.1.1 of Chapter II of this Report).

1.1.3.4 Consider adopting, through the appropriate legislative and/or administrative procedures provisions that explicitly specify that appointments to judicial and legal offices regulated by the Judicial and Legal Service Act are to be based on the principle of merit and ensure that the correlating criteria that will be taken into account to determine merit for entry into the Judicial and Legal Service, such as written competitive examinations, practical tests and interviews, are established. (See paragraph 44 in Section 1.1.1 of Chapter II of this Report).

1.1.3.5 Consider adopting, through the appropriate legislative and/or administrative procedures, provisions that establish the manner vacancies for offices in the Judicial and Legal Service regulated by the Judicial and Legal Service Act are to be advertised and ensure the criteria, including the content, the form and the duration that such advertisement shall have, is defined. (See paragraph 44 in Section 1.1.1 of Chapter II of this Report).

1.1.3.6 Clarify and expand, through the appropriate legislative or administrative procedures, the selection criteria for positions on contract. (See paragraph 49 in Section 1.1.1 of Chapter II of this Report).

1.1.3.7 Clarify and expand, through the appropriate legislative or administrative procedures, the mechanisms that provide clearly defined criteria for the advertisement of hiring opportunities for positions on contract. (See paragraph 49 in Section 1.1.1 of Chapter II of this Report).

1.1.3.8 Strengthen the legal provisions regarding the Service Commissions, so that these authorities have the necessary financial, human and technological resources to carry out their functions so that they can ensure that the laws in place are being followed regarding the appointment process in the Republic of Trinidad and Tobago. (See paragraph 56 in Section 1.1.1 of Chapter II of this Report).
1.1.3.9 Increase training programs for those responsible for managing public service selection and staffing processes, within available resources. (See paragraph 59 in Section 1.1.1 of Chapter II of this Report).

1.1.3.10 Increase training and induction programs for those who have recently entered the public service, so as to allow all employees to understand their duties and the functions expected of them, within available resources. (See paragraph 66 in Section 1.1.1 of Chapter II of this Report).

1.1.3.11 Provide the Public Service Academy with the necessary human, technological and financial resources needed for the proper performance of its functions, within available resources. (See paragraph 66 in Section 1.1.1 of Chapter II of this Report).

1.1.3.12 Adopt, through legislative or administrative procedures, a database to identify the categories of judicial review cases and their results in order to assess the efficiency regarding the measures for redress. (See paragraph 70 in Section 1.1.1 of Chapter II of this Report).

1.1.3.13 Adopt, through legislative or administrative procedures, a control mechanism to address noncompliance of the requirements to register all contracted officers on the relevant database. (See paragraph 73 in Section 1.1.1 of Chapter II of this Report).

1.1.3.14 Ensure that the website of the Service Commissions Department is regularly and timely updated in order to ensure that vacancies in the public service are consistently advertised and that other information related to the system of hiring of public officials and other related institutional information is published. (See paragraph 81 in Section 1.1.2.2 of Chapter II of this Report).

1.1.3.15 Compile and publish detailed annual statistics on the results of the selection processes for entry into the public service, in such a way as to show clearly the number and percentage of public servants for each of these modalities: external competitions, internal selection processes and the number of vacancy opportunities open to new entrants into the public service, in order to identify challenges and recommend corrective measures where appropriate. (See paragraph 82 in Section 1.1.2.3 of Chapter II of this Report.)

1.1.3.16 Compile and publish detailed annual statistics on administrative and judicial processes in such a way as to show clearly the number and percentage of administrative and judicial complaints and appeals filed against decisions against the outcomes of selection processes, in order to identify challenges and recommend corrective measures where appropriate. (See paragraph 83 in Section 1.1.2.3 of Chapter II of this Report.)

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

1.2.1 Follow-Up to the Implementation of the Recommendations Formulated in the Second Round

Recommendation 1.2.1:

*Strengthen systems for the procurement of goods and services by the government.*
Measure a) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Consider establishing a uniform legal framework for the procurement of goods and services that encompasses all the branches and agencies of the State, without prejudice to those State agencies and branches to establish their own guidelines.

[85] With respect to the aforementioned measure, in its Supplementary Response to the Questionnaire, the country under review presented information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:

“The major law governing the Government procurement is the: Public Procurement and Disposal of Public Property Act 2015, and its amendments, Act No. 5 of 2016 and Act No. 3 of 2017.

The Public Procurement and Disposal of Public Property Act, 2015 provides for:

a) good governance of public procurement and for the disposal of public property in accordance with the principles of accountability, integrity, transparency and value for money;
b) establishment of the Office of Procurement Regulation; and,
c) repeal of the Central Tenders Board Act, Chap. 71:91 and Regulations.

The Office of Procurement Regulation (“the OPR”) is established by the Public Procurement and Disposal of Public Property Act, 2015 (“the Act”) as amended. It is a regulatory body governed by an independent board appointed by the President of Trinidad and Tobago after consultation with the Prime Minister and the Leader of the Opposition. […]

Under Section 5(2) of the Act, a procuring entity is responsible for carrying out public procurement in a manner that is consistent with the objects of the Act. It does so by developing an overall procurement strategy and annual procurement plan that identifies and manages the risks and opportunities it faces in procuring the range of goods, services and works based on the underlying supply market at issue with a view to achieving value for money.

In that regard, the named procurement officer pursuant to Section 61 (2) of the Act shall be suitably qualified, experienced and competent to undertake the procurement and disposal functions of the public entity.

In developing its procurement strategy, the public body will determine the procurement methods that are most appropriate for the procurement of goods, services and works required.

Measures to ensure uniformity and standardization in the tendering process in all essential branches and agencies of the State are outlined in Part III of the Act, whereupon establishing ‘the Procurement Depository’ by the OPR as mentioned under S. 13(1)(a) and S.26(1), the procuring entity has the responsibility to conduct due diligence exercise as stated under S.29(1)(e) as part of a pre-qualification exercise. […]

To ensure standardization the tendering process, under S.30(1) the public body shall comply with such: (a) general guidelines in relation to public procurement as the Office may issue; (b) such special guidelines in relation to public procurement as the Office may approve for that procuring entity; and (c) such handbooks in relation to public procurement as the Office may approve for that procuring entity for the purposes of ensuring compliance with this Act and guidelines under paragraphs (a) and (b).
Under S. 30(2)(b), special guidelines shall be prepared by the procuring entity and submitted to the Office for its approval; and may provide that general guidelines under subsection 30(1)(a) shall apply to a procuring entity subject to such exemptions or amendments as are specified in the special guidelines.

These handbooks and guidelines in relation to public procurement of works shall be prepared by the procuring entity and submitted to the OPR for its approval.  

During the on-site visit, the Office of the Procurement Regulation (hereinafter, “OPR”) informed the Committee that the new public procurement regulatory framework is founded on the Public Procurement and Disposal of Public Property Act, 2015 and its amendments, Public Procurement and Disposal of Public Property (Amendment) Act, 2016 (Act No. 5 of 2016) and Public Procurement and Disposal of Public Property (Amendment) Act, 2017 (Act No. 3 of 2017). Though the Public and Disposal of Public Property Act assented to in January 2015, the legislation provides for an entry into force on a date to be fixed by the President by proclamation. The Act was subsequently partially proclaimed by Legal Notice No. 150 in 2015 later during the year.

The new regulatory framework under the Public Procurement and Disposal of Public Property Act, 2015, and its amendments, apply insofar as the sections are in operation. These provisions mostly relate to definitions, the establishment of the OPR, its governing Board, some of its functions and core responsibilities—albeit not all—powers of the OPR under Section 14 have not yet been proclaimed, disclosure of interests of members in matters under consideration by the Board, the appointment of staff for the performance of its functions, funds for its operation, immunity from personal liability for members of the OPR, the staff or any authorized officer, and regulations that the Minister may make in relation to the Act.

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86 Public Procurement and Disposal of Public Property Act, 2015 (as amended), supra note 78, Section 2.
88 Public Procurement and Disposal of Public Property Act, 2015 (as amended), supra note 78, Section 4.
89 Ibid., Section 9.
90 Ibid., Section 10.
91 Ibid., Section 13(1) - 13(2).
92 Ibid., Section 17(1) – 17(2).
93 Ibid., Section 18(1).
94 Ibid., Section 21.
95 Ibid., Section 62.
96 Ibid., Section 63.
[88] Representatives of the Ministry of Finance and the Central Tenders Board informed the Committee that the former procurement regime under the Central Tenders Board Act, Chap. 71:91 and Central Tenders Board (Amendment) Regulations, 2011 applies where outstanding parts of the Public Procurement and Disposal of Public Property Act, 2015 have not been proclaimed.98

[89] During the on-site visit, representatives Ministry of Finance and the OPR informed the Committee of the on-going efforts towards the implementation of the new public procurement regime under the Public Procurement and Disposal of Public Property Act, 2015 and discussed the current transition taking place. As it stands at present, the Central Tenders Board which operates as a division of the Ministry of Finance, still performs the public procurement functions under its sole and exclusive authority under the Central Tenders Board Ordinance No. 22 of 1961, as amended,99 except as provided for in Sections 20A and 35. The representatives of the Ministry of Finance also indicated that its role under the new regime will be limited to one of facilitation and that the OPR, as an independent regulatory body reporting to Parliament, will act as the governing body for all matters relating to public procurement henceforth, but that it is assisting in the transition process by making available all the necessary financial, technical and administrative support for the establishment of the OPR.

[90] Representatives of various government institutions also highlighted the need for the implementation of various measures before full proclamation of the new regime can occur, namely: the establishment of the Office of Procurement Regulation; the appointment of a Procurement Regulator; the establishment of a Review Board pursuant to Section 51A of the Public Procurement and Disposal of Public Property Act, 2015, as amended by Act No. 5 of 2016, the adoption of regulations under Section 63; the approval of general guidelines and special guidelines in relation to public procurement, training for procuring entities to ensure personnel can readily operate under the new regime; as well as preparing contractors and suppliers for the full proclamation Act, by informing them of their obligations under the new regime and raising awareness.

[91] During the on-site visit, the Committee was informed of rationale behind the partial proclamation of the Property Public Procurement Disposal of Public Property Act, 2015. Representatives of the OPR explained that certain sections of the Act were partially proclaimed by way of Legal Notice No. 150 in 2015 to allow for the establishment of the OPR, the appointment of the Procurement Regulator and the Members of the Board, as well as the performance of essential functions. The Act was also partially proclaimed so as to initiate drafting of the Regulations pursuant to Section 63.

[92] The Committee was informed that the OPR has been established and the members of its Board, including the Procurement Regulator, have been appointed by the President in accordance with Section 10 of the Act. Furthermore, during the on-site visit, the Procurement Regulator stated that he has been actively engaging in building capacity within the OPR and that staffing and training are in progress. The Procurement Regulator added that, barring unforeseen circumstances, the OPR should be fully staffed by the end of April 2019.

98 Upon full proclamation, Section 64(1) will have the effect of repealing the Central Tenders Board Act, Chap. 71:91.
In relation to the regulations that the Minister may introduce, pursuant to Section 63 and on the recommendation of the OPR, the Committee was informed that draft regulations to give effect to the provisions of the Public Procurement and Disposal of Public Property Act were currently being reviewed, but had not yet been tabled in Parliament for debate.

Representatives of the Ministry of Finance and the OPR indicated that though partially in operation, the new procurement regulatory regime could potentially become fully operational this year.

With respect to the scope of the Public Procurement and Disposal of Property, 2015 (as amended), the Committee the following provisions, which are in force:

- Section 8 states that the Act “binds the State.”

- Section 7(1) states that that Act “applies to public bodies and public-private partnership arrangements.”

- Section 4 defines “public body” as follows:

  “public body” means—

  (a) the Office of the President;
  (b) the Parliament;
  (c) the Judiciary;
  (d) a Ministry or a department or division of a Ministry;
  (e) the Tobago House of Assembly, or a division of the Tobago House of Assembly;
  (f) a Municipal Corporation established under the Municipal Corporations Act;
  (g) a Regional Health Authority established under the Regional Health Authorities Act;
  (h) a statutory body, responsibility for which is assigned to a Minister of Government;
  (i) a State-controlled enterprise;
  (j) a Service Commission established under the Constitution or other written law; or
  (k) a body corporate or unincorporated entity—
  (i) in relation to any function which it exercises on behalf of the State; or
  (ii) which is established by virtue of the President’s prerogative, by a Minister of Government in his capacity as such or by another public authority; or
  (l) a body corporate or unincorporated entity in relation to any function, project, scheme or arrangement which involves the use by it, of public money;

- Section 4 defines “public-partnership partnership arrangement” as follows:

  “public-private partnership arrangement” includes an arrangement between a public body and a private party under which—

  (a) the private party undertakes to perform a public function or provide a service on behalf of the public body;
  (b) the private party receives a benefit for performing the function or providing the service, either by way of—

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100 Public Procurement and Disposal of Public Property Act, 2015 (as amended), supra note 78, Section 8.
101 Ibid., Section 7(1).
(i) compensation from a public fund;  
(ii) charges or fees collected by the private party from the users of a service provided to them; or 
(iii) a combination of such compensation and such charges or fees; and 

c) the private party is generally liable for the risks arising from the performance of the function or the provision of the service depending on the terms of the arrangement;

[100] The application of the Act extends to private bodies that are considered “public bodies” for the purposes of the Act under Section 4(l) because their use of public money in relation to a function, project, scheme or arrangement.

[101] Section 4 defines “public money” as follows:

“public money” means money that is—

(a) received or receivable by a public body;  
(b) raised by an instrument from which it can be reasonably inferred that the State accepts ultimate liability in the case of default;  
(c) spent or committed for future expenditure, by a public body;  
(d) distributed by a public body to a person;  
(e) raised in accordance with a written law, for a public purpose; or  
(f) appropriated by Parliament.  

[102] The Committee observes that the application of the new procurement regime is much broader than one under the Central Tenders Board Act, Chap 71: 91, where some statutory bodies and state-owned enterprises were regarded as falling outside the scope of the Act.

[103] In this regard, the Committee notes that the Public Procurement and Disposal of Public Property Act, 2015 (as amended) applies to all branches of government (i.e. the Office of the President, Parliament, the Judiciary, Ministries and Departments and their divisions) and includes statutory bodies for which responsibility is assigned to a Minister of Government and state-controlled enterprises.

Section 4 also further expands the application of the Act so as to include independent bodies, such as the Service Commissions and bodies that exercise functions on behalf of the state or use public money in relation to a function, project, scheme or arrangement.

The Committee also takes note of the several public advisories that the OPR has issued on its website to notify the public bodies, persons and entities that should become familiar with the Public Procurement and Disposal of Public Property Act, 2015 (as amended) in light of this expanded scope and in preparation of its full proclamation.

102 Ibid., Section 4.  
103 According to the White Paper, published by the Government of Trinidad and Tobago and reviewed in the Second Round, Trinidad has gradually decentralized the tendering process since the enactment of 1961, through two mechanisms: “a) providing newly established statutory bodies with their own contracting capability outside the purview of the Board and b) removing statutory bodies from the First Schedule.” As stated in the Report of the Second Round, this has resulted, according to the White Paper, in a decentralized tendering process where most statutory bodies and state-owned enterprises “are responsible for their own procurement activities and establish their own policies and procedures managed through their own tender committees” and accordingly, an absence of uniformity in the tendering process and standard bidding documents. See Report of the Second Round, supra note 8, p. 9-10.  
104 Public Procurement and Disposal of Public Property Act, 2015 (as amended), supra note 78, Section 4.  
105 Ibid.  
In this respect, the Committee understands that the Public Procurement and Disposal of Public Property Act, 2015 (as amended) brings all bodies spending public money under a single, uniform regulatory framework for public procurement with the OPR as the oversight and regulatory body. The Committee further that the notes that that Section 13(1) of the Act, although not in force, provides for the harmonization of “policies, systems and practices in relation to public procurement activities”\footnote{107} and attributes that responsibility to the OPR.

In a meeting with civil society during the on-site visit, representative from Trinidad and Tobago Manufacturers’ Association highlighted in the need to address the harmonization of the procurement regimes between CARICOM Procurement Regime and national legislation of each CARICOM Member States.

In light of the foregoing, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (a) of the recommendation in Section 1.2.1 in Chapter II of this Report. However, the Committee given that many of the accompanying substantive part of the Act have not yet been proclaimed, the Committee notes the need for the country under review to continue to give additional attention to the implementation thereto. The Committee will also reformulate the recommendation to shift the focus to the importance of bringing into force the outstanding provisions of the Public Procurement and Disposal of Public Property Act, 2015 (as amended) and adopting the corresponding regulations so as to ensure that the new procurement regulatory framework is fully proclaimed and implemented. (See Recommendation 1.2.3.1 in Section 1.2.3 of Chapter II of this Report)

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

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

With respect to the aforementioned measure, in its Supplementary Response to the Questionnaire,\footnote{108} the country under review presented information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:

“The factors determining the proper tendering procedures would be outlined in the model general guidelines as the OPR may issue and such special guidelines in relation to public procurement as the Office may approve for the procuring entity as set out in S. 30(1)[of the Public Procurement and Disposal of Public Property Act, 2015 (as amended)].”\footnote{109}

Furthermore, the country under review, in its Supplementary Response to the Questionnaire, made reference to pre-qualification or pre-selection documents where the guidelines shall also be set out:

“These guidelines shall be stipulated within the pre-qualification or pre-selection documents, if any, and in the solicitation documents and shall equally to all suppliers or contractors. The procuring entity shall evaluate the qualifications of suppliers or contractors in accordance with the qualification criteria specified in subsection 29(1) and procedure set out in the pre-qualification or pre-selection documents, if any and in the solicitation documents (S. 29(3) and 29(4) of the [of the Public Procurement and Disposal of Public Property Act, 2015 (as amended)]).”\footnote{110}

\footnote{107}{Public Procurement and Disposal of Public Property Act, 2015 (as amended), supra note 78, Section 13(1).}
\footnote{108}{Supplementary Response to the Questionnaire (Office of Procurement Regulation), supra note 77, p. 5.}
\footnote{109}{Ibid.}
\footnote{110}{Ibid.}
The country under review additionally mentioned that a list of pre-qualified contractors and suppliers will be in a database that will be prepared and maintained by the OPR pursuant to Section 13(1)(q),111 and supplied with information provided by procuring entities subsequent to conducting a due diligence exercise as set out under Section 29(1) of the Public Procurement and Disposal of Public Property Act, 2015 (as amended), which provides the following:

“A procuring entity shall ensure that suppliers and contractors—

(a) have the legal capacity to enter into the procurement contract;
(b) are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial officer, their business activities have not been suspended and they are not the subject of legal proceedings for any of the foregoing;
(c) have not, and their directors or officers have not, been convicted of any criminal offence;
(d) have fulfilled their obligations to pay all required taxes and contributions in Trinidad and Tobago;
(e) have the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and personnel to perform the procurement contract; and
(f) meet relevant industry standards.”

The Committee also took cognizance of the “Procurement and Disposal Handbook”,112 a set of guidelines still in its draft stage intended to provide guidance on procurement policies and the various stages of procurement proceedings. The handbook has yet to be finalized and the best practice guidance on choosing a solicitation method is not available yet.113

During the on-site visit, the representatives of the Central Tenders Board stated that invitations for tenders may be public or selective. Public invitations to submit bids are advertisement through Tender Notices the CBT’s website and in at least two newspapers of wide circulation. If the CTB consider it expedient to do so, the CBT may seek the approval from the Minister of Finance to proceed with selective tendering pursuant to Section 20(3)(b) of the Central Tenders Board Act, Chap. 71:91.114 If approval is obtained, the CBT may invite tenders selectively to make offers from a short list of registered contractors and suppliers that have gone through a pre-qualification exercise.

However, given that Section 20(3) of the Central Tenders Board Act, Chap. 71:91115 on which measure (b) of the recommendation was based in the Report of the Second Round,116 is still the applicable provision in this respect and that none of the provisions of the Public Procurement and Disposal of Public Property (Amendment), 2015 referenced in the country under review’s Supplementary Response to the Questionnaire have been proclaimed, aside from the fact that they do not establish clear factors to determine the proper tendering procedure applicable (i.e. public or selective tendering) in a given situation, the Committee considers the legislation to still be silent on the matter. Moreover, the general guidelines that the OPR may issue and the special guidelines that the OPR may approve for procuring entities pursuant to

111 Public Procurement and Disposal of Public Property Act, 2015 (as amended), supra note 78, Section 26(1).
113 Ibid., p. 126.
114 Central Tenders Board Act, Chap. 71:91, supra note 93, Section 20(3)(b).
115 Ibid.
Section 30(1) have not been finalized, nor is the aforementioned handbook for the purposes of ensuring compliance with the Public Procurement and Disposal of Public Property Act, 2015 (as amended).

[113] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to the implementation thereto. (See Recommendation 1.2.3.2 of Section 1.2.3 of Chapter II of this Report).

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

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

[114] With respect to the aforementioned measure, in its Supplementary Response to the Questionnaire, the country under review presented information and new developments:

“The evaluation criteria and the evaluation of bids including those of public works would be the responsibility of the procuring entity and conducted in line with the procuring entity’s approved general and special guidelines.

The procuring entity is to select a tender and evaluation committee with sole responsibility for conducting the tender process as well as the evaluation of bids received. This evaluation committee should comprise at a minimum a representative from Head of Finance, Head of Legal and a Technical Expert in the field of the item being procured and would be responsible for conducting the evaluation of bids. (External key experts can also form part of this committee).

Each public entity would be required to establish a Procurement and Disposal Advisory Committee, preferably comprising at a minimum the Head of Finance, Head of Legal and an expert in the specific area of the procurement activity. This committee is responsible for the review of the evaluation process and the subsequent recommendation(s) to the Accounting Officer or equivalent.”117

[115] The Committee also takes note of Section 29(4) of the Public Procurement and Disposal of Property Act, 2015 (as amended) which set outs that suppliers and contractors are to be evaluated according to the qualification criteria in Section 29(1) and the procedures outlined in solicitation documents:

“A procuring entity shall evaluate the qualifications of suppliers or contractors in accordance with the qualification criteria specified in section (1) and the procedures set out in the pre-qualification or pre-selection documents, if any, and in the solicitation documents.”118

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117 Supplementary Response to the Questionnaire (Office of the Procurement Regulation), *supra* note 77, p. 6.
118 Public Procurement and Disposal of Public Property Act, 2015 (as amended), *supra* note 78, Section 29(4). Section 29(1) states the following: “29(1) A procuring entity shall ensure that suppliers and contractors—(a) have the legal capacity to enter into the procurement contract; (b) are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial officer, their business activities have not been suspended and they are not the subject of legal proceedings for any of the foregoing; (c) have not, and their directors or officers have not, been convicted of any criminal offence; (d) have fulfilled their obligations to pay all required taxes and contributions in Trinidad and Tobago; (e) have the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and personnel to perform the procurement contract; and (f) meet relevant industry standards.”
The Committee also became acquainted the sections of the “Procurement and Disposal Handbook” (Draft), which covers the offer evaluation process and criteria, as well as the methods of evaluation. The handbook emphasizes the importance of including the selection criteria in the solicitation documents and prioritizing them in terms of their relative importance so that prospective offerors can clearly identify the factors that are most important in meeting the procuring entity’s needs and respond accordingly.\textsuperscript{119} It additionally stipulates that the evaluation of offers should be objective, be based on reasoning, with potential sources of bias controlled, so that the offer that is the most advantageous, taking into account the needs of the procuring entity and the value for money, is selected.\textsuperscript{120}

The handbook also describes various methods of evaluation that may be used, depending on what is most appropriate to achieve value for money, taking into account, the objectives to be achieved, the nature of the requirements and the operation of the relevant supply market.\textsuperscript{121}

While the Committee takes note of this step towards the implementation of measure (c), the Committee also observes that Section 29(4) of the Public Procurement and Disposal of Property Act, 2015 (as amended) has not been proclaimed, nor does it provide for the adoption of objective criteria for the evaluation of bids. Moreover, Section 29(1) only provides basic requirements that a supplier or contractor should meet, while the procuring entity conducts its due diligence. In addition, the “Procurement and Disposal Handbook” is still in development and the sections regarding evaluation planning and evaluating offers have yet to be drafted.

During the on-site visit, representatives of Central Tenders Board described the current evaluation process and submitted the “Central Tenders Board Information Booklet”,\textsuperscript{122} which was published in April 2008. The “Information Booklet” sets outs out the process for evaluating offers, including some of the basic evaluation criteria that should be given special attention.\textsuperscript{123}

The CTB evaluates tenders and proposals to determine the lowest evaluated bid or preferred proposal presented. An evaluation team, consisting of members recommended by the requesting Ministry and approved the CTB, is then established.\textsuperscript{124} The Chairman of the evaluation team is mandated with the responsibility of making the necessary arrangements for the time and place of the evaluation exercise. The Chairman then distributes the documents to be used and the weighing system is discussed in a meeting with the members of the evaluation team. When required, as in the case with complex projects, documents may be distributed several days prior to the meeting and the evaluation team may be divided into sub-committees for more detailed work.\textsuperscript{125}

The evaluation team conducts a preliminary examination to ensure that the bids submitted contain the relevant documentation and comply with requirements. A summary of offers is prepared, highlighting the following items: comparable prices, converted to one currency; delivery time/completion period; make and model of items; terms of guarantee; terms of payment; and technical factors such as capacity, productivity, operating costs, maintenance and upkeep, quality, compatibility and standardization.\textsuperscript{126}

\textsuperscript{119} Procurement and Disposal Handbook (Draft), supra note 107, p. 125.
\textsuperscript{120} Ibid., p. 128-130.
\textsuperscript{121} Ibid., p. 130.
\textsuperscript{123} Ibid., p. 29-34.
\textsuperscript{124} Ibid., p. 29.
\textsuperscript{125} Ibid., p. 30.
\textsuperscript{126} Ibid., p. 30-31.
With respect to the criteria for evaluation, the “Central Tenders Board Information Booklet” states the following:

“Each criterion is assigned points, the total of which should be 100. The mean of the points of each member of the Evaluation Team is calculated and this mean is a reflection of the score attained by the prospective Tenderer or Consultant. The Evaluation Criteria must also reflect the minimum score, usually 70, which must be attained for the offer or Proposal to be considered further. Offers or Proposals are subsequently ranked in order of merit. In the case of consultancy, the financial proposals of the highest ranked firm are opened and negotiations are commenced. If an agreement cannot be reached, negotiations are then closed and negotiations are then initiated with the second ranked firm, and so on, until an agreement is reached.”^127

The booklet further states that how points are tallied up for each submission:

“The Chairman of the Evaluation Team tallies the points and finds the average score for each Tenderer or Consultant. An Evaluation Report is then prepared, signed by each member, and is then submitted to the Central Tenders Board for approval. If any member dissents, a separate report, called a Minority Report, is prepared and signed by that member and submitted to the Central Tenders Board.”

The booklet also provides basic criteria that should be considered for prequalification (general background and organization of the firm; available manpower, plant, and equipment resources; similar work experience/past performance/track record; financial capability, etc.) and for various types of services (e.g. supplies of goods, security services, construction and major works, consultancy services).

While the Committee notes that “Central Tenders Board Information Booklet” does set out the process for evaluating offers and the basic criteria to consider, depending on the nature of the service requested, the Committee believes that this does not provide the necessary guarantees to ensure that evaluations are conducted in a manner that is objective and devoid of discretion. Therefore, to preserve impartiality, transparency and equality of opportunity, the Committee believes that the Republic of Trinidad and Tobago should consider adopting objective criteria for the evaluation of bids that are reflected in legislation or formulated in an administrative document.

Moreover, with respect to the new regulatory framework, careful consideration should be given to making the evaluation process subject of regulations as opposed to general guidelines and special guidelines that may be issued or approved by the OPR.

In light of the foregoing, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (c) of the recommendation in Section 1.2.1 in Chapter II of this Report, while it takes note of the need for the country under review to give additional attention to implementation thereto. (See Recommendation 1.2.3.3 in Section 1.2.3 of Chapter II of this Report)

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

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

^127 Ibid., p. 31.
With respect to the aforementioned measure, in its Supplementary Response to the Questionnaire, the country under review presented information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:

“Under Section 5(2) of the Act, a procuring entity is responsible for carrying out public procurement in a manner that is consistent with the objects of the Act. It does so by developing an overall procurement strategy and annual procurement plan that identifies and manages the risks and opportunities it faces in procuring the range of goods, services and works based on the underlying supply market at issue with a view to achieving value for money.”

“Provisions which aim at guaranteeing openness, equity and efficiency of the procurement of goods and services are directly related to S.27(1)(a), wherein a procuring entity shall no later than six weeks after the approval of the National Budget, publish on its website or in any other electronic format, information regarding all planned procurement activities for the following twelve months. This thereby permits the procuring entity to plan sufficiently in advance of the launch of the procurement process.”

However, the Committee observes that Sections 5(2) and 27(1)(a) of the Public Procurement and Disposal of Public Property Act, 2015 (as amended), have not been proclaimed, nor does legislation provide for preparation studies, designs and technical evaluations to assess the appropriateness and the timeliness of a purchase, although it does consider the publication of all planned procurement activities for the year. Furthermore, the current regime under Central Tenders Board Act, Chap. 71:91 does not provide for such provisions.

The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (d) of the recommendation in Section 1.2.1 in Chapter II of this Report. However, given that the aforementioned provisions of the Public Procurement and Disposal of Public Property Act, 2015 (as amended) have not been brought into force, in addition to the fact that the Act does not consider measures to assess the appropriateness and the timeliness of a purchase, and that the current regime in place does not consider such provisions, the Committee notes the need for the country under review to give additional attention to implementation thereto. (See Recommendation 1.2.3.4 in Section 1.2.3 of Chapter II of this Report).

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

Strengthen existing mechanisms responsible for the internal and external audit, control and oversight of the government procurement system and the monitoring of execution of contracts.

With respect to the aforementioned measure, in its Supplementary Response to the Questionnaire, the country under review presented information and new developments in relation to the Public Procurement and Disposal of Public Property Act, 2015 (as amended), which the Committee notes as a step that contributes to progress in the implementation of the measure:

“Compliance and Enforcement

S. 6(1), Subject to subsection (2), any procurement of goods, works or services or retention or disposal of public property that is not done in accordance with the Act shall be void and illegal. In

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128 Supplementary Response to the Questionnaire (Office of Procurement Regulation), supra note 77, p. 1.
129 Ibid., p. 8.
carrying out its monitoring function, the Office may conduct audits and periodic inspections of public bodies and issue directions to them. Any public body/person who fails to comply with such a direction without reasonable justification is liable on summary conviction to a fine of $100,000.00 as set out under Schedule 1 (Section 61).

Under section 24 of the Act, the Regulator must also submit an annual report to the Parliament, including among other things, the total number and value of contracts awarded by public bodies, the number of unfulfilled procurement contracts, and those bodies that have failed to comply with the Act.”

With respect to measures taken to address challenges raised in the Report of the Second Round in relation to the lack of regulatory oversight and monitoring, the country under review stated the following:

“One of the functions of the OPR, as stated under Section 13, would be to investigate, on our own initiative or upon complaint from any party involved in public procurement or disposal of public property or any member of the public, any alleged or suspected breach of this Act.

The Office has the power to investigate any alleged breaches of the Act. If, upon completion of a thorough investigation, it is found that an offence has been committed, a report shall be sent to the Director of Public Prosecutions for further action.”

Furthermore, the Integrity Commission of Trinidad and Tobago stated the following in its Supplementary Response to the Questionnaire:

“Internal audit oversight and monitoring is conducted by an Internal Auditor. The external audit oversight and monitoring is the responsibility of the Office of Procurement Regulation in accordance with section 14 (1) of the Procurement Act.”

Section 14(1) states the following:

“14. (1) In the performance of its functions, the Office may—
(a) monitor the procurement of goods, works and services, and the disposal of public property, by public bodies to ensure compliance with this Act;
(b) conduct audits and periodic inspections of public bodies to ensure compliance with this Act;
(c) issue directions to public bodies to ensure compliance with this Act; and
(d) carry out such other activities and do such other acts as it considers necessary or expedient for the carrying out its functions.”

Nevertheless, the Committee notes that, although some subsections of Section 13 of the Public Procurement and Disposal of Public Property Act, 2015 (as amended) have been proclaimed, Section 13(h) which specifically covers auditing and the review of the procurement system, has not brought into force. Neither is Section 14(1) in force, which attributes this function to the OPR, along with monitoring the

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130 Ibid., p. 9.
131 Report of the Second Round, supra note 8, p. 11.
132 Supplementary Response to the Questionnaire (Office of Procurement Regulation), supra note 77, p. 9.
134 Public Procurement and Disposal of Public Property Act, 2015 (as amended), supra note 78, Section 14.
procurement of goods, works and services by public bodies to ensure compliance with the provisions of the Public Procurement and Disposal of Public Property Act, 2015 (as amended).

[136] With respect to the new regime, during the on-site visit, representatives of Ministry of Finance stressed the fact, unlike the CTB, a central procurement entity, which falls under the responsibility of the Ministry of Finance, the OPR will act as an independent regulatory body and as such, will only be accountable to Parliament as per Section 24 of Public Procurement and Disposal of Public Property Act, 2015 (as amended).

[137] Representatives from the Office of the Auditor General also informed the Committee that there is some oversight of the procurement system by the Auditor General under Part III of the Exchequer and Audit Act, Chap. 69:11 and that it may report on irregularities observed in the award of contracts. However, the Committee notes that Section 9 of the Exchequer and Audit Act, Chap. 69:11 considered in the Report of the Second Round and the existing mechanism was deemed to be insufficient for the audit, control and oversight of the procurement system.135

[138] That being said, the Committee wishes to recall the reasons for the recommendation for the measure:

“With regard to control mechanisms, the Committee notes that there is insufficiency in the existing mechanism for the audit, control and oversight of the procurement system. It is critical to the development of a sound government procurement system for a fully operational and functional external and internal control system. The White Paper makes reference to this lack of regulatory oversight, observing that the partially decentralized nature of the current system lends itself to inadequate monitoring. In addition, the Board does not have the authority to regulate and “the regulatory procurement framework lacks the authority to audit the procurement system and ensure compliance with the rules and procedures for the award and implementation of contracts.” The Committee nevertheless notes that there is some oversight of the procurement system per the Auditor General. This existing mechanism could therefore be strengthened and expanded, with particular focus on management control of the system and award of contracts.”136

[139] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (e) of the recommendation in Section 1.2.1 in Chapter II of this Report. However, given the relevant sections of the Public Procurement and Disposal of Public Property Act, 2015 (as amended) have not yet been brought into force, the Committee takes note of the need for country under review to give additional attention to implementation thereto. Moreover, the Committee notes that the recommendation contains two related, but independent elements and, as such, considers it advisable to reformulate the recommendation by breaking it down into two separate recommendations. (See Recommendations 1.2.3.5 and 1.2.3.6 in Section 1.2.3 of Chapter II of this Report)

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

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

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135 Report of the Second Round, supra note 8, p. 11.
[140] With respect to the aforementioned measure, in its Supplementary Response to the Questionnaire, the country under review presented information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:

“As set out under Section 13(f) of the Act, the OPR is mandated to promote the use of technology in public procurement and the retention and disposal of public property.”

[141] In relation to the publication of public tender opportunities, the country under review stated the following:

“In terms of public tender opportunities, under Section 27(1) of the Act, a procuring entity shall, no later than six weeks after the approval of the National Budget, publish on its website or in any other electronic format, information regarding all planned procurement activities for the following twelve months, and under Section 27(b), update the information referred to in paragraph (a) as necessary.”

[142] The country under review indicated the following regarding the publication of public notices of the award of procurement contracts on its website or in any other electronic format:

“In terms of public notice of the award of procurement contract or framework agreement, under Section 36(1), upon the entry into force of a procurement contract or conclusion of a framework agreement, a procuring entity shall promptly publish on its website or in any other electronic format, notice of the award of the procurement contract or the framework agreement, specifying the name of any supplier or contractor with whom the procurement contract or framework agreement was entered into, the goods or services to be supplied, the works to be effected and, in the case of procurement contracts, the date of the award of the contract and the contract price.”

[143] With respect to measures to make information available to the public on tendering opportunities, the status of bids and awards and the progress of major progress, the country under review stated the following:

“[O]ne of the functions of the OPR under Section 13(1) is to establish a comprehensive database of information on public procurement, including information on tenders received, the award and value of contracts, and such other information of public interest as the Office thinks fit.”

[144] The country under review also added that under Section 24(1) of the Public Procurement and Disposal of Public Property Act, the Regulator would be required to make some of the information through his or her annual report to Parliament. Section 24(2) provides some of the information that the report must include:

“24(2) A report under subsection (1) shall include—
(a) a figure representing the total value of contracts as awarded by public bodies, and another figure representing the cost of the total value of procurement contract variances for that year;
(b) the number of unfulfilled contracts awarded by public bodies in respect of procurement;”

137 Supplementary Response to the Questionnaire (Office of Procurement Regulation), supra note 77, p. 12.
138 Ibid., p. 12.
139 Ibid., p. 13.
140 Ibid., p. 12.
(c) a summary of transactions in respect of each public body specifying in respect of public procurement—
(i) the number of procurement contracts awarded;
(ii) the number of procurement contracts varied;
(iii) the quantum of those variances;
(iv) the number of unfulfilled procurement contracts and the quantum of cost incurred;
(v) with respect to the procurement for a project, a brief description, the awardee, the value, the scope of works and the expected deliverables of the project; and
(vi) lessons learnt as a consequence of the management of procurement contracts;

(d) a summary of transactions in respect of each public body concerning the disposal of public property—
(i) in respect of real property, the address and other identifying details of the property disposed of, including value, to whom it was disposed, date of disposal, means of disposal and consideration; and
(ii) in respect of property other than real property, details of the property disposed of, including value, to whom it was disposed, means of disposal, and consideration;

(e) details of changes implemented to ensure current best practice for procurement, and disposal of public property;

(f) the names of public bodies that have failed to comply with this Act;

(g) an assessment of the overall performance of the procurement system; (h) a summary of unresolved issues that are to be dealt with; and

(i) any recommendations requiring action on the part of a procuring entity.  

[145] The Committee notes that Sections 13(f), 27, 36(1), 24(1) and 24(2) have not yet been proclaimed. Moreover, while Section 27(1) and Section 36(1) does provide for the publication of tendering opportunities and the awards of contracts through electronic means, Section 24 does not explicitly ensure that the said information would be available online to the general public.

[146] The Committee also notes that, although Section 13(1)(a) is in force, the provision does not include the status of bids and awards and the progress in the execution of major projects, nor does it ensure that the information in the comprehensive database on public procurement will be accessible online to the public.

[147] During the on-site visit, the representatives of the Central Tenders Board and the Ministry of Finance stated that tender notices and awarded contracts are regularly published on its website.  

[148] However, the Committee notes that although it may be government practice to publish tender opportunities and awarded contracts, the Committee notes that the current regime under the Central Tenders Board Act, Chap. 71:91 contains no provisions for the use of electronic communications, such as the Internet to publicize tender opportunities, the status of bids, awarded contracts, and progress in the execution of major projects.

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141 Public Procurement and Disposal of Public Property Act, 2015 (as amended), Section 24(2).
[149] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (f) of the recommendation in Section 1.2.1 in Chapter II of this Report. However, given that the relevant provisions of the Public Procurement and Disposal Public Property have not yet been brought into force, the Committee also notes the need for country under review to give additional attention to implementation thereto. (See Recommendation 1.2.3.7 in Section 1.2.3 of Chapter II of this Report).

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

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

[150] With respect to the aforementioned measure, in its Supplementary Response to the Questionnaire, the country under review presented information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:

“One of the functions of the Act as stated under Section 13(1) is promoting the use of technology in public procurement and the retention and disposal of public property.”¹⁴³

[151] In addition to Section 13(f) of the Public Procurement and Disposal of Public Property (Amendment) Act, which promotes the use of technology in public procurement, the Committee also takes note of Section 13(g), which relates to the promotion of electronic transactions and Section 38(1), which provides that public procurement under the Act “may be undertaken using electronic means.”¹⁴⁴ While the provisions do consider moving towards an electronic procurement system, they have not yet been proclaimed.

[152] The Committee also notes Section 13(1)(k) which gives the responsibility of determining, developing, introducing, maintaining and updating system-wide databases and technology, which is presently in force and could serve as the basis for developing and implementing an electronic procurement system.

[153] However, representatives of the OPR stated during the on-site visit that there is no electronic procurement system in place at this time, although there been some encouragement from public bodies to move towards an electronic platform. The OPR indicated that while it is on the agenda, it unlikely to happen in the short term. The Central Tenders Board further added that the submission of tenders is still done through the use of sealed envelopes, which need to be placed inside the CTB’s tenders box located at the Central Tenders Board Division.

[154] In light of the foregoing, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (g) of the recommendation in Section 1.2.1 in Chapter II of this Report. However, given that some of the relevant provisions of the Public Procurement and Disposal Public Property (Amendment) Act, 2015 have not yet been brought into force and that there is presently no electronic system in place, the Committee also notes the need for country under review to give additional attention to implementation thereto. (See Recommendation 1.2.3.8 in Section 1.2.3 of Chapter II of this Report).

¹⁴³ Supplementary Response to the Questionnaire (Office of Procurement Regulation), supra note 77, p. 14.
¹⁴⁴ Public Procurement and Disposal of Public Property Act, 2015 (as amended), supra note 78, Section 38(1).
Furthermore, in a meeting with representatives of civil society, both Trinidad and Tobago Transparency Institute and Trinidad and Tobago Manufacturers’ Association highlighted the need for an electronic procurement system.

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

Establish a centralized registry of contractors of works, goods or services, mandatory to all State bodies and dependencies, to foster the principles of openness, equity and efficiency provided for in the Convention.

With respect to the aforementioned measure, in its Supplementary Response to the Questionnaire, the country under review presented information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:

“The OPR is responsible for the establishment of a comprehensive database of information on public procurement, including information on tenders received, the award and value of contracts, and such other information of public interest as the Office thinks fit as set out under Section 13(1)(a). This database is to be known as “the Procurement Depository”, where suppliers and contractors can submit information with respect to, among other things, their qualifications and experience. (Part III, Section 26(1)) As part of the pre-qualification exercise, under Section 13(1)(q), one of the main functions of the OPR would be to prepare and maintain a database of pre-qualified contractors and suppliers.”

Section 26 of the Public Procurement and Disposal of Public Property Act, 2015 (as amended), states the following:

“26(1) The Office shall establish a database, to be known as “the Procurement Depository”, to which suppliers or contractors can submit information with respect to, among other things, their qualifications and experience. (2) The Procurement Depository shall be accessible by the public for viewing. (3) A supplier or contractor who submits information to the Procurement Depository shall be responsible for ensuring its accuracy. (4) In conducting its due diligence, pursuant to section 29(1)(e), a procuring entity may require a supplier or contractor who has submitted information to the Procurement Depository to confirm the accuracy of the information submitted.”

However, the Committee notes that Section 13(1)(q) of the Public Procurement and Disposal of Public Property Act, 2015 (as amended), which provides for the establishment and the maintenance of a database of pre-qualified contractors and suppliers has not been proclaimed, nor has Section 26 regarding the Procurement Depository. The Committee further notes there is nothing in Section 26 to suggest the mandatory nature of the Procurement Depository. For example, subsection (1) states that suppliers or contractors “can submit information with respect with to, among other things, their qualifications and experience”. In doing so, a procuring entity “may”, pursuant to Section 26(4), “require a supplier or a contractor who has submitted information to the Procurement Depository to confirm the accuracy of the information submitted.” The Committee finds that the provisions do not clearly make it obligatory for procuring entities to participate in this process by providing whatever relevant information they may have to the OPR.

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145 Supplementary Response to the Questionnaire (Office of Procurement Regulation), supra note 77, p. 15.
146 Public Procurement and Disposal of Public Property Act, 2015 (as amended), supra note 78, Section 26(1).
During the on-site visit, the representatives of the OPR indicated that public bodies are presently in the process of submitting information regarding for upload to the Procurement Depository and that it is not yet readily available.

The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (h) of the recommendation in Section 1.2.1 in Chapter II of this Report. However, given that the relevant provisions of the Public Procurement and Disposal Public Property Act, 2015 (as amended) have not yet been brought into force, the Committee also notes the need for country under review to give additional attention to implementation thereto. (See Recommendation 1.2.3.9 in Section 1.2.3 of Chapter II of this Report).

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

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

With respect to the aforementioned measure, in its Supplementary Response to the Questionnaire, the country under review presented information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:

“\[159\] In the context of the PP&DPP Act, the use of the word “ineligibility list” means a list of suppliers or contractors who shall not participate in procurement proceedings under Section 58(1) as opposed of the terminology ‘blacklist’ or ‘ban’.

The preparation and maintenance of the ‘ineligibility list’ would be the responsibility of the OPR, under Section 58(2).

The OPR under Section 58(3) the Act has the authority to add a supplier or contractor to the ineligibility list where the supplier or contractor—

\[161\] a) consistently fails to provide satisfactory performance;

\[161\] b) is found to be indulging in corrupt or fraudulent practices; or

\[161\] c) is convicted of an offence under this Act.

Under Section 58(4) of the Act, the Minister of Finance, on the advice of the OPR, may make Regulations to specify the mechanism and manner for adding a supplier or contractor to the ineligibility list, including the procedure for removing a supplier or contractor from the list.

In terms of equity, a supplier or contractor shall be accorded an adequate opportunity to be heard and to make representation before he is added to the ineligibility list pursuant to Section 58(5).

Subsequent to a supplier or contractor being added to the ineligibility list, any information relating to the supplier or contractor that is stored in the Procurement Depository shall be removed; and the fact of the addition of the supplier or contractor to the ineligibility list shall be published and communicated to all public bodies as stated under Section 58(6).
A supplier or contractor whose tender or proposal is rejected or revoked under subsection (7) shall be added to the ineligibility list, pursuant to section 58, for a period of ten years following the date of rejection or revocation of his tender or proposal."\(^{147}\)

[162] While the Committee notes that Section 58 of the Public Procurement and Disposal of Public Property Act, 2015 (as amended) facilitates the exclusion and sanction of suppliers and contractors who have failed to provide satisfactory performance or comply with the Act, the provision and its subsections have not yet been proclaimed, nor have the regulations specifying the procedure for removing a supplier or a contractor from the Procurement Depository been adopted.

[163] During the on-site visit, the Central Tenders Board indicated that there is no formal blacklist and that it does not have the authority to blacklist or exclude suppliers and contractors under the Central Tenders Board Act, Chap. 71:91. Representatives of the OPR did confirm, however, that it will have such authority as the regulatory body under the new regime.

[164] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (i) of the recommendation in Section 1.2.1 in Chapter II of this Report. However, given that the relevant provisions of the Public Procurement and Disposal Public Property Act, 2015 (as amended) have not yet been brought into force, the Committee also notes the need for country under review to give additional attention to implementation thereto. (See Recommendation 1.2.3.10 in Section 1.2.3 of Chapter II of this Report).

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

*Implement provisions that facilitate the participation of citizen oversight mechanism to monitor the execution of contracts where the nature, importance or magnitude so warrants, in particular public works contracts.*

[165] With respect to the aforementioned measure, in its Supplementary Response to the Questionnaire, the country under review presented the following information and new developments:

> "Under Section 24 of the Act, the Regulator must submit an annual report to the Parliament, including among other things, the total number and value of contracts awarded by public bodies, the number of unfulfilled procurement contracts, and those bodies that have failed to comply with the Act."\(^{148}\)

[166] The country under review also indicated that under the new regime, the OPR will have the power to investigate on its own initiative or upon the complaint of any party involved in the procurement proceedings or any member of the public:

> "One of the functions of the OPR, as stated under Section 13, would be to investigate, on our own initiative or upon complaint from any party involved in public procurement or disposal of public property or any member of the public, any alleged or suspected breach of this Act."

\(^{147}\) Supplementary Response to the Questionnaire (Office of Procurement Regulation), *supra* note 77, p. 16.

The Office has the power to investigate any alleged breaches of the Act. If, upon completion of a thorough investigation, it is found that an offence has been committed, a report shall be sent to the Director of Public Prosecutions for further action.\textsuperscript{149}

[167] In that regard, the Committee notes that, although Section 24 may facilitate the participation of civil society in matters related to public procurement by making information available about contracts awarded, unfulfilled contracts and costs incurred, a summary of transactions in respect of each public body as it relates to procurement, changes to awarded contracts and projects, the list of public bodies that have failed to comply with the Act and an assessment of the overall performance of the procurement system, among others items, it has not been proclaimed. The Committee further notes that other than making information accessible, it does not provide for mechanisms oriented to facilitate and encourage the participation of civil society in the monitoring of the execution of contracts.

[168] The Committee also takes note of Section 13(1)(l) which attributes the function of promoting awareness of public bodies and the public to issues relating to public procurement, although it has yet to be in brought into force.

[169] During the on-site visit, representatives of the Central Tenders Board stated the current regime under the Central Tenders Board Act, Chap. 79:11 does not contain provisions to facilitate the participation of citizen oversight mechanisms to monitor the execution of contracts, nor it is involved itself in the monitoring of those contracts once they have been awarded. Representatives of the OPR also pointed out the lack of representatives of civil society who would have the qualified experience and requisite knowledge of the procurement system and its corresponding regulatory framework as a challenge for the establishment of such citizen oversight mechanisms.

[170] Accordingly, the Committee observes the absence of measures that promote and facilitate the participation of citizen oversight mechanism to monitor the execution of contracts where the nature, importance or magnitude so warrants, in particular public works contracts. Given the foregoing, the Committee reiterate the need for the country under review to give additional attention to implementation thereto. The Committee will also reformulate the recommendation for the sake of greater clarity. (See Recommendation 1.2.3.11 in Section 1.2.3 of Chapter II of this Report).

[171] Moreover, the Committee would like to also make mention of the fact that the Trinidad and Tobago Transparency Institute and the Trinidad and Tobago Manufacturers’ Association both indicated that they unaware of the existence of such measures, during the meeting with civil society as part of the on-site visit, and cited lack of capacity as a contributing factor for the lack of citizen oversight mechanisms in place in Trinidad and Tobago.

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

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

[172] With respect to the aforementioned measure, in its Supplementary Response to the Questionnaire, the country under review presented the following information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:

\textsuperscript{149} Ibid.
“With regard to complaints raised by a person or a group with an interest in the contract or the process under examination, Section 49(1) grants the right to challenge and appeal, so that a supplier or contractor may bring challenge proceedings where it is alleged that—
(a) a procuring entity made a decision or took action that is not in compliance with this Act; and
(b) the supplier or contractor has suffered or is likely to suffer loss or injury because of the decision or action of the procuring entity.”\footnote{Ibid., p. 10.}

[173] The Committee, in addition, takes note of Sections 49(2) and 49(3) of the Public Procurement and Disposal of Public Property Act, 2015 (as amended) which stipulates the following:

“49(2) Challenge proceedings may be made by way of an application for review by the Office under section 50.\footnote{Public Procurement and Disposal of Public Property Act, 2015 (as amended), supra note 78, Section 49(2).}

49(3) Subject to Section 52, all hearings under this Part shall take place in public.”\footnote{Ibid., Section 49(3).}

[174] The Committee also takes notice of Section 50(1) which provides that a “supplier or a contractor may apply to the OPR for review of a decisions or an action taken by a procuring entity in procurement proceedings.” Section 50(2) describes the procedure for applications for review by the OPR as well as the actions it may take in making its decision with respect to such applications.\footnote{Ibid., Section 49(3).}

[175] In addition, Section 51(1) provides for the participation of any supplier or contractor to which the application relates as well as any public body whose interests are or could be affected by the application. Moreover, under Section 51(3) participants in challenge proceedings shall have the right to be “(a) present, represented and accompanied at all hearings during the proceedings; (b) be heard; (c) present evidence, including witnesses; and (d) seek access to the record of challenge proceedings [...]”\footnote{Ibid., Section 51(3).}

[176] The Committee, however, notes that while the aforementioned provisions allow for challenges to the procurement process at the administrative level and specifies the procedure for handling and responding to challenges and appeals, they have not yet been proclaimed.

[177] The Committee also takes note of Section 13(1)(r) in relation to dispute resolution in relation to procurement proceedings, which has been proclaimed. Section 13(1)(r) requires the OPR to “prepare and maintain a list of pre-qualified mediators, arbitrators and experts for the purposes of alternative dispute resolution” under the Act. However, the Act does not establish how such mechanisms would function nor the circumstances that would make such mechanisms available.

[178] The Committee observes that The Public Procurement and Disposal of Property (Amendment) Act, 2016 (Act No. 5 of 2016) establishes the Public Procurement Review Board, which can review decisions made by the OPR.\footnote{Public Procurement and Disposal of Public Property (Amendment) Act, 2016 (Act No. 5 of 2016), supra note 79, Section 6.}
However, taking into account the current legal framework, as enforced, there are, as it stands, no formal mechanisms designed specifically to allow administrative challenges or appeals to the bidding process.

During the on-site visit, representatives of the Office of the Ombudsman of Trinidad and Tobago informed the Committee that it is empowered to investigate complaints in relation to any decision, recommendation, act or omission, by any officer of a government or statutory body in which a member of the public claims to have been aggrieved or appears to have sustained some injustice in the exercise of administrative functions. It may look at unfair treatment and faults in the administration such as delays in addressing a matter, decisions that are not in accordance with policies and failure to follow recognized procedures, among others. The Office of the Ombudsman may also investigate complaints that bring into question the integrity of the Public Service, including matters of corruption.

Given the foregoing, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (k) of the recommendation in Section 1.2.1 in Chapter II of this Report. However, given that the relevant provisions of the Public Procurement and Disposal Public Property Act, 2015 (as amended) in relation to challenges proceedings have not yet been brought into force, the Committee also notes the need for country under review to give additional attention to implementation thereto. (See Recommendation 1.2.3.12 in Section 1.2.3 of Chapter II of this Report).

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

Ensure that the Board has the necessary trained personnel and resources to carry out its functions properly as well as establishing mechanisms that permit ongoing evaluation and follow up of said activities.

With respect to the aforementioned measure, in its Supplementary Response to the Questionnaire, the country under review presented the following information and new developments regarding the OPR, which the Committee notes as a step that contributes to progress in the implementation of the measure:

“Provisions for ensuring the Board has the necessary trained personnel and resources as well as measures to address challenges in terms of staffing and training personnel and structural deficiencies to effectively deal with the volume and complexity of work involved is addressed under Section 10 of the Act.”

Section 10 provides for the establishment of a Board within the OPR, which shall consist of the Procurement Regulator, who shall be the Chairman of the board, and no less than eight but no more than eleven members. Section 10 also specifies the requisite qualifications and experience in matters relating to procurement to occupy such function.

The country under review also mentioned, its Supplementary Response to the Questionnaire, the following in relation to staffing:

“The staffing would be appointed for the efficient performance of the functions of the OPR and on such terms and conditions as the OPR may determine under Sections 18(1) & 18(2). There are also provisions under Section 19(1), whereupon approval of the appropriate Service Commission or

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156 Constitution of the Republic of Trinidad and Tobago, Chap. 1:01, 1976, *supra* note 14, Section 93.
158 Supplementary Response to the Questionnaire (Office of Procurement Regulation), *supra* note 77, p. 19.
public body and with the consent of the officer or employed person, a public officer or any person in the employment of any public body may be seconded to the service of the OPR." 159

[185] The Committee also notes Section 13(1)(b) of the Public Procurement and Disposal of Public Property Act, 2015 (as amended) which establishes setting “training standard, competence levels and certification requirements to promote best practices in procurement” as one of the OPR’s functions.

[186] During the on-site visit, representatives of the OPR indicated that the Procurement Regulator and the member of the Board have been appointed by the President in accordance with Section 10 of the Act. With respect to staffing, the Procurement Regulator indicated that he has been working actively to staff the OPR and building capacity for its operations. The Procurement Regulator added that, barring unforeseen circumstances, the OPR should be fully staffed by the end of April 2019.

[187] In relation to internal capacity, the OPR stated that training for senior management on the operation framework for internal control for procurement has been developed and as well as for internal auditors in relation to best practices in procurement compliance monitoring. Training opportunities have also been made available to civil servants whose functions may touch on elements of procurement proceedings—from the planning stage to the formal acknowledgement of the completion of a contract—to ensure personnel will be readily capable to operate under the new regime once it is fully proclaimed. Workshops on the new procurement regulatory framework have been provided through the Public Service Academy. Moreover, representatives of the Ministry of Finance mentioned that officers have been exposed to procurement training in partnership with the United Nations Development Programme, which provides certification in procurement and supply in compliance with international qualification standards.

[188] The OPR did however raise dearth of appropriately qualified procurement professionals as a challenge which may present a difficulty in implementing the new framework.

[189] In light of the foregoing, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (l) of the recommendation in Section 1.2.1 in Chapter II of this Report. However, given that the OPR is still in the process of staffing up, training personnel and procuring to be proficient in the new regime and the difficulties expressed which may make the implementation of the new framework challenging, the Committee also notes the need for country under review to give additional attention to implementation thereto. Furthermore, given that measure (l) recommendation originally formulated for CBT and that country under review is moving towards the implementation of its new regulatory framework, the Committee considers appropriate to reformulate the recommendation for greater clarity, indicating that it is intended for the OPR. (See Recommendation 1.2.3.13 in Section 1.2.3 of Chapter II of this Report).

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

Maintain and publish statistics that reflect the nature of contracts awarded, the proportion that is by public tender, the proportion that is by selective tender, the number of judicial review applications regarding the process and the number of decisions given.

[190] With respect to the aforementioned measure, in its Supplementary Response to the Questionnaire, the country under review presented the following information:

“The OPR is not currently in possession of any of the statistical data requested. However, upon full proclamation of the Act, the OPR will begin compiling the information as detailed in S. 24(1).”

[191] The Committee takes notice of Section 24(1) of the Public Procurement and Disposal of Public Property Act, 2015 (as amended) but notes that it has not yet been brought into force. Section 24(1) of the Public Procurement and Disposal of Public Property Act, 2015 (as amended) requires the OPR to maintain and publish statistical data on the total value of contracts awarded by public bodies and a summary of transactions for each public body in respect of public procurement, including the number of contracts awarded; the number of unfulfilled contracts awarded and the costs incurred; the number of contracts varied and the quantum of those variances; in respect to procurement for projects, a brief description, the awardee, the value, the scope of works and expected deliverables; as well as the names of the public bodies that have failed to comply with the Public Procurement, among others. Moreover, the Section 24(1) does not include maintaining and publishing statistical data on the number of judicial review applications nor the number of decisions issued and their outcome.

[192] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (m) of the recommendation in Section 1.2.1 in Chapter II of this Report. However, given that the relevant provisions of the Public Procurement and Disposal Public Property Act, 2015 (as amended) has not yet been brought into force and that it does not take into account statistics in relation to judicial review applications and the Committee also notes the need for country under review to give additional attention to implementation thereof. Moreover, the Committee notes that the reformulation contains two related, but independent elements and, as such, considers it advisable to reformulate the recommendation by breaking it down into two separate recommendations. The Committee will formulate a recommendation for the country under review to maintain and publish detailed statistics, compiled on an annual basis, including aspects such as percentage of contracts awarded via the different contracting methods; the number and value of contracts awarded via competitive and noncompetitive methods; and the total number of contracts awarded. (See Recommendation 1.2.3.14 in Section 1.2.3 of Chapter II of this Report). The Committee will also formulate separately a recommendation for the country under review to maintain and publish statistics, compiled on an annual basis, that reflect on the number of judicial review applications regarding procurement processes and the number of decisions given. (See Recommendation 1.2.3.15 in Section 1.2.3 of Chapter II of this Report).

1.2.2 New Developments with respect to the Provisions of the Convention on Government Systems for the Procurement of Goods and Services

1.2.2.1. New developments with respect to the legal framework

a) Scope

[193] As explained in Section 1.2.1 of this Report, a new procurement regulatory framework was introduced in January 2015 under the Public Procurement and Disposal of Public Property Act, 2015. The Act was introduced in response to a need for reform and a modern approach to public procurement identified in the White Paper, which was published by the Ministry of Finance and referenced in the Report of the Second Round. Although it was assented to in Parliament in January 2015, Section 2 provides that the Act will come into operation on a date as fixed by the President by Proclamation.

[194] The Public Procurement and Disposal of Public Property Act, 2015 was subsequently partially proclaimed later in the year by Legal Notice No. 150. As such, most of the provisions have yet to be proclaimed.

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160 Ibid., p. 21.
The Act provides for good governance of procurement and for the disposal of public property in accordance with the principles of accountability, integrity, transparency and value for money as well as the establishment of the OPR and the repeal of the Central Tenders Board Act, Chap. 71:91 and Regulations.

It covers all procurement and disposal activities involving public monies and public property and applies to all public bodies, including public-private partnerships and other arrangements in which public monies are expended on procured goods, works and services. It therefore applies to entities which previously fell out of the purview of the Central Tenders Board Ordinance.

The Public Procurement and Disposal of Public Property Act, 2015 was also subject to amendments. The Public Procurement and Disposal of Public Property Amendment Act, 2016 established the Public Procurement Review Board, which is empowered to review decisions issued by the Procurement Regulator. The Public Procurement and Disposal of Public Property Amendment Act, 2017 further amended the 2015 Act by reducing the term of the regulator and member of the Board.

b) Observations

The Committee acknowledges the assent of the Public Procurement and Disposal and Disposal of Public Property Act, 2015, its amendments, and its subsequent partial proclamation as measure adopted by Trinidad and Tobago to continue to move forward with the adoption of standards that guarantee the principles of openness, equity and efficiency in government systems for the procurement of goods and services, as provided in the Convention.

The Committee notes that, although the Public Procurement and Disposal of Public Property Act, 2015 was partially proclaimed by the President, most of the outstanding provisions have yet to be brought into force, as provided in Section 2. Therefore, for the most part in place is still the same provisions analyzed during the Second Round of Review and, consequently, in this Report.

In this context, the Committee deems it pertinent to make a few comments regarding the advisability of the country under review to consider strengthening, developing, and/or adapting certain aspects that have to do with those new developments, notwithstanding the observations made by the Committee in Section 1.2.1 above in connection with the follow-up on implementation of the recommendations made to the country under review in the Report of the Second Round.

The Committee notes that, although not in force, Section 30(2)(a) enables procuring entities to prepare special guidelines that they may submit to the OPR for approval. These special guidelines may provide that the general guidelines prepared by the OPR, pursuant to 30(1)(a), shall apply to a procuring entity “subject to such exemptions or amendments as are specified in the guidelines.”

Given the foregoing, the Committee believes that it would be advisable for the country under review to consider measures to ensure that procurement policies are standardized for all public bodies so as to minimize discrepancies between various procuring entities and ensure that practices meet the standards established in the Act and forthcoming regulations. The country under review could also consider providing for additional safeguards to ensure that special guidelines do not become a gateway to circumvent the Act.

1.2.2.2 New developments with respect to technology

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161 Public Procurement and Disposal of Public Property Act, 2015 (as amended), supra note 78, Section 30(2)(b).
The country under review did not provide information on new developments with regard to technology either in its response to the questionnaire or the on-site visit.

Notwithstanding the foregoing, the Committee notes that, although not fully operational, the OPR has a dedicated website, which provides information about its role, governance and regulatory framework. The website includes all the relevant legislation in relation to the new regime, draft versions of handbooks and special guidelines for different entities, as well as documentation and reports which emergence from consultation workshops.

Taking into account that the Committee formulated recommendations in the preceding sections to increase the scope of use of electronic communications, such as the Internet to publish tendering opportunities, the status of bids, and awarded contracts as well as progress in the execution of major projects and that the OPR will be responsible, pursuant to Section 24(1) of the Public Procurement and Disposal of Public Property Act, 2015 (as amended), to maintain and publish statistical data on the total value of contracts awarded by public bodies and a summary of transactions for each public body in respect of public procurement, including the number of contracts awarded; the number of unfulfilled contracts awarded and the costs incurred; the number of contracts varied and the quantum of those variances; in respect to procurement for projects, a brief description, the awardee, the value, the scope of works and expected deliverables; as well as the names of the public bodies that have failed to comply with the Public Procurement, among others, the Committee believes it would be beneficial for the country under review to consider providing the OPR with the necessary human and financial resources, within available resources, to maintain its website and ensure its suitability. The Committee will formulate a recommendation in that regard. (See Recommendation 1.2.3.16 in Section 1.2.3 in Chapter II of this Report).

Results

The country under review did not provide, either in its Response to the Questionnaire, or during the on-site visit, any information about results in relation to government systems for the procurement of goods and services.

In addition, the Committee, believes that it would be useful for the country under review to consider preparing detailed, disaggregated statistics compiled on an annual basis on sanctions or suspensions imposed on contractors for infringing contracting rules, specifying the reason for the sanction, the identity of the contractor, and a list of contractors removed from the register, in order to increase transparency in the government system for procurement of goods and services as well as to identify obstacles and recommend corrective measures, as necessary. The Committee will make a recommendation to the country under review in that regard. (See Recommendation 1.2.3.17 in Section 1.2.3 of Chapter II of this Report).

Recommendations

In light of the observations formulated in sections 1.2.1 and 1.2.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

1.2.3.1 Consider bringing into force the outstanding provisions of the Public Procurement and Disposal of Public Property Act, 2015 (as amended) and adopt the corresponding regulations so as to ensure that the new procurement regulatory framework is fully proclaimed and implemented. (See paragraph 106 in Section 1.2.1 of Chapter II of this Report).
1.2.3.2 Implement provisions outlining clear and uniformed procedures for the selection of contractors when either public tendering or selective tendering procedures are utilized. (See paragraph 113 in Section 1.2.1 of Chapter II of this Report).

1.2.3.3 Implement provisions that provide for objective selection factors or criteria in the evaluation of bids, including those of public works. (See paragraph 127 in Section 1.2.1 of Chapter II of this Report).

1.2.3.4 Implement provisions that require prior planning sufficiently in advance of the launch of procurement process, such as preparing studies, designs and technical evaluations, and to assess the appropriateness and timeliness of the purchase. (See paragraph 130 in Section 1.2.1 of Chapter II of this Report).

1.2.3.5 Strengthen existing mechanisms responsible for the internal audit, control and oversight of the government procurement system and the monitoring of execution of contracts, which should be distinct and carried out by an authority other than the one exercising external control. (See paragraph 139 in Section 1.2.1 of Chapter II of this Report).

1.2.3.6 Strengthen existing mechanisms responsible for the external audit, control and oversight of the government procurement system and the monitoring of execution of contracts, and bring into force the mechanisms provided for in the legislation. (See paragraph 139 in Section 1.2.1 of Chapter II of this Report).

1.2.3.7 Strengthen and increase the scope of use of electronic communications, such as the Internet for publicizing the tender opportunities, status of bids and awards and the progress in the execution of major projects. (See paragraph 149 in Section 1.2.1 of Chapter II of this Report).

1.2.3.8 Develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means. (See paragraph 154 in Section 1.2.1 of Chapter II of this Report).

1.2.3.9 Establish a centralized registry of contractors of works, goods or services, mandatory to all State bodies and dependencies, to foster the principles of openness, equity and efficiency provided for in the Convention. (See paragraph 160 in Section 1.2.1 of Chapter II of this Report).

1.2.3.10 Implement a mechanism by legislative or administrative means to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons. (See paragraph 164 in Section 1.2.1 of Chapter II of this Report).

1.2.3.11 Implement measures that facilitate the participation of citizen oversight mechanism to monitor the execution of contracts where the nature, importance or magnitude so warrants, in particular public works contracts. (See paragraph 170 in Section 1.2.1 of Chapter II of this Report).

1.2.3.12 Implement specific provisions allowing for challenges to the procurement process at the administrative level, which detail the procedure to be followed by government entities in handling and responding to such challenges and appeals, notwithstanding the procedures provided for by the Judicial Review Act and the Constitution. (See paragraph 181 in Section 1.2.1 of Chapter II of this Report).
1.2.3.13 Ensure that the Office of the Procurement Regulator has the necessary trained personnel and resources to carry out its functions properly as well as establishing mechanisms that permit ongoing evaluation and follow-up of said activities. (See paragraph 189 in Section 1.2.1 of Chapter II of this Report).

1.2.3.14 Maintain and publish detailed statistics, compiled on an annual basis, including aspects such as percentage of contracts awarded via the different contracting methods; the number and value of contracts awarded via competitive and noncompetitive methods; and the total number of contracts awarded. (See paragraph 192 in Section 1.2.1 of Chapter II of this Report).

1.2.3.15 Maintain and publish statistics, compiled on an annual basis, that reflect on the number of judicial review applications regarding procurement processes and the number of decisions given. (See paragraph 192 in Section 1.2.1 of Chapter II of this Report).

1.2.3.16 Consider providing the OPR with the necessary human and financial resources, within available resources, to maintain its website and ensure its sustainability. (See paragraph 205 in Section 1.2.2.2 of this Report).

1.2.3.17 Preparing detailed, disaggregated statistics compiled on an annual basis on sanctions or suspensions imposed on contractors for infringing contracting rules, specifying the reason for the sanction, the identity of the contractor, and a list of contractors removed from the register, in order to increase transparency in the government system for procurement of goods and services as well as to identify obstacles and recommend corrective measures, as necessary. (See paragraph 207 in Section 1.2.2.3 of Chapter II of this Report).

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

2.1 Follow-Up to the Implementation of the Recommendations Formulated in the Second Round

Recommendation 2.1

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

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

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

[209] With respect to the aforementioned measure, the Committee notes that this measure was satisfactorily considered in the Report of the Third Round and, therefore, does not require additional attention.162

162 Report of the Third Round, supra note 9, p. 38.
Measure b) suggested by the Committee that requires additional attention within the Framework of the Third Round:

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

[210] With respect to the aforementioned measure, the Committee notes that this measure was satisfactorily considered in the Report of the Third Round and, therefore, does not require additional attention.\(^{163}\)

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

*Mechanisms for reporting, such as anonymous reporting or protection of identity reporting, that guarantee the personal security and the confidentiality of the identity of public servants and private citizens who in good faith report acts of corruption.*

[211] With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review provided the following information and new developments, which the Committee notes as a step towards the implementation of measure (c):

> “Section 32 (1) of the Integrity in Public Life Act, Chap. 22:01 of Trinidad and Tobago provides that:
> “A member of the public who wishes to allege or make a complaint that a person in public life or any person exercising a public function –
> (a) is in contravention of this Act;
> (b) in relation to the Register of Interests, has a conflict of interest; or
> (c) is committing or has committed an offence under the Prevention of Corruption Act may do so in writing”.

Subsection 2 of Section 32 further states that “Any person who knowingly and mischievously makes or causes to be made a false report to the Commission or misleads the Commission by giving false information or by making false statements or accusations shall be guilty of an offence and is liable on conviction to a fine of five hundred thousand dollars and to imprisonment for ten years”.*\(^{164}\)

[212] Furthermore, the country under review, in its Responses to the Questionnaire, made reference to its Justice Protection Programme:

> “The Republic of Trinidad and Tobago has regulation on the protection of persons who report acts of corruption within the Justice Protection Act Chap 5:33 proclaimed in 2007.

Under the Act, a “witness” is a person who has given, is obliged to give or has agreed to give evidence in relation to a crime. Offences which may give rise to protection under the Justice Protection Programme (established under section 4 of the Act) include offences under the Prevention of Corruption Act, 1987.”*\(^{165}\)

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\(^{163}\) Ibid., p. 39.

\(^{164}\) Response to the Questionnaire, Section I, *supra* note 10, p. 20.

\(^{165}\) Ibid., p. 19.
The Committee notes that the Integrity in Public Life Act, Chap. 22:01 (as amended) was reviewed in the Report of the Third Round. It provides mechanisms for employees of the State and members of the public to report acts of corruption under Section 42A and Section 32(1), respectively. However, the Act does not guarantee their personal security, nor the confidentiality of their identity. Rather, it protects information reveal by witnesses—where appropriate and to the extent necessary—and establishes sanctions for those who disclose or attempt to disclose protected information. In that regard, the Committee finds that while the provisions provide a means to report acts in contravention of the Integrity in Public Life Act, Chap. 22:01 (as amended) or the Prevention of Corruption Act, Chap. 11:11, 1987, they do not constitute, in and of themselves, mechanisms for anonymous reporting. The Committee notes for instance that they are not followed by concomitant provisions intended to protect the identity of reporting individuals.

With respect to the reference made to the Justice Protection Programme established by the Justice Protection Act, Chap. 5:33, the Committee observes that actions may be taken to ensure the safety and security of its participants, pursuant to Section 5(5), including the following:

“(a) providing any documents necessary—
   (i) to establish a new identity for the participant; and
   (ii) to protect the participant;
(b) permitting a participant to use an assumed name in carrying-out his duties in relation to the Programme and to carry documentation supporting the assumed name;
(c) providing payments to or for the participant for the purpose of—
   (i) meeting his reasonable living expenses including, where appropriate, living expenses of his family; and
   (ii) providing, whether directly or indirectly, other reasonable financial assistance;
(d) providing payments to the participant for the purpose of meeting costs associated with
(e) providing assistance to the participant in obtaining employment, access to education and health care;
(f) providing other assistance to the participant with a view to ensuring that the participant becomes self-sustaining.”

The Committee further observes that additional steps may be taken under Section 15(2) to protect participants while they attend Court.

The Committee notes that although the Justice Protection Programme established under the Protection Act, Chap. 5:33 protects its participants by affording them personal security, protecting their

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168 Integrity in Public Life Act, Chap. 22:01, Section 35(1), available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/22.01.pdf. Section 35(1) states that “[t]he records of the Commission and any information revealed by a witness or by the production of documents, shall not be disclosed other than to such extent as may be necessary for the purpose of proceedings in any Court relating to a charge under this Act, the Prevention of Corruption Act or any other written law.”
169 Ibid., Section 35
172 Ibid., Section 15(2).
identity and, if their circumstances warrant so, facilitating the obtainment of a new identity and the corresponding documentation, the programme protects persons insofar as they are witnesses in criminal or civil proceedings and have been admitted as participants,\(^{173}\) which, under normal circumstances,\(^{174}\) is normally preceded by an application process and a rigorous assessment involving evaluations and input from various bodies, including the Investigative Agency, the Protective Agency and the Director of Public Prosecutions or the Attorney General, as the case may be.\(^{175}\) While the Justice Protection Act, Chap. 5:11 guarantees the personal security and the confidentiality of witnesses, it does not constitute a mechanism for anonymous reporting, given the extensive application process involved to receive such protection in the first place.

[217] During the on-site visit, representatives from the Office of the Attorney General indicated, in relation to mechanisms for anonymous reporting, that Whistleblower Protection Bill, if passed, would provide allow whistleblowing reporting officers and units to receive and process anonymous disclosures.\(^{176}\) However, the Committee notes that while the bill was introduced in April 2019 and went through First and Second Reading, including Committee Stage, it was defeated during votes in the House of Representatives\(^{177}\) as it required support from a special majority of at least three-fifths of members to move to the Senate to meet constitutional thresholds.\(^{178}\)

[218] Given the foregoing, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (c) of the recommendation in Section 2.1 of Chapter II of this Report and notes the need to continue to give additional attention to the implementation thereto. (See Recommendation 2.3.1 in Section 2.3 of Chapter II of this Report).

[219] In its Response to the Questionnaire, the country under review indicated that Section 32(2) has been found to present a challenge in relation to reporting acts of corruption:

“Where a person is accused of a crime, such a person has a right to confront his accuser and to challenge the allegations made, a fundamental tenet of due process. The heavy penalty imposed upon a person who falsely accuses another of corruption has been found to be an important deterrent against the making of unsubstantiated allegations in a small society where reputations may be easily destroyed and not as easily repaired. The Constitution of Trinidad and Tobago

\(^{173}\) Ibid., Section 5(1). Pursuant to Section 5(1), the Administration Centre develops, manages, and maintains the Justice Protection Programme and is responsible for deciding whether a prospective participant is to be afforded protection or assistance or both, under the Programme. Furthermore, Section 5(3) states that the Administrative Centre shall make a determination on the basis of the assessment received from the Investigative Agency, the Protective agency as well as the Direction of Public Prosecutions, in relation to criminal matters, and the Attorney General, in relation to civil matters and enquiries under the Commission of Enquiry Act.

\(^{174}\) The Justice Protection Act, Chap. 5:33 may provide for the provisional entry into the program prior to the determination of the result of the assessment in cases of emergency pursuant to Section 9(c). See Justice Protection Act, Chap. 5:33, supra note 165, Section 9(c).

\(^{175}\) Ibid., Sections 5(3), 5(4), 7, 9, 10 and 11.


\(^{178}\) Section 13(2) of the Constitution of the Republic of Trinidad and Tobago, Chap. 1:01, 1976 requires, for a bill that may be inconsistent with protected fundamental rights and freedoms under Sections 4 and 5, to be passed by both Houses of Parliament and at the final votes of not less three-fifths of all the members of that House. See Constitution of the Republic of Trinidad and Tobago, Chap. 1:01, 1976, supra note 14, Section 13(2).
guarantees to each person that Parliament may not make laws that deprive him/her of a right to a fair hearing in accordance with the principles of natural justice.\footnote{179}

[220] The Committee also takes note of challenges raised in relation to Section 32(2) and the effects that such a heavy penalty may have on potential whistleblowers who may want to report acts that they reasonably suspect to be misconduct under the Integrity in Public Life Act, Chap. 22:01 or an offense under the Prevention of Corruption Act, but whom may feel dissuaded to do so should the allegations be found not proven upon further investigation. The Committee will formulate a recommendation in that respect. (See Recommendation 2.3.2 in Section 2.3 of Chapter II of this Report).

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

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

[221] With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review reiterated the information provided for measure (c).\footnote{180}

[222] The Committee notes that Integrity in Public Life Act, Chap. 22:01 as amended by An Act to Amend the Integrity in Public Life Act, Chap. 22:01 (Act No. 1 of 2010) prohibits the dismissal, suspension, demotion, discipline, harassment or denial or benefits to public employees for reporting in good faith and on the basis of a reasonable belief of an act of corruption under Section 42A,\footnote{181} but does not indicate the appropriate authorities to report threats or reprisals, should the employee be the subject of any of the detrimental actions enumerated in Section 42A. Furthermore, the Act does not grant protection to persons who fall outside of the public realm.

[223] During the on-site visit, representatives of the Office of the Attorney General mentioned that the Whistleblower Protection Bill, 2018, would protect persons who report information on improper conduct has occurred or is likely to occur, from detrimental action. However, as previously noted, the bill was defeated in May 2019.\footnote{182}

[224] Given the foregoing, the Committee finds that the country under review does not have mechanisms for reporting the threats or reprisals that whistleblowers may face, nor does the current legal framework in place clear as to which authorities or bodies would be responsible for processing protection requests or provide protection. Therefore, the Committee reiterates the need for the country under review to give additional attention to the implementation thereto. (See Recommendation 2.3.3 in Section 2.3 of Chapter II of this Report).

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

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

\footnote{179} Response to the Questionnaire, Section I, supra note p. 20.
\footnote{180} Ibid.
\footnote{181} Integrity in Public Life (Amendment) Act, 2010 (Act. No. 1 of 2010), supra note 161, Section 14. Also see Integrity in Public Life Act, Chap. 22:01 (as amended), supra note 162, Section 42A.
\footnote{182} Whistleblower Protection Bill, 2018, supra note 170, Section 4.
With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review provided reiterated the information and new developments provided for measure (c), which the Committee notes as an important step which leads it to conclude that the measure has been partially satisfactorily considered.

The Committee wishes to acknowledge the efforts by the country under review to formalize the Justice Protection Programme, evidenced by the proclamation of the Justice Protection Act, Chap. 5:33 in April 2007. The Committee observes that the Justice Protection Programme, which was reviewed in the Report of the Third Round, put in place witness protection mechanisms that provide guarantees to (1) witnesses, (2) who have given, are obliged to give, or have agreed to give a statement or evidence under the First Schedule, which includes offenses listed under the Prevention of Corruption Act, Chap. 11:11, irrespective of whether they are public servants or private citizens.

The Committee further notes that during the on-site visit, representatives of the Office of the Attorney General and of the Anti-Corruption Investigation Bureau underscored the strong competence and wide experience of the officers who run the Justice Protection Programme and indicated that they have undergone adequate training.

However, while the Act protects both, public servants or private citizens, the Committee notes that this protection extends insofar as the statement or evidence given relates to a criminal trial or civil proceedings. The Act does not make any reference to the protection of persons who report acts of corruption in the context of administrative proceedings.

Given the foregoing, the Committee takes note of the steps taken by the country under review in relation to the implementation of measure (c) as well as the partial satisfactory consideration of the foresaid measure. However, bearing in mind that the breath of protection provided under Justice Protection Programme only includes protection in the case of civil or criminal proceedings, and that it does not include persons who have given or have agreed to give a statement or evidence in relation to an administrative proceeding, the Committee reiterates the need for the country under review to continue to give attention thereto. The Committee also considers it appropriate to reformulate the recommendation and re-orient its focus on this particular aspect. (See Recommendation 2.3.4 in Section 2.3 of Chapter II of this Report).

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

Mechanisms to facilitate international cooperation on the foregoing matters, when appropriate, including the technical assistance and cooperation provided for by the Convention, as well as the exchanges of experiences, training, and mutual assistance.

With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review provided the following information:

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183 Response to the Questionnaire, Section I, supra note 10, p. 20.
184 Report of the Third Round, supra note 9, p. 38.
185 Justice Protection Act, Chap. 5:33, supra note 165, Section 3.
186 The full list of offenses for which witness protection may be provided for under the Justice Protection Programme can be found in the First Schedule of the Justice Protection Act, Chap. 5:33. These also offenses in relation to money-laundering and under the Criminal Offenses Act, Chap. 11:01, available at: https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/11.01.pdf.
187 Justice Protection Act, Chap. 5:33, supra note 165, Section 3.
“Mutual Legal Assistance in Criminal Matters is governed by the Mutual Assistance in Criminal Matters Act, 1997, as amended by Act No. 2 of 2018 of the Laws of the Republic of Trinidad and Tobago. A request for assistance made by a Commonwealth country shall comply with the conditions set out in the First Schedule to this Act. For non-Commonwealth countries, once a treaty has been entered into between that country and Trinidad and Tobago providing for mutual assistance in a criminal matter, then upon the application of that country for assistance, the Attorney-General of Trinidad and Tobago may, by Order, subject to negative resolution of Parliament, declare that country to be a country to which this Act applies. If this is done the following procedure will also apply to that non-Commonwealth country.

Such meetings and negotiations on an international level continues to expand the knowledge of the Department thus providing further useful information to a number of different areas of international criminal law.”

[231] The country under review also made reference to the Mutual Assistance in Criminal Matters (Request for Mutual Assistance) Regulations, 2019 in its Response to the Questionnaire:

“Reg 2. States where a request is made by another country for mutual assistance in accordance with the Act and based on reciprocity, Central Authority shall take steps to prioritize the request and execute it promptly.”

[232] Reference was also made to the Extradition (Commonwealth and Foreign Territories) Act, 1985 and to the CARICOM Arrest Warrant Treaty, as well as other multilateral instruments to which Trinidad and Tobago is a party.

[233] The Committee notes that that the Mutual Assistance in Criminal Matters Act, Chap. 11:24 was amended in May 2018 by Miscellaneous Provisions (Mutual Assistance in Criminal Matters, Proceeds of Crime, Financial Intelligence Unit of Trinidad and Tobago, Customs and Exchange Control) Act, 2018 and its corresponding regulations, the Mutual Assistance in Criminal Matters (Requests for Mutual Assistance) Regulations, 2019 were adopted in January 2019. Although the Mutual Assistance in Criminal Matters Act, Chap. 11:24 (as amended) and its Regulations set out a broad range of forms of assistance in criminal matters with Commonwealth countries and countries with which Trinidad and Tobago has a bilateral treaty, the Act does not contain specific provisions aimed at facilitating international cooperation and assistance in matters of whistleblower and witness protection.

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188 Response to the Questionnaire, Section I, supra note 10, p. 21.
189 Ibid., p. 20.
192 See Response to the Questionnaire, Section I, supra note 10, p. 21.
Likewise, the Committee observes that the Extradition (Commonwealth and Foreign Territories) Act, 1985 and the CARICOM Arrest Warrant Treaty do not provide mechanisms to facilitate international cooperation so as to protect witnesses and whistleblowers who report acts of corruption.

Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementation thereto, taking into account that it has not implemented other forms of international cooperation to address this topic, such as the technical assistance and reciprocal cooperation described in the Inter-American Convention against Corruption, along with exchanges of experiences, training, and mutual assistance. (See Recommendation 2.3.5 in Section 2.3 of Chapter II of this Report).

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

*A simple whistleblower protection application process*

With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review provided information regarding the Whistleblower Protection Bill, which the Committee notes was defeated in May 2019.

The Committee also takes note of the Justice Protection Programme established under Justice Protection Act, Chap. 5:33, which was reviewed in the Report of the Third Round. The Committee observes that entry into the Justice Protection Programme entails a rigorous assessment which includes, but is not limited to, numerous disclosures of personal information, a report on the suitability for entry to the programme, which involves an interview with the prospective participant and an examination of their threat, if any, and risk assessment, as well as medical tests or examinations and psychological or psychiatric evaluations. Assessments also involve input from law enforcement, the Director of Public Prosecutions for criminal matters or the Attorney General for civil matters, the Investigative Agency and the Protective Agency. The Committee also observes that Section 9 allows for the possibility of granting protection to prospective participants while the assessment under Section 5(3) is carried and that an application may be made for provisional entry into the programme prior to the determination of the assessment of in the case of an emergency.

In that regard, the Committee notes that, although exceptions can be made for certain emergency cases, the regular application process to be granted protection is fairly extensive and entails a rigorous assessment that requires input from multiple bodies as well as close coordination. The process also involves

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196 Response to the Questionnaire, Section I, *supra* note 10, p. 23.
198 *See* Justice Protection Act, Chap. 5:33, *supra* note 165, Section 7(2) for a complete list. Information to be disclosed to the Administration Centre include details on outstanding legal obligations; outstanding debts; criminal history; civil proceedings either instituted by or against the prospective participant; cash balances of bank accounts; real or personal property held and liabilities; enterprises; all sources of receivables and income; general medical condition; dependents and related obligations; court orders in relation to a criminal prosecutions or arrangements relating to custody of children; etc.
203 *Ibid.*, Section 9(b).
204 *Ibid.*, Section 9(c).
disclosing and gathering a significant amount of personal information, which in addition to being laborious, may also discourage from persons from applying.

[239] Given the foregoing, the Committee takes note of the steps taken by the country under review to make progress in relation to the implementation of measure (g) of the recommendation in Section 2.1 of this Report. However, bearing in mind that application process is fairly extensive, the Committee takes note of the need for country under review to give additional attention to implementation thereto.

[240] The Committee also considers it appropriate to reformulate the recommendation for greater clarity and recommend that Trinidad and Tobago consider using as a guide the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses, available at the Anticorruption Portal of the Americas.205 (See Recommendation 2.3.6 in Section 2.3 of Chapter II of this Report).

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

“An application for additional protective measures is an action whereby a whistleblower and/or witness of acts of corruption requests the granting of such measures, because he or she deems the physical and/or psychological integrity of his/her person, or that of his or her family group, or the safety of his or her property to be actually or potentially threatened, and/or where there is an undue alteration in his/her working conditions that suggest an intent to retaliate against and harm the whistleblower and/or witness.”206

[242] In addition, Article 10 of the “Model Law” contains a series of administrative measures to facilitate the reporting of acts of corruption:

“In order to ensure timely and confidential attention to reports of acts of corruption, the competent authority responsible for receiving them shall implement at least the following organizational and operational changes: 1. Appointment of specialized officers for receiving and dealing with the reports. 2. Document processing and secure storage procedures different from standard procedures. 3. Provision of a request form in accordance with the model attached to this law. 4. Assignment of a specific secure telephone hotline for receiving the reports. 5. Creation of a specific secure e-mail account for dealing with the reports. 6. Arrangements for reports through intermediaries, without revealing the whistleblower’s identity.”207

[243] In that regard, the Model Law includes a “Form for Reporting Acts of Corruption and Requesting Protective Measures for Whistleblowers and Witnesses of Acts of Corruption.”208

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206 Ibid., Article 23.
207 Ibid., Article 10.
208 Ibid., Annex, p. 21.
Measure h) suggested by the Committee that requires additional attention within the Framework of the Third Round:

*Provisions which sanction the failure to observe the rules and/or duties relating to protection.*

[244] With respect to the aforementioned measure, in its Response to the Questionnaire, the country under review reiterated the information provided for measure (c). 209

[245] The Committee notes that Section 21 of the Justice Protection Act, Chap. 5:33 lists the offenses and sanctions relating to protection for both participants and persons involved in the administration of the Act:

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

21. (2) A person who is or has been a participant or a person who has undergone assessment for 
   inclusion in the Justice Protection Programme and discloses—
   (a) the fact of such participation or assessment;
   (b) information as to the way in which the Programme operates; Officers protected 
   from suit in respect of decisions made under this Act.
   (c) information about any officer of the Administrative Centre who is or has been 
   involved in the Programme;
   (d) the fact that he has signed a Memorandum of Understanding; or
   (e) any details of a Memorandum of Understanding that he has signed, commits an 
   offence unless he has been authorised by the Centre to make the disclosure.

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

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

21. (5) A person who, without reasonable excuse fails to return the documents referred to in 
   section 18(5) in accordance with that section, commits an offence and is liable on summary 
   conviction to a fine of ten thousand dollars and to imprisonment for three years.”
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[246] Given the foregoing, the Committee takes note of the steps taken by the country under review to progress in the implementation of measure (h) of the recommendation in Section 2.1 of this Report. However, bearing in mind that the country under review does not have legislative provisions, which sanction the failure to observe rules relating to protection, the Committee reiterates the need for the country under review to give additional attention to the implementation of measure (h) in Section 2.1 of Chapter II

209 Response to the Questionnaire, Section I, *supra* note 10, p. 25.

210 Justice Protection Act, Chap. 5:33, *supra* note 165, Section 21.
of this Report. The Committee also considers it appropriate to reformulate the recommendation to focus on whistleblowers and break it into two separate recommendations so as to consider both administrative and criminal sanctions. (See Recommendations 2.3.7 and 2.3.8 in Section 2.3 of Chapter II of this Report).

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

*Provisions that clearly delineate the respective competence of judicial and administrative authorities with respect to this area.*

[247] The country did not provide, in its Response to the Questionnaire, information pertaining to the aforementioned measure.

[248] In this regard, the Committee notes that the current legal system does not include provisions that clearly delineate the respective competence of judicial and administrative authorities with respect to this area and it reiterates the need for the country under review to give additional attention to the implementation of measure (i) in section 2.1 of Chapter II of this Report. (See Recommendation 2.3.9 in Section 2.3 of Chapter II of this Report).

### 2.2 New Developments with respect to the Provision of the Convention on Systems for Protecting Public Servants and Private Citizens who, in Good Faith, Report Acts of Corruption

#### 2.2.1 New developments with respect to the legal framework

[249] With regard to new developments relating to the regulatory framework, the country under review, referred to the information provided for measure (g) in Section 2.1. In that respect, the Committee notes that the Whistleblower Protection Bill was defeated in May 2019 and will not delve into further analysis consequently.

#### 2.2.2 New developments with respect to technology

[250] The country under review stated that there were currently no new developments with respect to technological aspects.

#### 2.2.3 Results

[251] The Committee notes that the country under review did not provide, either in its Response to the Questionnaire, or during the on-site visit, any information about objective results in relation to systems for protecting public servants and private citizens who in good faith report acts of corruption because it has no such systems. (See Recommendation 2.3.10 of Section 2.3 of this Report).

### 2.3 Recommendations

[252] Bearing in mind the observations made in Sections 2.1 and 2.2 of Chapter II of this Report, the Committee suggests that the country under review take into account the criteria outlined in the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses, and consider, *inter alia*, the following:

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211 *Response to the Questionnaire, Section I, supra note 10, p. 28.*

2.3.1. Adopt mechanisms for reporting, such as anonymous reporting or protection of identity reporting, that guarantee the personal security and the confidentiality of the identity of public servants and private citizens who in good faith report acts of corruption, without prejudice to the right of due process. (See paragraph 218 in Section 2.1 of Chapter II of this Report).

2.3.2. Ensure that the penalties and sanctions under the Integrity in Public Life Act, Chap. 22:01 do not discourage potential whistleblowers who may want to report acts that they reasonably suspect to be misconduct under the Integrity in Public Life act, Chap. 22:01 or an offense under the Prevention of Corruption Act, Chap. 11:11, but whom may feel dissuaded to do so, should the allegations be found not proven upon further investigation. (See paragraph 220 in Section 2.1 of Chapter II of this Report).

2.3.3. Establish mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it. (See paragraph 224 in Section 2.1 of Chapter II of this Report).

2.3.4. Adopt, through the corresponding authority, a comprehensive legal and regulatory framework that provides integral protection of witnesses who, in good faith, report acts of corruption, including protection of their identities before, during and after administrative proceedings, in accordance with the Constitution and the fundamental principles of its domestic system of laws. (See paragraph 229 of Section 2.1 of Chapter II of this Report).

2.3.5. Establish mechanisms to facilitate international cooperation on the protection of whistleblowers and witnesses, when appropriate, including the technical assistance and cooperation provided for by the Convention, as well as the exchanges of experiences, training, and mutual assistance on these matters. (See paragraph 235 of Section 2.1 of Chapter II of this Report).

2.3.6. Establish a simplified and readily accessible application process for protection measures for whistleblowers and witnesses of acts of corruption. (See paragraph 240 of Section 2.1 of Chapter II of this Report)

2.3.7. Adopt provisions which provide for administrative sanctions for the failure to observe the rules and/or duties relating to the protection of whistleblowers by any person, including any public authorities. (See paragraph 246 in Section 2.1 of Chapter II of this Report).

2.3.8. Adopt provisions which provide for criminal sanctions for the failure to observe the rules and/or duties relating to the protection of whistleblowers and witnesses by any person, including any public authorities. (See paragraph 246 in Section 2.1 of Chapter II of this Report).

2.3.9. Adopt provisions that clearly delineate the respective competence of judicial and administrative authorities with respect to this area. (See paragraph 248 in Section 2.1 of Chapter II of this Report).

2.3.10. Maintain results on the number of witnesses requesting to enter the protection program established in the Justice Protection Act, Chap. 5:33 due to an inquiry, investigation or prosecution that involves an act of corruption, including the number admitted and refused, in order to identify
challenges and recommend corrective measures (See paragraph 251 in Section 2.2.3 of Chapter II of this Report).

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

3.1. Follow-Up on the Implementation of the Recommendations made during the Second Round

Recommendation 3.1

Implement provisions which criminalize other acts or omission in the discharge of his or her duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party other than as set out in Section 5 of the Prevention of Corruption Act, pursuant to Article VI(1)(c) of the Convention.

[253] With respect to the aforementioned measure, the country under review presented information regarding the existence of a comprehensive anti-money laundering and combating financing terrorism framework in place which allows for the investigation and prosecution of acts or omissions of persons which may form part of corrupt acts.213

[254] However, the Committee finds that the legislation does not specifically address the underlying reasoning behind the recommendation formulated in the Report of the Second Round and notes that that Section 5(1) is still in effect as it was analyzed during in the Report of the Second Round.214

[255] Given that Section 5 of the Prevention of Corruption Act, Chap. 11:11, 1987 is still in force as it was analyzed during the Second Round of Review and that the country under review has not adopted other provisions to the effect of criminalizing other acts or omissions, by government officials or persons who perform public functions, in the discharge their duties for the purpose of illicitly obtain benefits for themselves or for a third party, the Committee reiterates the need for the country under review to give additional attention to implementation thereto. (See Recommendation 3.3.1 in Section 3.3 of Chapter III of this Report).

Recommendation 3.2

Provide that the offences set out in Sections 45 and 46 of the Proceeds of Crime Act are made applicable to public servants.

[256] With respect to the aforementioned recommendation, the country under presented the following information and new development, which the Committee takes note of the satisfactory consideration by the country under review of measure (b):

“The word “person” in this context applies to any individual regardless of status of employment. Act No. 20 of the 2018 amends the Proceeds of Crime Act to include Section 53(4). Notwithstanding Subsections (2) and (3), where a person employed in the Service of the State as a public officer or on contract, commits an offense under—
(a) Section 51, he is liable under summary conviction to a fine of ten million dollars and to imprisonment for ten years; or

213 For the complete list of legislation cited, see Response to the Questionnaire, Section I, supra note 10, p. 25-26.
214 Ibid., p. 18.
(b) *Section 52, he is liable under summary conviction to a fine of five hundred thousand dollars and to imprisonment for five years.*[^215]

[257] The Committee notes that Sections 44, 45 and 46 of relation to proceeds of specified offences, analyzed in the Report of the Second Round[^216] have repealed by Act No. 2014 and replaced with provisions which address money laundering and dealings with criminal property. Section 45 describes actions that constitute money laundering,[^217] while Section 44 makes it an indictable offence.[^218]

[258] The Committee also notes that Section 54, which stated that the Minister responsible for Public Administration may make Regulations to prescribe the circumstances and the manner these provisions shall apply to persons in the employ of the State was repealed by Act No. 20 of 2018.[^219] Accordingly, the Committee no longer finds that public servants to be excluded from the purview of these offenses as previously found in the Report of the Second Round.[^220] Moreover, as the country under review pointed out, in its Response to the Questionnaire,[^221] that Section 53(1), which establishes the penalties for a person who commits an offense under Section 45, is broad enough to include public servant within its scope.[^222]

[259] Given the foregoing, the Committee takes note of the satisfactory consideration by the country under review of the foregoing recommendation.

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

#### 3.2.1 New developments with respect to the legal framework

[260] In its response to the Questionnaire, the country under review made reference to various piece of legislation and regulations,[^223] of which the Committee finds the latest amendments to the Proceeds of Crime Act, 11:27 (as amended) and the Financial Intelligence Unit of Trinidad and Tobago Act (as amended) to be relevant for the purposes of the provisions of Convention reviewed in this Chapter.

[261] The Committee takes note of the new amendments of the Proceeds of Crime Act, 11:27, including the provisions in relation to money laundering and dealings with criminal property. The Proceeds of Crime Act, which establishes the procedure for the confiscation of proceeds of certain offenses and criminalizes the act of money laundering, as amended, also extends certain offenses to public servants.

[^215]: Ibid., p. 27.
[^217]: Proceeds of Crime Act, Chap. 11:27 (as amended), *supra* note, Section 45.
[^218]: Ibid., Section 44(2).
[^219]: Act to Amend the Proceeds of Crime Act, Chap. 11:27, the Anti-Terrorism Act, Chap. 12:07 and the Financial Intelligence Unit of Trinidad and Tobago Act (Act No. 20 of 2018), Section 2(d).
[^221]: Response to the Questionnaire, Section I, p. 27.
[^223]: For a complete list of the legislation and regulations cited, see Response to the Questionnaire, Section I, *supra* note 10, p. 29.
For example, Section 51 of the Proceeds of Crime Act, 11:27, as last amended by Act No. 15 of 2014, makes it an offense for a person to engage in the following acts and carries an aggravated penalty under 53(4) for persons who are employed in the service of the State as a public officer or on contract:

“(51) A person commits an offence if—

(a) he knows or suspects that a Police Officer is acting or proposing to act, in connection with an investigation which is being, or about to be, conducted into money laundering; and
(b) he discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation.”

Section 52 of the Proceeds of Crime Act, Chap: 11:27, as last amended by Act No. 15 of 2014, and previously noted, makes it an offence for a person to fail to disclose knowledge or information of suspicion of money laundering and imposes heavier penalties under 53(4) for persons who are employed in the service of the State as a public officer or on contract:

“(52) A person commits an offense if—

(a) he knows or suspects that another person is engaged in money laundering;
(b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
(c) he does not disclose the information or other matter to the Police Officer or the rank of sergeant or above or to the FIU as soon as it is reasonably practical after it comes to his attention.”

The Committee also notes that it encourages persons, more broadly, to disclose a suspicion or a belief that a property is, or in whole or in part directly or indirectly representing other person’s proceeds of a criminal conduct under, Section 47(1), or discloses to a police officer any matter on which such suspicion or belief is based, and that such disclosures shall not be treated as breaches of any restrictions upon disclosure imposed by a contract or any enactment, regulation or rule of conduct or other provision.

During the on-site visit, the country under review, stated that the Anti-Corruption Investigative Bureau has been reorganized and transferred to the Police Service for greater efficiency. The Anti-Corruption Investigative Bureau is empowered to investigate reports and allegations of corruption against government officials, public officers, police officers and public and statutory bodies. The Committee had the opportunity to meet the Anti-Corruption Investigation Bureau and notes that it provided detailed results on its work during the Fourth Round of Review. Given that the country under review did not submit detailed statistics or results with to acts of corruption for this round, the Committee will formulate a recommendation for the country under review to ensure that the Anti-Corruption Investigation Bureau keeps maintaining results on the outcome of investigations, broken down by act of corruption, in order to identify challenges and recommend corrective measures. (See Recommendation 3.3.2 in Section 3.3 of Chapter III of this Report).

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224 Proceeds of Crime Act, Chap. 11:27 (as amended), supra note 216, Section 51.
225 Ibid., Section 52.
226 Ibid., Section 47.
227 Report of the Fourth Round, supra note 11, p. 46.
The Committee observes that, pursuant to Section 55D, the Act also encourages financial institutions and listed businesses to report to the Financial Intelligence Unit suspicious activity and transactions for which there are reasonable grounds to suspect that the funds being used for the purpose of a transaction are proceeds of crime.\textsuperscript{228}

The Committee also notes that the Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01, assented in Parliament in 2009 and proclaimed in 2010 by Legal Notice No. 21,\textsuperscript{229} establishes the Financial Intelligence Unit, which is responsible for collecting financial intelligence and information, analyzing it and exchange it with law enforcement authorities, financial institutions and businesses according to functions given to it under the Proceeds of Crime Act, Chap. 11:27.\textsuperscript{230}

The Financial Intelligence Unit receives reports of suspicious transactions and activities\textsuperscript{231} and is responsible for implementing a system for monitoring the effectiveness of policies with respect to money laundering, including by maintaining comprehensive statistics on the number of reports received and transmitted to law enforcement, the number of investigations and convictions, property frozen, seized as confiscated as well as international requests for mutual assistance or other cooperation.\textsuperscript{232}

The Committee notes the role that Financial Intelligence Unit with respect to acts of corruption under the Proceeds of Crime Act, Chap. 11:27, as well as the role of other public bodies within the institutional framework of the country under review, including, but not limited to, the Integrity Commission, which is mandated to investigate administrative complaints regarding acts of corruption against persons in public life or exercising public functions, the Director and of Public Prosecutions, which is authorized to initiate investigations of acts of corruption under the Prevention of Corruption Act, 1987, Chap. 11:11, the Service Commissions, which may carry out administrative investigations in relation to misconduct on matters of corruption, the Ombudsman office which may investigate administratively any act done or omitted by a government department or authority, including those that may raise questions as to the integrity or corruption of the Public Service\textsuperscript{233} and the Anti-Corruption Investigation Bureau of the Police Service. As such, the Committee notes the breadth of the institutions involved in matters in relation to misconduct and acts of corruption and will formulate a recommendation for the country under view to consider adopting or strengthening the institutional mechanisms necessary for the harmonious development

\textsuperscript{228}Proceeds of Crime Act, Chap. 11:27 (as amended), supra note 2018, Section 55A.
\textsuperscript{230}Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01, Section 8(1), available at: \url{https://www.fiu.gov.tt/content/FIUTT\_20Act\_2072\_2001.pdf}.
\textsuperscript{231}Ibid., Section 8(2).
\textsuperscript{232}Ibid., Section 9.
\textsuperscript{233}The Constitution of the Trinidad and Tobago, Chap. 1:01, 1976, supra note 14, provides the following under Section 94: “94(1) In investigating any matter leading to, resulting from or connected with the decision of a Minister, the Ombudsman shall not inquire into or question the policy of the Minister in accordance with which the decision was made. (2) The Ombudsman shall have power to investigate complaints of administrative injustice under section 93 notwithstanding that such complaints raise questions as to the integrity or corruption of the public service or any department or office of the public service, and may investigate any conditions resulting from, or calculated to facilitate or encourage corruption in the public service, but he shall not undertake any investigation into specific charges of corruption against individuals. (3) Where in the course of an investigation it appears to the Ombudsman that there is evidence of any corrupt act by any public officer or by any person in connection with the public service, he shall report the matter to the appropriate authority with his recommendation as to any further investigation he may consider proper. […]”
of the functions with the different institutions involved in matters of corruption to allow for effective collaboration amongst them as it relates their common objective of receiving reports, investigating, monitoring or transferring to appropriate authorities matters regarding misconduct and acts of corruption. (See Recommendation 3.3.3 in Section 3.3 of Chapter III of this Report).

[270] Moreover, given that matters from various government bodies may be referred to the Office of the Director of Public Prosecutions, the Committee believes that the country under review could benefit from implementing a mechanism whereby the Office of the Director of Public Prosecutions would provide feedback to government bodies regarding the outcome of the referrals of wrongdoings received by the Office and will formulate a recommendation in that respect. (See Recommendation 3.3.4 in Section 3.3 of Chapter III of this Report).

[271] During the on-site visit, representatives of the Office of the Attorney General indicated that the Civil Assets Recovery and Management and Unexplained Wealth Bill, 2019, which aims to provide for the establishment of the Civil Assets Recovery and Management Agency for the recovery of criminal property, was introduced in the House of Representatives. The Committee was informed that the Act was assented shortly following the on-site visit in April 2019.

3.2.2 New developments with respect to technology

[272] The country under review made no mention of new developments with respect to technology in this area.

3.2.3 Results

[273] The Committee notes that the country under review stated that there was currently no available statistical data or objective results in relation to this matter. The Committee however notes that during the on-site visit, the Office of the Director of Public Prosecutor stated that some statistics do exist and that, over the course of the last eight years, 12 investigations have successfully led to charges in the complex fraud category. Nevertheless, the country under review did not provide further information following the on-site visit any information on results in relation to acts of corruption recognized at Article VI (1) of the Convention. Accordingly, the Committee will make a recommendation to the Office of the Director of Public Prosecutions to maintain result on the outcome of rulings, broken down by act of corruption, in order to identify challenges and recommend corrective measures. (See Recommendation 3.3.5 in Section 3.3 of Chapter III of this Report).

[274] The Committee will also formulate a recommendation for the country under review to for the Office of the Director of Public Prosecutions to maintain results for the last five year on the total number of cases investigated, so as to determine how many have been suspended, have prescribed, have been archived, are ongoing or have been referred to the competent authorities for a decision, in order to identify challenges and recommended corrective measures. (See Recommendation 3.3.6 in Section 3.3 of Chapter III of this Report).

[275] Finally, the Committee formulate a recommendation for the country under review to maintain statistics on the number of investigations opened by courts into acts of corruption, so as to determine how many are ongoing, have been suspended, have prescribed or were achieved without a decision as well as

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234 Response to the Questionnaire, Section I, supra note 10, p. 29.
the number of decisions that are ready to be issued, that were determined on the merits, including the outcome of those decisions, that is whether the decision was to acquit or convict, so as to identify challenges and recommend corrective measures. (See Recommendation 3.3.7 in Section 3.3 of Chapter III of this Report).

3.3 Recommendations

[276] In light of the comments made in Sections 3.1 and 3.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

3.3.1 Implement provisions which criminalize other acts or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party other than as set out in Section 5 of the Prevention of Corruption Act, pursuant to Article VI(1)(c) of the Convention. (See paragraph 255 in Section 3.1 of Chapter III of this Report).

3.3.2 Ensure that the Anti-Corruption Investigation Bureau maintains results, on the outcome investigations, broken down by act of corruption, in order to identify challenges and recommend corrective measures (See paragraph 265 in Section 3.2.1 of Chapter III of this Report).

3.3.3 Consider adopting or strengthening the institutional mechanisms necessary for the harmonious development of the functions with the different institutions involved in matters of corruption to allow for effective collaboration amongst them as it relates their common objective of receiving reports, investigating, monitoring or transferring to appropriate authorities matters regarding misconduct and acts of corruption. (See paragraph 269 in Section 3.2.1 of Chapter III of this Report).

3.3.4 Implement a mechanism whereby the Office of the Director of Public Prosecutions provides feedback to government bodies regarding the outcome of the referrals of wrongdoings received by this Office. (See paragraph 270 in Section 3.2.1 of Chapter III of this Report).

3.3.5 Maintain statistics, on the part of the Office of the Director of Public Prosecutions, on the outcome of rulings, broken down by act of corruption, in order to identify challenges and recommend corrective measures (See paragraph 273 in Section 3.2.3 of Chapter III of this Report).

3.3.6 Maintain statistics, including, if possible, statistics for the last five years, on the part of the Office of the Director of Public Prosecutions, on the total number of cases investigated, as to determine how many have been suspended, have prescribed, have been archived, are ongoing or have been referred to the competent authorities for a decision, in order to identify challenges and recommended corrective measures. (See paragraph 274 in Section 3.2.3 of Chapter III of this Report).\(^{235}\)

3.3.7 Maintain statistics, including, if possible, statistics for the last five years on cases before courts on acts of corruption, so as to determine how many are ongoing, have been suspended, have prescribed or were achieved without a decision as well as the number of decisions that are ready to be issued, that were determined on the merits, including the outcome of those decisions, that is whether the

\(^{235}\) The Republic of Trinidad and Tobago explained, during the plenary session of the Committee on September 10, 2019, that it currently does not have the technical capacity to maintain statistics on cases of corruption. Brazil offered to provide technical assistance in this respect.
decision was to acquit or convict, so as to identify challenges and recommend corrective measures. (See paragraph 275 in Section 3.2.3 of this Report).

4. GENERAL RECOMMENDATIONS

Recommendation 4.1, which requires further attention:

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

[277] In its Response to the Questionnaire, the country under review referred measure (f) of Recommendation 1.1 in Section 1.1 and indicated that “each ministry is designated the task of training their staff.”

[278] The Committee, bearing in mind that Sections 1, 2, and 3 of Chapter II of this report provide an updated and detailed follow-up of the recommendations formulated to Trinidad and Tobago in the Second Round of Review, as well as the systems, standards, measures and mechanisms to which the above recommendation refers, the Committee believes that this recommendation is redundant.

Recommendation 4.2, which requires further attention:

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

[279] In its Response to the Questionnaire, the country under review stated the following:

“Trinidad and Tobago has not currently implemented this.”

[280] The Committee, bearing in mind that Sections 1, 2, and 3 of Chapter II of this report provide an updated and detailed follow-up of the recommendations formulated to Trinidad and Tobago in the Second Round of Review, as well as the systems, standards, measures and mechanisms to which the above recommendation refers, the Committee believes that this recommendation is redundant.

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

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

[281] In accordance with the Methodology adopted by the Committee for the Fifth Round regarding the implementation of Article III, paragraph 3 of the Convention, which refer to measures that are intended to establish, maintain and strengthen “instruction[s] to government personnel to ensure proper
understanding of their responsibilities and the ethical rules governing their activities,” the country under review selected the Public Service Commission, the due to the important role they play in central government in relation to the human resources and that they cover most civil servants in the Civil Service.\textsuperscript{238}

[282] The following is a brief description of the body selected by Trinidad and Tobago that is to be examined in this section:

“The Commission is an independent body established under Sections 120 and 121 of the Constitution. Section 121 gives the power to appoint persons to hold or act in offices to which that section applies, including the power to make appointments on promotion and transfer and to confirm appointments and to remove and to exercise disciplinary control over persons holding or acting in such offices and to enforce standards of conduct on such officers.”\textsuperscript{239}

1.1 Existence of a legal framework and/or other measures

[283] The Committee notes the existence of provisions and/or measures for providing instructions to personnel under the purview of the Public Service Commission which ensure proper understanding of their responsibilities, among which the following provisions are noted:

[284] Regarding provisions and/or measures intended to provide instructions to personnel that fall under the purview of the Public Service Commission, to ensure the proper understanding of their responsibilities, the Committee notes the absence of legislation in this matter as well as the lack of specific reference to training.

[285] As to the manner in which personnel are informed of their responsibilities and functions, indicating whether this is done verbally or in writing and whether records are kept of those instructions, the representatives of the Public Service Academy\textsuperscript{240} informed the Committee during the on-site visit, that civil servants are informed verbally during their orientation as well as in writing by virtue of a job description which contains personnel duties and responsibilities and a formal letter of employment. Representatives of the Public Service Academy stated that Human Resources Unit in each Ministry or Department is responsible for providing new personnel with such orientation. In this respect, the Public Service Academy indicated that it has provided to Human Resources Units “Designing Orientation Programmes” workshops, designed to guide them on how to develop orientation agendas and programmes for in-house delivery to new personnel. Representatives of the Public Service Academy also mentioned that the workshops also touched upon expectations of new personnel and the Ministry or Department and ensuring that new

\textsuperscript{238} The term “Civil Service” and “civil servant” is used throughout the report in accordance to Sections 3(1) and 3(2) of the Civil Service Act, 23:01. The several public offices which are deemed to constitute the Civil Service of Trinidad and Tobago are set out in its First Schedule.


\textsuperscript{240} The Public Service Academy is a division of the Ministry of Public Administration, which is responsible for leading the Public Service Reform agenda including Public Service policy and legislation and Human Resources Management modernization policy. See Trinidad and Tobago Gazette (Extraordinary), Vol. 57, No. 77, 12\textsuperscript{th} of June 2018, which lists the responsibilities assigned to the Ministry of Public Administration. As part of its mandate to modernize institutions, including the Public Service Commission, and build capacity in the Public Service, the Ministry of Public Administration through its Public Service Academy division offers training services to public officers in client Ministries and Departments.
employees are informed of their role and how it contributes to meeting the overall objectives of the Ministry or Department, to which they have been appointed.

[286] As regards the occasion(s) when personnel are informed of their responsibilities or functions, indicating whether this is when they begin performing them or at some later point, when said functions change due to a promotion or a transfer, the Public Service Academy stated, during the on-site visit, that civil servants are informed of their responsibilities when they begin their new position, but may not receive the necessary training in relation to their new functions at that time. Human Resources Units and supervisors may nominate a civil servant to receive a training through the Public Service Academy based on their new position, assigned duties and responsibilities, training history for the last two years and the identified training needs. Furthermore, given that the trainings are given on a rotation basis and that the availability of space is limited, a new employee may not receive the training that he or she may need until later date when he or she is already performing the functions required under their new duties and responsibilities. In that respect, the Public Service Academy mentioned the need for better coordination and forward planning, on the part of Ministries and Departments that is in line with identified long-term training needs so that employees in the Civil Service are exposed to the necessary trainings before they are called to perform their new functions. Representatives further stated that this involves Ministries and Departments identifying the type of interventions needed as well as the existing deficiencies within their respective Ministries and Departments.

[287] The Public Service Academy, as part of the Public Management Consulting Division of the Ministry of Public Administration, mentioned its consultancy role in relation to Ministries and Departments and that its mandate to build human resources capacity through human resource development interventions, providing short term local trainings, overseeing the training provided to public servants and monitoring the quality of such training so as to ensure it meets requisite standards. As such, its objective is to build capacity within different Human Resources Units so that they may, in turn, take those skills and develop their own trainings and interventions within their Ministries and Departments. That being said, the Public Service Academy raised the fact that there is currently a heavy dependence and reliance on the Academy to fill that gap and that it is presently understaffed and lacks the resources to effectively attend all the training needs of all Ministries and Departments.

[288] As to the existence of induction, training, or instruction programs and courses for personnel on the proper performance of their responsibilities and functions, and, in particular, to make them aware of the inherent corruption risks in their performance, the Public Service Academy indicated that it provides three workshops on ethical issues in the Public Service, which are tailored to the needs of three groups: clerical officers; mid-level managers, administrative officers and technical officers between salary ranges 25 - 46; and senior level officers. The trainings span over the course of two days and aim to examine some of the common ethical issues that may arise in the workplace, expose civil servants to the Code of Conduct under the Civil Service Regulations and other Public Service Commission Regulations. The trainings also cover issues typically encountered as it relates to their particular group’s workplace setting and the correlating provisions that are breached in such circumstances. The workshops additionally examine case studies and provide a seven-step model for making ethical decisions in situations where opportunities for misconduct may arise. The trainings also expose civil servants to the key principles under the Integrity in Public Life Act, Chap. 22:01, including those in relation to receiving gifts and conflicts of interest. Trainings also cover actual incidences of corruption, which have occurred in Trinidad and Tobago. In relation to procurement, the Public Service Academy also indicated that it delivers an “Ethics in Procurement” training, which
considers all phases of the procurement cycle. It also addresses penalties and sanctions for public procurement offenses.

[289] The Public Service Academy further stated that although it strives to expose the trainings to most civil servants, they are not mandatory per se, unless they are specifically required at request of a supervisor. Representatives further stressed that in order to achieve greater results, trainings must be provided across all government.

[290] As to the use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly, the representative of the Public Service Academy indicated that the list training opportunities is disseminated on a regular basis on the website of the Ministry of Public Administration and that the forms for training nominations are also on the said website.

[291] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly, the country under review, during the on-site visit, indicated, that civil servants can resort to their supervisor, the Human Resource Unit with their Ministry or Department or the Head of Department or the Permanent Secretary.

[292] In terms of the existence of a governing organ, authority or body responsible for defining, steering, advising, or supporting the manner in which personnel are to be informed of their responsibilities and functions, for seeing that this task is fully carried out, and the measures or actions such bodies can take to enforce the norms and/or measures in force in this regard, country under review, noted that the authorities responsible are Service Commissions Department and, as it relates to the Civil Service, more specifically, the Public Service Commission. It may also review performance of Ministries and Departments under where authorities have been delegated to Permanent Secretaries and Heads of Departments.

[293] As to the manner in which personnel are informed of the ethical rules governing their activities, indicating whether this is done verbally or in writing and whether records are kept of those instructions, the country under review, during the on-site visit, noted that civil servants exposed to the Code of Conduct over the course of trainings in ethics in the Public Service and that Employment Handbook is available on each civil servant’s computer. Some of the trainings that were given include “Ethical Issues in the Public Service”, “Office Etiquette for Administrative Staff”, “Ethics of Accountability and Good Governance” as well as “Disciplinary Procedures in the Public Service”. The workshops, as previously mentioned, are held on a rotation basis given the limited availability and are advertised on the website of the Public Service Academy as well as through circulars. The Public Service Academy also indicated that it keeps records of the civil servants who have participated to their trainings.

241 The Technical Secretariat consulted the website of the Ministry of Public Administration subsequent to the on-site visit and found a list of the training opportunities for April and May 2019 at the following link: http://mpac.gov.tt/sites/default/files/file_upload/psacourses/PSA%20Learning%20Activities%20April%20-%20May%202019.pdf. (Consulted in June 2019).

242 The Technical Secretariat consulted the website of the Ministry of Public Administration following the on-site visit and found the following training nomination form on the Public Service Academy’s page: http://www.mpac.gov.tt/sites/default/files/file_upload/psacourses/psa%20training%20nomination%20form.pdf (Consulted in June 2019).

Regarding the occasion(s) when personnel are informed of ethical rules governing their activities, indicating whether this is done when they begin performing them or at some later point; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules, representatives of the Public Service Academy indicate, during the on-site visit, that civil servants may be informed of the ethical rules governing their activities by participating to the trainings they organize, but these are delivered on a rotation basis and as such, they may not be expose to trainings at the moment they being performing their new functions. Nonetheless, the Public Service Academy stated that civil servants are nonetheless generally exposed to the Code of Conduct.

As regards the existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities, the Public Service Academy, indicated during the on-site visit that trainings regarding ethical rules in the Public Service are provided through their various ethics workshops, which span over two days, includes a workbook and consists of three phases: a pre-workshop phase where reading material provided and a quiz is sent, the in-class sessions, and a post-workshop phase where an assessment is done in relation to what was covered in the workshop. The workshops also contain follow-up component where an impact assessment evaluation of the workshop takes place so as to be able to report on results.

As to the use of modern technologies to apprise personnel of the ethical rules governing their activities, the Public Service Academy indicated that trainings are provided, for the most part, in an “in-class” format, but that some components are online, such as the assessments. Reading material and the quiz is also sent to workshop participants online. The Public Service Academy noted that the use of technology could be beneficial to provide distance trainings opportunities to civil servants and that this could be valuable particularly at the executive level of the Civil Service, given the time constraints senior officers often face.

As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of the ethical rules governing their activities, the Public Service Academy, noted during the on-site visit that personnel could share experiences amongst peers who also participated in the trainings and seek guidance on the application of particular regulations. Representatives further mentioned the existence of a platform where Human Resources professionals in the Civil Service can communicate with one another, share practices and seek assistance from one another in relation to situations they come across in the practice.

In terms of the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or the measures in force in this regard, the country under review, stated that there is no clear institution for this matter.

1.2 Adequacy of the legal framework and/or other measures

With respect to the statutory and other legal provisions reviewed by the Committee on the measures intended to provide instructions to government personnel under the purview of the Public Service Commission that ensure proper understanding of their responsibilities and the ethical rules governing their activities, the Committee notes that they are relevant for promoting the purposes of the Convention.
Nevertheless, the Committee considers appropriate to set forth some observations with respect to these provisions and/or other measures:

The Committee notes the absence of provisions, in its current legal framework, intended to ensure that personnel are provided with instructions to ensure the proper understanding of their responsibilities. The Civil Service Act, Chap. 23:01,244 the Civil Service Regulations245 and the Public Commission Service Regulations (as amended)246 make any reference to training in their provisions. Furthermore, during the on-site visit, representatives of the Public Service Academy noted that the trainings it provides are not explicated mandatory, nor are there standardized induction programs across Ministries and Departments, although there has been an effort to provide trainings on how to design such programs to Human Resources Units. In that regard, the Committee will formulate a recommendation for the country under review to consider adopting provisions in relation to instructions intended to ensure that newly hired personnel falling under the purview of the Public Service Commission properly understand their responsibilities and the functions are expected of them. The Committee also deems it appropriate for the country under review to make participation to induction trainings and programmes mandatory for all newly hired personnel and include a timetable, which indicates whether this is to be done when they begin performing their functions or a later date so that all personnel have a proper understanding of their duties and the functions that are expected of them. The Committee will also formulate a recommendation to consider standardizing induction trainings to ensure that training is consistent across Ministries and Departments. (See Recommendations 1.4.1, 1.4.2 and 1.4.3 in Section 1.4 of Chapter III of this Report).

In relation to civil servants already in the Civil Service, the Committee observes that the country under review does not have provisions in its current legal framework, to ensure that personnel under the purview of the Public Service Commission are informed of their responsibilities and functions when those said responsibilities and functions change due to a change in duties, a transfer or a promotion. Nor does the legal framework ensure that they receive training in relation to their new position. The Committee will formulate a recommendation for the country under review to consider adopting provisions to ensure that personnel under the purview of the Public Service Commission are informed of their responsibilities and functions when those responsibilities and functions change, and that they receive the adequate training needed to perform those new functions. (See Recommendation 1.4.4 in Section 1.4 of Chapter III of this Report).

Furthermore, during the on-site visit, representatives of the Public Service Academy indicated that personnel may receive needed training in relation to a new position at a much later date when they have already begun performing the functions required of them under their new duties and responsibilities. Given that trainings are offered on a rotation basis and in smaller groups due to the lack of staff, a civil servant may have to wait several months before receiving such training. The Public Service Academy cited a lack of resources for its inability to effectively respond to the needs of all civil servants in its client Ministries and Departments. The Committee will formulate a recommendation for the country under review to consider adopting the necessary measures, within available resources, to strengthen the Public Service Academy and ensure that it is provided with the necessary financial and human resources to discharge its functions. (See Recommendation 1.4.5 in Section 1.4 of Chapter III of this Report).

244 Civil Service Act, Chap. 23:01, available at:
245 Civil Service Regulations, ibid.
246 Public Service Commission Regulations, 1966 (as amended), supra note 16.
Moreover, the Public Service Academy mentioned, during the on-site visit, the need for better coordination and forward planning on the part of Ministries and Departments that is in line with identified long-term term training needs so that civil servants are exposed to the necessary trainings they need in a timely manner. Representatives stated that this involves Ministries and Departments identifying existing deficiencies with their respective Ministries and Departments and the type of training and interventions that will be needed to overcome these existing deficiencies, including foreseeing future needs of personnel and planning accordingly. The Committee will formulate a recommendation in that respect. (See Recommendation 1.4.6 in Section 1.4 of Chapter III of this Report).

The Committee further notes that the country under review does not have provisions in relation to instructions to personnel to ensure the proper understanding of the ethical rules governing their activities, nor measures to ensure that all civil servants under the purview of the Public Service Commission receive training on the said ethical rules on a mandatory basis. Although trainings does exist and an effort is made to ensure that a great number of civil servants receive these trainings, the country under view, indicated that not all civil servants have been exposed to them, considering that they are offered on a rotation basis and in smaller groups due to the lack of staff, in addition to the fact that they are not explicitly mandatory. Representatives of the Public Service Committee stated that civil servants may be exposed to the trainings, either by nomination, based on an identified need by a supervisor or a Human Resources Unit, or by application, based on the civil servants perceived need and own initiation. Furthermore, although civil servants may be generally be exposed to the Code of Conduct under the Civil Service Regulations in the meantime, the Committee notes that this does not guarantee proper understanding of those rules and how they relate to a civil servant’s activities. In that regard, the Committee will formulate a recommendation for the country under review to consider adopting provisions in relation to instructions to personnel to ensure the proper understanding of the ethical rules governing their activities and ensure that these trainings be mandatory for all civil servants under the purview of the Public Service Commission. (See Recommendation 1.4.7 in Section 1.4 of Chapter III of this Report).

The Committee notes that the lack of training regarding the responsibilities and obligations of civil servants under the Code of Conduct of the Integrity in Public Life Act, Chap. 22:01 was raised during the Fourth Round of Review. Given that little information was provided during the on-site regarding training in relation to the Code of Conduct under the Integrity in Public Life Act, Chap. 22:01, the Committee will reiterate Recommendation 1.4.11 of Section 1.4 of Chapter II of the Report of the Fourth Round. (See Recommendation 1.4.8 in Section 1.4 of Chapter III of this Report).

The Committee also notes that absence of provisions and/or mechanisms to ensure that personnel receives training regarding the ethical rules that govern their activities not only when they begin performing their functions, but also when a change of duties calls for a comprehensive understanding of a different set ethical rules or when the aforesaid rules change or are amended. The Committee will formulate a recommendation in that respect. (See Recommendation 1.4.9 in Section 1.4 of Chapter III of this Report).

With respect to the governing body personnel may resort to obtain information in relation to doubts regarding the ethical rules governing their activities or on how to resolve such doubts, the Committee observes the lack of clarity, based on the information provided by the country under review, during the on-

\[248\] Ibid.
site visit, on the governing body to which personnel should turn to get information or resolve doubts as to the scope of interpretation of the ethical rules governing their activities. The Committee will formulate a recommendation under review to consider including, in the appropriate legislation or regulations, provisions that clearly specify the governing body to which personnel may resort to obtain information in relation to doubts regarding the ethical rules governing their activities or to resolve such doubts in relation to scope of interpretation of the aforementioned ethical rules. (See Recommendation 1.4.10 in Section 1.4 of Chapter III of this Report).

[309] In terms of the existence of a governing authority or body responsible for defining, steering, giving guidance or supporting the manner in which personnel are informed of the ethical rules governing their duties and for seeing that this task is fully carried out, the Committee notes that, based on the information the country under review provided during the on-site visit, that lack of clear governing body and the measures it may take to enforce such norms. It appears to the Committee that the appropriate body would be the Public Service Commission. Moreover, the Committee notes that the country under review raised similar concerns in its Green Paper and stated that there are no clear delineations among HR policy, operations and oversight responsibilities. The paper stated, for example, that the Public Service Commission performs all three functions and that responsibility for setting Human Resource management policy is divided between the Personnel Department, the MPA, and the Public Service Commission. The Committee will formulate a recommendation under review to consider including, in the appropriate legislation or regulations, provisions that clearly specify the governing body responsible for defining, steering, giving guidance or supporting the manner in which personnel are informed of the ethical rules governing their duties, and for seeing that this is done thoroughly, along with measures or actions that can be taken to ensure compliance with provisions and/or measures that govern these matters. (See Recommendation 1.4.11 in Section 1.4 of Chapter III of this Report).

[310] With respect to the use of technology, the country under review indicated that although it does integrate technology in trainings through its online assessments, it could benefit from further use as this could allow to offer online training programmes, which could be particularly beneficial for senior civil servants whom, given time constraints, may find it challenging to attend trainings in an in-class format. The Committee will formulate a recommendation in that respect. (See Recommendation 1.4.12 in Section 1.4 of Chapter III of this Report).

1.3 Results

[311] Neither in its response to the questionnaire, nor during the on-site visit, did the country under review provide any information about results of instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities. With the above in mind, the Committee will formulate recommendations. (See Recommendation 1.4.13 of Section 1.4 of Chapter III of this Report).

1.4 Conclusions and recommendations


250 Ibid.
Based on the review conducted regarding the implementation in Trinidad and Tobago of Article III, paragraph 3 of the Convention, the Committee suggests that the country under review consider the following recommendations:

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

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 Consider adopting provisions in relation to instructions intended to ensure that newly hired personnel falling under the purview of the Public Service Commission properly understand their responsibilities and the functions are expected of them. (See paragraph 302 in Section 1.2 of Chapter III of this Report).

1.4.2 Consider making participation to induction trainings and programmes mandatory for all newly hired personnel and include a timetable, which indicates whether this is to be done when they begin performing their functions or a later date so that all personnel have a proper understanding of their duties and the functions that are expected of them. (See paragraph 302 in Section 1.2 of Chapter III of this Report).

1.4.3 Consider standardizing induction trainings to ensure that training is consistent across Ministries and Departments. (See paragraph 302 in Section 1.2 of Chapter III of this Report).

1.4.4 Consider adopting provisions to ensure that personnel under the purview of the Public Service Commission are informed of their responsibilities and functions when those responsibilities and functions change, and that they receive the adequate training needed to perform those new functions. (See paragraph 303 in Section 1.2 of Chapter III of this Report).

1.4.5 Consider adopting the necessary measures, within available resources, to strengthen the Public Service Academy and ensure that it is provided with the necessary financial, technological, and human resources to perform its functions properly. (See paragraph 304 in Section 1.2 of Chapter III of this Report).

1.4.6 Ensure that Human Resources Units identify long-term training needs in their Ministries and Departments and plan accordingly, and adopt mechanisms to facilitate close coordination with the Public Service Academy with respect to training needs. (See paragraph 305 in Section 1.2 of Chapter III of this Report).

1.4.7 Consider adopting provisions in relation to instructions to personnel under the purview of the Public Service Commission to ensure the proper understanding of the ethical rules governing their activities. (See paragraph 306 in Section 1.2 of Chapter III of this Report).

1.4.8 Carry out training programs for persons exercising public functions regarding their responsibilities under the Code of Conduct in the Integrity in Public Life Act as well as the workplace protections
in place for reporting acts of corruption. (See paragraph 307 in Section 1.2 of Chapter III of this Report).

1.4.9 Consider adopt the necessary provisions and/or measures to ensure that training to personnel under the purview of the Public Service Commission regarding the ethical rules that govern their activities, are not only offered when they begin performing their functions, but also when a change of duties calls for a comprehensive understanding of a different set ethical rules or when the aforesaid rules change or are amended. (See paragraph 308 in Section 1.2 of Chapter III of this Report).

1.4.10 Consider including, in the appropriate legislation or regulations, provisions that clearly specify the governing body to which personnel may resort to obtain information in relation to doubts regarding the ethical rules governing their activities or to resolve such doubts in relation to scope of interpretation of the aforementioned ethical rules. (See paragraph 309 in Section 1.2 of Chapter III of this Report).

1.4.11 Consider adopting, in the appropriate legislation or regulations, provisions that clearly specify the governing body responsible for defining, steering, giving guidance or supporting the manner in which personnel are informed of the ethical rules governing their duties, and for overseeing that this is done thoroughly, along with measures or actions that can be taken to ensure compliance with provisions and/or measures that govern these matters. (See paragraph 310 in Section 1.2 of Chapter III of this Report).

1.4.12 Adopt the necessary measures to facilitate the use of technology in trainings so as to allow for the possibility of offering distance learning opportunities online. (See paragraph 311 in Section 1.2 of Chapter III of this Report).

1.4.13 Compile detailed statistics on instructions imparted to personnel under the purview of the Public Service Commission to ensure proper understanding of their responsibilities and the ethical rules governing their activities, covering such aspects as: number of training or instruction programs and courses for that purpose; periodicity or frequency with which they are imparted and the number of civil servants taking part; number of handbooks for civil servants on the proper performance of their functions and on their ethical rules, and to alert them to the risks of corruption inherent in the performance of the functions; number of inquiries by civil servants on the proper performance of their duties and on the ethical rules governing their activities answered, and use of modern communication technologies for that purpose; number of activities undertaken to ascertain if the objective of ensuring that those ethical rules are understood has been achieved; and number of measures or adopted by the authorities or bodies responsible for seeing that instruction is provided fully and for ensuring compliance with provisions and/or measures adopted in that regard. The purpose of the foregoing is to identify obstacles and recommend corrective measures, as necessary. (See paragraph 312 in Section 1.3 of Chapter III of this Report).

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

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

2.2 ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT CRITERIA FOR DETERMINING THE COMPENSATION OF PUBLIC SERVANTS

2.2.1 Existence of a legal framework and/or other measures

[316] The Committee notes the establishment of a Salaries Review Commission under Section 140 of the Constitution of the Republic of Trinidad and Tobago,\(^\text{251}\) whose function is to review the salaries and other conditions of service of offices falling within its purview,\(^\text{252}\) which includes, \textit{inter alia}, Members of Parliament, the Higher Judiciary, the Ombudsman, the Auditor General, top managers in the Public Service, top managers in statutory bodies, Chairmen and Members of Commissions and Boards, as well as the Judicial and Legal Service, and presents its findings in a report,\(^\text{253}\) with recommendations, to the President.\(^\text{254}\)

[317] With respect to the Civil Service, the Committee notes that the country under review notes that the Civil Service Act, Chap. 23:01 establishes, under Section 14, the Personnel Department as the body responsible for maintaining the classification of the Civil Service and for reviewing the remuneration payable to civil servants\(^\text{255}\) as well as for administering the general regulations in respect to the Civil Service.\(^\text{256}\) The Act also provides for the establishment of procedures for consultation and negotiation between the Personnel Department and appropriate recognized associations for the classification of offices, grievances, remuneration and the terms and conditions of employment.\(^\text{257}\) In relation to these specific matters, the Personnel Department is subject to the direction of the Minister of Finance.\(^\text{258}\)

[318] Pursuant to Section 14(2), the Minister of Finance may also “\textit{from time to time make recommendations with regard to remuneration to be paid to civil servants}.”\(^\text{259}\) Section 14(3) establishes the elements that the Minister shall consider before making recommendations on pay rates:

\[
(\text{“14(3) The Minister of Finance shall, before making recommendations on remuneration under subsection (2)—}
\]
\[
(a) \text{consider the requirements of the Civil Service;}
\]

\(^{251}\) Constitution of the Republic of Trinidad and Tobago, Chap. 1:01, 1976, \textit{supra} note 14, Section 140.
\(^{252}\) \textit{Ibid.}, Section 141(1).
\(^{253}\) These reports can be found online on the website of the Parliament of Trinidad and Tobago. For example, the Ninety-Eighth Report of the Salaries Review Commission of the Republic of Trinidad and Tobago, General Review of Salaries and other Terms and Conditions of Service of Offices within the Purview of the Salaries Review Commission, is available at: \url{http://www.ttparliament.org/documents/2225.pdf}.
\(^{254}\) Constitution of the Republic of Trinidad and Tobago, Chap. 1:01, 1976, \textit{supra} note 14, Section 141(2).
\(^{255}\) Civil Service Act, Chap. 23:01, \textit{supra} note 237, Section 141(1)(a).
\(^{256}\) \textit{Ibid.}, Section 141(1)(b).
\(^{257}\) \textit{Ibid.}, Section 141(1)(c).
\(^{258}\) \textit{Ibid.}, Section 15.
\(^{259}\) \textit{Ibid.}, Section 14(2).
(b) take into account the rates of pay and other terms and conditions of employment prevailing in Trinidad and Tobago outside the Civil Service and the relationship of duties of the various classes and grades within the Civil Service; and
(c) be guided by the considerations set out in section 20(2)(a) to (f) in the Industrial Relations Act.²⁶⁰

[319] Section 14(4) further states that the Minister of Finance may require the Personnel Department to consult with appropriate recognized associations prior to formulating any recommendation under 14(2).²⁶¹ The Personnel Department may also consult with such associations in relation to the aforementioned matters at the request of the associations or whenever the Minister of Finance considers it necessary or desirable to do so.²⁶²

[320] The Committee also takes note of the following provisions from the Civil Service Regulations:

[321] - Regulation 35 which establishes that an officer is entitled to receive “the full pay to the office to which he is appointed from date of his appointment thereto”²⁶³ and on promotion, “the minimum salary range attached to the office to which he is promoted from the date of his promotion.”²⁶⁴

[322] - Regulation 36 which establishes that “upon first appoint, the commencing salary to be paid shall be the minimum of the salary range applicable to the office (whether temporary, acting or permanent.”²⁶⁵

[323] - Regulation 37 which states that “[n]otwithstanding Regulation 36, the appropriate Commission may authorize the payment of any commencing salary within the range in accordance with the principles to such office.”²⁶⁶

[324] - Regulation 39(1) which establishes the schedule for the payment of salary.²⁶⁷

[325] – Regulations 41 and 42 provide for the payment of increments.²⁶⁸

[326] – Regulation 44, which establishes the salary an officer is to receive in the case of a promotion.

[327] With respect to the Judicial and Legal Service, the Committee notes the following provision from the Judicial and Legal Service Act, Chap. 6:01 in relation to remuneration:

[328] – Section 6(1), which states that subject to the Constitution, the President may by Order prescribe:

²⁶⁰ Ibid., Section 14(3).
²⁶¹ Ibid.
²⁶² Ibid., Section 16.
²⁶³ Civil Service Regulations, supra note 237, Section 35(1).
²⁶⁴ Ibid., Regulation 35(3).
²⁶⁵ Ibid., Regulation 36.
²⁶⁶ Ibid., Regulation 37.
²⁶⁷ Ibid., Regulation 39.
²⁶⁸ Ibid., Regulations 41 and 42.
“— (a) the pay in respect of an office; (b) allowances and benefits that attach to an office and that any such allowance or benefit is exempt from income tax or any other tax; (c) the other terms and conditions of service of an officer.”

[329] The Committee also notes the Remuneration (Judicial and Legal Service) Order, 1987 made under 6(1) which eliminates salary increments under the Judicial and Legal Service Act, Chap. 6:01.

[330] The Committee observes that the Public Service Commission Regulations, which was also adopted mutatis mutandis by the Judicial and Legal Services Commission, contains the following provision in relation to compensation:

[331] - Regulation 33 which provides that that the Public Service Commission “may authorise payment to an officer of a commencing pay at an incremental point higher than the minimum in the scale attaching to the office to which he is appointed or promoted.”

[332] The Committee also notes the Judges and Salaries and Pensions Act, Chap. 6:02, which determines the salary the Chief Justice of Trinidad and Tobago, Judges of the Court of Appeal and Judges of the High Court in accordance to its Schedule.

[333] With respect to the legislative branch, the Committee notes that the Office of the Parliament is required to prepare its annual estimates under the Exchequer and Audit Act, Chap. 69:01 for submission to the Ministry of Finance, which includes the salaries and allowances for Members of Parliament who do not hold ministerial portfolios.

[334] Finally, the Committee takes note that the salaries for all offices in all three branches of government are included in the Estimates of Expenditure with the passage of the Appropriation Act for every financial year. The Estimates of Expenditure are made available online on the website of the Ministry of Finance.

2.2.2 Adequacy of the legal framework and/or other measures

[335] With respect to the establishment of objective and transparent criteria for determining the compensation of public servants that have been examined by the Committee, based on the information made

269 Judicial and Legal Service Act, Chap. 6:01, supra note 42, Section 6(1).
271 Public Service Commission Regulations, supra note 16, Regulation 33.
274 Section 113(1) of the Constitution of the Republic of Trinidad and Tobago, Chap. 1:01, 1976, supra note 14, states that the “Minister responsible for finance shall cause be prepared and laid before the House of Representatives before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Trinidad and Tobago for that year.”
available to it, they constitute, as a whole, a set of measures relevant for promoting the purposes of the Convention.

[336] Nonetheless, the Committee considers appropriate to make an observation regarding the advisability for Trinidad and Tobago to consider complementing and implementing certain provisions in this area, taking into account the following:

[337] Although the salaries are published in the Estimates of Expenditures for every financial year, the Committee notes that these are voluminous and may make consulting salary scales difficult and less accessible to the general. In that regard, the Committee believes that the country could benefit from publishing a simplified document with the salary scales and make is readily accessible online for the general public. The Committee will formulate a recommendation in that respect. (See Recommendation 2.2.3.1 in Section 2.2.3 of Chapter III of this Report).

[338] In addition, the Committee notes the lack of rules and regulations to establish criteria for the determination of the several steps contained in the salary scales in the Civil Service. The Committee will formulate a recommendation in that regard. (See Recommendation 2.2.3.2 in Section 2.2.3 of Chapter III of this Report).

[339] The Committee also takes note that the 2017-2020 Green Paper on Transforming the Civil Service, published by the Ministry of Public Administration, makes reference to the difficulty of retaining experienced professional and managerial staff and how this has resulted in the recruitment of senior professionals from outside of the Civil Service use of fixed-terms contracts with pay levels outside of approved salary ranges/scales. This measure to overcome this challenge is said to have contributed to distortions in internal equity and has resulted in a rapid increase in contractual employment. The Committee will formulate a recommendation for the country under review to adopt measures to ensure that salaries for contractual employees are in line with pay scales in use for similar functions so as to increase equity and promote the principles of transparency. (See Recommendation 2.2.3.3 in Section 2.2.3 of Chapter III of this Report).

2.2.3 Conclusions and recommendations

[340] Based on the review conducted in the above sections regarding the implementation in Trinidad and Tobago of Article III, paragraph 12 of the Convention, the Committee offers the following conclusions:

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

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

2.2.3.1 Consider publishing a simplified document for each branch of government with the salary scales for all offices and make is readily accessible online to the general public. (See paragraph 338 in Section 2.2.2 of Chapter III of this Report).

276 Green Paper, Transforming the Civil Service: Renewal and Modernisation, Ministry of Public Administration, Government of the Republic of Trinidad and Tobago, supra note 242, p. 17-18.
2.2.3.2 Establish criteria for the determination of the steps in the salary scales in the Civil Service. (See paragraph 339 in Section 2.2.2 of Chapter III of this Report).

2.2.3.3 Adopt measures to ensure that salaries for contractual employees are in line with pay scales in use for similar functions so as to increase equity and promote the principles of transparency. (See paragraph 340 in Section 2.2.2 of Chapter III of this Report).

IV. BEST PRACTICES

[343] The country under review did not present any best practices in relation to the Convention provisions selected for the Second and Fifth Rounds of Review.
**FIFTH ROUND OF REVIEW**

**AGENDA FOR THE ON-SITE VISIT TO TRINIDAD & TOBAGO**

<table>
<thead>
<tr>
<th>Monday, April 1, 2019</th>
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<tbody>
<tr>
<td>15:00 hrs. – 15:30 hrs.</td>
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<tr>
<td><strong>Location:</strong> Radisson Hotel</td>
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<tr>
<th>Tuesday, April 2, 2019</th>
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<tbody>
<tr>
<td>9:00 hrs. – 12:30 hrs.</td>
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<tr>
<td><strong>Location:</strong> AGLA Tower, Government Campus Plaza</td>
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277 Annex I of the Response of Trinidad and Tobago to the Questionnaire on follow-up on implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round is available at: [http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic5_tto_response_section1.pdf](http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic5_tto_response_section1.pdf).

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
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<td>- Trinidad and Tobago Transparency Institute</td>
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<td>- Mr. Dion Abdul</td>
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<td>12:30 hrs. – 14:00 hrs.</td>
<td>Lunch</td>
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<tr>
<td>14:00 hrs. – 17:30 hrs.</td>
<td><strong>Follow Up to the Recommendations of the Second Round: Systems of Government Hiring</strong></td>
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<tr>
<td>14:00 hrs. – 17:30 hrs.</td>
<td><strong>Panel 1:</strong></td>
<td>- Progress and new developments</td>
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<td>- <em>Public Service Commission Regulations, 1966 (as amended)</em></td>
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<td>- *Judicial and Legal Service Act, Chap. 6:01</td>
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<td>- Systems for filing challenges</td>
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<td>- Ministry of Public Administration and Information</td>
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<td>- Mr. Claudelle McKellar, Deputy Permanent Secretary</td>
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<td>- Ms. Abigail Bynoe, Manager, Policy, Strategy and Monitoring</td>
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<tr>
<td>17:30 hrs. – 18:00 hrs.</td>
<td><strong>Informal meeting</strong></td>
<td><strong>Informal meeting</strong> between the representatives of the member states of the Subgroup and the Technical Secretariat</td>
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**Wednesday, April 3, 2019**

279 Available at: [http://www.oas.org/juridico/english/mesicic_II_rep_tto.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_tto.pdf)

280 Available at: [http://www.oas.org/juridico/english/mesicic_II_rep_tto.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_tto.pdf)
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<td>9:00 hrs. – 12:30 hrs.</td>
<td><strong>Follow Up to the Recommendations of the Second Round: Systems of Government Procurement of Goods and Services</strong></td>
<td>AGLA Tower, Government Campus Plaza</td>
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<td><strong>Panel 2:</strong></td>
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<td>- Progress and new developments</td>
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<td>- Central Tenders Board Act, Chap. 71:91</td>
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<td>- Exchequer and Audit (Act No. 20 of 1959)</td>
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<td>- Public Procurement and Disposal of Public Property Act, 2015</td>
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<td>- Public Procurement and Disposal of Public Property (Amendment) 2016</td>
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<td>- Reform of the Public Sector Procurement Regime (White Paper)</td>
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<td>- Challenges with the implementation process</td>
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<td>- Technical cooperation needs</td>
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<td>- Results</td>
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<td>12:30 hrs. – 14:00 hrs.</td>
<td><strong>Lunch</strong></td>
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<td>14:00 hrs. – 15:30 hrs.</td>
<td><strong>Follow-up to the Recommendations of the Second Round: Acts of Corruption</strong></td>
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<td>- Trinidad and Tobago Manufacturers Association (civil society)</td>
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<td></td>
<td>o Mr. Mahindra Ramdeen, Chief Executive Officer</td>
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<td>o Ms. Joy Francis, Team Lead, Trade</td>
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<td>- Central Tenders Board</td>
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<td>o Ms Koreisha Emamali, Director of Contracts</td>
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<td>o Ms. Angela D. Lochan, Assistant Director of Contracts</td>
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<td>- Office of the Auditor General</td>
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<td>o Ms. Anita Mangra, Senior Legal Officer</td>
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<td>- Office of the Ombudsman</td>
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<td>o Mr. Mangroo, Investigator</td>
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<td>o Ms. Felisha Hosein, Research Officer</td>
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<td>o Mr. Moonilal Lalchan, Chairman, Procurement Regulator</td>
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<td>o Ms. Sasha Mahabir, Executive Assistant to the Chairman</td>
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<td>o Mr. Ian Samaroo, Policy Officer</td>
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<td>- Ministry of Finance</td>
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<td>o Ms. Michelle Kissoon, Permanent Secretary</td>
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<td>- Integrity Commission</td>
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<td>o Mr. Richard Frederick, Director Investigations</td>
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<td>o Ms. Isha George, Procurement Officer</td>
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### Panel 3:
- Progress and new developments
- *Justice Protection Act, Chap. 5:07*
- *Prevention of Corruption Act, Chap. 11:11, 1987*
- *Proceeds of Crime Act, Chap. 11:27*
- Challenges
- Resources
- Results

**Participants:**
- Office of the Attorney General, Ministry of the Attorney General and Legal Affairs
  - Ms. Solange DeSouza
- Anti-Corruption Investigation Bureau, Ministry of the Attorney General and Legal Affairs
  - Mr. William Nurse


### Panel 4:
- Progress and new developments
- *Justice Protection Act, Chap. 5:33*
- *Integrity in Public Life Act, Chap. 22:01*
- *Prevention of Corruption Act, Chap. 11:11, 1987*
- *Proceeds of Crime Act, Chap. 11:27*
- Witness Protection Program
- Justice Protection Program
- Challenges in the implementation process
- Technical cooperation needs
- Results

**Participants:**
- Office of the Attorney General, Ministry of the Attorney General and Legal Affairs
  - Ms. Solange DeSouza
- Anti-Corruption Investigation Bureau, Ministry of the Attorney General and Legal Affairs
  - Mr. William Nurse

<p>| 17:30 hrs. – 18:00 hrs. | <strong>Informal meeting</strong> between the representatives of the member states of the Subgroup and the Technical Secretariat |</p>
<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>09:00 hrs. – 12:30 hrs.</td>
<td>Panels Corresponding to the Provisions of the Convention Selected for the Fifth Round of Review</td>
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<tr>
<td><strong>Location:</strong> AGLA Tower, Government Campus Plaza</td>
<td>Panel 5: Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities</td>
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<td>- Legal framework</td>
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<td>- Training programs</td>
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<td>- Use of technology</td>
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<td>- Difficulties and technical cooperation needs</td>
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<td>- Results</td>
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<td>12:30 hrs. – 14:00 hrs.</td>
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<td>14:00 hrs. – 16:00 hrs.</td>
<td>Panels Corresponding to the Provisions of the Convention Selected for the Fifth Round of Review</td>
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<td>Panel 6: Study of preventive measures that take into account the relationship between equitable compensation and probity in the Public Service</td>
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<td>- Criteria currently used to determine salary of public officers</td>
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<td>- Public Service Academy</td>
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<td>o Ms. Denis Phillip, Director</td>
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<td>o Ms. Cherryl Ramroop, Human Resources Advisor</td>
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<td>o Ms. Malika Lyon Best, Human Resources Advisor</td>
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<td>16:00 hrs. – 16:30 hrs.</td>
<td>Informal meeting between the representatives of the member states of the Subgroup and the Technical Secretariat</td>
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<td>16:30 hrs. – 17:00 hrs.</td>
<td><strong>Final meeting</strong> between the representatives of the country under review, the member states of the Subgroup and the Technical Secretariat</td>
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</tbody>
</table>

COUNTRY UNDER REVIEW

TRINIDAD AND TOBAGO

Ian Rampersad
Lead Expert, Committee of Experts of the MESICIC
Director, International Law and Human Rights Unit
Ministry of the Attorney General and Legal Affairs

MEMBER STATES OF THE REVIEW SUBGROUP:

BELIZE

Stacy Martinez
Expert, Committee of Experts of the MESICIC
Crown Counsel, International Legal Affairs
Attorney General’s Ministry

ST-KITTS AND NEVIS

De Lara Mac Clure Taylor
Expert, Committee of Experts of the MESICIC
Crown Counsel
Ministry of the Attorney General

TECHNICAL SECRETARIAT OF THE MESICIC:

Alexsa McKenzie
Legal Consultant
Department of Legal Cooperation
OAS Secretariat for Legal Affairs

Rodrigo Silva
Legal Officer
Department of Legal Cooperation
OAS Secretariat for Legal Affairs