

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
SG/MESICIC/doc.229/08 rev. 2
CONVENTION AGAINST CORRUPTION
Fourteenth Meeting of the Committee of Experts
December 8 to 12, 2008
Washington, DC.

OEA/Ser.L

12 December 2008
Original: Spanish

QUESTIONNAIRE

ON THE PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION SELECTED IN THE THIRD ROUND AND FOR FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE PREVIOUS ROUNDS

INTRODUCTION

The Report of Buenos Aires and the Rules of Procedure and Other Provisions of the Committee of Experts on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption (hereinafter, as applicable, Report of Buenos Aires, Rules, Committee, Mechanism, and Convention) provide that the Committee shall adopt a questionnaire on the selected provisions to be reviewed in each round.

At its thirteenth meeting, held from June 23 to 27, 2008, the Committee decided that during the third round it would review implementation by States Parties of the following provisions of the Convention: Article III, paragraphs 7 and 10; and Articles VIII, IX, X, and XIII.

Furthermore, the first paragraph of Article 29 of the Rules provides that “At the start of a new round, there shall be included within the questionnaire a section on “Follow-up on Recommendations” to enable the review of progress made in implementing the recommendations included in its country report adopted in previous rounds,’ and that ‘to that end, each State Party shall submit the appropriate information in the standard format that the Committee shall provide as an Annex to the Questionnaire.’ The aforesaid Article also provides in its second paragraph that “with respect to the implementation of recommendations, the State Party shall refer to any difficulties that may have arisen in the process,” and that, “should it deem it to be appropriate, the State Party may also identify the domestic agencies that have participated in implementing the recommendations, as well as identify specific technical assistance or other needs connected with the implementation of the recommendations.”

In light of the above, this document contains the questions that comprise the Questionnaire adopted by the Committee.

The responses given to the questionnaire shall be reviewed in accordance with the methodology adopted by the Committee, which is annexed to this document and may also be consulted on the OAS Webpage at:

http://www.oas.org/juridico/english/mesicic_method_IIIround.pdf

In accordance with Article 21 of the Rules, the State Party shall forward the response to the questionnaire through its Permanent Mission to the OAS, in an electronic format, along with the corresponding supporting documents, within the time period established by the Committee.

To this effect, the OAS General Secretariat's e-mail, to which the response to the questionnaire should be sent and to which queries may be addressed in order to clarify any doubts that arise, is the following: LegalCooperation@oas.org.

In completing this questionnaire, States Parties should keep in mind the deadlines set by the Committee in the schedule for the Third Round as well as the recommendation contained therein that responses to the questionnaire not exceed 35 pages.

SECTION I

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

CHAPTER ONE

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

- a) Describe the laws, rules and/or measures that expressly deny or prevent favourable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of your country. Please attach a copy of the relevant provisions and documents.
- b) Describe the means or mechanisms to enforce the respective laws, rules and/or measures taken to prevent, investigate and/or sanction those who obtain favourable tax treatment for expenditures made in violation of the anticorruption laws of your country.
- c) Briefly mention the objective results that have been obtained in applying the respective laws, rules and/or measures, providing any relevant statistical data available in your country, if possible for the last two years.

- a) Describe the laws, rules and/or measures that expressly deny or prevent favourable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of your country. Please attach a copy of the relevant provisions and documents.

GRENADA'S RESPONSE

- (a) The laws, rules and/or measures that expressly deny or prevent favourable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of GRENADA. COPY OF relevant provisions is attached.**

Grenada has several pieces of legislation which provide a sound legislative tapestry to ensure that there is no favourable tax treatment given to any individual or corporation for expenditures made in violation of the anticorruption laws.

High on this list of laws is the **Income Tax Act No 36 of 1994 (ITA)** with all its amendments, which seek to ensure that income tax collection (from persons and corporations) is done in a fair and transparent manner.

Section 7 of the ITA makes provisions for a person earning income to pay income tax in accordance with the ITA, at such rates specified for each type of income. Note that 'person' is defined by the ITA as including a body corporate. **Division II of the ITA** sets out certain categories of persons liable to be taxed.

Section 11 of the ITA provides that such taxation shall be assessed and paid on a yearly basis.

The **ITA by Part V** specify what shall be regarded as income for the purposes of taxation ensuring that no person shall be in any doubt as to what monies earned shall be liable to taxation.

Division II of the ITA sets out what deductions are allowable in ascertaining assessable income. All normal expenses are to be deducted. So too is qualified capital expenditure. Losses are also to be deducted. **Section 36(2) as amended by Act no 5 of 1996** provides that the taxpayer is required to make a claim for deductions and he is required to present evidence to the Commissioner which satisfied him that such deductions are to be allowed.

Part IV of the ITA specifies those persons and types of income which are exempted from Income Taxation. This is a necessary part of any taxation regime; certain categories or persons are usually exempted for public policy reasons. For example,

under this Part the income of Governor General, Heads of Diplomatic Missions accredited to Grenada are exempted.

Section 26 of the ITA makes provisions for ensuring transparency in providing exemption for Hotels granted by the Government – Tax Holidays for development projects.

Section 27 of the ITA also provides exemption for certain approved enterprises for fiscal incentive relief CAP 107.

Section 65 of the ITA provides that every person liable to pay income tax shall file an Income Tax Return containing a calculation of his chargeable income.

Section 71 of the ITA provides that every person carrying on business shall keep in English Language, such records or books as are necessary to reflect the true and full nature of the transactions of the business regard being had to the nature of the business and the scale of the activities carried on. Such records shall be kept for a period of seven years. The failure to keep such records may result in a penalty – See **section 117**.

Section 78 of the ITA gives the Commissioner the power to conduct a best judgment assessment whether or not a person has filed an Income Tax Return. Section 79 gives the Commissioner power to do an ‘additional’ assessment where he is of the opinion that the tax charged or the refund given is less or greater than the amount which should have been charged or given respectively. **Section 82** allows this assessment to be done within six years after the end of the year of assessment to which it relates unless there has been a wilful neglect or default in which case it can be done at any time.

Section 88(7) provides in cases of objections and appeals, that the Board has the power to summon any witnesses, order the production of any documents and books, all the powers of a subordinate court to deal with witnesses – take evidence on oath and punishment for misconduct before the court.

Section 117 gives the Commissioner power to compel a person to furnish his records and books. Where there is failure to produce or there is a failure to keep proper records, or there is non-disclosure the taxpayer is liable to summary prosecution and if convicted to a fine of two thousand dollars and to imprisonment for one year.

Section 118 provides that any person who wilfully and with intent to evade assessment or liability to tax, inter alia, makes, causes or allows to be made an incorrect statement in any return filed, or signs any document or any return and has

reason to believe that the document or part of it is incorrect, or provides incorrect information to the Commissioner in response to a request, is guilty of a summary offence punishable by four thousand dollars and imprisonment for two years.

The Proceeds of Crime Act No 3 of 2003 should also 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.

Section 48 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.

(b) Describe the means or mechanisms to enforce the respective laws, rules and/or measures taken to prevent, investigate and/or sanction those who obtain favourable tax treatment for expenditures made in violation of the anticorruption laws of your country.

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.

There is also a Financial Crime Unit which actively investigates financial crime. Whilst there is no data available demonstrating this Units work under this heading, it has the capability of ensuring that corrupt payments are investigated.

(c) Briefly mention the objective results that have been obtained in applying the respective laws, rules and/or measures, providing any relevant statistical data available in your country, if possible for the last two years.

No data is available at this time.

CHAPTER TWO

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

- a) Are there laws and/or measures in your country to deter or impede bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts? If so please specify what they are, briefly describe them, and list and attach a copy of the related provisions and documents, referring in particular to the following aspects:
- ii. Publicly held companies and other types of associations required to maintain accounting records of their operations in accordance with the accounting standards in force in your country.
 - iii. Rules regarding how these accounting records are to be maintained, indicating what length of time they must be kept; if they must be kept in books of account or any other medium that affords suitable protection for their contents; if said records are required to state all cash or in-kind expenditure, payments, or contributions, as well as specify their reason or purpose, and precisely identify their recipients; and if they must be substantiated with supporting documents containing the necessary information to confirm their veracity.
 - iv. Mechanisms to enforce the respective laws and/or other measures, such as the prohibitions against the establishment of accounts or operations without recording them on the books; registration of fictional expenditures or misstatement of the purpose thereof; adulteration of accounting records; use of false documents to support accounting records, and destruction of accounting documents before their prescribed custody period expires; as well as criminal, financial, or other penalties for those who infringe these prohibitions, and organs and agencies responsible for prevention and/or investigation of their violation and for imposing the appropriate punishment.
- (b) In relation to question a), briefly mention the objective results that have been obtained in enforcing the respective laws and/or other measures to which it refers, such as steps taken to prevent or investigate their infringement and penalties imposed in that regard, providing any relevant statistical data available in your country, if possible for the last two years.
- (c) If there are no laws and/or other measures such as those mentioned in question a), briefly indicate how your State has considered the applicability within your own institutional system of the provisions contained in Article III (10) of the

Convention.

GRENADA'S RESPONSE

- (a) **Deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts.**

Grenada has enacted laws which are meant to deter bribery of both domestic and foreign government officials. With regard to domestic government officials the **Integrity in Public Life Act No. 14 of 2007** is instructive. This Act was meant to give effect to the IACC and its following sections are worthy of note in response to Chapter 3.

Part III of the Integrity in Public Life Act addresses the issue of financial disclosure. Sections 28 and 29 of Part III impose a duty on a person in public life to furnish a declaration of assets liabilities and income.

Section 28 provides that every person in public life shall file a declaration to the Commission in a prescribed form setting out his assets and liabilities.

Section 47 is also expressly directed at deterring bribery and provides that a person in public life shall not accept any gift or reward from any person as an inducement for any official to be done by him or her; or as a reward for any official act done by him or her. From a practical standpoint some gifts are allowed by persons in public life where it is from a community organization on a social occasion which represents the creativity of that organization, or a foreign dignitary, where the person in public life has reasonable grounds to believe that the refusal to accept the gift may offend the foreign dignitary. (note that there is a still a requirement of declaration in this latter instance.

The Integrity Commission is mandated to determine whether the gift was given to the person in public life as a personal gift and was not intended to be for an act of corruption then the Commission shall allow the person in public life to retain the gift.

Where the Commission of course finds that the gift was given for an act of corruption the Commission shall direct the person in public life, in writing, to deliver the gift to the Director of Finance on behalf of the State within a specified period. Failure to do so will result in criminal sanctions.

Section 71 of the Income Tax Act speaks to the maintenance of proper records.

The Prevention of Corruption Act No. 15 of 2007 was specifically enacted to prevent corruption by public officers in the performance of their functions. Part II which contains sections 3 to 12 provides for offences and penalties for corruption by public officers. For e.g. section 4 provides that a person shall not, without any lawful authority, by himself or in conjunction with any other person, offer from another any gratification to a public officer as an inducement or reward for himself or herself, or any other person in order that the public officer or any other person abstains from performing or performs any act in his or her official capacity, or assists, hinders or delays any other person in the transaction of any business with a public body, or expedites or prevents the performance of an act whether by himself or herself or through any other public officer. This very section also prevents the unlawful solicitation of any gratification for himself or any other person for the purpose of doing an act of corruption. Breaches of these provisions are punishable by *inter alia* a fine exceeding fifty thousand dollars or to a term of imprisonment not exceeding three years.

Section 7 creates offences in relation to corrupt activities relating to tenders. Section 9 addresses bribery of Parliamentarians and provides that a person shall not offer any gratification to a Member of Parliament as an inducement or reward for the Member doing or forbearing to do any act in his or her capacity as a Member. Equally a Member of Parliament shall not solicit or accept any gratification as an inducement or a reward for his or her doing or forbearing to do any act in his or her capacity as a Member. Criminal sanctions for breaches under these provisions is a fine not exceeding one hundred thousand dollars or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

The Audit Act No. 26 of 2007 provides in **section 13** that the Director of Audit shall, not later than six months after the end of each financial year, make such examinations and inquiries as he or she considers necessary to enable him or her to audit the accounts of statutory bodies and Government controlled corporations for the previous year and to report as required by this Act.

The provisions of **Section 10(2)** shall apply mutatis mutandis to this section. This subsection provides that in his or her examination and audit of the accounts of the Government, the Director of Audit may make such checks as he or she considers necessary to enable him or her to form an opinion as to whether a department of Government including a branch of a department, a Ministry or an authority has used its resources with economy, efficiency and effectiveness.

(b) In relation to question a), briefly mention the objective results that have been obtained in enforcing the respective laws and/or other measures to

which it refers, such as steps taken to prevent or investigate their infringement and penalties imposed in that regard, providing any relevant statistical data available in your country, if possible for the last two years.

CHAPTER THREE

TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

1. Criminalization of Transnational Bribery

- a) Does your State prohibit and punish, subject to its Constitution and the fundamental principles of its legal system, the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions? If so, please indicate if in your country it is considered an act of corruption for the purposes of the Convention, and describe briefly the laws and/or other measures regarding them, indicating what penalties they provide, and attach a copy of them.
- b) If your State has criminalized transnational bribery, briefly mention the objective results that have been obtained in that regard, such as judicial proceedings undertaken and their outcome. The above information should refer, as far as possible, to the last five years.
- c) If your State has not criminalized transnational bribery, briefly mention if your country has taken any steps to do so.

2. Assistance and cooperation in the case of States Parties that have not criminalized transnational bribery

- a) If your State has not criminalized transnational bribery, does it, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in the Convention.
- b) If so, briefly mention the objective results that have been obtained in that regard. The above information should refer, as far as possible, to the last five years.

GRENADE'S REPOSE

- a) **Grenada's position on "the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor,**

promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions.”

Grenada has sought to criminalize transnational bribery as provided in the Inter-American Convention against Corruption, under **the Prevention of Corruption Act No.15 of 2007, and it is considered an act of corruption.**

The Prevention of Corruption Act No. 15 of 2007 provides for transnational bribery in the following sections;

Section 6 provides that a public officer shall not, without any lawful authority give, offer or promise directly or indirectly, to a foreign public official, any gratification for himself or herself or for any other person, in order that the foreign public official acts or refrains from acting in the exercise 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.

Section 6(2) provides a foreign official shall not without any lawful authority, accept or solicit directly or indirectly any gratification for the purposes outlined in section 6(1).

Under **section 6(3)** a foreign public official or a public officer who contravenes subsection (1) and (2) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand or a term of imprisonment not exceeding three years.

Section 6(4) provides that a public officer in addition to the penalty imposed subject to **section 6(3)** he shall be disqualified from holding any public office for a period of seven years from the date of conviction of the offence.

For the purposes of this section “Foreign public official’ under **section 2** is defined to mean any person exercising a public function for a foreign State and holding an administrative, executive, judicial or legislative office of a foreign State, regardless of whether that foreign public official is appointed or elected.

Section 9 provides generally for the Bribery of Members of Parliament. **Section 9(1) and(2)** provides that a person shall not offer any gratification to a Member of Parliament as an inducement or reward nor should a member accept such when acting in his or her capacity as member. Any person who contravenes this section commits an offence and is liable on conviction on indictment to a fine not exceeding one hundred thousand dollars or imprisonment not exceeding five years or both.

Section 11 provides for the Director of Public Prosecutions to report his or her findings to the Commissioner of Police for an investigation to be made where there are reasonable grounds for suspecting that an offence has been committed.

- (b) **If your State has criminalized transnational bribery, briefly mention the objective results that have been obtained in that regard, such as judicial proceedings undertaken and their outcome. The above information should refer, as far as possible, to the last five years.**

There is no data available on this.

CHAPTER FOUR

ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

1. Criminalization of illicit enrichment

- a) Has your State established as an offense, subject to its Constitution and the fundamental principles of its legal system, a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions? If so, please indicate if in your country it is considered an act of corruption for the purposes of the Convention, and describe briefly the laws and/or other measures regarding them, indicating what sanctions they provide, and attach a copy of them.
- b) If your State has criminalized illicit enrichment, briefly mention the objective results that have been obtained in that regard, such as judicial proceedings undertaken and their outcome. The above information should refer, as far as possible, to the last five years.
- c) If your State has not criminalized illicit enrichment, briefly mention if your country has taken any steps to do so.

2. Assistance and cooperation in the case of States Parties that have not criminalized illicit enrichment

- a) If your State has not criminalized illicit enrichment, does it, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in the Convention.
- b) If so, briefly mention the objective results that have been obtained in that regard. The above information should refer, as far as possible, to the last five years.

GRENADA' RESPONSE

Criminalization of illicit enrichment

The **Financial Intelligence Unit Act** , the **Proceeds of Crime Act 2003** and the **Integrity in Public Life Act No. 14 of 2007**, which though do not provide expressly

for the offense of illicit enrichment, there are provisions which provide for investigations, which impliedly can be interpreted as including investigations of offenses such as illicit enrichment.

The Financial Intelligence Unit Act section 5 provides that police officers seconded to the Financial Intelligence Unit shall retain their powers of arrest search and seizure under the Police Act and customs officers shall retain their powers of arrest search and seizure under the Customs Act.

The Financial Unit Act section 6.—(1) provides;

In the exercise of its functions under subsection(2), the Financial Intelligence Unit shall act as the agency responsible for receiving, analysing, obtaining and disseminating information which relates to or may relate to the proceeds of the offences created by the **Proceeds of Crime Act 2003—**

Subsection (2) provides notwithstanding any other law to the contrary the Financial Intelligence Unit -

- (a) shall receive all suspicious transaction reports as are required to be made pursuant to the provisions of the Proceeds of Crime Act 2003 which are relevant to its functions, including information from any Foreign Financial Intelligence Unit;
- (b) may require the production of such information that the Financial Intelligence Unit considers necessary to fulfil its functions;
- (c) shall retain a record of all information that it receives for a minimum of five years after the information is received;
- (d) shall provide information, subject to such conditions as may be determined by the Director, to the Commissioner of Police and to the Director of Public Prosecutions where the information may relate to the commission of an offence;
- (e) may provide information relating to the commission of an offence or information concerning suspicious transaction or suspicious activity reports to any Foreign Financial Intelligence Unit, subject to any conditions as may be considered appropriate by the Director;
- (f) may enter into any agreement or arrangement, in writing, with a Foreign Financial Intelligence Unit which the director considers necessary for the discharge of the functions of the Financial Intelligence Unit;
- (g) shall inform financial and business institutions of their obligations under measures that have been or might be taken to detect, prevent and deter the commission of offences under the Proceeds of Crime Act 2003.

Section 12(e) of the Integrity in Public Life Act No. 14 of 2007 provides that the Integrity in Public Life Commission has a duty to investigate the conduct of any person falling under the purview of the Commission which, in the opinion of the Commission, may be considered dishonest or conducive to corruption

Under the above mentioned pieces of legislation it can be interpreted that upon investigations (investigations which may impliedly include illicit enrichment) police officers seconded to the FIU unit can make use of their powers of arrest, search, seizure etc. in circumstances where it is deemed reasonable to do so.

GENERAL BRIBERY AND RECEIPT OF REWARD PROVISIONS UNDER THE CRIMINAL CODE CAP 1 OF THE 1990 REVISED LAWS OF GRENADA AND THE INTEGRITY IN PUBLIC LIFE ACT NO14 OF 2007

Under the **Criminal Code** there are several provisions which provide for offences in instances where a public official unlawfully accepts or agrees to accept any valuable consideration. There is however, no specific provision for illicit enrichment as an offense whereby once there is a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions. There are also provisions providing for bribery generally, however, these provisions only provide for public officers, jurors and voters within Grenada and not government officials of another State (transnational Bribery) as is provided for as an offense in Article VIII in the Inter- American Convention against Corruption.

Criminal Code Title XXVII- Offences Relating to Public Offices and to Public Elections. Sections 389-418

Section 397 provides whoever accepts, or agrees or offers to accept any valuable consideration under pretence or colour of having unduly influenced, or of agreeing or being able so to influence, any person in respect of his duties as a public officer or juror is guilty of a misdemeanor.

Section 405 provides where any person who, by himself or in conjunction with any other person-

- (a) Corruptly solicits or receives or agrees to receive for himself or any other person any gift loan, fee, reward or advantage as an inducement to any member or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such body is concerned; or
- (b) Corruptly gives, promises or offers any person whether for the benefit of that person or any other person, any gift, loan, fee, reward or advantage as an inducement to or reward for or otherwise on account of any member, officer or

servant of a public body doing or forbearing to do anything in respect of any matter in which the public body is concerned shall be liable to imprisonment for two years or to a fine not exceeding two thousand four hundred dollars or both. Where the matter or transaction in relation to which the offense is committed is a contract or proposal for a contract with her Majesty or any Government department or any public body, or is subcontract to execute any work comprised in such a contract the offender shall be liable to imprisonment for a term not exceeding seven nor less than three years.

In this section the expression “public body” is defined to include the Senate and House of Representatives, District Boards and in addition local and public Boards and authorities of all description.

Section 406 provides for bribery of, or by a Minister. This section provides, where any person who bribes a Minister, or being a Minister, accepts a bribe, where the object of the Bribe is to induce such Minister to do, or to omit to do, any act contrary to his official duty, or to show favour or partiality in the discharge to his duty, he shall be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding three thousand dollars, or both.

Section 408 provides that a person who endeavours to directly or indirectly influence the conduct of a public officer, juror or voter in respect of the duties of his office or in respect of his vote, by a gift, promise, or prospect of any valuable consideration shall be guilty of corruption the above- named persons.

Sections 412 and 413 provides for instances where a public officer, juror or voter secretly accepts any valuable consideration he or she shall be presumed to be guilty of corruption, unless contrary is shown.

Under **section 414** “valuable consideration” is defined to include any money, money’s worth, or valuable thing, and any office or dignity, any forbearance to demand money or money’s worth, or any valuable thing, and any private advantage of whatsoever kind.

Section 47 of the Integrity in Public Life Act No. 14 of 2007 prohibits the acceptance of gifts or rewards by persons in public life as a motive for doing or abstaining from doing anything in the course of the performance of his or her official functions. If that is the case, the Commission can direct that the person in public life deliver the gift to the Director of Finance on behalf of the State. If the person in public life fails to do so then he commits an offence and is liable on summary conviction to a fine of equal value of the gift or ten

thousand dollars whichever is greater or a term of imprisonment not exceeding three months.

CHAPTER FIVE

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

If, subsequent to its ratification of the Convention, your State has criminalized transnational bribery and/or illicit enrichment, as provided at Articles VIII (1) and IX (1) of said Convention, please indicate if it has notified the Secretary General of the OAS.

GRENADE'S RESPONSE

We hope that this Response may be treated as our notification on these issues. In any event an Official notification with regard to enactment of Transnational Bribery as an offence in Grenada is being prepared for onward transmission. This should be done shortly.

CHAPTER SIX

EXTRADITION (ARTICLE XIII OF THE CONVENTION)

- a) Bearing in mind the provisions contained in Article XIII (1, 2, 3, and 4) of the Convention, under your country's legal framework, may this Convention be considered the legal basis for extradition in connection with the offenses it has criminalized in accordance therewith? If so, briefly describe any existing laws and/or other measures that allow as much, and attach a copy thereof.
- b) If your State may refuse extradition for the above offenses solely on the basis of the nationality of the person sought, or because it deems that it has jurisdiction over the offense, please indicate, when this occurs, if it submits the case to the competent authorities for the purpose of prosecution and reports the final outcome to the requesting State in due course. If so, briefly describe the existing laws and/or other measures in that regard and attach a copy thereof.
- c) Please indicate if, subject to the provisions of its domestic law and its extradition treaties, your State, upon being satisfied that the circumstances so warrant and are urgent, and at the request of another State Party to the Convention, takes into custody the person whose extradition is sought and who is present in its territory, or takes other appropriate measures to ensure their presence at extradition proceedings. If so, briefly describe the existing laws and/or other measures in that regard and attach a copy thereof.

- d) Briefly state the objective results that have been obtained in enforcing the existing rules and/or other measures on extradition for the aforementioned offenses, such as extradition requests made to other States Parties for the purpose of investigating or prosecuting those offenses and procedures initiated by your State to attend to requests received by it from other States Parties with the same purpose, as well as the results thereof. The above information should refer, as far as possible, to the last five years.

GRENADA'S RESPONSE

- a) **Bearing in mind the provisions contained in Article XIII (1, 2, 3, and 4) of the Convention, under your country's legal framework, may this Convention be considered the legal basis for extradition in connection with the offenses it has criminalized in accordance therewith? If so, briefly describe any existing laws and/or other measures that allow as much, and attach a copy thereof.**

Grenada has a set of Legislation related to extradition, among which the following should be noted;

- 1) **The Extradition Act No. 22 of 1998 applies to Commonwealth Countries and foreign states**
- 2) **The Extradition Treaty (Government of Grenada and Government of USA) Act No. 2 of 2001 which applies to Grenada and the USA.**

The following are the relevant sections of the **Extradition Act No. 22 of 1998**;

Section 3 of the Act provides that a person accused of an extraditable offence or is alleged to be unlawfully at large after conviction of an extraditable offence in a declared Commonwealth territory or declared foreign territory may be arrested and returned.

Section 4 of the Act refers to an "extradition offence"

4(1) In this Act, "extradition offence" means

- (a) 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.

(b) an extra-territorial offence against the laws of a foreign state or Commonwealth country which, on indictment, is punishable under those laws with imprisonment for a term of five years or any greater punishment, and which satisfies-

- (i) the condition specified in subsection (2); or
- (ii) all the conditions specified in subsection (3).

(2) For the purposes of subsection (1) (b)(i), the condition is that in corresponding circumstances, equivalent conduct would constitute an extraterritorial offence against the Laws of Grenada which, on indictment is punishable with imprisonment for a term of five years or any greater punishment.

(3) For the purposes of sub-section (1)(b)(ii) the conditions are-

(a) that the foreign State or Commonwealth country bases its jurisdiction on the nationality of the offender;

(b) that the conduct constituting the offence occurred outside Grenada; and

(c) that, if the conditions constituting the offence occurred in Grenada, it would constitute an offence against the Laws of Grenada which, on indictment, would be punishable with imprisonment for a term of five years, or any greater punishment.

(4) For the purposes of subsections (1) to (3) –

(a) the laws of a foreign State or a Commonwealth country includes the laws of any part of it; and

(b) conduct in a colony or dependency of a foreign State or a Commonwealth Country, or a vessel, aircraft or hovercraft of a foreign State or a Commonwealth country, shall be treated as if it were conduct in the territory of the State or Commonwealth country.

Section 5 of the Act provides that extradition arrangements mean arrangements of a general nature made with one or more States and relating to the operation of extradition procedures. These arrangements may relate to the operation of those procedures in a particular case in this Act referred to as “special extradition arrangements.”

Part III of the Act provides restrictions on surrender. **Section 8(1)** states that a person will not be surrendered if;

- (i) the offense committed by the person is of a political character;
- (ii) the offense is one under military law and not under general criminal law;

- (iii) the request for his surrender is in fact made for the purpose of prosecuting or punishing him on account of race, religion, nationality, political opinions, sex or status;
- (iv) 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;
- (v) final judgment has been given against the person in Grenada or a third country for that offence;
- (vi) under the laws of the requesting country or the laws of Grenada the person has become immune from prosecution or punishment;
- (vii) the person has already been acquitted or pardoned in the country making the extradition request or in 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 an extradition offence.
- (viii) the person has been or would be subjected to torture, cruel, inhuman or degrading treatment or punishment.

Subject to **section 8(3)** If the country making the extradition request and Grenada are parties to the Convention against Torture and other cruel, inhuman and degrading treatment or punishment or the International Covenant on Civil and Political Rights then Grenada cannot refuse to surrender a person on the basis that the person may be subjected to torture or cruel, inhuman or degrading treatment or punishment.

Section 12(1) – where a court of committal refuses to make an order, then the foreign State or commonwealth country seeking the surrender of that person to it may question the proceedings on the ground that it is wrong in law. This can be done by applying to the court to state a case for the opinion of the High Court on the question of law involved.

Under **section 12(5)** the High Court may either then:

- (i) Remit the case to the court of committal to decide it according to the opinion of the High Court on the question of law; or
- (ii) dismiss the application.

Section 13 provides that a person committed shall not be surrendered

- (i) in any case until the expiration of the period of fifteen days beginning with the day on which the order for his committal is made; or
- (ii) if an application for *habeas corpus* is made in his case, so long as proceedings on that application are pending.

Section 13(3) stipulates that the court shall order the applicant's discharge if it appears to the court in relation to the offence in respect of which the applicant's surrender is sought, that

- (i) by reason of the trivial nature of the offence;
- (ii) by reason of the passage of time since the applicant is alleged to have committed the offence or to have become unlawfully at large, as the case may be; or
- (iii) because the accusation against him is not made in good faith in the interest of justice, it would, having regard to all the circumstances, be unjust or oppressive to surrender him.

Section 14 provides if a person consents to being surrendered for the extradition offence and the country requesting his extradition requests that the person should also be surrendered for another offence that is not an extradition offence the Magistrate must ask the person whether he also consents to being surrendered for that offence. Where consent is voluntarily given then the Magistrate must inform the person of the effect of such consent.

Section 18 provides that where a person is surrendered and proceedings do not begin against him for the offence which he was surrendered within 6 months or on his trial he is acquitted of the offence, the Minister may arrange for the person to be sent back free of charge and with as little delay as possible to the jurisdiction of the foreign State or Commonwealth Country.

The country under review has also entered into a bilateral extradition treaty with the United States of America (**The Extradition Treaty (Government of Grenada and Government of USA) Act No. 2 of 2001.**)

The following are the relevant sections of the **Extradition Treaty (Government of Grenada and Government of USA) Act No. 2 of 2001**;

Article 2(1)- provides that an offense shall be an extraditable offense if it is punishable under the laws in both Contracting States by deprivation of liberty for a period of more than one year or by a more severe penalty.

2. An offense shall also be an extraditable offense if it consists of an attempt or a conspiracy to commit, aiding or abetting, counseling or procuring the commission of, or being an accessory before or after the fact to, any offense described in paragraph 1.

3. For the purpose of this Article, an offense shall be an extraditable offense:

- (a) whether or not the laws in the Contracting states place the offense within the same category of offenses or describe the offense by the same terminology; or
- (b) whether or not the offense is one for which United States Federal law requires the showing of such matters as interstate transportation, or use of the mails or other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdictions in a United States Federal Court.

4. Where the offense was committed outside of the territory of the requesting State, if the laws in the Requesting State:

- (a) provide for punishment of an offense committed outside of its territory in similar circumstances, extradition shall be granted in accordance with this Treaty; or
- (b) do not provide for punishment of an offense committed outside of its in a similar circumstances extradition may nonetheless be granted in the discretion of the Executive Authority of the Requested State, provided that all other requirements of this Treaty are met.

5. If Extradition has been granted for an extraditable offense, it may also be granted for any other offense specified in the request even if the latter offense is punishable by less than one year's deprivation of liberty, provide that all other requirements for the extradition are met.

Article 4- provides that extradition shall not be granted if the offense for which extradition is requested is a political offense.

Article 4(2) provides that for the purposes of the Treaty the following offenses shall not be considered political offenses;

- (a) a murder or other violent crime against the person of a Head of State of one of the Contracting States, or of a member of the Head of State's family;
- (b) an offense for which both Contracting States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution; and
- (c) a conspiracy or attempt to commit any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses.

Article 9 provides for provisional Arrest. In case of urgency a contracting State may initiate the process of extradition by requesting the provisional arrest of the person sought.

Article 15 provides, where a person sought consents to surrender to the Requesting State, the Requesting State may surrender the person as expeditiously as possible without further proceedings.

In assessing the Inter American Convention against Corruption it can be said that it serves as a legal basis for extradition arrangements between Grenada and several State Parties to the Convention. If Extradition arrangements has to be provided for with other State Parties under the Convention, to which both the **Extradition Act No. 22 of 1998 and the Extradition Treaty (Government of Grenada and the Government f the United States of America) Ac No. 2 of 2001**) do not provide for, the Government of Grenada must be consulted with and policy must be agreed on, in order for this to be implemented.

(b) If your State may refuse extradition for the above offenses solely on the basis of the nationality of the person sought, or because it deems that it has jurisdiction over the offense, please indicate, when this occurs, if it submits the case to the competent authorities for the purpose of prosecution and reports the final outcome to the requesting State in due course. If so, briefly describe the existing laws and/or other measures in that regard and attach a copy thereof.

The **Extradition Act of 1998** appear to make some provision which allow Grenada to refuse extradition on the basis of nationality – see **Section 8** which states that surrender of the person may be refused if Grenada considers that Extradition is being sought to punish the person because of his nationality.

The Extradition Treaty (Government of Grenada and the Government of the United States of America) Ac No. 2 of 2001) by Article 3 provides if all conditions in this Treaty relating to extradition are met, extradition shall not be refused based on the nationality of the person sought.

In any case extradition may be refused because Grenada decides to assume jurisdiction. **Section 3 of the 1998 Act** provides for this discretion.

(c) Please indicate if, subject to the provisions of its domestic law and its extradition treaties, your State, upon being satisfied that the circumstances so warrant and are urgent, and at the request of another State Party to the Convention, takes into custody the person whose extradition is sought and who is present in its territory, or takes other appropriate measures to ensure their presence at extradition proceedings. If so, briefly describe the existing laws and/or other measures in that regard and attach a copy thereof.

The Courts in Grenada has all the coercive powers to deal with a person if the Authority has requested that proceedings be taken for extradition of that person.

Under **section 9(5) of the Extradition Act No. 22 of 1998** on receipt of an extradition request, the Minister may issue an authority to proceed unless it appears to him that an order for the surrender of the person concerned could not lawfully be made, or could not in fact be made in accordance with the provisions of the Act.

Section 9(6) states that an authority to proceed shall specify the offence under the Laws of Grenada which it appears to the Minister would be constituted by equivalent conduct in Grenada.

Section 10 provides that a warrant for the arrest of a person may be issued:

- (i) On receipt of an authority to proceed by a Magistrate;
- (ii) Without such an authority, 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.

Section 11 provides that a person arrested in pursuance of a warrant shall be brought as soon as practicable before a Magistrate, in this act referred to as “the court of committal” as may be directed by the warrant.

- (d) Briefly state the objective results that have been obtained in enforcing the existing rules and/or other measures on extradition for the aforementioned offenses, such as extradition requests made to other States Parties for the purpose of investigating or prosecuting those offenses and procedures initiated by your State to attend to requests received by it from other States Parties with the same purpose, as well as the results thereof. The above information should refer, as far as possible, to the last five years.

There have been no requests made for the corruptions offences being addressed here.

SECTION II & SECTION III

FIRST ROUND OF REVIEW

STANDARD OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPH 1 AND 2 OF THE CONVENTION)

RECOMMENDATION 1.1

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

Establish and 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 violation of those standards.

RECOMMENDATION 1.2

Consider strengthening control systems within the public and 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 services) entrusted to them in Recommendation 1.3.

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.

RECOMMENDATION 2

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

a. Require by law or regulation those in high level political and civil servant positions (and others identified as holding high risks 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.

c. Consider making the reports public, where appropriate.

ASSISTANCE AND COOPERATION (ARTICLE XIV)

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 investigations 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.

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.

SECOND ROUND OF REVIEW

SYSTEM OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES

RECOMMENDATION 1.1

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

RECOMMENDATION 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.

ADOPTED MEASURES

Grenada becomes a party to the Inter-American Convention against Corruption in 2001 and joins the Mechanism for Follow-up on the Implementation of the Convention (MESICIC) in 2002.

Grenada is committed towards the fight against corruption in all ramifications and in this regard, ever willing to put all hand on deck to achieve the desire end.

In 2008, the present Government of Grenada, won eleven (11) of the Fifteen (15) seats in a generally free and fair elections and consequently formed the Government.

The Government is committed to good governance which was one of the cardinal issues campaigned upon before assuming governance. The principles underlying good governance, such as accountability, transparency, people's participation, equity and inclusion and rule of law are well incorporated in governance of the present administration and paramount in the running of the government.

Within the period covered by this report, the following are part of the initiative or measures that has been put in place:

1. Establishment of the office of the Integrity Commission, and the appointment of the Integrity Commissioners. This is to allow the function of the Commission to be carried out. This Commission, among other things, will obtain declaration of the assets, liabilities and income of persons in public life. Training of the Commissioners is ongoing.
2. Training of Officers: Further training of officers, both within and outside of Grenada to ensure familiarity with Mutual Legal Assistance Treaty, Tax Information Exchange Agreement and Extradition Treaty with United States, are ongoing.
3. Constitutional Reform: The Government of Grenada has recently proposed constitutional reform, part of which would endeavour to strengthen the independence of the Public Service Commission and several other substantive amendments.
4. Training of Public Officers: Training of public servants is ongoing and Public Service has continued to take steps and measures to encourage better management of the Public Service.

5. A Procurement Act has been drafted which is going to be placed before the Parliament in early part of 2011. This new draft proposes to strengthen on the existing procurement system and ensure that there is fairness and transparency in the procurement regime.
6. Notification: Grenada has sought to criminalise Transnational Bribery under **The Prevention of Corruption Act No. 15 of 2007**

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

Please provide the following information:

(a) State Party: GRENADA

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

(1) Mr.: DARSHAN RAMDHANI

Title/position: SOLICITOR GENERAL

Agency/office: MINISTRY OF LEGAL AFFAIRS

(2) Ms.: CHRISTINE BOWEN

Title/position: LEGAL DRAFTER

Agency/office: MINISTRY OF LEGAL AFFAIRS

(3) Ms. KINNA MARRAST-VICTOR

Title/position: CROWN COUNSEL

Agency/office: MINISTRY OF LEGAL AFFAIRS

(4) Mr. ADEBAYO OLOWU

Title/position: CROWN COUNSEL

Agency/Position: MINISTRY OF LEGAL AFFAIRS