

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Nineteenth Meeting of the Committee of Experts
September 12 – 16, 2011
Washington, DC.

OEA/Ser.L.
SG/MESICIC/doc.283/11 rev. 4
16 September 2011
Original: English

GRENADA

FINAL REPORT

(Adopted at the September 16, 2011 plenary session)

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

**REPORT ON IMPLEMENTATION IN GRENADA OF THE CONVENTION PROVISIONS
SELECTED FOR REVIEW IN THE THIRD ROUND, AND ON FOLLOW-UP TO THE
RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN PREVIOUS ROUNDS¹**

INTRODUCTION

1. Contents of the Report

[1] This report presents, first, a review of implementation in Grenada of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the third round: Article III, paragraphs 7 and 10, and Articles VIII, IX, X and XIII.

[2] Second, the report will examine follow-up to the recommendations that were formulated to Grenada by the MESICIC Committee of Experts in the previous rounds, which are contained in the report on that country adopted by the Committee and published at the following web pages: www.oas.org/juridico/english/mec_rep_grd.pdf and www.oas.org/juridico/english/mesicic_II_inf_grd_en.pdf

2. Ratification of the Convention and adherence to the Mechanism

[3] According to the official records of the OAS General Secretariat, Grenada deposited the instrument of ratification of the Inter-American Convention against Corruption on January 16, 2002.

[4] In addition, Grenada signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2002.

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of Grenada

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from Grenada and in particular from the Office of the Attorney General, which was evidenced, inter alia, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, Grenada sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following webpage: www.oas.org/juridico/english/mesicic3_tto.htm

[6] For its review, the Committee took into account the information provided by Grenada up to the date on which it submitted its Response, and that furnished and requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and the review Methodology.

1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 16, 2011, at its Nineteenth meeting, held at OAS Headquarters, September 12 – 16, 2011.

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

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT² FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

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

[7] Grenada has a set of provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, among which the following should be noted:

[8] – Statutory provisions such as the Income Tax Act, of which the following should be noted:³

[9] Section 7(1), which provides that tax shall be charged for each year of assessment on the chargeable income for a person⁴ for that year. Section 7(3) states that, subject to Part VII of this Act, the chargeable income of any person shall be ascertained in accordance with Part VI of this Act⁵ and Section 7(4) establishes that the tax payable by any person shall be calculated in accordance with Part VIII.

[10] Section 11(1), which establishes that the assessable income of any person for a year of assessment shall be the whole of the income, ascertained in accordance with Part V, which accrues to such person during the twelve months ending on December 31 in that year.

[11] Section 29(1), which provides that the assessable income of any person shall include the gains or profits from or by way of: (a) any business; (b) any employment; (c) rentals and royalties; (d) interest other than interest exempted in paragraph (aa) of section 25(1);⁶ (da) discounts; (e) premiums, commissions, fees and licence charges; (f) annuities and other periodic receipts;⁷ (h) gains or profits or amounts deemed to be income of that person under this Act; and (i) any other gains or profits accrued to that person which are not included under any other paragraph of this subsection.

[12] Section 36(1) states that the assessable income of every person for each year of assessment shall be ascertained after taking into account the deductions allowable under Division 2 of the Act, specifically sections 36 – 41. Section 36(2) further provides that in ascertaining the assessable income of any person for any year of assessment from any source specified in section 29 there shall,

2. For the purposes of this report, the MESICIC Committee of Experts defines favorable tax treatment as all exemptions and any deductible items used for the purposes of determining the income tax base, and other treatment that gives rise to favorable reductions in the amount of tax payable by taxpayers.

3. Income Tax Act, http://www.oas.org/juridico/english/mesicic3_grd.htm.

4. Section 2(1) of the Act defines person to include an individual, a trust, the estate of a deceased person, a company, a partnership and every other juridical person. Furthermore, ‘company’ is defined as meaning a body corporate, wherever incorporated, but does not include a partnership or an unincorporated body of persons. Moreover, Section 7(2) states that the persons chargeable to tax shall be those persons specified in Division II of the Act, specifically sections 12 to 24.

5. Section 42 of Part VI provides that the chargeable income of a person for any year of assessment is the aggregate amount of the assessable income of that person for that year of assessment from the sources specified in section 29 of the Act.

6. Section 25(1)(aa) states “interest accruing from deposits to an individual who is resident or ordinarily resident in Grenada with effect from March 31, 1995.”

7. It should be noted that section 29(1)(g), referring to dividends from companies, was deleted by section 9(c) of the Income Tax (Amendment) Act, 1996, http://www.oas.org/juridico/english/mesicic3_grd.htm.

upon due claim and subject to such evidence as the Comptroller may require, be allowed as a deduction all expenditure wholly, exclusively and necessarily incurred by that person during the basis period for that year of assessment for the purpose of producing the income from that source.⁸

[13] Section 40(1), which states that no amount shall be deducted under any provision of this Act in respect of expenditure, or claim for an allowance, which has been, or will be, taken into account as a deduction or in calculating a deduction under any other provision of this Act.

[14] Section 41(1) provides that subject to any express provision in this Act authorizing a specified deduction in ascertaining the assessable income of any person for any year of assessment, no deduction shall be allowed in respect of: (a) any expenditure to the extent to which it is not incurred for the purpose of producing assessable income; (b) any expenditure incurred for domestic or private purposes; (c) any expenditure incurred on entertainment or entertainment allowance; (d) any expenditure incurred for the purpose of producing exempt income; (e) any sum in respect of expenses recoverable under an insurance contract of indemnity; (f) any capital withdrawn or any expenditure or loss of a capital nature; (g) any tax imposed under this Act; (h) any income tax or tax of a similar nature charged in a country outside Grenada; (i) any contribution made to a pension fund which has not been approved under this Act.

[15] Section 68(1), which entitles the Comptroller, for the purposes of the administration or the enforcement of this Act, including the obtaining of full information in respect of the income of any person who is or may be liable to tax, to require that person or any other person, by notice in writing, (a) to furnish to the Comptroller within such time as may be specified in such notice such further return of income, statement of assets and liabilities or other information as may be required by him; (b) to produce, at such time and place as may be specified in such notice for examination by the Comptroller or for retention by him for such period as may be reasonable for their examination, any accounts, books of account, statement of assets and liabilities or other documents which the Comptroller may consider necessary for such purpose and, if any such information is not available in the English language, to produce at the expense of the person who is, or may be, liable to tax a translation in English prepared and certified by an approved translator; (c) to attend, at such time and place as may be specified in the notice, for the purpose of being examined by the Comptroller in respect of the assessable or chargeable income of himself or any other person or any transaction or matters appearing to the Comptroller to be relevant thereto.

[16] Section 69(1), which provides that whether or not any person has been assessed to tax, the Comptroller may carry out an examination of the income tax affairs of such person, but subject to the limit as to time specified in section 82. Furthermore, Section 69(2) establishes that, for such purposes, the Comptroller or any other officer authorized by him may at all reasonable times, and subject to prior notice, enter into any premises where any business is carried on or the records or books of account of such business are kept and: (a) examine the records or books of account and examine any documents which related to income accruing from such business; (b) inspect any trading stock of the business and any assets of the business in respect of which allowances or deductions have been or may be claimed under the Act; and (c) require the owner of the business, or any employee or agent to give him such reasonable assistance in connection with the examination and inspection as may be necessary and to answer orally or in writing any questions in relation thereto.

8. Section 36(2), as amended by section 14 of the Income Tax (Amendment) Act, 1996, *ibid*.

[17] Section 71(1), which obligates every person carrying on any business to keep, in the English language, such records or books of accounts as are necessary to reflect the true and full nature of the transactions of the business regard being had to the nature of the activities concerned and the scale on which they are carried on. Section 71(2) further provides that where the Comptroller is of the opinion that records and books are not being kept in accordance with Section 71(1), or where no records or books of account are being kept, by any person carrying on business then, in addition to the proceedings which may be taken under section 117, the Comptroller may direct such person to keep such records or books of account as he may specify. Section 71(4) provides, in addition, that every person to whom Section 71 applies shall preserve all books of account and other records which are essential to the explanation of any entry in such books of account of that business for a period of seven years after the end of the basis period to which such books of account or records relate. The Comptroller may, by notice in writing, require any person to retain such records as are referred to in Section 71(4) for such further period of time as he deems necessary for their proper examination.

[18] Sections 78(1)–78(3), which provide that the Comptroller may make an assessment of the chargeable income of and tax payable by any person chargeable to tax; and may make an assessment on any person where there is no liability to tax but there is an entitlement to a refund of tax. Where a person has furnished a return of income, also, the Comptroller may accept such return and that tax computed in accordance therewith; and where a person fails to furnish a return of income; or the Comptroller is not satisfied that the return furnished by any person is true and correct, he may make an assessment to the best of his judgment.

[19] Section 82, which provides that an assessment may be made in relation to any person at any time prior to the expiry of six years after the end of the year of assessment to which it relates. This section further provides that where no return of income is furnished, an assessment may be made at any time and where any fraud or willful default has been committed in connection with any tax for any year of assessment by or on behalf of any person, an assessment maybe made at any time as well.

[20] Section 112(1), which provides that any person who fails to furnish a correct return of income for any year of assessment by reason of his failure to disclose any assessable income accrued to him from any source; the deduction or set off by him of any amount which is not allowable as a deduction or set off; the claim by him of an expenditure or loss of an amount which was not expended or lost; or his failure to disclose any fact, the disclosure of which would result in an increase in his liability to tax, he shall be liable to a civil penalty in accordance with Section 112(2) or 112(3). In this regard, Section 112(2) establishes that where the incorrectness of the return of income or the information was attributable to (a) neglect or carelessness, he is liable to a penalty not exceeding the amount of tax which would have been lost if he had been assessed on the basis of the incorrect return or information furnished by him; or (b) fraud or willful default, he is liable to a civil penalty not exceeding three times the amount of tax which would have been lost if he had been assessed on the basis of the incorrect return or information furnished by him.

[21] Section 113(1), which provides that any person who fails within the specified time period to comply with a notice issued under section 68(1) requiring him to (a) furnish returns or information; (b) produce books or account or documents; or (c) attend the Comptroller for examination, whether in relation to himself or any other person, is liable to a civil penalty not exceeding one thousand dollars.

[22] Section 117(1), which provides that any person who fails or neglects to furnish to the Comptroller any return or document as when required under the Act; fails to comply with the requirements of any notice in writing served on him under the Act; refuses or neglects to answer truly

and fully any question put to him or to supply any information required from him in relation to his assessable income or the assessable income of any other person; fails to keep a proper record of his transactions or to preserve any books of account or documents as required under section 71; fails to disclose in any return of income made by him any assessable income accrued to him or any material facts which should have been disclosed; signs any return or document rendered to the Comptroller without reasonable grounds for believing that return or document or any part thereof to be correct; or obstructs or hinders any person appointed or employed under the Act in the discharge of his duties; is guilty of a criminal offence and liable on summary conviction to a fine of two thousand dollars and to imprisonment for one year.

[23] Section 118(1), which provides that any person who willfully and with intent to evade assessment or liability to tax; makes causes or allows to be made any incorrect statement in any return lodged under the Act; signs any document or any return lodged under the Act having reason to believe the contents of such document or return or any part thereof to be incorrect; gives any incorrect answer, verbally or in writing, to any request for information made by the Comptroller; prepares or maintains any incorrect books of account or other records or falsifies any books of account or other records; authorizes the preparation or maintenance of any incorrect books of account or other records; or makes use of or authorizes the use of any fraud whatever; is guilty of a criminal offence and liable on summary conviction to a fine of four thousand dollars and to imprisonment for two years.

[24] The country under review also states in its Response to the Questionnaire that Grenada has in place an active Inland Revenue Department which is presently preparing a Tax Collections Manual which is aimed at increasing tax collection in a fair and transparent manner and that there is also a Financial Crime Unit which actively investigates financial crime.⁹

[25] Furthermore, in its response, the country under review provides information on the existence of other provisions in this area, such as the Proceeds of Crime Act No 3 of 2003, which should be noted for its provisions relating to investigations and law enforcement with regard to money transactions and has important utility in assisting in the fight against corruption.¹⁰

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

[26] With respect to provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[27] Notwithstanding, the Committee considers it appropriate to make some observations on the advisability of developing and complementing certain legal provisions that refer to the tax treatment in Grenada of expenditures made in violation of anticorruption laws.

9. Response of Grenada to the Questionnaire for the Third Round, pg. 5, www.oas.org/juridico/english/mesicic3_grd_resp.pdf.

10. Proceeds of Crime Act, www.oas.org/juridico/english/mesicic3_grd.htm. The country under review notes that Section 48 of this Act provides that every financial institution or person engaged in a relevant business activity shall keep and maintain records relating to the financial activities in accordance with regulations made under the Act. It requires that special attention be had to all complex and unusual or large transaction whether completed or not, and to all unusual patterns of transactions, which have no apparent economic or lawful purpose, see Response of Grenada to the Questionnaire for the Third Round, pg. 5, *ibid*.

[28] The Committee believes that it would be beneficial for the country under review to consider taking such steps as it deems appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment. (see Recommendation 1.4(a) in Section 1.4 of Chapter II of this Report)

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

[29] With respect to results in this field, Grenada states that no data is available at this time.¹¹

[30] Considering that the Committee does not have information that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (see Recommendation 1.4(b) in Section 1.4 of Chapter II of this Report)

1.4. Conclusions and recommendations

[31] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 7 of the Convention:

[32] **Grenada has considered and adopted measures intended to create, maintain and strengthen standards on the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, as described in section 1 of Chapter II of this report.**

[33] In light of the comments formulated in the above-noted sections, the Committee suggests that Grenada consider the following recommendation:

[34] Strengthen the standards and measures for the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws. To comply with this recommendation, Grenada could take the following measures into account:

- a. Consider adopting the measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment, such as the following: (see Section 1.2 of Chapter II of this Report)
 - i. Manuals, guidelines or directives that will guide them in reviewing those applications, so that they are able to verify that the applications contain the established requirements, to confirm the truthfulness of the information provided, and to confirm the origin of the expenditure or payment on which the claims are based.

11. Response of Grenada to the Questionnaire for the Third Round, pg. 5, *ibid.*

- ii. The possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests for information from financial institutions.
 - iii. Develop electronic programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.
 - iv. Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, on such aspects as certifying the authenticity of the documents submitted with the applications.
 - v. Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications.
 - vi. Channels of communication so that they may promptly report to those who must decide on favorable treatment and warn them of the anomalies detected or of any irregularity that could affect the decision.
- b. Select and develop, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto. (See section 1.3 of Chapter 2 of this Report)

2. PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III (10) OF THE CONVENTION)

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

[35] Grenada has a set of provisions related to the prevention of bribery of domestic and foreign government officials, among which the following should be noted:

[36] Statutory provisions such as the Companies Act, 1994,¹² of which the following should be noted:

[37] Section 149, which requires directors of a company to place before its shareholders at every annual meeting of the shareholders of the company: (a) comparative financial statements, (b) the report of the auditor, if any and (c) any further information respecting the financial position of the company and the results of its operations required by the articles of the company, its by-laws or any unanimous shareholder agreement.

[38] Section 152(1), which provides that these financial statements are to be approved by the directors of the company and this approval shall be evidenced by the signature of one or more director. Section 152(2) further provides that the company shall not issue, publish or circulate copies

12. Companies Act, 1994, http://www.oas.org/juridico/english/mesicic3_grd.htm. Section 543 of this Act provides that 'company' means a body corporate that is incorporated or continued under his Act. This section further provides that 'body corporate' includes a company within the meaning of this section or other body corporate wherever or however incorporated, other than a corporation sole.

of the financial statements unless they are approved and signed by one or more directors and accompanied by a report of the auditor of the company, if any.

[39] Section 156(1), which states that that a public company¹³ shall, and any other company may, have an audit committee composed of not less than three directors of the company, a majority of whom are not officers or employees of the company or any of its affiliates. This Committee shall review the financial statements of the company before such financial statements are approved under Section 152. In addition, Section 156(2) provides that a company may apply to the Registrar for an order authorizing the company to dispense with an audit committee, and the Registrar may, if he is satisfied that the shareholders will not be prejudiced by such an order, permit the company to dispense with an audit committee on such reasonable conditions as he thinks fit.

[40] Section 158(1), which states that a person is eligible for appointment as auditor¹⁴ of a company only if he (a) is a practicing member of a recognized supervisory body¹⁵, and (b) is eligible for the appointment under the rules of that body.

[41] Section 160, which provides that a person is ineligible for appointment as auditor of a company if he is (a) an officer or employee of the company, or (b) a partner or employee of or of partnership of which that office or employee is a partner, or if he is ineligible by virtue of paragraph (a) or (b) for appointment as auditor of any associated undertaking¹⁶ of the company.¹⁷

[42] Section 163, which provides that the shareholders of a company,¹⁸ other than a public company, may resolve not to appoint an auditor, which is only valid until the next succeeding annual meeting of shareholders and if consented to by all the shareholders, including those not otherwise entitled to vote.

[43] Section 167, which provides that if a company does not have an auditor, the court may, upon application of a shareholder or the Registrar, appoint and fix the remuneration of an auditor, until one is appointed by the shareholders.

[44] Section 168, which provides that the auditor is entitled to receive notice of every meeting of the shareholders of the company, and, at the expense of the company, to attend and be heard at the meeting on matters relating to his duties as auditor.

[45] Section 171(1), which states that the auditor shall make the examination that is in his opinion necessary to enable him to report in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except such financial statements or parts thereof that

13 Pursuant Section 543 of the Companies Act 1994, 'public company' means a company any of whose issued shares or debentures are or were part, of a distribution to the public within the meaning of Section 541 of this Act.

14. Section 543 of the Act provides that 'auditor' includes a partnership of auditors.

15. Section 158(3) of this Act provides that 'recognized supervisory body' means a prescribed professional institute or other body.

16. Section 160(3) of this Act provides that 'associated undertaking' in relation to a company means (a) a parent undertaking or subsidiary undertaking of the company, or (b) a subsidiary undertaking of any parent undertaking of the company.

17. It should be noted that Section 157 of this Act states that the main purposes of sections 158 – 161 of the Companies Act, 1994 is to secure that only person who are properly supervised and appropriately qualified are appointed auditors of companies and that audits by persons so appointed are carried out properly and with integrity and with a proper degree of independence.

18. Other than a public company or one where the gross revenue as shown in its most recent financial statements exceed \$2,000,000 or the assets of which as shown in those statements exceed \$1,000,000 or such greater amounts as may be prescribed.

relate to the immediately preceding financial year referred to in subparagraph (ii) of paragraph (a) of subsection (1) of section 149 of the Companies Act, 1994.

[46] Section 172(1), which provides that, upon the demand of an auditor of a company, the present or former directors, officers, employees or agents of the company shall furnish to the auditor (a) such information and explanations, and (b) such access to records, documents, books, accounts and vouchers of the company or any of its subsidiaries, as are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 171 and that the directors, officers, employees or agents are reasonably able to furnish. Additionally, Section 172(2) provides that, upon the demand of an auditor of a company, the directors of the company shall (a) obtain from the present or former directors, officers, employees or agents of any subsidiary of the company the information and explanations that these persons are reasonably able to furnish, and that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 171, and (b) furnish the information and explanations so obtained to the auditor.

[47] Section 173, which provides that a director or an officer of a company shall forthwith notify the audit committee and the auditor of any error or misstatement of which he becomes aware in a financial statement that the auditor or a former auditor of the company has reported upon. Also, when the auditor or a former auditor of a company is notified or becomes aware of an error or misstatement in a financial statement upon which he has reported to the company and in his opinion, the error or misstatement is material, he shall inform each director of the company accordingly. In addition, when the auditor or a former auditor of a company informs the directors of an error or misstatement in a financial statement of the company, the directors shall (a) prepare and issue revised financial statements, or (b) otherwise inform the shareholders of the error or misstatement, and, if the company is one that is required to comply with Section 154 of this Act, inform the Registrar¹⁹ of the error or misstatement in the same manner as the directors inform the shareholders of the error or misstatement.

[48] Section 187, which provides that a company is required to prepare and maintain accounting records which are to be kept at the registered office of the company or at some other place in Grenada designated by the directors and, at all reasonable times, are to be available for inspection by the directors and shareholders.

[49] Section 188, which provides that records required by this Act may be prepared and maintained in a bound or loose-leaf form or in a photographic film form or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

[50] Section 189, which provides that a company and its agents shall take reasonable precautions to prevent loss or destruction of, to prevent the falsification of entries in, and to facilitate detection and correction of inaccuracies in the records required by this Act to be prepared and maintained in respect of the company.

[51] Section 530(1), which provides that a person who makes or assists in making a report, return, notice or other document (a) that is required by this Act or the regulations to be sent to the Registrar or to any other person, and (b) that (i) contains an untrue statement of a material fact, or (ii) omits to state a material fact required in the report, return, notice or other document, or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, is

19. Section 492 of the Companies Act, 1994 provides that the Registrar is responsible for the administration of this Act.

guilty of an offence and liable on summary conviction to a fine of five thousand dollars and/or to imprisonment for a term of eighteen months. Furthermore, section 530(3) provides that when a body corporate commits the offence set out in section 530(3) and a director or officer of a body corporate knowingly authorized, permitted or acquiesced in the commission of this offence, the director or officer is also guilty of the offence and is liable on summary conviction to a fine of five thousand dollars and/or to imprisonment for a term of eighteen months.

[52] Section 531(1), which provides that a person is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and/or imprisonment for a term of eighteen months who, without reasonable cause, contravenes the aforementioned sections 173 and 189 of the Act. Section 531(2) further provides that when a body corporate is guilty of the offence set out in section 531(1), then, whether the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorized, permitted or acquiesced in the act or omission that constituted the offence is also guilty of an offence and liable on summary conviction to a fine of five thousand dollars and/or imprisonment for a term of eighteen months.

[53] Section 533, which is a general penalty provision, provides that any person who is guilty of an offence under the Act or the regulations is, if no punishment is elsewhere in this Act provided for that offence, liable on summary conviction to a fine of five thousand dollars and/or to imprisonment for a term of eighteen months.

[54] – Statutory provisions such as Section 71(1) of the Income Tax Act,²⁰ referred to in section 1.1.1 of this Report, which requires every person carrying on any business to keep, in the English language, such records or books of accounts as are necessary to reflect the true and full nature of the transactions of the business, regard being had to the nature of the activities concerned and the scale on which they are carried on. Every person to whom Section 71 applies shall preserve all books of account and other records which are essential to the explanation of any entry in such books of account of that business for a period of seven years after the end of the basis period to which such books of account or records relate.

[55] – Statutory provisions such as the Institute of Chartered Accountants of the Eastern Caribbean Agreement Act, 2010,²¹ which gives legal effect and provides implementation of this Institute in Grenada, of which the following provisions of this Agreement should be noted:

[56] Article 4, which provides that the objects of the Institute are, among others, to promote, foster and maintain the highest standards of accounting in public practice, the public service and the commercial and industrial spheres; promote and increase the knowledge, skill and proficiency of its members and students of accountancy; and to regulate etiquette, ethics, discipline, professional conduct and standards of its members and students of accountancy.

[57] Article 6, which provides that the powers of the Institute are, among others, establish and maintain an acceptable standard of professional conduct by members and students of accountancy and where necessary to exercise disciplinary powers over them.

20. Income Tax Act, *supra* note 3.

21. Institute of Chartered Accountants of the Eastern Caribbean Agreement Act, 2010, http://www.oas.org/juridico/english/mesicic3_grd.htm. Section 3(2) of this Act provides that the Institute may make rules generally for the good management and governance of accountants and for carrying out the objects of this Act.

[58] Furthermore, in its response, the country under review provides information on the existence of other provisions in this area, such as the Audit Act, 2007.²²

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

[59] With respect to the provisions that refer to the prevention of bribery of domestic and foreign government officials that the Committee has examined, based on the information available to it, they constitute a set of measures relevant for promoting the purposes of the Convention.

[60] Notwithstanding, the Committee considers it appropriate to express some comments regarding the advisability that the country under review considers strengthening the legal framework and measures in place in this regard.

[61] In this regard, the Committee believes it necessary for the country under review to consider adopting appropriate measures to ensure that companies subject to the provisions of the Companies Act, 1994 are covered by regulations on how to establish sufficient internal accounting controls that enable their officers to detect corrupt acts. (See Recommendation 2.4(a) in Section 2.4 of Chapter II of this report).

[62] The Committee also notes that there is no obligation for publicly held companies and other types of associations to have legally qualified accountants in charge of their internal accounting controls. The Committee will formulate a recommendation (see Recommendation 2.4(b) in Section 2.4 Chapter II of this report).²³

[63] Furthermore, the Committee notes that in a Letter dated May 17, 2011,²⁴ sent by the country under review in response to request for information by the Technical Secretariat, Grenada states that it operates under the International Financial Reporting Standards (IFRS)²⁵ and the International Standards on Auditing (ISA).²⁶ Nevertheless, the country under review, in this same letter, notes that there is no piece of legislation which addresses international accounting and auditing standards within Grenada.²⁷ Given the absence of norms regarding the establishment of these standards, and in order to strengthen accounting and auditing methods in the country under review, the Committee believes that it would be advisable for Grenada to consider formally harmonizing its accounting and auditing system with the IFRS and ISA. (See Recommendation 2.4 (c) in Section 2.4 of Chapter II of this report).

22. Response of Grenada to the Questionnaire for the Third Round, *supra* note at pg. 9.

23. The country under review in its response to the draft preliminary report has noted that this issue is currently being addressed.

24. Letter of Explanation of May 17, 2011, http://www.oas.org/juridico/english/mesicic3_grd.htm

25. The IFRS include: a) the pronouncements issued by the International Accounting Standards Board (IASB); b) the International Accounting Standards (IAS) issued by the predecessor of the IASB, the International Accounting Standards Committee; and, c) related official interpretations.

26. ISAs are issued by the International Auditing and Assurance Standards Board (IAASB) as part of the International Federation of Accountants (IFAC).

27. Grenada further states that there are various pieces of legislation which have some influence, directly and indirectly, on accounting and auditing in Grenada, which are the Company Act, 1994, the Income Tax Act, 1994, the Public Finance Management Act, 2007, the Money Laundering (Prevention Act), 1999 and the Financial Intelligence Unit Act, 2003, Letter of Explanation, *supra* note 24.

[64] In addition, the Committee notes that the country under review presented legislation regarding the establishment of the Institute of Chartered Accountants of the Eastern Caribbean along with draft Rules of this Institute.²⁸ Nevertheless, from the information at its disposal, the Committee was unable to identify within these documents that established ethical standards of conduct to ensure the integrity and objectiveness of accountants and auditors in the performance of their functions. In this connection, the Committee urges the country under review to develop provisions that govern the professional conduct of persons responsible for the entry and audit of accounting records, including, inter alia, the obligation to bring any anomalies that they detect in the course of their work to the attention of the appropriate authorities in the event that they could constitute an offense, and that it adopt pertinent measures to ensure that “professional confidentiality” is not an obstacle in the performance of this obligation. (See Recommendation 2.4(d) in Section 2.4 of Chapter II of this report).

[65] By the same token, the Committee believes that it would be advisable for Grenada to consider holding awareness campaigns targeted at persons responsible for maintaining accounts and verifying their accuracy, on the importance of observing the standards in force to ensure the veracity of said records and the consequences of their violation, and also to consider implementing training programs designed specifically for internal comptrollers in publicly held companies and other types of associations who are required to keep accounts, to instruct them in ways of detecting acts of bribery in the course of their work. (See Recommendation 2.4 (e) in Section 2.4 of Chapter II of this report).

[66] In relation to the foregoing, the Committee also believes that it would be beneficial for Grenada to consider adopting and/or strengthening measures as it deems appropriate to make it easier for the organs or agencies responsible for prevention and/or investigation of noncompliance with measures designed to safeguard the accuracy of accounting records to detect sums paid for corruption concealed in those records. (See Recommendation 2.4 (f) in Section 2.4 of Chapter II of this report).

[67] Finally, the Committee believes that it would be useful for the country under review to consider holding awareness and integrity promotion campaigns that target the private sector and to consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption. (See Recommendation 2.4 (g) in Section 2.4 of Chapter II of this report).

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

[68] In its Response to the Questionnaire, the country under review did not provide information on results.

[69] Considering that the Committee does not have information that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the appropriate manner, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Recommendation 2.4 (h) in Chapter II of this report).

28. Working Draft of the Rules of the Institute of Chartered Accountants of the Eastern Caribbean, http://www.oas.org/juridico/english/mesicic3_grd.htm

2.4. Conclusions and Recommendations

[70] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 10 of the Convention:

[71] Grenada has considered and adopted measures intended to create, maintain and strengthen provisions for the prevention of the bribery of domestic and foreign government officials, as described in Chapter II, Section 2 of this Report.

[72] In light of the comments formulated in the above-noted sections, the Committee suggests that the country under review consider the following recommendation:

[73] Strengthen the standards and measures on the prevention of bribery of domestic and foreign government officials.

[74] To comply with this recommendation, Grenada could take the following measures into account:

- a. Adopt the appropriate measures to ensure that companies subject to the Companies Act, 1994 are required to establish sufficient internal accounting controls to enable their officers to detect corrupt acts. (See Chapter II, Section 2.2 of this Report).
- b. Introduce the obligation for publicly held companies and other associations to have legally qualified accountants responsible for their internal accounting controls (See Chapter II, Section 2.2 of this Report).
- c. Formally harmonize its accounting and auditing system with the International Financial Reporting Standards (IFRS) and the International Standards on Auditing (ISA). (See Chapter II, Section 2.2 of this Report).
- d. Develop provisions that govern the professional conduct of persons responsible for the entry and audit of accounting records, including, inter alia, the obligation to bring any anomalies that they detect in the course of their work to the attention of the appropriate authorities in the event that they could constitute an offense, and that it adopt pertinent measures to ensure that “professional confidentiality” is not an obstacle in the performance of this obligation. (See Chapter II, Section 2.2 of this Report).
- e. Conduct awareness campaigns that target individuals responsible for the entry and accuracy of accounting records, on the importance of abiding by the standards in force to ensure the veracity of said records and the consequences of their violation, in addition to implementing training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect corrupt acts through their work. (see Section 2.2 of Chapter II of this Report)
- f. Consider the adoption of measures necessary to facilitate by the organs or agencies responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records, the detection of sums paid for corruption concealed through said records, including the following (see Chapter II, Section 2.2 of this Report):

- i. Review methods, including account inspections and analysis of periodically requested information, by which to detect anomalies in accounting records that could indicate the payment of sums for corruption;
 - ii. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred.
 - iii. Manuals, guidelines or directives for those organs or entities on how to review accounting records in order to detect sums paid for corruption.
 - iv. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based.
 - v. Institutional coordination mechanisms that enable those organs or entities to easily obtain the necessary collaboration from other institutions to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity; and
 - vi. Training programs for the officials of these organs and entities, specifically designed to alert them to the methods used to disguise payments for corruption in those records and to instruct them on how to detect them.
- g. Consider holding awareness and integrity promotion campaigns that target the private sector and consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption. (see Section 2.2 of Chapter II of this Report)
- h. Through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and for ensuring ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report. (See Chapter II, Section 2.3 of this Report).

3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

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

[75] Grenada has a set of provisions related to transnational bribery, among which the following should be noted:

[76] – Statutory provisions, such as the Prevention of Corruption Act,²⁹ of which section 6 states: “(1) *A public officer shall not, without any lawful authority, give, offer or promise directly or indirectly, to a foreign public official³⁰, any gratification³¹ for himself or herself or for any other*

29. Prevention of Corruption Act, http://www.oas.org/juridico/english/mesicic3_grd.htm.

30. A ‘foreign public official’ under section 2 of the Act is defined as meaning any person (a) exercising a public function for a foreign state, (b) holding an administrative, executive, judicial or legislative office of a foreign State, irregardless of whether that foreign public official is appointed or elected.

person, in order that the foreign public official acts or refrains from acting in the exercise of his or her official duties so that the person may obtain or retain any gratification in the conduct of any business.

[77] *(2) A foreign public official shall not, without any lawful authority, accept or solicit directly or indirectly, any gratification for himself or herself, or for any other person, in order that he or she acts or refrain from acting in the exercise of his or her official duties.*

[78] *(3) A foreign public official who contravenes the provisions of subsection (1), or a public officer who contravenes the provisions of subsection (2), commits an offence is liable on summary conviction to a fine not exceeding fifty thousand dollars or to a term of imprisonment not exceeding three years.*

[79] *(4) A public officer, in addition to the penalty imposed on him or her pursuant to subsection (3), shall be disqualified from holding any public office for a period of seven years from the date of the conviction of the offence.”*

[80] The country under review also notes that Grenada provides international assistance and cooperation on this topic, citing, for example, the Mutual Legal Assistance in Criminal Matters Act, 2001.

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

[81] With respect to the specific provisions related to the partial criminalization of transnational bribery as provided for by Article VIII of the Convention, the Committee notes that based on the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

[82] Notwithstanding, the Committee considers it appropriate to formulate a number of observations on the advisability of developing and complementing certain legal provisions that might be useful for the country under review to consider.

[83] The Committee notes that the offense of transnational bribery, as criminalized under the Prevention of Corruption Act, is solely applicable to public officials who commit this offense, and not to the broader application found in the Convention, namely, to nationals of Grenada, persons having their habitual residence in its territory and businesses domiciled there. Given that the Prevention of Corruption Act, as stated in its preamble, was enacted to give effect to the provisions of the Inter-American Convention, the Committee believes that the country under review should consider amending the Act, or implement other measures, so as to make the offense of transnational

31. ‘Gratification’ under section 2 of the Act is defined as including, (a) any money, whether cash or otherwise; (b) an donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether moveable or immovable or any other similar advantage; (c) the avoidance of loss, liability, penalty, forfeiture, punishment or other disadvantage; (d) any office, status, honour, employment, contract of employment or services or any agreement to render services in any capacity; (e) residential and hotel accommodation; (f) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part; (g) any forbearance to demand any money or money’s worth or valuable thing; (h) any other service, favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise of any right or official power or duty; (i) any right or privilege; (j) any real or pretended aid, vote, consent, influence or abstention from voting; or (k) any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage.

bribery consistent with the provision of transnational bribery as set out in the Convention. (see Recommendation 3.4.1 in Section 3.4 of Chapter II of this Report)

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

[84] With respect to results in this field, Grenada states that there is no data available.³²

[85] Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies charged with the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (see Recommendation 3.4.2 in Section 3.4 of Chapter II of this Report)

3.4. Conclusion and recommendation

[86] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article VIII of the Convention:

[87] **Grenada has not fully criminalized the offense of transnational bribery as provided in Article VIII of the Convention, as described in Chapter II, Section 3 of this report.**

[88] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendation:

3.4.1 Amend the Prevention of Corruption Act, or implement other measures, so as to make the offense of transnational bribery in Grenada consistent with the provision of transnational bribery as set out in the Convention. (See Section 3.2 of Chapter II of this Report).

3.4.2 Select and develop, through the organs and agencies responsible for investigating and/or prosecuting the crime of transnational bribery, and for requesting and/or providing the assistance and cooperation provided for in connection with it in the Convention, procedures and indicators, when appropriate and when they do not exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Section 3.3 of Chapter II of this Report).

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

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

[89] Grenada has not established illicit enrichment as an offense as provided in Article IX of the Convention, although the country under review states that provisions in the Proceeds of Crime Act, 2003 and the Financial Intelligence Unit Act, 2003 can be interpreted in allowing police officers seconded to the Financial Intelligence Unit in conducting their investigations, which implicitly can be

32. Response of Grenada to the Questionnaire for the Third Round, pg. 11, *supra* note 9.

interpreted to include investigations for illicit enrichment, to make use of their powers of arrest, search, seizure, etc. in circumstances where it is deemed reasonable to do so.³³

4.2 Adequacy of the legal framework and/or other measures

[90] Based on the observations contained in the preceding section, the Committee will formulate the relevant recommendations to the country under review so that, subject to its Constitution and the fundamental principles of its legal system, it establish as an offense the conduct described in Article IX of the Convention. (See Recommendation 4.4.1 in Section 4.4 of Chapter II of this Report)

4.3 Results of the legal framework and/or other measures

[91] There are no results to report as the country under review has not criminalized the offense of illicit enrichment as provided in Article IX of the Convention.

[92] Considering that the Committee does not have information that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies, responsible for requesting and/or providing assistance and cooperation, in so far as its laws permit, with respect of the offense of illicit enrichment, as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (see Recommendation 4.4.2 in Section 4.4 of Chapter II of this Report)

4.4 Conclusions and recommendations

[93] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article IX of the Convention:

[94] **Grenada has not adopted the offense of illicit enrichment as provided in Article IX of the Convention, as described in Chapter II, Section 4 of this report.**

[95] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendations:

- 4.4.1. Criminalize, subject to its Constitution and the fundamental principles of its legal system, the conduct of illicit enrichment as described in Article IX of the Convention. (See Chapter II, Section 4.2 of Chapter II of this Report).
- 4.4.2. Select and develop, through the organs and agencies responsible for requesting and/or providing assistance and cooperation, in so far as its laws permit, with respect to the offense of illicit enrichment, as provided in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the

33. *Ibid.*, pgs. 11 – 13. The country under review also states in its Response to the Questionnaire that under the Criminal Code, though there is no specific provision for illicit enrichment, there are several provisions which provide for offences in instances where a public official unlawfully accepts or agrees to accept any valuable consideration, see Response of Grenada to the Questionnaire for the Third Round, pgs. 13 – 15, *ibid.*

recommendations made in this report in relation thereto. (See Section 4.3 of Chapter II of this Report).

5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)

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

[96] Grenada has not fully criminalized transnational bribery and has not criminalized illicit enrichment as provided in Articles VIII and IX, respectively, of the Convention, as was noted in Chapter II, Sections 3 and 4 of this Report.

5.2 Adequacy of the legal framework and/or other

[97] Bearing in mind that the country under review has not fully criminalized transnational bribery and has not criminalized illicit enrichment as provided in Articles VIII and IX of the Convention, respectively, the Committee will recommend that, when it does so, it notify the OAS Secretary General of that fact, in accordance with Article X of the Convention. (See the Recommendation in Section 5.3 of Chapter II of this Report)

5.3 Conclusions and recommendation

[98] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article X of the Convention:

[99] Grenada has not fully criminalized transnational bribery and has not criminalized illicit enrichment as provided in Articles VIII and IX, respectively, of the Convention. Accordingly, when it does so, the Committee recommends that it notify the OAS Secretary General of that fact, in accordance with Article X of the Convention.

6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

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

[100] Grenada has a set of provisions related to extradition, among which the following should be noted:

[101] - Statutory provisions such as the Extradition Act, 1998,³⁴ of which the following should be noted:

[102] Section 3(1), which provides that where extradition procedures under Part IV of the Act are available as between Grenada and a foreign State,³⁵ a person accused of the commission of an extradition offence or is alleged to be unlawfully at large after conviction of an extradition offence in that State may be arrested and returned. Section 3(2) further provides that a person in Grenada who is accused of an extradition offence in a Commonwealth country³⁶ or who is alleged to be unlawfully at

34. Extradition Act, 1998, http://www.oas.org/juridico/english/mesicic3_grd.htm

35. Section 2 provides that 'foreign state' means any state, other than Grenada, that is not a Commonwealth country.

36. Section 2 provides that 'Commonwealth country' means a country other than Grenada, that is mentioned in the First Schedule. The following State Parties to the Inter-American Convention against Corruption are on this list: Antigua and

large after conviction of such an offence in any such country, may be arrested and surrendered in accordance with extradition procedures under Part IV.

[103] Section 4(1), which provides that an extradition offence means conduct in the territory of a foreign State or a Commonwealth country which, if it occurred in Grenada, would constitute an offence which, on indictment, is punishable with imprisonment for a term of five years, or any greater punishment, and which, however described in the laws of the foreign State or Commonwealth country, is so punishable under those laws, or an extra-territorial offence against the laws of a foreign State or a Commonwealth country which, on indictment, is punishable under those laws with imprisonment for a term of five years or any greater punishment.

[104] Section 5(1), which provides that ‘extradition arrangements’ may be entered with a foreign State under which the extradition procedures under Part IV will be available as between Grenada and that State. These arrangements may be of a general nature made with one or more States and relating to the operation of extradition procedures under Part IV of the Act, referred to as general extradition arrangements; or arrangements relating to the operation of those procedures in particular cases, referred to as ‘special extradition arrangements,’ made with a State with which there is no general extradition arrangement.

[105] Section 6(1), which provides that where a general extradition arrangement have been made, the Minister for Foreign Affairs maybe by order reciting and embodying the terms of the arrangements, direct that the Act so as it relates to extradition procedures shall apply to Grenada and any foreign State mentioned in the order in which they have been made.³⁷

[106] Section 8(1), which provides that a person shall not be surrendered under the Act or committed or kept in custody for the purposes of a surrender if it appears to an appropriate authority that: (a) the offence of which that person is accused or was convicted is an offence of a political character;³⁸ (b) that the offence of which that person is accused or was convicted is an offence under military law which is not also an offence under the general criminal law; (c) the request for his surrender, though purporting to be made on account of an extradition offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, political opinions, sex or status; (d) he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, political opinions, sex or status; (e) final judgment has been given against the person in Grenada or a third country for the offence; (f) under the laws of the requesting country or the Laws of Grenada the person has become immune from prosecution or punishment because of lapse of time or any other reason; (g) the person has already been acquitted or pardoned in the country making the extradition request or Grenada, or punished under the laws of that country or the Laws of Grenada for the offence or another offence constituted by the same conduct as constitutes the extradition offence; or (h) the person has been or would be

Barbuda, The Bahamas, Belize, Canada, Dominica, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago.

37. The Minister of Foreign Affairs of Grenada has made such an order with regard to the United States of America, see the Extradition Act (United States of America) Order 2001, http://www.oas.org/juridico/english/mesicic3_grd.htm.

38. Section 8(6) provides that an offence of a political character does not include “(a) an offence constituted by conduct of a kind referred to in any multilateral Convention to which Grenada is a party, being an offence in respect of which the States which are parties thereto have an obligation to extradite or to prosecute the person sought; (b) the offence of genocide; (c) an offence against the life or person of a Head of State or a member of his immediate family or any related offence; (d) an offence against the life or person of a Head of Government or of a Minister of Government or any related offence; (e) any other offence in respect of which agreement has been reached with another country that it will not be treated as a political offence for the purposes of extradition,” Extradition Act, *supra* note 34.

subjected in the country making the extradition request to torture or cruel, inhuman or degrading treatment or punishment. In addition, section 8(2) provides that a person who is alleged to be unlawfully at large after conviction of an extradition offence shall not be surrendered, committed or kept in custody if it appears that the conviction was obtained in his absence and it would not be in the interests of justice to surrender him on the ground of the conviction.

[107] Section 10(1), which provides that a warrant for the arrest of a person may be issued on receipt of an authority to proceed by a Magistrate and a provisional arrest warrant may be issued by a Magistrate or Justice of the Peace upon information from Interpol, or any other credible source, that the said person is or is believed to be in or on his way to Grenada..

[108] Section 11(1), which provides that a person arrested in pursuance of a warrant under section 10 shall be brought as soon as practicable before a Magistrate, referred to as a court of committal in the Act, as may be directed by the warrant. Under section 11(2), a court of committal shall have the like jurisdiction and powers, as nearly as may be, including the power to remand in custody or admit to bail, as Magistrate exercising jurisdiction in a preliminary inquiry.

[109] Section 13(3), which provides that on application of *habeas corpus*, the High Court shall order the applicant's discharge if it appears to the High Court in relation to the offence in respect of which the applicant's surrender is sought that by reason of the trivial nature of the offence; by reason of the passage of time or because the accusation against him is not made in good faith in the interests of justice, it would, having regard to all the circumstances, be unjust or oppressive to surrender him.

[110] The country under review has also entered into a bilateral extradition treaty with the United States of America.³⁹

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

[111] With respect to provisions related to extradition, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[112] The Committee nevertheless deems it appropriate to express the following comment that could be considered by the country under review, as follows:

[113] As stated in section 6.1 of this Report, under section 4 of the Extradition Act, 1998, the Committee notes that one of the conditions for an offence to be an extradition offence in the country under review is for the punishment, upon indictment, to be at least five years of imprisonment. However, the Committee notes that under the Prevention of Corruption Act, which was enacted to give effect to the provisions of the Inter-American Convention against Corruption, and which sets out offences and penalties with respect to corruption relation to public officers, including the provisions on transnational bribery aforementioned in section 3.1 of this Report, the punishment on summary conviction, in general, is a fine not exceeding fifty thousand dollars or to a term of imprisonment not exceeding three years. Therefore, the offences set out in the Prevention of Corruption Act are not extradition offences under the laws of Grenada. The Committee believes that the country under review should consider reviewing the legislation in place so that the offences set out in the Prevention of Corruption Act, and the acts of corruption found in the Inter-American Convention against

39. See the Extradition Treaty (Government of Grenada and Government of the United States of America) Act, 2000, http://www.oas.org/juridico/english/mesicic3_grd.htm.

Corruption, are considered extradition offences in Grenada. (see Recommendation 6.4(a) in Section 6.4 of Chapter II of this Report)

[114] In addition, while section 6 of the Extradition Act, 1998 can serve as a legal basis to grant extradition requests, it is only applicable to a foreign state that Grenada has entered into an extradition arrangement or with the Commonwealth countries set out in the First Schedule of the Act. In this case, the granting of extradition requests can only be made to the following States Parties to the Convention: Antigua and Barbuda, the Bahamas, Belize, Canada, Dominica, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago; and the United States of America. As such, it leaves out the remaining States Parties to the Convention and thus in those cases, there is no legal basis to be found in the country under review to grant an extradition request. The Committee believes that the country under review should consider using the Convention as a legal basis for extradition with those State Parties to the Convention that are not currently covered by the Act. (see Recommendation 6.4(b) in Section 6.4 of Chapter II of this Report)

[115] The Committee also believes it is necessary that pursuant to Article XIII(6), of the Convention, the country under review should consider adopting the relevant measures to inform a requesting state that its extradition for offenses covered in the Convention has been denied because it deems it has jurisdiction over the offence and it has decided to submit the case to its competent authorities for the purpose of prosecution, and to report on the final result of the case. (see Recommendation 6.4(c) in Section 6.4 of Chapter II of this Report)

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

[116] With respect to results in this field, Grenada reports that there have been no requests made for the corruption offences.⁴⁰

[117] Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies responsible for processing incoming and outgoing extradition requests, respectively, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. The Committee will formulate a recommendation in this regard. (see Recommendation 6.4(d) in Section 6.4 of Chapter II of this Report)

[118] In addition, the Committee considers that it might be useful for the country under review to consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases. This could consist, among other measures, in the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (see Recommendation 6.4(e) in Section 6.4 of Chapter II of this Report)

40. Response of Grenada to the Questionnaire for the Third Round, pg. 22, *supra* note 9.

6.4. Conclusions and recommendations

[119] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article XIII of the Convention:

[120] Grenada has adopted measures regarding extradition as provided in Article XIII of the Convention, as described in Chapter II, Section 6 of this report.

[121] In light of the comments formulated in that section, the Committee suggests that Grenada consider the following recommendations:

- a. Consider reviewing the legislation in place so that the acts of corruption as set out in the Inter-American Convention against Corruption are considered extradition offences in Grenada. (See Section 6.2 of Chapter II of this Report)
- b. Consider using the Convention as a legal basis for extradition with those State Parties to the Convention that are not currently covered by the Extradition Act, 1998. (See Section 6.2 of Chapter II of this Report)
- c. Consider the convenience of establishing relevant measures to inform, in due course, a requesting state that its extradition request for offenses covered by the Convention has been denied because the State deems that it has jurisdiction over the offence and it has decided to submit the case to its competent authorities for the purposes of prosecution, and to report on the final result of the case. (See Section 6.2 of Chapter II of this Report)
- d. Select and develop, through the competent organs or agencies, procedures and indicators, when appropriate and where they do not yet exist, to verify the follow up to the recommendations formulated in this report with respect to this area; and to analyze objective results obtained in relation to requests for extradition formulated to other States Parties to the Convention, for the investigation or prosecution of the crimes that have been criminalized pursuant thereto and the steps that have been taken to respond to similar requests from other States Parties. (See Section 6.3 of Chapter II of this Report)
- e. Consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases, which could consist of, among other measures, the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (See Section 6.3 of Chapter II of this Report)

III. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN REPORTS FROM PREVIOUS ROUNDS

FIRST ROUND⁴¹

[122] With respect to the implementation of the recommendations issued to Grenada in the report from the First Round on which it did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those for which it supplied information but which the Committee considered in Section IV of the report for that round that they needed additional attention, and on the basis of the information available to it, referring to progress in implementation subsequent to that report, the Committee notes the following:

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

1.1. Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms

Recommendation:

Consider strengthening the implementation of the provisions on conflicts of interest, and ensure that the laws on this matter are applicable to all persons performing public functions.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁴²

- a. *Establish and then implement standards of conduct for those persons that perform public functions that currently do not fall under the purview of any controls, including adequate sanctions and enforcement mechanisms for violations of those standards.*
- b. *Establish a standard for addressing the conflicts that can occur between individual specific government matters in which those persons that perform public functions would normally be expected to act as a part of their responsibilities and an official's or family member's financial interests or his outside activities or negotiations for future private employment arrangements. Such a standard could include recusal, request by the person that perform public functions for permission to continue to act, request by the official for a transfer of duties (if appropriate), or direction by an appropriate authority for divestiture/resignation when the conflict is pervasive.*
- c. *Establish suitable restrictions for persons who leave public service, such as prohibitions on participation as a representative of a private interest in ongoing, specific matters in which they had participated in an official capacity, or for a reasonable time, restrictions on dealing with former government body in which they served.*

41. The references to sections that appear in italics in the recommendations and measures transcribed herein refer to the report from the First Round of Review.

42. Report on Implementation in Grenada of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 27 – 28, http://www.oas.org/juridico/english/mesicic_II_inf_grd_en.pdf.

[123] With respect to the measures of the foregoing recommendation, in its Response, the country under review presents information that it considers related, additional to that reviewed by the Committee in the Report from the Second Round:

[124] The Integrity Commission has been established and the Integrity Commissioners appointed, which will allow the function of the Commission to be carried out. Moreover, the Commission, among other things, will be able to obtain declaration of the assets, liabilities and income of persons in public life and that training of the Commissioners are ongoing.⁴³

[125] The Committee reiterates the need for the country under review to give additional attention to its implementation, bearing in mind that with respect to measure a) of the foregoing recommendation, although the Integrity in Public Life Act has established a Code of Conduct that encompasses the behavior of all persons in public life in Grenada, it does not directly set out sanctions or comprehensive enforcement mechanisms for violation of this Code and with respect to measure c) of the foregoing recommendation, the Code does not address post employment restrictions.

[126] With respect to measure b) of the foregoing recommendation, the Committee notes the following as steps that lead it to conclude that said measure has been satisfactorily considered. The Code of Conduct contained in the Integrity in Public Life Act does address situations in which through exercise of their functions, a person in public life may come into conflict with the person's or family member's financial interests. In such a case, the person is to report to his or her superiors any conflict that may arise and comply with any final decision to withdraw from the situation or divest of any advantage causing the conflict. The Committee takes note of the satisfactory consideration by the country under review of this measure, which, by its nature, requires a continuation of efforts in its implementation.

1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms

Recommendation suggested by the Committee that requires information on its implementation or which required additional attention within the Framework of the Second Round:⁴⁴

Recommendation:

Consider strengthening control systems within the public administration by developing enforceable written standards applicable to all persons performing public functions to create a duty to conserve and properly use the resources (including government paid for services) entrusted to them in the performance of their functions.

[127] In its Response, the country under review did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

43. Response of Grenada to the Questionnaire for the Third Round, *supra* note 9 at pg. 25.

44. Report of the Second Round, pg. 28, *supra* note 42.

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

Recommendation suggested by the Committee that requires information on its implementation or which required additional attention within the Framework of the Second Round:⁴⁵

Recommendation:

Consider developing and strengthening mechanisms that require all public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, complemented by the necessary measures that protect them, in particular when these acts involve a manager or supervisor.

[128] With respect to the foregoing recommendation, in its Progress Report presented at the Sixteenth Meeting of the Committee of Experts, the country under review presents information additional to that reviewed by the Committee in the Second Round:

[129] “[F]or the purpose of public servants reporting acts of corruption in the performance of their public functions, there is current revision of the Money Laundering and Financial Intelligence Unit Legislation. The proposal is to have the various pieces of legislation consolidated (Money Laundering (Prevention) Act 18/1999, Proceed of Crime Act 27/1992 and the Financial Intelligence Unit Act 1/2003) to put in place a Proceeds of Crime Code to be enacted into law.”⁴⁶

[130] The Committee takes note of the steps taken by the country under review to advance in its implementation of the Recommendation as well as reiterates the need for it to continue to give attention thereto, bearing in mind that the proposed revisions serve to report acts of corruption when the offense of money laundering is involved, it does not establish a mechanism for reporting all acts of corruption.

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

Recommendation:

Consider adopting an integrated system for registering income, assets, and liabilities.

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:⁴⁷

- a. *Require by law or regulation those in high level political and civil servant positions (and others identified as holding high risk positions) to file such reports upon entry into government service, thereafter on an annual basis, and when leaving government service.*
- b. *Review the filed reports for potential conflicts of interest and other possible violations of law or regulation.*

45. *Ibid.*

46. Progress Report to the Sixteenth Meeting of the Committee of Experts, pg. 3, http://www.oas.org/juridico/english/mec_avance_grdXVI.pdf.

47. Report of the Second Round, pg. 28, *supra* note 42.

Measure suggested by the Committee that requires information on its implementation or which required additional attention within the Framework of the Second Round:⁴⁸

c. *Consider making the reports public, where appropriate.*

[131] In its Response, the country under review did not present information with respect to the implementation of measure c) of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

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

Recommendation suggested by the Committee that requires information on its implementation or which required additional attention within the Framework of the Second Round:⁴⁹

Recommendation 3:

Consider strengthening the functions of, and where appropriate, create oversight bodies that enforce compliance with the matters covered by the provisions of Article III, paragraphs 1, 2, 4 and 11 of the Convention; provide them with the necessary resources to enable them to carry out their functions in full; and establish mechanisms necessary to permit effective institutional

[132] With respect to the foregoing recommendation, in its Progress Report presented at the Fifteenth Meeting of the Committee of Experts, the country under review presents information additional to that reviewed by the Committee in the Second Round:

[133] *“A steering committee has recently been set up here in Grenada within the Department of Public Administration, to reform the Public Service which would facilitate and encourage better management of our public system. Although there are rules and procedures under the Grenada Constitution, existing public service rules and staff orders there is a need for updating the current system. Once this is achieved, training programs for public servants etc. can be incorporated which will aid in putting into action the above mentioned recommendations.”*⁵⁰

[134] The Committee takes note of the steps taken by the country under review to advance in its implementation of the Recommendation as well as reiterates the need for it to continue to give attention thereto.

48. *Ibid.*

49. *Ibid.*

50. Progress Report to the Fifteenth Meeting of the Committee of Experts, pg. 3, http://www.oas.org/juridico/english/mec_avance_grdXV.pdf.

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

4.1 General participation mechanisms

Recommendation suggested by the Committee that requires information on its implementation or which required additional attention within the Framework of the Second Round:⁵¹

Recommendation:

Consider whether the recommendations related to the specific mechanisms referred to below indicate a need for Grenada to reassess its general approach to encouraging civil society and nongovernmental organizations in efforts to prevent corruption.

[135] In its Response, the country under review did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

4.2. Mechanisms for access to information

Recommendation:

Establish an enforceable system to assure access to government information.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁵²

- a. *Establish clear written standards as to the types of information that will be provided under the system.*
- b. *Establish standards recognizing the right of all persons to obtain information or copies of documents concerning official actions, except where exempt by law, which are in the possession, or under the control of public institutions.*
- c. *Establish a requirement that all government entities, to the extent practicable, publicize their procedures, results and other relevant information through the use of such communication methods as publications, dissemination centers, mass media and Internet web sites.*
- d. *Establish mechanisms to enforce compliance with the measures adopted.*

[136] In its Response, the country under review did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

51. Report of the Second Round, pg. 30, *supra* note 42.

52. *Ibid.*

4.3. Mechanisms for consultation

Recommendation:

Establish consultation mechanisms to enable civil society and non-governmental organizations to provide opinions and proposals.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁵³

- a. *Include in the mechanism clear systems for government consideration of those opinions and proposals that will help prevent corruption.*
- b. *Implement a program to assist in receiving such opinions and proposals and to help publicize the consultation programs, which includes and utilizes to the extent possible, electronic means for announcing opportunities to consult, accepting responses to those announcements, and publicizing the availability of the opportunities.*

[137] In its Response, the country under review did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

4.4. Mechanisms to encourage participation in public administration

Recommendation:

Develop standards and procedures to establish, maintain and strengthen mechanisms to encourage participation by civil society and nongovernmental organizations in public policy.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁵⁴

- a. *Include in the mechanism a clear system for considering the advice and recommendations made by civil society, nongovernmental organizations and individual citizens.*
- b. *Implement a program that publicizes in a wide fashion, including electronic means, opportunities to participate in policy discussions and in advisory bodies.*

[138] In its Response, the country under review did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

53. *Ibid.*, pg. 31.

54. *Ibid.*

4.5. Mechanisms to encourage participation in the follow-up of public administration

Recommendation:

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

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁵⁵

- a. *Design and implement specific programs to publicize the mechanisms for encouraging participation in the follow up of public administration.*
- b. *Promote methods, where appropriate, to allow, facilitate, and assist civil society and nongovernmental organizations in the follow up of public administration, in order to address corruption.*

[139] In its Response, the country under review did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

5.1. Mutual Assistance

Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁵⁶

Recommendation 5.1.1:

Design and implement a comprehensive information and training program for appropriate government authorities and officials, to ensure that they are familiar with and able to apply mutual assistance provisions regarding investigation or prosecution of acts of corruption contained in the Convention and treaties signed by Grenada with a number of countries.

Recommendation 5.1.2:

Design and implement an information program that enables the authorities of Grenada to keep permanent track of mutual assistance requests in relation to acts of corruption, in particular those provided for in the Convention.

[140] With respect to Recommendation 5.1.1, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

55. *Ibid.*, pg. 32.

56. *Ibid.* pp. 33 – 34.

[141] “*Training of Officers: Further training of officers, both within and outside of Grenada to ensure familiarity with the Mutual Legal Assistance Treaty, Tax Information Exchange Agreement and Extradition Treaty with the United States are ongoing.*”⁵⁷

[142] The Committee takes note of the steps taken by the country under review to advance in its implementation of Recommendation 5.1.1, as well as reiterates the need for it to continue to give attention thereto.

[143] With respect to Recommendations 5.1.2, in its Response, the country under review did not present information with respect to its implementation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto

5.2. Mutual Technical Cooperation

Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁵⁸

Recommendation 5.2.1:

Identify specific areas in which Grenada considers it needs technical cooperation from other States Parties to strengthen its capacities to prevent, detect, investigate and punish acts of corruption. Grenada should also identify and ascribe priority to requests for mutual technical cooperation.

Recommendation 5.2.2:

Continue efforts to exchange technical cooperation with other States Parties on the most effective ways and means to prevent, detect, investigate, and punish corruption.

[144] With respect to Recommendations 5.2.1, and 5.2.2, in its Response, the country under review did not present information with respect to the implementation of the foregoing recommendations. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁵⁹

Recommendation 6.1:

Notify the OAS General Secretariat formally of the designation of the central authority, pursuant to the prescribed formalities.

Recommendation 6.2:

Implement a mechanism for channeling requests for cooperation on mutual legal assistance, as provided under the Convention.

57. Response of Grenada to the Questionnaire for the Third Round, pg. 25, *supra* note 9.

58. Report of the Second Round, pg. 30, *supra* note 32.

59. *Ibid.*, pg. 33.

[145] In its Response, the country under review did not present information with respect to the implementation of the foregoing recommendations. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

7. GENERAL RECOMMENDATIONS

Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁶⁰

Recommendation 7.1:

Design and implement, where appropriate, training programs for public servants responsible for application of the systems, standards, measures, and mechanisms included in this Report, in order to ensure that they are thoroughly understood and properly applied.

Recommendation 7.2:

Select and develop procedures and indicators, as appropriate, for verifying follow-up of the recommendations contained in this Report, and notify the Committee accordingly through the Technical Secretariat. For said purposes, Grenada could take into account the list of broader indicators applicable to the inter-American system that were available for selection, as necessary, by Grenada, and which have been published by the Technical Secretariat of the Committee on the OAS Internet web site. Grenada could also take into account any information arising from the review of mechanisms developed pursuant to recommendation 7.3 below.

Recommendation 7.3:

Implement the recommendations contained in this Report and develop, as appropriate and where none exist, procedures to review the mechanisms mentioned herein.

[146] With respect to Recommendation 7.1, in its Progress Reports presented at the Fifteenth and Sixteenth Meetings of the Committee of Experts, the country under review presents information additional to that reviewed by the Committee in the Second Round:

[147] *“A steering committee has recently been set up here in Grenada within the Department of Public Administration, to reform the Public Service which would facilitate and encourage better management of our public system. Although there are rules and procedures under the Grenada Constitution, existing public service rules and staff orders there is a need for updating the current system. Once this is achieved, training programs for public servants etc. can be incorporated which will aid in putting into action the above mentioned recommendations.”*⁶¹

[148] *“As recent as September 21st- 24th 2009, there was a training program hosted by the Department of Public Administration under the Prime Minister’s office, to allow for the training of newly recruited public servants in the Public Service [Public Service Orientation for new entrants]. This program was hosted to ensure that recruits are aware of their duties and responsibilities.*

60. *Ibid.*

61. Progress Report to the Fifteenth Meeting of the Committee of Experts, pg., 3, *supra* note 50.

*Different Ministries and Departments also made presentations to the recruits on their various responsibilities and functions.”*⁶²

[149] The Committee takes note of the steps taken by the country under review to advance in its implementation of the Recommendation as well as reiterates the need for it to continue to give attention thereto.

[150] With respect to the implementation of Recommendations 7.2 and 7.3, in its Response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

SECOND ROUND⁶³

[151] The Committee offers the following observations with respect to the implementation of the recommendations made to Grenada in the Report from the Second Round, based on the information available to it:

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

1.1. Systems of Government Hiring

Recommendation:

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

Measures suggested by the Committee:

- a. *Explicitly provide, through the appropriate legislative or administrative procedures, that government hiring into the Public Service is to be based on the principle of merit. (See Section 1.1.2. of Chapter II of this Report)*
- b. *Adopt, through the appropriate legislative or administrative procedures, the different stages that comprise the process of selecting and appointing public servants, by adopting provisions and clearly defined criteria that ensure access to the public service, always taking into account the principles of openness, equity and efficiency as provided in the Convention. (See Section 1.1.2 of Chapter II of this Report).*
- c. *Ensure that the Public Service Commission clearly substantiate when a decision is made not to advertise a vacancy to the general public, as well as ensure the use of modern means of media for publicizing vacancies (e.g. the internet). (See Section 1.1.2. of Chapter II of this Report).*

62. Progress Report to the Sixteenth Meeting, pgs. 4 – 5, *supra* note 46.

63. The references to sections appearing in italics in the transcribed recommendations and measures refer to the report from the Second Round of Review.

- d. *Strengthen the legal provisions regarding the Ombudsman so that it has the competence to revoke or take other corrective measures when it is found that an appointment process was, among other things, irregular, improper or made through a fraudulent competition. (See Section 1.1.2. of Chapter II of this Report)*
- e. *Adopt administrative measures that provide that hiring by the Ombudsman is based on merit, with clearly defined criteria on advertisement opportunities as well as for the provision of recourse mechanisms that allow for preventive or corrective measure against irregular selection processes. (See Section 1.1.2. of Chapter II of this Report)*

[152] Grenada did not present information with respect to the implementation of the foregoing recommendation or its measures. Accordingly, the Committee takes note of the need for the country under review to give additional attention thereto.

1.2. Government Systems for the Procurement of Goods and Services

Recommendation:

Continue strengthening systems for the procurement of goods and services by the government.

Measures suggested by the Committee:

- a. *Enact the necessary regulations to the Public Procurement and Contract Administration Act so that fairness and transparency can be ensured in the newly established procurement regime. (See Section 1.2.2. of Chapter II of this Report)*
- b. *Make publicly accessible the register of exempt and partially exempt procurements found under the Public Procurement and Contract Administration Act. (See Section 1.2.2. of Chapter II of this Report)*
- c. *Strengthen and increase the scope of use of electronic communications, such as the internet for publicizing the tender opportunities, status of bids and awards, the progress in the execution of major projects, and the list of suspended suppliers, contractors and consultants. (See Section 1.2.2. of Chapter II of this Report)*
- d. *Develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means. (See Section 1.2.2. of Chapter II of this Report)*
- e. *Implement provisions that require awards to be publicized in a sufficiently justified or substantiated announcement. (See Section 1.2.2. of Chapter II of this Report)*
- f. *Implement guidelines or criteria that allow for an analysis as to whether the launch of a procurement process requires prior planning sufficiently in advance, such as preparing studies, designs and technical evaluations, and to assess the appropriateness and timeliness of the purchase. (See Section 1.2.2. of Chapter II of this Report)*
- g. *Develop and implement provisions that provide for the recusal of those in the procuring entity or who are directly involved in the determination of needs or specifications, appraisal of bids, selection of alternatives, or approval of purchases or payments when they have ties*

to bidders or contractors, whether familial, political, commercial or of any other nature. (See Section 1.2.2. of Chapter II of this Report)

- h. Implement provisions that facilitate transparent mechanisms in monitoring the execution of contracts, such as encouraging citizen oversight, where their nature, importance or magnitude so warrants, in particular public works contracts. (See Section 1.2.2. of Chapter II of this Report). (See Section 1.2.2. of Chapter II of this Report)*

[153] With respect to the foregoing recommendation, the country under review presents information. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, the following:

[154] *“A Procurement Act has been drafted which is going to be placed before the Parliament. This new draft proposes to strengthen on the existing procurement system and ensure that there is fairness and transparency in the procurement regime.”*⁶⁴

[155] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the draft Procurement Act has not been enacted and therefore it is unclear how the provisions of this draft Act address the measures set out in the foregoing recommendation.

[156] With respect to measures c) and d) of the foregoing recommendation, the country under review presents information in its Progress Report presented at the Sixteenth Meeting of the Committee of Experts. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[157] *“With regard to developing and implementing electronic procurement systems, there is currently a proposal in the work plan of the Legislative Drafting Unit in the Ministry of Legal Affairs, to bring into force the Electronic Transaction Act. Once this draft is approved, it will cover areas such as posting notices, contract award notices and the like. An electronic environment would encourage transparency and prevention of corruption in procurement.”*⁶⁵

[158] The Committee takes note of the step taken by the country under review to advance in its implementation of measures c) and d) of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the Electronic Transaction Act has not yet been enacted.

[159] With respect to measures a), b), e), f), g) and h), Grenada did not present information with respect to their implementation. Accordingly, the Committee takes note of the need for the country under review to give additional attention thereto.

64. Response of Grenada to the Questionnaire for the Third Round, pg. 26, *supra* note 9.

65. Progress Report to the Sixteenth Meeting, *supra* note 46, at pg. 8.

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

Recommendation:

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

Measures suggested by the Committee:

- a. *Mechanisms that offer protections to private citizens who report acts of corruption in good faith;*
- b. *Measures to protect the physical integrity of whistleblowers and their families;*
- c. *Mechanisms for reporting, such as anonymous reporting or protection of identity reporting, that protect the personal security and the confidentiality of the identity of public servants and private citizens who in good faith report acts of corruption;*
- d. *Witness protection mechanisms that offer witnesses similar protections to those provided to public servants and private citizens;*
- e. *Mechanisms to report threats or reprisals against persons who report acts of corruption, indicating the competent authorities for processing the necessary requests for protection.*
- f. *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;*
- g. *Provisions that provide for a general sanction for the failure to observe the rules and/or duties relating to protection.*

[160] Grenada did not present information with respect to the implementation of the foregoing recommendation or its measures. Accordingly, the Committee takes note of the need for the country under review to give additional attention thereto.

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

Recommendation:

Adopt and/or complement, as appropriate, its criminal legislation, in order to include the elements of those acts of corruption set out in Article VI.1 of the Convention.

Measures suggested by the Committee:

- 3.1 *Study the possibility of amending the legislation in place, in particular the Prevention of Corruption Act, so that the definition of public officer is expanded to include those private citizens who perform public functions or who manage public funds in any capacity or form. (See Section 3.2 of Chapter II of this Report)*

- 3.2 *Modify Sections 4(1) and 5(1) of the Prevention of Corruption Act, so as to be more fully consistent with Article VI(1)(b) of the Convention, by incorporating thereto the element of granting a gratification to a public officer. (See Section 3.2 of Chapter II of this Report)*
- 3.3 *Criminalize the fraudulent use or concealment of property derived from any of the acts referred to in Article VI(1) of the Convention, in accordance with paragraph (d) of the same Article. (See Section 3.2 of Chapter II of this Report).*

[161] Grenada did not present information with respect to the implementation of the foregoing recommendation or its measures. Accordingly, the Committee takes note of the need for the country under review to give additional attention thereto.

4. GENERAL RECOMMENDATIONS

Recommendations:

- 4.1 *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.*
- 4.2 *Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein. (see Sections 1.1.3, 1.2.3, 2.3 and 3.3 of Chapter II of this Report)*

[162] With respect to Recommendation 4.1, the country under review presents information in its Progress Reports presented at the Fifteenth and Sixteenth Meetings of the Committee of Experts. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the recommendation, the following:

[163] *“A working group committee has been recently set up in Grenada under the Department of Public Administration, to reform the Public Service, to encourage better management of the system. Though there is the Grenada Constitution, existing public service rules and staff orders there is a need for updating the system. Once this is achieved, training programs for public servants etc. can be incorporated and the above mentioned recommendations can be implemented.”⁶⁶*

[164] *“During September 2009, there was a training program held for newly recruited workers in the Public Service [Public Service Orientation for new entrants].”⁶⁷*

[165] The Committee takes note of the steps taken by the country under review to advance in its implementation of Recommendation 4.1 and of the need for it to continue to give attention thereto.

[166] With respect to Recommendation 4.2, Grenada did not present information with respect to its implementation. Accordingly, the Committee takes note of the need for the country under review to give additional attention thereto.

66. Progress Report to the Fifteenth Meeting, *supra* note 50, at pg., 3.

67. Progress Report to the Sixteenth Meeting, *supra* note 46, at pg. 7.