

**TRINIDAD AND TOBAGO'S RESPONSE TO THE QUESTIONNAIRE ON THE PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION SELECTED IN THE SECOND ROUND AND FOR FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE FIRST ROUND**

**SECTION 1**

**QUESTIONS ON THE IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND**

**CHAPTER ONE**

**SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE 111 (5) OF THE CONVENTION)**

**1. Government Hiring Systems**

- (a) Are there any laws and/or measures in your country establishing government hiring systems? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.

Also describe how the above systems ensure openness, equity and efficiency in your country.

In relation to the above, refer, among others, to the following aspects:

- (i) Governing or administrating authorities of the systems and control mechanisms
- (ii) Access to the public service through a merit-based system.
- (iii) Advertisement for the selection of public servants, indicating the qualifications for selection.
- (iv) Ways to challenge a decision made in the selection system.
- (v) Relevant exceptions to the above.

In relation to question a), state the objective results obtained, including any available statistical data.

If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government hiring systems, in accordance with Article III (5) of the Convention.

Trinidad and Tobago has laws and measures that establish government hiring systems.

## **MAJOR PUBLIC SECTOR LAWS FOR HIRING**

There are four service commissions established under the Constitution of the Republic of Trinidad and Tobago. These are:

- Public Service Commission
- Police Service Commission
- Teaching Service Commission
- Judicial and Legal Service Commission (JLSC)

These Service Commissions, by law, are non-political bodies with the sole purpose of maintaining neutral services operating on the basis of merit, free from patronage, discrimination, nepotism and injustice. They are vested with the power to appoint persons to hold or to act in the relevant posts, including the power to make appointments on promotion and transfer and to confirm appointments and to remove and exercise disciplinary control over persons holding or acting in offices governed by the respective Service Commissions

The Public service Commission is regulated by *The Public Service Regulations, 1966*, made under the provisions of Section 102, of the Constitution. The Regulations details the requirements for making applications, selecting appropriate candidates, making appointments, appraising performance, and disciplining officers.

The Regulations also specifically detail the code of conduct for Public Officers and Sections 75 specifically states that Officers shall be guilty of misconduct if they accept solicit Members of Parliament, Ministers and members of the Commission for support to advance their Public Service career. Section 76 states that, unless permission is obtained from the Commission, an officer shall not accept any gifts from any member of the public or from any organisation for services rendered in the course of his official duties.

Chapter 9 of the Constitution of the Republic of Trinidad and Tobago authorizes appointments to the Public Service (i.e. the Civil, Fire and Prison Services), the Police Service and the Teaching Service.

Chapter 7 authorizes appointments to the Judicial and Legal Service (section 110).

- (i) The administrating authorities for the Public, Police and Teaching Services are the Public, Police and Teaching Service Commissions established under sections 120(1), 122(1) and 124(1) of the Constitution, respectively.

The members of each Commission are appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. A person who is a member of the House of Representatives or the Senate, or who holds or is acting in any public office or has held any public office within the period of three years preceding his proposed appointment, is not qualified to hold the office of a member of a Service Commission (section 126(1) of the Constitution).

A person who has held office or acted as a member of a Service Commission will not, within a period of three years commencing with the date on which he last

held or acted in such an office, be eligible for appointment to any public office (section 126(2)). Before entering upon the duties of his office a member of a Service Commission must take and subscribe the oath of office, before the President or a person appointed by the President for the purpose (section 126(6)).

- (ii) Under regulation 12(1) of the Public Service Commission Regulations, 1966, (the Regulations) candidates for permanent appointment to public offices in the clerical or secretarial classes and to such other classes in the Public Service as the Public Service Commission (the Commission) may specify, are selected on the basis of written competitive examinations and interviews.

Under regulation 2 of the Regulations, the Public Service includes the Teaching Service, which is established under section 53 of the Education Act, Chap. 39:01. By Regulation 126 of the Regulations, every application for first appointment to an office of teacher in the Teaching Service must be addressed to the Permanent Secretary in the Ministry of Education who must check every application to ensure that the applicant is eligible for appointment to the office of teacher in accordance with the Education Act. The Permanent Secretary must then forward the applications of all eligible applicants to the Director of Personnel Administration (the DPA) for submission to the Teaching Service Commission (the TSC).

Under Regulation 150(2) of the Regulations, a candidate who applies for a first appointment in the Fire Service and qualifies for appointment is selected on merit by the Commission on the basis of a practical test (devised by the Commission after consultation with the Chief Fire Officer) and an interview.

Applications for first appointments in the Prison Service must be made to the DPA or by personal appearance in response to an advertisement (regulation 166(1) of the Regulations). A Superintendent of Prisons will then make a preliminary selection of candidates who have the prescribed qualifications (regulation 166(2)). A selected candidate will be required to take an education test and, if successful, pass a medical test (regulation 166(3)). Under regulation 166(4), a candidate who qualifies for a first appointment (Prison Officer I) shall be interviewed by a Selection Board and, under regulation 166(5), the successful candidates are placed in order of merit on the basis of the educational test and the interview.

- (iii) Regulation 15 of the Regulations states that where the Commission considers either that there is no suitable candidate already in the 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.

As soon as it is known that a vacancy will occur in the office of teacher in a government school, the Permanent Secretary in the Ministry of Education must communicate the particulars of the vacancy to the DPA in writing and, by circular memorandum, advertise the vacancy in all public schools (regulation 128(1) of the Regulations). Where a vacancy exists in an assisted school, the relevant

denominational Board must communicate the particulars of the vacancy to the DPA and, by circular memorandum, advertise the vacancy in all public schools (regulation 129(1) and (2)). The Permanent Secretary must then forward all applications received in response to the advertisement under regulation 129(2) to the Board for the Board to make its recommendation regarding the filling of the vacancy (regulation 129(5)). The Permanent Secretary must afterwards forward to the DPA any recommendation made by the Board for the filling of the vacancy and his comments on the recommendation.

Where the TSC, after considering the recommendation of the Permanent Secretary or the Board under regulations 128 or 129, respectively, considers that there is no suitable teacher already in the Teaching Service available for the filling of the vacancy or that having regard to qualifications, experience and merit it would be in the best interest of the Teaching Service that the services of a teacher not already in that Service be secured, the TSC may authorize the advertisement of the vacancy.

Under regulation 149 of the Regulations, the Chief Fire Officer must advise the DPA of a vacancy in the office of Fire-fighter (the entry level position in the Fire Service) and the Commission may cause the vacancy to be advertised through the Press and electronic media inviting persons to apply on the appropriate form (regulation 149(1),(2) and (3)).

Under regulation 166(1), every application for the office of Prison Officer I must be made in writing to the DPA or by personal appearance in response to any advertisement issued by the DPA through the press and radio, stating the place, date and time at which a candidate may present himself for selection.

- (iv) None of the relevant Acts or Regulations relating to the Civil, Fire, Prison and Teaching Services contain provisions setting out ways to challenge a decision made in the selection system. A person aggrieved over an administrative decision may, however, seek redress under his constitutional right to equality of treatment from any public authority in the exercise of any functions (section 4(d) of the Constitution). He may also apply for judicial review of the decision on grounds listed under section 5 of the Judicial Review Act, 2000. These grounds include: that the decision was in any way unauthorized or contrary to law; acting in excess of jurisdiction; an exercise of power in a manner that is so unreasonable that no reasonable person could have so exercised the power; deprivation of a legitimate expectation; and breach of the principles of natural justice. The principles of natural justice have been developed by the courts as, according to Wade and Forsyth "... a kind of code of fair administrative procedure."
- (v) The number of persons employed by the Government on contract is expanding. Some areas of such employment are as Advisors, Prosecutors and Consultants and in the fields of public relations, communications and, latterly, policing. Employment is often not preceded by advertisements and the listing of qualifying criteria and expected duties.

Once it is determined that a contract position needs to be created, then the Job description and justifications are prepared in conjunction with Public Management Consulting Division (PMCD) of the Ministry of Public

Administration and Information. Cabinet approval is then sought. Once Cabinet approval is granted, the position is then publicly advertised and applicants are short listed for interviews based on selection criteria that normally entail:

- (a) Meeting the minimum qualifications
- (b) Having the relevant and required experience
- (c) Having relevant knowledge of the public service procedures (where applicable)

Before interviews are held, evaluation sheets are developed using the criteria mentioned above, as well as other criteria such attitude, interpersonal skills, and competence. Each criterion is assigned a weighted score. The interviews are conducted by a panel consisting of several persons. The candidate who gets the highest aggregate score is normally offered the position. Once the position is accepted by the successful candidate, the requested terms and conditions of employment are submitted to and negotiated with the Chief personnel Officer, Personnel Department, Ministry of Public Administration and Information.

- (vi) The procedures for the appointment of the Chief Justice, Judges of the High Court, members of the Judicial and Legal Services Commission, the Director of Public Prosecutions, the Solicitor General, the Chief Parliamentary Counsel, the Chief State Solicitor, and the Registrar General are contained within Chapter 7 of the Constitution.

Section 137 details the procedures for the removal of the Chief Justice and High Court Judges. These procedures are strictly and clearly defined within the Constitution.

The procedures for the appointment of all other Judicial and Legal Officers are to be found within the Judicial and Legal Service Act Chap. 6:01.

Such officers include the Treasury Solicitor, the Chief Magistrate, Magistrates Masters of the High Court, Registrars of the Appeal Board and Industrial Court and other Legal Officers, all of whom are appointed by the Judicial and Legal Services Commission.

This legislation also contains procedures for the dismissal of these persons.

The following steps outline the main procedures in selecting officers for employment in the Public Service

#### ***Established Positions - Hiring***

1. Unsolicited offers are accepted by the PSC, and applicants can do so by completing a standardized form and waiting for vacancies to become available.
2. At the request of Ministries/Departments, advertisements for specific positions may be posted by the Service Commissions Department if the number of applications from which to choose is small.
3. For some positions, candidates may be selected or promoted on the basis of an examination.
4. In most cases the Commission takes into account the seniority, experience, educational qualifications, merit and ability, together with relative efficiency of such officers for promotions.
5. An officer on gaining entry into the service is then required to serve on probation.

## **Challenges facing the Service Commissions**

- Delegation of functions by the Commission to Permanent Secretaries are not properly exercised
- Failure of Ministries to strictly adhere to regulations
- Heavy workload of the Service Commission due to the following factors:
  - The vast increase in the number of offices in the Civil, Police and Teaching Services;
  - The numerous representations and requests for information from public officers through the freedom of Information Act;
  - An increase in the disciplinary matters arising out of allegations of misconduct in office made against public officers.
- Slow response to clients needs
- Confirmation of appointments takes long
- Recent poll by MORI (a UK based research group) found that customer satisfaction ratings for the Service Commissions were low

## **Promotion**

The Public Service Regulations states that officers may be selected or promoted on the basis of educational qualifications, seniority, merit, among other things, but these criteria are followed only when senior offices are vacant, for example Deputy Permanent Secretary and the Permanent Secretary. It was noted earlier that the Public Service Commission (P.S.C.) changed the criteria for selection, which now included various exams to test the competencies of the candidates.

The advertisement for the selection of public servants is done via internal memo throughout government departments, external advertising is rarely done. The PSC regulations 1966 Chapter 3 section 15 states:

*Where the Commission considers either that there is no suitable candidate already in the particular service available for the filling of any vacancy or that having regard to 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*

Contract posts, that is, non-established posts, are circulated on a wider scale.

## **Ways to Challenge the System**

### *Means within the Public Service Commission*

The Public Service Commission acts as a body for addressing grievances that occurred either as a result of a decision by Permanent Secretaries, Heads of Departments or the Commission itself.

In the latter case, the Public Service Appeal Board, for which Section 132(1) of the Constitution provides for, is the main avenue for appealing decisions of the Commission of any person who exercises authority delegated by the Commission.

### *Judicial Review*

A public officer aggrieved by a decision in the selection process can file for judicial review. Recently, 23 police officers, who were bypassed for promotion, have sued the Commissioner and the Police Service Commission claiming that a new appraisal system introduced this year was unfair.

There were also six acting Permanent Secretaries who were granted leave by a High Court Judge to judicially review the decision of the Public Services Commission to use the assessment conducted by the Canadian Public Services Commission as a tool for promotions.

They are seeking a declaration that the Public Service Commission policy to use the Canadian assessment for the purpose of preparing a shortlist from which public officers would be selected for promotion to the offices of Deputy Permanent Secretary and/or Permanent Secretary is illegal, null and void and of no legal effect.

The procedures adopted by the Commission in the performance of its duties are subject to scrutiny by the Courts and their judgements now constitute a body of precedents relative to administrative law which must guide the decisions of the Commission. The cases listed are still pending.

## (b) AVAILABLE STATISTICS ON HIRING

**Appendix I** contains statistics obtained from the Public Service Commission on its hiring for the period 2002-2004.

The table below shows the number of individuals hired on contract in the Public Service from 2001 to November 1, 2006, and who are registered on the Government's Integrated Human Resource Information System.

YEAR	2001	2002	2003	2004	2005	2006
<b>Total Number of Contracted Officers<sup>1</sup></b>	801	1659	1988	3579	4753	5289
<b>% change</b>		52	17	45	24	10

*Source: IHRIS Project Unit*

## (c) MEASURES IN LIEU OF THE ABSENCE OF GOVERNMENT HIRING LAWS

The main legislation for dealing with public sector hiring is the *Public Service Regulations, 1966*.

### 1. Government Systems for Procurement of Goods and Services

(a) *Are there laws and/or measures in your country establishing government systems for procurement of goods and services? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.*

*Also describe how the above systems ensure openness, equity and efficiency in your country.*

*In relation to the above, refer, among others, to the following aspects:*

- i. Procurement systems with a public tender and without a public tender*
- ii. Governing or administering authorities of the systems and control mechanisms*
- iii. Register or pre-approved contractors*
- iv. Electronic methods and information systems for government procurement*

<sup>1</sup> These figures may be marginally understated since, according to the Treasury Division, some Ministries do not always follow the requirement of registering all contracted officers on the IHRIS database.

- v. *Public works contracts*
- vi. *Identification of the selection criteria for contractors (e.g. price, quality and expertise)*
- vii. *Ways to challenge a selection*

- (b) *In relation to question a), state the objective results obtained, including any available statistical data (e.g. percentage of contracts awarded through public tender; sanctions imposed on contractors).*
- (c) *If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government systems for procurement of goods and services, in accordance with Article III (5) of the Convention.*

#### **(a) LAWS AND MEASURES FOR GOVERNMENT PROCUREMENT**

The major laws governing Government procurement are:

- (i) The Central Tenders Board Ordinance No. 22 of 1961
- (ii) The Exchequer and Audit Act No. 20 of 1959

Both pieces of legislation have received several amendments since they were first drafted. Many Government agencies also try to model their procedures along the World Bank procurement guidelines, and may follow the procedures therein for receiving and investigating complaints.

The Central Tenders Board (CTB) is a Statutory Agency under the Ministry of Finance responsible for administering the Central Tenders Board Ordinance. The CTB's functions includes requesting tenders, evaluating tenders and awarding contracts, as well as resolving complaints and disputes on Public Sector procurement. Some State Agencies may have their own tendering processes and tender evaluation committees; however all are guided by the Central Tenders Board Ordinance, 1961.

The CTB has full autonomy to invite, consider, accept or reject offers for the supply of articles or for the undertaking of works or any service in connection therewith, necessary for carrying out the functions of the Government or any of the Statutory Bodies under the purview of the CTB ordinance.

The two (2) main methods of tendering as practiced by the CTB are / Selective (Limited) Tendering and Public (Open) Tendering/competitive bidding. / Public tender notices are published in the daily newspapers, and in some cases, regional and foreign newspapers.

##### ***Selective (Limited) Tendering Procedures:***

Selective Tendering involves requesting tenders from a minimum of three (3) to a maximum of seven (7) pre-qualified suppliers or contractors. In this regard, justifications for opting to using the method of selective tendering have to be presented for approval by the Minister of Finance. In respect of selective tendering for consultancy, justifications have to be presented to the Board for approval.

##### ***Public (Open) Tendering Procedure:***

This method involves the public advertising of proposed works or consultancies and the soliciting of bidders on the open market.

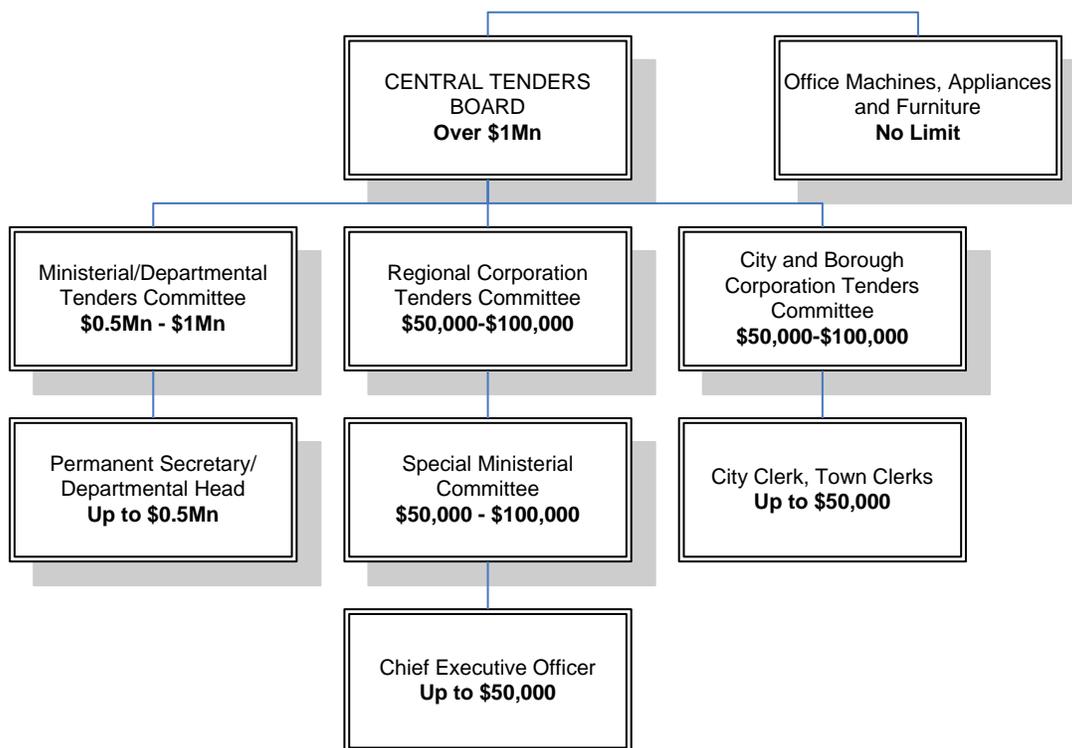
##### ***Selection criteria for contractors***

The following criteria are considered when selecting contractors:

- (i) past performance
- (ii) financial standing
- (iii) availability of manpower and expertise
- (iv) present and projected workload
- (v) delivery time-frame
- (vi) method statement
- (vii) quality plan
- (viii) Cost

These criteria may vary depending on the nature of the project, however not significantly.

The CTB Act, 1961 also sets the financial limits for each type of tendering committee. The diagram below shows this.



**Financial Limits of the Central Tenders Board and Sub-Committees**

### ***Electronic Tendering***

Recently the Government launched a website to announce invitations to tender.

The Central Tenders Board Ordinance, 1961 (the Ordinance) embodies the current legal and regulatory procurement framework applicable to Government Ministries and

Departments and some statutory authorities. There are, however, other agencies using public funds, including state-owned enterprises, statutory authorities and civil society whose procurement practices fall outside the ambit of the Ordinance.

- (i) Under section 20(1) of the Ordinance, whenever goods or services are required to be supplied to the Government or statutory body to which the Ordinance applies (as listed in the First Schedule to the Ordinance), the Government or statutory body must make a written request to the Central Tenders Board (“the Board”) to invite offers for the supply of the necessary goods or services.

By section 20(3) of the Ordinance, on receipt of the request, the Board must either invite members of the public in general to make offers (section 20(3)(a)) or, whenever the Board considers it expedient or desirable to do so, invite such bodies or persons as may be selected by the Board. This selective invitation is subject to the approval of the Minister (section 20(3)(b)).

- (ii) The Ordinance establishes a Central Tenders Board and vests in the Board sole and exclusive authority to act for, in the name and on behalf of the Government and the statutory bodies to which the Ordinance applies, in inviting, considering and accepting or rejecting offers for the supply of goods and services which are necessary for carrying out the functions of the Government or any of the statutory bodies (section 4(1)).

By section 16(1) of the Ordinance, there is established for every statutory body to which the Ordinance applies a Committee of the Board chaired by an ex-officio member of the Board. Each such Committee must consider offers for the supply of goods and services made to the statutory body and make recommendations to the Board for its acceptance or rejection of such offers.

Section 33 of the Ordinance states that in the exercise of its powers and the performance of its duties the Board shall conform with any general or special directions given to it by the Minister. By section 35 of the Ordinance, the Governor General (now the President) may make regulations necessary or expedient for the proper carrying out of the intent and provisions of the Ordinance. Regulations made may, inter alia, prescribe the procedure to be adopted by the Board in the exercise of their authority and establish Ministerial, departmental or special committees to deal with departmental contracts or special items or services, the value of which does not exceed an amount to be fixed by regulations.

Under section 21 of the Ordinance, the Board is obliged to keep specially constructed boxes in which all offers must be placed. Each box must have two independent locks with the Chairman of the Board keeping the key for one lock and the key for the other lock being kept by another member of the Board or Committee. Under section 22, on the date fixed for the opening of the offers, the Chairman and the other member of the Board or Committee must unlock the box and remove and open the offers found in the box. They must initial the offers found and make a note of the number of offers found and opened, the names of the persons making the offers and any further information the Board or Committee directs to be recorded.

Section 32 of the Ordinance requires every person having an official duty or being employed in the administration of the Ordinance to regard and deal with all documents and information relating to the functions of the Board as confidential. A person who communicates or attempts to communicate information relating to the functions of the Board to any person other than a member of the Board commits an offence (section 32(2)).

Under section 32(3) of the Ordinance, a person commits an offence where, with the intention of gaining an advantage or concession, he offers any member of the Board or a Committee or any officer of the Board a gift of money or other thing. The person is also disqualified from being awarded a contract.

Under regulation 16(1) of the Central Tenders Board Regulations, 1965, a public officer or an employee of the Government, or a member or employee of a statutory body or a spouse or a child or such person, must not enter into any contract for the supply of goods or services to the Government or statutory body. Further, where a person becomes a public officer or employee of the Government or a member or employee of a statutory body, after he or his spouse or any child has entered into a contract such as the one described above, the contract with such person or his spouse or any child shall thereupon be treated as terminated upon such terms as the Board considers appropriate. A person who contravenes this provision commits an offence.

Under regulation 11, provision is made for the establishment of Ministerial and Departmental Committees to act on behalf of the Board where the supply of goods and services do not exceed certain financial limits (one million dollars at present – see L.N. No. 223 of 2003). Under regulation 12, a Permanent Secretary (or officer of a statutory body appointed for that purpose) may act for the Board where the supply contracts do not exceed five hundred thousand dollars (see L.N. No. 223 of 2003). Under both regulations a Committee or Permanent Secretary (or officer appointed for the purpose) must not, for the purpose of giving itself or himself authority to act, subdivide a contract so that the value of the portions will be less than the prevailing limits within which they could act.

- (iii) The Board maintains at its offices Registers of contractors who have supplied, or firms and individuals who have expressed an interest in supplying, goods and services to the Government or statutory bodies. Under section 27A of the Ordinance, provision is made for the appointment of consultants. A consultant is a person whom the Board believes to be qualified to be registered for a project, such as a person who is an architectural or engineering consultant, a quantity surveyor, a marketing consultant or a technical or managerial consultant.

The Board must annually invite practicing consultants to register with the Board for the purpose of negotiating their appointments as consultants in connection with any project (section 27C(2)) and the Board must keep a register of each category of consultants (section 27C(1)). The Board may not register a consultant where it is satisfied that it is not in the public interest to do so (section 27C(3)).

- (iv) The Board generates its records manually at present but it is anticipated that these will soon be converted into, and maintained, in an electronic form.
- (v) The Board issues public invitations for public works contracts.
- (vi) Under section 24 of the Ordinance, the Board or a Committee shall consider the offers received and, except for good reason, the sufficiency of which is in the discretion of the Board or the Committee, must accept the lowest offer.
- (vii) Neither the Ordinance nor the Regulations contain provisions setting out ways to challenge a selection. A person aggrieved over the fairness of an administrative decision may, however, seek redress under his constitutional right to equality of treatment from any public authority in the exercise of any functions (section 4(d) of the Constitution). He may also apply for judicial review of the decision on grounds listed under section 5 of the Judicial Review Act, 2000. These grounds include breach of the principles of natural justice. These principles have been developed by the courts as, according to Wade and Forsyth "... a kind of code of fair administrative procedure."

### *Reform Proposals*

The Government of the Republic of Trinidad and Tobago, in August 2005, published a White Paper entitled: "Reform of the Public Sector Procurement Regime".

In the Paper, the function of the Board was re-stated i.e. it was established to be the sole and exclusive authority to invite, consider and accept or reject offers for the supply of goods and services necessary for carrying out the functions of Government or any statutory bodies. However, the Paper pointed out that over the years Government has played an increasingly influential role in the public procurement system. The Paper drew reference to the following amendments to the Ordinance:

- 1979 – to allow the Government to act on its own behalf
- 1987 – to provide for the handling of matters in the event of an emergency, without reference to the Central Tenders Board
- 1991 – provision for a Special Ministerial Tenders Committee in the Ministry of National Security to procure arms, ammunition and equipment for the Defence Force and the Protective Services
- 1993 – to validate the National Insurance Property Development Company Limited (NIPDEC) as a procurement agency for Government outside the ambit of the Central Tenders Board.

The Paper added that further decentralization of the procurement regime was also effected from 1979 onwards by the establishment of new statutory corporations and the removal of some earlier established statutory bodies from the purview of the Central Tenders Board. The Paper concluded that the Central Tenders Board now has an exceedingly diminished role as compared to 1961 (pg. (iii)).

The Paper proposes a new legal and regulatory framework whereby the Ordinance and its subsidiary legislation will be repealed and replaced by a new Act that will govern the procurement activities of all who use public money (pg. (ix)).

## **(b) STATISTICS ON CONTRACTS AWARDED AND SANCTIONS IMPOSED**

The Central Tenders Board has advised of the following, with respect to contracts awarded between October 2004 – September 2006:

	<b>2004/2005</b>	<b>2005/2006</b>	<b>TOTAL</b>
Total Contracts Awarded	236	310	<b>546</b>
Contracts Advertised Internationally on a per qualification basis	3	7	<b>10</b>

The Central Tenders Board Ordinance does not have any authority to blacklist or ban any contractor.

## **(c) FUTURE INITIATIVES - WHITE PAPER ON PUBLIC SECTOR PROCUREMENT**

The Reform of the Public Sector Procurement Regime (White Paper, August 2005) was developed by the Ministry of Finance to improve the existing procurement practices. The framework, as proposed by the White Paper, has various objectives:

1. Value for money in public spending
2. Greater public accountability
3. Promotion of greater transparency in public procurement
4. Consistency with and support of government policies
5. Effective and efficient contract performance
6. Balance between a commitment to develop local businesses and the need to provide a level playing field
7. A trade off between control, rules and regulations and accountability on the one hand and efficiency, flexibility, judgement and innovation

From these objectives a Principle Model was developed with the philosophy of holding accountable all organisations spending public funds.

There are three operating principles of the Model:

1. Value for Money – evaluated on a whole-of-life basis, influenced by the following:
  - (i) the procurement method adopted
  - (ii) maturity of the market for the property or service sought
  - (iii) performance history of each prospective supplier
  - (iv) relative risk of each proposal
  - (v) financial considerations including all relevant direct and indirect benefits and costs
  - (vi) the anticipated price that could be obtained at the point of disposal

- (vii) maintenance
  - (viii) evaluation of contract options (e.g. contract extension option)
2. Transparency – This deals with the appropriateness of the procurement process, and can only be achieved through increased sharing of information and disclosure. Organisation must adhere to the following:
    - (i) Report publicly available procurement opportunities in an adequate and timely fashion in the Gazette and electronically where possible;
    - (ii) The evaluation criteria should clearly identify the relative importance of all relevant factors and provide a sound basis for a procurement decision;
    - (iii) Agencies evaluate each offer by applying only the evaluation criteria and methodology notified to bidders;
    - (iv) Where market circumstances limit competition; agencies recognise this and use procurement methods that take account of it;
    - (v) Bidders are provided with reasonable opportunities to meet any prequalification requirements for participation.
  3. Accountability – Officials are responsible for plans, actions, decision and outcome involving public funds. Each agency must appoint an officer to be responsible, but ultimate accountability rests with the Chief Executive Officer or the Permanent Secretary. Agencies should include in tender documents and contracts a clause/provision that notifies prospective suppliers and contractors to the public accountability requirements by the State. This may also include the Auditor General to access a contractor’s records and premises.

Agencies that are interested in procurement would advertise for a Pre-Qualifications of Contractors. The advertisement must identify the criteria and clearly state that the purpose of the advertisement is for the development of a register ONLY. Agencies then choose three companies from which they would like tender proposals.

The Model also provides for complaints form or about procuring officers or procedures that are contrary to guidelines as laid out in the White Paper. A complaint can be made by a person or a group with an interest in the contract or the process under examination. There are two types of complaints:

1. Pre-Award Complaint – this is done prior to the awarding of the contract. The Regulator (Government official) investigates and arbitrates accordingly. If there is a breach, the Regulator may void the process and mediated a settlement between all parties involved.
2. Post-Award Complaint – this is done after a contract is awarded. However, the contractual requirements are still enforced during the investigation. If a breach is discovered, the party responsible for the breach must pay damages (assessed by the Regulator) to all affected. The contract can also be voided.

If a complaint is found to be frivolous, the Regulator can fine the complaint and order a prohibition of dealings for a specified duration.

It should be noted that no statistics are available, due to the fact that this is a Proposed Model and the necessary legislation has not yet been drafted to support the Model.

## CHAPTER TWO

### SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE 111 (8) OF THE CONVENTION)

- (a) Under the Prevention of Corruption Act, 1987, no provision is made for the protection of persons who report acts of corruption. Regulation 146 of the Civil Service Regulations requires an officer who is offered a bribe to immediately inform his senior officer of the offer but, there also, no provision is made for the protection of the officer.
- (i) Two government approved programmes have been put in place to allow for the anonymity of persons who utilize certain telephone numbers to report the commission of criminal activities. These are the “Crime-stoppers” and “Dial 555” initiatives.
- (ii) Threats or reprisals may be reported as complaints of assault and battery under section 4 of the Summary Offences Act, Chap. 11:02 or under the Offences Against the Person Act, Chap. 11:08.  
Reports of threats or reprisals may be made to the police, to the Court or to the Director of Public Prosecutions.

Such threats or reprisals are rigorously investigated and prosecuted, where evidence is found, in accordance with existing law.

- (iii) There is no formal legislative framework for the protection of persons who raise accusations of corruption against an alleged offender.  
The Parliament of Trinidad and Tobago passed in the year 2000 the Justice Protection Act. The Act was assented to on 27/10/2000 but has yet to be proclaimed and so is not in operation.

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.

If the prosecution of an alleged offender depends primarily on the evidence to be given by a person who alleges the offence, the laws of Trinidad and Tobago do not, at this time, allow for the prosecution of that alleged offender without the identification of the accuser.

There exists an informal but effective witness protection programme adequately funded and managed.

The programme operates at present under Executive Authority.

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”.

It is important to note that Trinidad and Tobago is a twin island Republic with a population of just over 1.3 million persons.

The Constitution of Trinidad and Tobago 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.

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.

- (b) There is no available statistical data.
- (c) Laws and measures exist (see a, i– iii above)

## CHAPTER THREE

### ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

#### 1. Criminalization of acts of corruption provided for in Article VI(1) of the Convention

(a) Trinidad and Tobago has criminalized the acts of corruption referred to and provided for in Article VI(1) of the Convention.

(i) Under section 3(1) of the Prevention of Corruption Act, 1987, a person who, by himself or in conjunction with any other person, corruptly solicits or receives for himself or for any other person any gift, loan, fee, reward or advantage as an inducement to do or forbear from doing anything in respect of any matter in which the State or a public body is concerned, is guilty of an offence.

A person who commits an offence under section 3(1) is liable to a fine of five hundred thousand dollars and to imprisonment for ten years. In addition, the person shall be ordered to pay to the public body the amount or value of the gift, loan, fee or reward received by him and shall be adjudged forever incapable of being a member of a public body or of holding any other public office and shall forfeit any such office held by him at the time of his conviction (section 6(1)).

In the event of a second conviction for a like offence, the person shall also be adjudged to be incapable for seven years of being registered as an elector, or voting at any election of members of any public body (section 6(2)).

Where the person is an officer or servant in the employ of a public body, upon conviction he shall be liable to forfeit his right to a claim to any compensation or pension to which he would otherwise have been entitled (section 6(3)).

(ii) Under section 3(2) of the Prevention of Corruption Act, 1987, a person who, by himself or in conjunction with another person, corruptly gives, promises or offers any gift, loan, fee, reward or advantage to any person, whether for the benefit of that person or another person, as an inducement or reward for doing or forbearing to do anything in respect of any matter in which the State or a public body is concerned, is guilty of an offence.

The penalties are the same as for an offence under section 3(1).

(iii) The elements that constitute the offence created under section 3(1) of the Prevention of Corruption Act, 1987 will cover any act 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.

Another anti-corruption initiative was undertaken in the year 2000 when Trinidad and Tobago repealed and replaced the Integrity in Public Life Act, 1987. The Integrity in Public Life Act 2000 made provision for, inter alia, the prevention of corruption of persons in public life and those exercising public functions through public disclosure of their incomes, assets and liabilities (section 11(1)).

Persons under an obligation to make disclosures include Members of Parliament, Ministers of Government, Members of Local Government Authorities, Members of Boards of Statutory Bodies and State Enterprises, Judges and Magistrates, Permanent Secretaries and Chief Technical Officers (Schedule to the Act).

Under section 11(1) of the Act, a person shall within three months of becoming a person in public office, complete and file a declaration of his income, assets and liabilities in respect of the previous year. The declaration is to be filed with the Integrity Commission which is established under section 138 of the Constitution. Thereafter, in each succeeding year that the declarant remains a person in public life, he must file further declarations. A declaration should include such particulars as are known to the declarant of the income, assets and liabilities of himself, his spouse and his dependent children.

A person in public life who, inter alia, fails without reasonable cause to furnish a declaration to the Commission, knowingly makes a declaration that is false or knowingly gives false information at an enquiry being conducted under the Act, commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for a period of ten years (section 21(1)).

The Act also legislates (under Part IV) a code of conduct which applies to all persons in public life and those performing public functions. Under section 24 of the Act, such persons should be fair and impartial in exercising their public duty and afford no undue preferential treatment to any group or individual. Such persons should not use property or services for activities not related to their official work or directly or indirectly use their office for private gain.

A person to whom Part IV applies should not accept a fee, gift or personal benefit, except compensation authorised by law that is connected directly or indirectly with the performance of his or her duties of office (section 27(1)).

- (iv) Under section 2(1) of the Proceeds of Crime Act, 2000, the offences under section 3(1) of the Prevention of Corruption Act are “specified offences” (since they are amongst the indictable offences listed under the Second Schedule to the Summary Courts Act, Chap. 4:20 (at paragraph 9)).

If the court determines that a convicted person has benefited from the commission of a specified offence, it shall determine the amount to be recovered and make an order for the payment of that amount (section 4(1) of the Proceeds of Crime Act, 2000). A person benefits from a specified offence where he obtains property or derives a pecuniary advantage as a result of the commission of the offence (section 3(3) of the Proceeds of Crime Act, 2000).

Regarding the fraudulent use or concealment of the property derived from the offences committed under section 3(1) and (2) of the Prevention of Corruption Act, 1987, under section 44 of the Proceeds of Crime Act, 2000, a person is guilty of an offence if he conceals or disguises any property which constitutes the proceeds of the offence or if he converts, transfers or disposes of the property or removes it from the jurisdiction for the purpose of avoiding prosecution for the offence or the making of a confiscation order.

Section 45 of the 2000 Act makes it an offence to conceal or disguise another's proceeds of crime and section 46 makes it an offence to receive, possess or convert another's proceeds of crime.

Under section 54(1) of the 2000 Act, the Minister responsible for Public Administration may make Regulations to prescribe circumstances in which sections 45 and 46 shall apply to persons in the employ of the State, in the execution of their duties.

- (v) The offences under section 3(1) and (2) of the Prevention of Corruption Act, 1987 cover persons who participate in the illegal activities themselves or in conjunction with other persons. This will therefore cover principals, co-principals, instigators, accomplices and accessories.

Under section 65 of the Interpretation Act, Chap. 3:01, where a written law creates an offence, the written law shall be deemed to provide also that an attempt to commit that offence is an offence and is punishable with the same penalty as if the offence had been committed. Further, section 66(1) of the Act provides that where a reference is made in an Act to an offence, that reference includes a reference to aiding, abetting, counselling or procuring that offence and a conspiracy to commit that offence.

At common law a person may be charged for having conspired to commit any of the offences stated within the Prevention of Corruption Act or the Integrity in Public Life Act stated herein and may within the laws of Trinidad and Tobago be charged with aiding and abetting the commission of a criminal offence.

- (b) There is no available empirical data. There are at present a number of prosecutions currently before the Courts in Trinidad and Tobago. These are yet to be completed.
- (c) Trinidad and Tobago is committed to the prosecution of corruption in all its forms and to compliance with the requirements of the Inter-American Convention against Corruption.

To this end the government has directed that the Prevention of Corruption Act No. 11 of 1987 be appropriately amended to suitably reflect the Country's commitment to the tenets of the Convention.

A draft Bill has been prepared (attached) to amend the Prevention of Corruption Act as follows:

- The inclusion of the definition of the terms “foreign public official, official of a public international organisation, person in public life, property”, and the extension of the definition of the term “public body”;
- The criminalisation of corruption specifically linked to the private sector;
- The criminalization of bribery in regard to contracts in respect of persons who offer, accept, or solicit an advantage;
- The criminalisation of an offer to, acceptance by and solicitation by a person in public life not provided for under the existing legislation;
- The criminalisation of solicitation by a foreign public official, bribery of an official of a public international organisation, solicitation by an official of a public international organisation, trading in influence, and possession of unexplained property, all not provided for within the current Act.

In addition to the proposed amendment of the Prevention of Corruption Act 1987, a draft of an Act to amend the Integrity in Public Life Act 2000 is being prepared.

In this proposed amendment Bill, the protection of witnesses who report acts of corruption is being addressed.

**2. Application of the Convention to acts of corruption not described therein, in accordance with Article VI (2)**

(a) Trinidad and Tobago has entered into Mutual Legal Assistance Treaties with Canada, the United States of America and Britain in addition to which the Mutual Assistance in Criminal Matters Act 1997 allows for cooperation with Commonwealth States on the prosecution of criminal matters in general.

There are no specific agreements that apply to the Inter-American Convention against Corruption.

(b) None are available.

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**Interviews**

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Research and Information Unit, Public Service Commission

## APPENDIX I

<b>PUBLIC SERVICE COMMISSION STATISTICS FOR 2002-2004</b>			
	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>Appointments</b>	<b>915</b>	<b>994</b>	<b>876</b>
Civil Service	915	994	876
Fire Service (Delegated Authority)	–	–	–
Prison Service (Delegated Authority)	–	–	–
<b>Promotions</b>	<b>1608</b>	<b>1433</b>	<b>1419</b>
Civil Service	1485	1374	1342
Fire Service	45	27	34
Prison Service	78	32	43
<b>Acting Appointments</b>	<b>6375</b>	<b>7049</b>	<b>6643</b>
Civil Service	6105	6729	6492
Fire Service	109	186	64
Prison Service	161	134	87
<b>Separations</b>	<b>361</b>	<b>363</b>	<b>299</b>
Compulsory Retirement	39	34	26
Voluntary Retirement	13	41	19
Retirement on Grounds of Marriage	21	19	16
Retirement in the Public Interest	15	11	7
Permission to Retire	78	72	70
Retirement on Grounds of Ill-Health	88	69	48
Resignations	11	26	14
Abandonment of Office	93	86	97
Deceased Public Officers	3	5	2

<b>Discipline</b>	<b>166</b>	<b>136</b>	<b>165</b>
Allegations of Misconduct	21	13	6
Orders of Suspension/Interdiction	13	9	11
Lifting Orders of Suspension/Interdiction	7	11	9
High Court Actions	11	18	13
Preferment of Disciplinary Charges	25	8	14
Dismissal of Court Charges	6	4	6
Appeals	10	7	6
Court Charges	3	6	23
Exonerations	3	5	13
Penalties Imposed	4	–	–
Court Convictions	1	–	–
Dismissals from the Public Service	5	6	6
Reports of Disciplinary Tribunals	6	13	10
Appointment of Disciplinary Tribunal	16	10	14
Officers found Guilty of disciplinary Charges	7	5	4
Withdrawal of Disciplinary Charges	3	2	2
Appointments of Investigating Officers Rescinded Decisions to Appoint Disciplinary Tribunal	5	7	5
Referrals for Legal Advice	1	2	1
Extensions for completion of Investigating Officer's Report	6	–	–
Discontinuations/No Further Action in Disciplinary Proceedings	4	2	3
Imposition of Penalty	9	8	15
	–	–	4

## SECTION 11

### FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORT IN THE FIRST ROUND

#### **Background:**

As a follow-up to the Inter-American Convention Against Corruption (The Convention), the Committee of Experts of the Follow-Up Mechanism for the Implementation of the Inter-American Convention Against Corruption (The Committee) was established to devise a methodology for the review of the implementation of the provisions of the Convention.

The Committee comprised expert representatives of each State Party to the Convention.

Collectively, the Committee was required to, through a process of Country Reports and reviews of those Reports, to evaluate the extent to which each State Party had sought to implement the provisions of the Convention either through the incorporation of the provisions into domestic law or by the establishment of administrative and organisational mechanisms.

At its first meeting in Washington DC from January 14<sup>th</sup> to 18<sup>th</sup>, 2002, the Committee decided that during the first round of the process review, it would review the implementation by States Parties of the specific provisions of the Convention to wit: **Article 111, paragraphs 1,2,4,9, and 11; Article XIV; and Article XV111.**

Following the submission of a Country Report in 2002 the review of Trinidad and Tobago's implementation of the identified provisions of the Convention took place in Washington DC between March 2<sup>nd</sup> 2005 and March 12<sup>th</sup> 2005 using a peer review mechanism methodology in which two States Parties were randomly selected to review a third State Party.

The States Parties of El Salvador and The Bahamas were selected to review the State Party of Trinidad and Tobago.

Emanating from this review that was based upon the a detailed examination of the Country Report of the State Party Trinidad and Tobago, a draft Committee Report was prepared incorporating suggestions and recommendations for the States Parties that was placed before the complete Committee for ratification and the preparation of a final Committee Report on the State Party.

The Final Report of the Committee assessed the State Party's implementation of the specific provisions of the Convention and included suggestions and recommendations to

achieve further implementation of the selected provisions and further the identification of achievements of the State Party.

The Government of Trinidad and Tobago continues to be steadfastly committed to the fight against corruption in whatever form it may rear its ugly head.

Its commitment to the fight against corruption is clearly manifested in the Government's willingness to investigate allegations of corruption wherever and whenever they occur, whether or not the perpetrator is a friend or foe.

All allegations of corruption, once investigated have been referred to the Director of Public Prosecutions for prosecution, the Constitutional authority for that purpose.

In 2003 the Government of Trinidad and Tobago accepted a report on the development of a National Anti-Corruption Strategy prepared for the Cabinet by Mr Bertrand De Speville.

The Cabinet later accepted the results of a National consultation on Corruption as prepared by Mr. De Speville.

The result has been the development of a National Anti-corruption strategy prepared by the Ministry of the Attorney General which incorporates the proposals of the De Speville Report while at the same time paying heed to Trinidad and Tobago's international obligations in the Inter-American Convention against Corruption and Constitutional and Legislative framework.

[\(Information regarding follow-up and updated action by Trinidad and Tobago is inserted in blue font and underlined\)](#)

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

### **1.1 Standards of conduct geared towards preventing conflicts of interest and mechanisms to enforce compliance.**

**The Republic of Trinidad and Tobago has considered and adopted measures to establish, maintain, and strengthen standards of conduct with respect to the prevention of conflicts of interest and enforcement mechanisms, as described in Chapter 2, Section 1.1 of this report.**

In light of the comments made in that section, the Committee suggests that the Republic of Trinidad and Tobago consider strengthening the implementation of laws and regulatory systems related to conflicts of interest. In meeting this recommendation, the Republic of Trinidad and Tobago may wish to consider the following measures:

- (a) Strengthen the measures related to conflicts of interest with respect to members of the judiciary, as well as those who perform judicial functions, subject to its

constitution and the fundamental principles of its legal system, taking into account the following:

- (i) Consider the usefulness of defining in a code of conduct for judicial officers what actions or omissions would constitute ‘misbehaviour’.
- (ii) Review relevant provisions with an aim towards removing any conflicts that cause the provisions of the Integrity in Public Life Act not to be applied to judges.
- (iii) Create specific codes of conduct for judicial officers that would promote measures to create, maintain, and strengthen standards of conduct for the correct, honourable, and proper fulfilment of public functions, in addition to mechanisms to enforce these standards of conduct.
- (iv) Create a mechanism that would allow the Service Commissions to hold administrative hearings and dismiss public servants based on a finding of involvement in corrupt activity independent of whether proceedings are taken against the public servant in any Court.  
Where allegations of misconduct are made in respect of a public office, once the allegations do not entail criminal misconduct that would be subject to criminal prosecution, the Service Commissions will proceed to address the matter administratively. Once there are allegations of criminal wrongdoing for which charges have been proffered, the Commissions continue to await the outcome of the Court proceedings, in the interim imposing suspension upon the officer.
- (v) Review and amend Service Commission regulations as appropriate to ensure that investigative and disciplinary processes will not entail lengthy delays.  
Service Commissions have sought to address this issue by embarking upon the intensive training of Permanent Secretaries and Heads of Departments to minimise complications and delays associated with disciplinary proceedings. In addition to training, Commissions have increasingly used “one man” enquiry Commissions to expedite investigations of public officers.
- (vi) Strengthen the provisions within the Integrity in Public Life Act taking into account the following:
- (vii) Set up a system to ensure that the Integrity Commission has enough resources to perform its functions.  
The Integrity Commission has been provided with all the financial and human resources required to fulfil its mandate. As a component of the provision of its resources the Commission is provided with its separate financial vote for expenditure.

In this regard the Commission has complete control of its expenditure with accountability only to the Parliament.

- (viii) Undertake a review of existing regulations and amend them where appropriate to ensure that the Integrity Commission has a system to train, inform and respond to requests for advice and consultation by public servants, in compliance with its mandate.

The Integrity Commission has embarked upon intensive training for its members and personnel in partnership with international agencies and experts.

The Commission held a series of training seminars in early 2006 with Permanent Secretaries and other public sector personnel in an effort to clarify to them their obligations in the fight against corruption and to enhance their relationship with the Commission.

Further, the proposed amendments to the Integrity in Public Life Act will incorporate in it provisions to enable the restructured Commission to respond effectively to requests for advice from public servants.

- (ix) Ensure that the competent oversight agencies have a system to see that public servants comply with the provisions of the Code of Conduct in the Integrity in Public Life Act, including having public servants sign a written agreement to abide by the Code of Conduct in the Integrity in Public Life Act.
- (x) Enact specific measures, where appropriate, to ensure that conflicts of interest that may arise in all branches of government are covered (see section 1.1.2 of Chapter 2).

This is to be included in the amendments to the Integrity in Public Life Act. These amendments are being incorporated into the prepared draft Bill.

- (xi) Incorporate into the Civil Service Regulations and the Civil Service (Amendment) Regulations, as appropriate, provisions dealing specifically with the detection and/or prevention of conflicts of interest.
- (xii) Review and amend where appropriate existing regulations to ensure that the disciplinary process of the Police Service Commission is efficient and effective, and ensure that the Commission has resources to operate accordingly.

The Parliament of Trinidad and Tobago has passed a package of legislation to completely enhance and reorganise the administration of the Police Service of Trinidad and Tobago. The Legislation completely reorganises the Police Service Commission by way of a Constitutional Amendment. This was done with the cooperation of the Opposition since the Bill required a special majority for passage.

The package of legislation includes Act No 6 of 2006 The Constitution (Amendment) Bill, Act No. 7 of 2006, The Police Service Act 2006, and Act No. 8 of 2006, The Police Complaints Authority Act 2006. The legislation seeks to streamline and to simplify disciplinary procedures within the Police Service among other things.

Unfortunately the package of legislation has not yet been assented to by the President given that all the appropriate Regulations have not yet been prepared.

- (xiii) Encourage the updating of a more comprehensive version of the proposed Code of Ethics for Parliamentarians including Ministers than the one previously in force, incorporating into the new version provisions similar to those contained in the Code of Conduct in the Integrity in Public Life Act, and enforcement provisions.
- (xiv) Establish as a mandatory Committee of the Parliament the Standing Ethics Committee of the Houses of Parliament, and ensure that the Code of Ethics be contained in the Rules of the House of Parliament and the Senate.
- (xv) Consider including in appropriate legislation provisions to protect whistleblowers who report acts of corruption from threats and acts of retaliation.

To be included in the draft amendments to the Integrity in Public Life Act. These amendments are being prepared.

- (xvi) Subject to compatibility with the constitutional right of the individual to freedom of work, incorporate into the legal system relevant and appropriate restrictions for those who leave public sector employment, within a reasonable period of time after leaving their position, regarding activities that could involve them taking undue advantage of their status as a former public servant. (See Chapter II, section 1.1.2 of this Report).

## **1.2 Standards of conduct and mechanisms to ensure the conservation and proper use of resources entrusted to public officials**

**The Republic of Trinidad and Tobago has considered and adopted measures designed to establish, maintain and strengthen standards of conduct to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions, as mentioned in Chapter 2, Section 1.2 of this report.**

In view of the comments made in this section, the Committee suggests that the Republic of Trinidad and Tobago consider strengthening the system of control of public resources. In meeting this recommendation, the Republic of Trinidad and Tobago may wish to consider the following measures:

- (xvii) Conduct an analysis of the use and effectiveness of standards of conduct for ensuring the conservation and proper use of public resources and of the mechanisms existing in the Republic of Trinidad and Tobago to enforce these standards, as instruments for preventing corruption. As an outcome of said analysis, consider the adoption of measures to promote, facilitate, and consolidate or ensure the effectiveness of these instruments for this purpose.

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

**The Republic of Trinidad and Tobago has considered but not adopted measures designed to establish, maintain and strengthen standards of conduct and mechanisms related to measures and systems that require public servants to report to the appropriate authorities acts of corruption in the performance of public functions.**

In light of this situation, the Committee suggests that the Republic of Trinidad and Tobago consider creating measures requiring public officials to report to the appropriate authorities acts of corruption in the performance of public functions of which they are aware. In implementing this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

- (a) Incorporate into existing legislation a requirement that all public servants must report acts of corruption of which they become aware during the course of their public functions, and make the corresponding Commission responsible for training.
- (b) Assess the relevance of offering greater protection to civil servants who report acts of corruption, especially in cases where their superiors are involved in the acts being reported.

[The Justice Protection Act 2000 has been passed by the Parliament but is yet to be proclaimed.](#)

- (c) Review the results of the investigations carried out by the Commissions of Enquiry in order to analyse the effectiveness of any legislation already in place.

[All legislation relating to corruption is currently under review.](#)

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

**The Republic of Trinidad and Tobago has considered and adopted measures designed to establish, maintain and strengthen systems for registration of income, assets and liabilities of persons exercising public functions in certain posts as specified by law, and, where appropriate, for making such disclosures public, in accordance with the comments in Chapter 2 of this report.**

In view of the comments made in the above-mentioned paragraph, the Committee suggests that the Republic of Trinidad and Tobago consider strengthening systems for the disclosure of income, assets and liabilities. In meeting this recommendation, the Republic of Trinidad and Tobago may wish to consider the following measures:

- (a) Amend the Integrity in Public Life Act at 41(2) so that approval of its form of declaration and regulations will be subject only to a negative resolution of Parliament, or to no resolution at all.
- (b) Give more enforcement powers to the Integrity Commission so that it can impose penalties directly on a person in public life who is in violation of sections 11, 13 or 14, of the Integrity in Public Life Act.  
[Only a Judicial authority such as a Court may impose a penalty. Rulings by the Judicial Committee of the Privy Council in London, the highest appellate Court for Trinidad and Tobago continue to affirm this as the law.](#)
- (c) Review the possibility of making public the proceedings of a tribunal under 16(2) of the Integrity in Public Life Act.
- (d) Ensure that provisions have been made by the Service Commissions to receive declarations of interests from Commission members.
- (e) Review the provisions on declarations of interest to ensure that all public employees in appropriate positions are required to file declarations, including members of the Diplomatic Service and Advisers to the Government.

[Included in proposed amendments to the Integrity in Public Life Act.](#)

- (f) Regulate the conditions, procedures and other aspects related to publicizing the declarations of income, assets, and liabilities, and registrable interests, as appropriate.
- (g) Utilize the declarations of income, assets and liabilities and registrable interests in order to detect and prevent conflicts of interests and illicit enrichment.

[The offence of Illicit Enrichment is to be included in the draft amendments to the Prevention of Corruption Act.](#)

- (h) Create mechanisms, or implement those that already exist, such as mass media campaigns, information in educational establishments and public institutions, aimed at citizens in general and those who are interested in performing public functions, that help ensure broad knowledge about the purpose and scope of the provisions regarding the registration of income, assets, and liabilities and the public registry of interests.

[Education campaigns are ongoing by the Integrity Commission. In addition to this, the Commission continues to have meetings and training seminars for public servants who fall within the requirements of the Integrity in Public Life Act.](#)

- (i) Ensure that a public register of interests has been established in accordance with the Integrity in Public Life Act, section 14.

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

**The Republic of Trinidad and Tobago has considered and adopted measures designed to establish, maintain and strengthen oversight bodies that carry out functions related to the effective enforcement of the provisions selected for review within the framework of the first round (Article III, paragraphs 1, 2, 4, and 11 of the Convention), in accordance with the comments in Chapter 2, paragraph 3 of this report.**

In view of the comments made in the above section, the Committee suggests that the Republic of Trinidad and Tobago consider establishing mechanisms that allow for improved functioning and coordination among oversight bodies such as:

- Strengthen oversight bodies in their functions related to enforcement of Articles 1, 2, 4 and 11 of the Convention, in order to ensure that such control is effective; give them greater support and the resources necessary to carry out their functions; and establish mechanisms for coordinating their activities, as appropriate, and for their continuous evaluation and monitoring. In carrying out this recommendation, the following could be taken into account:

- Clarify the role of the Permanent Secretary or Head of Department under the Civil Service (Amendment) Regulations.

[Recent training seminars for Permanent Secretaries have addressed this.](#)

- Amend the Public Service Commission Regulations to specifically provide that Permanent Secretaries and Heads of Department must report acts of misconduct that are not minor in nature to the Public Service Commission.

[As accounting officers in the public service, Permanent Secretaries and Heads of Departments are under duty to report acts of misconduct. Recent additional training has continued to stress this.](#)

- Have all oversight agencies keep and systematize statistical information for the purpose of performing an objective evaluation of the results of the legal framework and other measures.

#### **4. MECHANISMS TO PROMOTE PARTICIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11).**

**The Republic of Trinidad and Tobago has considered and adopted measures designed to establish, maintain and strengthen mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption, in accordance with Comments in Chapter 2, paragraph 4 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendations:

##### **4.1 General Participation Mechanisms**

The Committee encourages the Republic of Trinidad and Tobago to continue working on the implementation of formal mechanisms or statutory provisions expressly designed to stimulate the participation of civil society and of the non-governmental organizations in efforts intended to prevent corruption.

##### **4.2 Mechanisms for Access to Information**

Strengthen the mechanisms for ensuring public access to information. In meeting this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

- (a) Include under the reach of the Freedom of Information Act, reports of Commissions of Enquiry issued by the President once they have completed their investigations, and public authorities or functions of public authorities designated by the President, after review by the House of Representatives.
- (b) Establish objective criteria that the President may take into account in exempting from the scope of the Freedom of Information Act certain documents of public authorities and Commissions of Enquiry.
- (c) Consider reviewing the scope of the exemption on Cabinet documents.

### **4.3 Consultative Mechanisms**

Supplement existing consultative mechanisms, establishing, as appropriate, procedures that will offer greater opportunities to hold public consultations before designing public policies and approving legal provisions. In meeting this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

- Consider encouraging the House of Representatives to include in their Standing Orders, pending legislation as one of the matters into which the Joint Select Committees may seek input from civil society organizations.
- Adopt standards that provide for the possibility of having members of civil society and nongovernmental organizations become part of advisory councils or committees responsible for advising on the use of public resources.

### **4.4 Mechanisms to encourage participation in public administration**

Strengthen and continue to implement mechanisms that encourage civil society and nongovernmental organizations to participate in public administration. In meeting this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

- (a) Continue to make comments from the media available to any area of government which may stand to benefit from them
- (b) Develop and promote mechanisms and laws to encourage participation in public administration, and consider the advisability of creating new mechanisms to make it possible to monitor public administration for the purposes of the Convention.
- (c) Make the response of the Opinion Leaders Group available to the public.

- (d) Examine the advisability of an increase in the number of town meetings by holding them at regularly scheduled times and allow civil society to convene such meetings.
- (e) Modify existing libel law in order to ensure that it cannot be used to silence public reporting on corruption and integrity issues.

#### **4.5 Participation mechanisms in the follow-up of public administration**

Strengthen and continue implementing mechanisms that encourage civil society and nongovernmental organizations to participate in the follow-up of public administration. To comply with this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

- (a) Adopt the measures necessary to ensure that new rules and standards on participation in the follow-up of public administration can be monitored and, as appropriate, enforced through the application of sanctions.
- (b) Design and implement programs that publicize participatory mechanisms concerning the monitoring of public administration and, where appropriate, that train and provide the necessary tools to civil society and nongovernmental organizations in order to use such mechanisms.
- (c) Adopt methods that allow civil society and nongovernmental organizations to assist in the development of new participation mechanisms in the follow-up of public administration.
- (d) Review whether the fine for knowingly and mischievously making a false complaint to the Integrity Commission is an impediment to civil society participation.

### **5. ASSISTANCE AND COOPERATION (ARTICLE XIV)**

**The Republic of Trinidad and Tobago has adopted measures in relation to mutual technical cooperation and mutual assistance, in accordance with the provisions of Article XIV of the Convention, as described and reviewed in Chapter 2, paragraph 5 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendations:

- (a) Determine and prioritize specific areas in which the Republic of Trinidad and Tobago considers that it needs the technical cooperation

of other state parties to strengthen its capacity to prevent, direct, investigate and punish acts of corruption.

- (b) Continue efforts to exchange technical cooperation with other State Parties on the most effective methods and means for preventing, detecting, investigating and punishing acts of corruption through the use of the OAS Convention against Corruption.

## **6. CENTRAL AUTHORITIES (ARTICLE XVIII)**

**The Republic of Trinidad and Tobago has adopted certain measures relative to the designation of the central authority referred to in Article XVIII of the Convention, as discussed in section 6, chapter II of this report.**

In view of the comments made in section 6 Chapter II of this report, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendation:

- 6.1** Inform the General Secretariat of the OAS of the designation of the central authority or authorities for purposes of the international assistance and cooperation provided for in the Convention.  
[Trinidad and Tobago proposes to inform the OAS Secretariat that the Central Authority Department within the Office of the Attorney General will be the central authority for the purposes of the Convention.](#)

## **7. GENERAL RECOMMENDATIONS**

Based on the review and the contributions that appear throughout this report, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendations:

- 7.1** Design and implement, as appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.  
[This exercise is ongoing.](#)
- 7.2** Select and develop procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider

information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.

- 7.3** Develop, as appropriate and where they do not yet exist, procedures designed to analyse the mechanisms mentioned in this report, as well as the recommendations in this report.
- 7.4** Systematize statistical records generated by the competent oversight agencies in order to make it possible to conduct an objective analysis of the results of the legal framework and other measures adopted

## **LIST OF ACTS REFERRED TO IN THIS DOCUMENT**

The Education Act Chap 39:01  
The Judicial Review Act, 2000  
The Freedom of Information Act  
The Public Service Commission Act  
The Exchequer and Audit Act No. 20 of 1959  
The Central Tenders Board Act, 1961  
The Prevention of Corruption Act 1987  
The Summary Offences Act Chap. 11:02  
The Offences Against the Person Act Chap. 11:09  
The Integrity in Public Life Act Chap. 22:01  
The Proceeds of Crime Act, 2000  
The Summary Courts Act Chap. 4:20  
The Interpretation Act Chap. 3:01  
The Mutual Assistance in Criminal Matters Act 1999  
The Constitution (Amendment) Act No. 7 of 2006  
The Police Service Act, 2006  
The Police Complaints Authority Act, 2006  
The Judicial and Legal Service Act Chap.6:01  
The Civil Service Regulations, 1967  
The Public Service Commission Regulations, 1966  
The Civil Service Act Chap. 23:01  
The Accessories and Abettors Act Chap. 10:02

Websites: [www.ttparliament.org](http://www.ttparliament.org)  
[www.legalaffairs.gov.tt](http://www.legalaffairs.gov.tt)

**SECTION 111**

**INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF  
THIS QUESTIONNAIRE**

(a) State Party: **THE REPUBLIC OF TRINIDAD AND TOBAGO**

(b) The official to be consulted regarding the responses to the questionnaire is:

**Mr Norton Jack**

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