

INDEPENDENT REPORT

By

Trinidad and Tobago Transparency Institute (TTTI)

On the

**Monitoring and Evaluation
Of**

**The Third Round of the Inter-American Convention
Against Corruption**

In

Trinidad and Tobago

August 13, 2009

ABBREVIATIONS

AC	Assessment Centre
ACE	Assessment Centre Exercise
CPI	Corruption Perception Index
CTB	Central Tenders Board
DPA	Director of Personnel Administration
IACaC	Inter-American Convention against Corruption
NAR	National Alliance for Reconstruction
PSC	Public Service Commission
PNM	Peoples National Movement
THA	Tobago House of Assembly
TTTI/ TI	Trinidad and Tobago Transparency Institute/ Transparency Institute
UNC	United National Congress

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CHAPTER ONE

Introduction

1.1. Consistent with the signing of the Inter- American Convention against Corruption (IACaC) in 1996, the Monitoring and Evaluative Mechanism (MESICIC) has been charged with the responsibility of reviewing the implementation process of the Convention. Within such a framework, Independent Reports, compiled by civil society organizations, are utilized in conducting this review. To this end, Trinidad and Tobago Transparency Institute (TTTI), the local chapter of Transparency International has undertaken the responsibility of compiling this Independent report to assist in the development of a Monitoring and Evaluation Report for Trinidad and Tobago on its implementation of the IACaC.

1.1a General

Trinidad and Tobago is a twin island Republic. Trinidad is located at latitude 10 1/2°N, longitude 61 1/2° W and Tobago Latitude 11°N, Longitude 60°W. Trinidad and Tobago is the most southerly of the archipelago of the chain of Caribbean Islands. Both Islands have a combined population of approximately 1.3million people.

In the 2007 Annual Report of the Central Bank, Trinidad and Tobago was recorded to have received the most growth from the Petro-chemical sector, the value being 12.2 per cent in real GDP¹. That sector remains the primary revenue earner for the island of Trinidad and for the country as a whole. The island of Tobago earns the majority of its revenue from the tourism sector.

The political landscape of Trinidad and Tobago remains stable. Since the country gained its independence in 1962 there have been several regime changes, all in accordance with democratic principles, cognizant that a dominant two party system operates. In emphasizing the stable nature of the polity, it may be instructive to note that in 2001, even in the context of a tied election where both political parties had won 18 seats each, the government changed when the President removed the incumbent United National Congress (UNC) administration and installed a government comprised of the members of the other political party, namely the Peoples National Movement (PNM). Since such a regime change was done within the context of the Constitution, there was no upheaval in the society. Be that as it may, based on the tied election results, the Parliament was unable to be convened. Consequently, another election was held in 2002 where the Peoples National Movement (PNM) secured a victory and again took the government. The party returned to the polls in 2007 and again won and so retains the government.

Party politics in Trinidad and Tobago is fueled by ethnic loyalties. It may be noted that eighty percent of Trinidad and Tobago's populace is shared near equally between two main races, namely, the Indo-Trinidadian and the Afro-Trinidadian. These two races

¹ Annual Report 2007, Central Bank of Trinidad and Tobago, 2007, p.V

account for the support of the two main political parties, UNC and the PNM. Beyond the politics however, it must be emphasized that members of both races live harmoniously together and engage in all economic and social activities without serious division.

In 2005, corruption was Trinidad and Tobago ranked at 3.8. Concern was raised by the TTTI, in release titled. “Trinidad and Tobago again seen to be more corrupt: what can we do about it?” since TTTI noted that the Island has been constantly down graded in the Corruption Perception Index (CPI), whereas in 1995 it ranked 5.3, whilst in 2004 and 2005 the rankings were 4.2 and 3.8 respectively. The 2008, Trinidad and Tobago ranked as the 4th most corrupt in the Caribbean Region at 3.6 on the CPI.

1.2 Trinidad and Tobago Transparency Institute

Transparency International is an international organization that seeks to decrease as well as educate on the impact of corruption on the delivery of public goods and services. In keeping with the goals to minimize corruption globally, Transparency International defines corruption as *the abuse of entrusted power for private gain*². This definition seeks to encompass both private and governmental organizations and therefore serves as an initial barometer to judge the extent or practice of corruption.

Transparency International has established a number of chapters throughout the world. In keeping with its global partnership in treating with corruption one such chapter was established in Trinidad and Tobago in 1998. Its mission is *to work towards a country and region that are free of corruption*³. Therefore it is well within the responsibility of the Trinidad and Tobago chapter of Transparency International to undertake as well as spearhead the Civil Society Review of the Third Round of the MESICIC on the Inter-American Convention against Corruption.

Unlike the last two rounds, where TTTI was able comment briefly on particular issues rising out of the questionnaire, it was recognized that a more comprehensive report be done to cover the maximum questions as well as recommendations from the Third Round.

1.3 Objectives

Based on the sections, questions posed in the Questionnaire as well as the constraint of time, a number of questions and recommendations were omitted. Therefore, the objectives of report are to:

- To investigate Section I Chapters 1, 4, and 6 of the Questionnaire
- To investigate the extent to which Recommendations 1 and 2 of the First Round of MESICIC were carried out.

² Taken from http://www.transparency.org/about_us

³ Taken from <http://www.transparency.org.tt/about.htm>

- To investigate the extent to which the Recommendations 1.1 and 1.2 of the Second Round of MESICIC were carried out.
- To give recommendations based on the research, thereby enhancing the monitoring and evaluation process of MESICIC.

1.4a Contents of the Report

This report contains seven chapters. The first chapter seeks to set the backdrop for the report, where the economic and political landscape of Trinidad and Tobago is summarized. It goes further to assess the level of corruption as set out in the international indicator, the Corruption Perception Index (CPI). The responsibility of TTTI as a civil society organization and the mandate to conduct the research on the independent report is also highlighted. In addition, the objective of the report is pointed out since it does not treat with all of the questions and recommendations of the Questionnaire and the previous Rounds respectively.

Chapter two treats with the issue of Denial of favorable tax treatment to person(s) who violated anti-corruption legislation. In this section, one of the major concerns highlighted is the high level of discretionary power that is given to the Minister of the Ministry from which some type of favorable tax treatment is being given. Chapter three focuses on Illicit Enrichment and to what extent measure or law have been put in place and what are the results of them in curbing such practices. Although, the concept of illicit enrichment does not currently exist in any law of Trinidad and Tobago, it was proposed in the Prevention of Corruption Bill 2001. That Bill however lapsed and hence all references to illicit enrichment is treated within the Integrity in Public Life Act 2000.

Chapter four deal specifically with the Extradition of Person for such acts of corruption as pointed out in Articles VI, VIII, IX, and XI of the Convention. This is the one area wherein there has been substantial movement Trinidad and Tobago. Herein the Government has sought to update the treaties as well as mechanisms to treat with the issue of extradition.

Chapter five seeks to give an update to the implementation of the recommendations from the First Round of MESICIC. With reference to the First Round, two recommendations are discussed; namely, *consider strengthening the implementation of law and regulatory systems related to conflicts of interest* and *considering strengthening systems for the disclosure of income, assets and liabilities*. Chapter six gives an update to the implementation of the recommendations from the Second Round of MESICIC. In the Second Round the two recommendations discussed are, *establish, maintain and strengthen the systems of government hiring of public servants, when applicable, that assure the openness, equity and efficiency of such systems*, and *strengthen systems for the procurement of goods and services by the government*. One of the more contentious issues within this chapter is that of public procurement. Within the recent past, at least two Ministers, representing the Government, have stated that the proposed Reform of the Public Sector Procurement as was published in a White Paper in 2005 was no longer

representative of the Government's position. Chapter seven concludes the report and gives general overview of the major issues in the report.

1.4b A Note on Formatting.

In an attempt to respond to specific questions and recommendations as were posed in the draft questionnaire, the questions and/or recommendations are restated within the body of this report. For the sake of clarity however, all such restated questions are placed in italics, whilst the responses are in plain text.

CHAPTER TWO

DENIAL OR ELIMINATION OF FAVOURABLE TAX TREATMENT FOR EXPENDITURES OR PAYMENTS MADE IN VIOLATION OF THE ANTI-CORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

2.1 Question a) *Are there laws in your country that expressly deny or eliminate favorable tax treatment for any individual or corporation for expenditures or payments made in violation of the anticorruption laws?*

Response:

There are no laws which expressly deny or eliminate favorable tax treatment for any individual or corporation for expenditures or payments made in violation of the anticorruption laws. However, it is note worthy to recognize that such offences as stated in Sections 3, 4 and 5 of the Prevention of Corruption Act 1987, seeks remedy only through fines and terms of imprisonment rather than denial and / or removal of favorable tax treatment:

6. (1) A person who commits an offence under section 3, 4 or 5, notwithstanding section 100(5) of the Summary Courts Act, is liable, whether upon summary conviction or upon conviction on indictment, to a fine of five hundred thousand dollars and to imprisonment for ten years and, in addition, shall be ordered to pay to such public body and in such manner as the Court directs, the amount or value of any gift, loan, fee, or reward received by him. Such person shall also be adjudged forever incapable of being elected or appointed as a member of a public body or of holding any other public office and shall forfeit any such office held by him at the time of his conviction.

(2) In the event of a second conviction for a like offence such person shall, in addition to the foregoing penalties, notwithstanding section 15 of the Representation of the People Act, be adjudged to be incapable for seven years of being registered as an elector, or voting at any election of members of any public body.

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

2.1 Question b) *If no such laws exist, are there rules and/or other measures that prevent favorable tax treatment for any individual or corporation for expenditures or payments made in violation of the anticorruption laws?*

Response:

In relation to this issue the Prevention of Corruption Act 1987, distinguishes and defines the nature of offences as follows:

3. (1) Every person who, by himself or by or in conjunction with any other person, corruptly solicits or receives, or agrees to receive, for himself or for any other person, any gift, loan, fee, reward, or advantage whatsoever, as an inducement to, or reward for, or otherwise on account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the State or a public body is concerned, is guilty of an offence.

(2) Every person who, by himself or by or in conjunction with any other person, corruptly gives, promises or offers any gift, loan, fee, reward, or advantage whatsoever, to any person, whether for the benefit of that person or of another person, as an inducement to, or reward for, or otherwise on account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the State or a public body is concerned, is guilty of an offence.

4. Any person who—

(a) being an agent, corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the commencement of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favor or disfavor to any person in relation to his principal's affairs or business;

(b) corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the commencement of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favor or disfavor to any person in relation to his principal's affairs or business; or

(c) knowingly gives to an agent, or being an agent knowingly uses, with intent to deceive his principal, any receipt, account, or other document, in respect of which the principal is interested, and which contains any statement which is false or erroneous or

defective in any material particular, and which to his knowledge is intended to mislead the principal,

is guilty of an offence.

5. (1) Any person who being an agent—

(a) corruptly uses official information for the purpose of obtaining any gift, loan, fee, reward or advantage whatsoever for himself or any other person; or

(b) corruptly communicates official information to any other person with a view of enabling any person to obtain any gift, loan, fee, reward or advantage whatsoever,

is guilty of an offence.

(2) For the purposes of this section “official information” means any fact or document which comes to a person’s knowledge or into his possession by virtue of his position as a person serving under the State or being a member of a public body or holding any other public office.

As such consistent with what is stated above, any transaction that was sought other than the natural and transparent course of the process in accessing particular services and or treatment is deemed to be corruption. Recognizing such, the measure of remedy is as pointed out in response “a” of the chapter. However, other remedies could be sought whether through criminal proceedings or investigation under the Integrity in Public Life Act. What must be noted however, that any denial and / or removal of favorable tax treatment to individuals and companies alike is set out in the various Tax laws. Such examples include:

1. As stated in the Provisional Collection of Taxes Act 1963 –

An Order under section 3 imposing or varying any tax may contain such conditions affecting the tax as are appropriate for the purpose of the imposition and collection of the tax as so imposed or varied⁴.

Subject to Section 5 above, section 6 states:

Nothing in this Act shall be construed as affecting the powers of the House of Representatives or the President under any written law to impose or vary any tax⁵.

⁴ Provisional Collection of Taxes Act 1963, Section 5

⁵ Ibid., Section 6

2. Throughout the Income Tax Act 1938 and its Amendments, reference is constantly being made to “the minister”. In such cases the definition of the “Minister” varies according to the exemption as well as area of exemption. For example, in the area of receiving a tax exemptions in Housing-

If the Minister is of opinion that the applicant qualifies for exemption under the provisions of the said section, he shall issue a certificate in the form set out as Form 3 in the Schedule⁶.

Therefore, the discretion of the Minister of the Ministry from which the exemption is being sought, makes the final decision.

3. Additionally, in the Fiscal Incentives Act 1979 and its Amendments, where most companies and businesses are awarded tax holidays and tax breaks, recognizes the sole discretionary power of President of the Republic of Trinidad and Tobago and the Minister:

The exercise of the powers vested in the President and in the Minister under this Act shall be in their absolute discretion⁷.

2.1 Question *c) If your answer to question a) or b) was in the affirmative, please specify what the respective laws or rules and/or other measures are, briefly describe them, and list and attach a copy of the related provisions and documents, referring in particular to the following aspects:*

- i. Violations of the anticorruption laws, such as payment of bribes, against which said laws or rules and/or other measures have been adopted.*

- ii. Mechanisms to enforce the respective laws or rules and/or other measures, such as criminal, financial, or other sanctions for anyone who “disguises” the payment of bribes or commits any other violation of the anticorruption laws in order to obtain favorable tax treatment; and organs or agencies responsible for prevention and/or investigation of such offences and for imposing the appropriate punishment.*

Response:

- i. The Prevention Against Corruption Act of 1987, express the instances where violations of the Act can exist. Section 3(1) of the act relates to the act of soliciting:

⁶ Housing (Income Tax Exemption) Regulations, Section 2(2)

⁷ Fiscal Incentives Act 1979, Section 31

Every person who, by himself or by or in conjunction with any other person, corruptly solicits or receives, or agrees to receive, for himself or for any other person, any gift, loan, fee, reward, or advantage whatsoever, as an inducement to, or reward for, or otherwise on account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the State or a public body is concerned, is guilty of an offence.

Whereas Section 3(2) treats with the issue of promising:

Every person who, by himself or by or in conjunction with any other person, corruptly gives, promises or offers any gift, loan, fee, reward, or advantage whatsoever, to any person, whether for the benefit of that person or of another person, as an inducement to, or reward for, or otherwise on account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the State or a public body is concerned, is guilty of an offence.

- ii. As such, in both the instances of the action as well as the promise to conduct corrupt transactions, the person(s) has committed a criminal offense. Consistent with the initiation of all criminal proceedings, the matter must be referred to the Director of Public Prosecutions, as expressed in Section 11 of the Act:

A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions.

2.1Question *d)If your answer to question a) or b) was in the affirmative, briefly mention the objective results that have been obtained in enforcing the respective laws or rules and/or other measures, such as steps taken to prevent or investigate access to favorable tax treatment for expenditures or payments made in violation of the anticorruption laws and penalties imposed in that regard, providing any relevant statistical data available in your country, if possible for the last two years.*

Response:

With respect to this question, there are no available data with reference to expressly denying or eliminating favorable tax treatment for any individual or corporation for expenditures or payments made in violation of the anticorruption laws.

2.1Question *e)If there are no laws or rules and/or other measures such as those mentioned in questions a) or b), briefly indicate how your State has*

considered the applicability within your own institutional system of the provisions contained in Article III (7) of the Convention.

Response:

The Government of Trinidad and Tobago has not included denial and / or elimination of favorable tax treatment as a sanction for breaches of the anti-corruption laws. However, indirectly, the Integrity in Public Life Act 2000 seeks to provide a safeguard through the inclusion of Ministers to file financial declarations annually, thereby tracking the possibility of receipts of bribes. In addition, the Prevention of Corruption has established as a criminal offense such actions, which are deemed to be corrupt expressed in sections 3, 4 and 5 of the Act.

2.2 Summary of Findings

- For Offences committed in breach of the Prevention of Corruption Act 1987, which is the main piece of anti-corruption legislation fines and prison terms are sanctions rather than denial / removal of favorable tax treatment.
- Any determination of favorable tax treat to be given is at the discretion of the Minister of the Ministry concerned where the favorable tax treatment is being sought.
- Recognizing the high level of discretion, which is placed, on the Minister(s), there exist greater possibilities for corruption to exist. However, it is also recognized that any monetary transfers are scrutinized by the Integrity Commission in the filing of financial declaration of the Minister(s) and therefore this leaves room for non- monetary transfers.

CHAPTER THREE

ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

3.1. Criminalization of illicit enrichment

3.1 Question *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.*

Response:

The Government of Trinidad and Tobago has not established as an offense, illicit enrichment. There was an indication that the Government had intended to put the issue of illicit enrichment within the confines of law when the Prevention of Corruption Amendment Bill of 2001 was brought to the Parliament.. In that Bill, the addition of illicit enrichment as an offense was first proposed, consistent with Article IX of the Convention. The Bill had defined illicit enrichment as,

A presumption of corruption would arise where there is evidence of a significant increase in the standard of living of a person holding public office which is not commensurate with that person's present or past known sources of income or assets. In determining whether there has been "illicit enrichment", the court would be entitled to take into account property held by a third party in trust for or otherwise on behalf of the accused⁸.

The scope of the Bill, sought to include three main groups. The first was the Cabinet, the House of Representatives, the Senate and the Tobago House of Assembly (THA). The second group included municipal and statutory authorities, state enterprises and boards. And the third group, being public and private bodies which provided public functions⁹.

Having consideration for what was defined as illicit enrichment provided under the Bill, an offense would have been committed where the person (as identified in the three main groups under the Bill):

(a) maintains a standard of living above that which is commensurate with his present or past known sources of income or assets; or (b) is in control

⁸ Prevention of Corruption Amendment Bill of 2001, Section 5A,

⁹ Ibid., Section 2B

or possession of pecuniary resources or property disproportionate to his present or past known sources of income or assets¹⁰.

Under the Bill an offense was said to be committed where the actions of the person deprives the state of revenue it is entitled to¹¹, where there is bribery of a foreign official¹², where there is bribery for giving assistance with regard to contracts¹³, for the resisting or obstructing Officers during the investigation¹⁴ and false reports to officers¹⁵.

Sanctions under the Bill, included:

On summary conviction to a fine of five hundred thousand dollars and to imprisonment for ten years and on indictment to a fine of one million, five hundred thousand dollars and to imprisonment for twenty years¹⁶.

This Bill however was never passed in the Parliament. To be sure the Parliament was prorogued before it could be passed, and an election called. As noted in Chapter 1, following this election there was a regime change and the new regime has never sought to bring this Bill back to the Parliament. In light of the fact that the Prevention of Corruption Bill 2001 was never passed, all references to illicit enrichment is treated indirectly via the Integrity in Public Life Act of 2000 and Amendment of 2000. With reference to the definition of illicit enrichment stated in the Prevention of Corruption Amendment Bill of 2001, a necessary aspect of evidence of illicit enrichment is the visible difference in the way of life in the person in public life. Consequently, the scope of the Integrity in Public Life Act 2000 covered,

1. Members of the House of Representatives
2. Ministers of Government
3. Parliamentary Secretaries
4. Members of the Tobago House of Assembly
5. Members of Municipalities
6. Members of Local Government Authorities
7. Members of the Boards of Statutory Bodies and State Enterprises as prescribed in accordance with section 138(2) of the Constitution¹⁷.

In November of 2000, an Amendment of the 2000 Act was made to include,

7. Senators.
8. Judges and Magistrates appointed by the Judicial and Legal Service Commission.

¹⁰ Ibid., Section 5A(1)(a) and (b)

¹¹ Prevention of Corruption Amendment Bill of 2001, 5A

¹² Ibid., Section 5C

¹³ Ibid., Section 5D

¹⁴ Ibid., Section 5E

¹⁵ Ibid., Section 5F

¹⁶ Ibid., Section 6

¹⁷ Integrity in Public Life Act 2000, Schedule

9. Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest.
10. Permanent Secretaries and Chief Technical Officers¹⁸.

However, in a High Court decision, No. 1735 of 2005, ruled, on October, 15, 2007, that Judges and Magistrates are not subject to the Integrity in Public Life Act, 2000¹⁹.

In order to track the assets and life styles of person in Public life as listed above, they are required to file a declaration of assets. Details of the contents of the declaration:

- (1)... shall include such particulars as are known to the declarant, of the income, assets and liabilities of himself, his spouse and his dependent children.
- (2) Notwithstanding subsection (1), where—
 - (a) the spouse was not ordinarily living with the declarant for a continuous period of six months during the period in relation to which the declaration was made; or
 - (b) a dependent child was not ordinarily living with the declarant at any time during the period in relation to which the declaration was made, the particulars required to be furnished by subsection (1) shall be limited to assets held by the spouse or child in trust for, or as agent of the declarant, except that nothing in this section shall be construed as precluding the Commission from requiring from a declarant, any additional particulars.
- (3) Where a person in public life holds money or other property in trust for another person, he shall so state in his declaration but shall not be required to disclose the terms of the trust²⁰.

Where declarations are not filed or falsely filed to the Integrity Commission, the Act sets out the sanctions:

21. (1) A person in public life who—
 - (a) fails, without reasonable cause, to furnish to the Commission a declaration, or further particulars which he is required to furnish in accordance with the provisions of the Act;
 - (b) knowingly makes a declaration that is false;
 - (c) fails, without reasonable cause to give such information or explanation as the Commission or a tribunal may require;
 - (d) fails, without reasonable cause to attend an enquiry being conducted by a tribunal appointed under section 15 or knowingly gives false information in such enquiry, is guilty of an offence, and liable on summary conviction

¹⁸ Integrity in Public Life (Amendment Act), 2000

¹⁹ <http://www.integritycommission.org.tt/whofile.html>

²⁰ Integrity in Public Life Act, 2000 Section 12 (1),(2), (3)

to a fine of two hundred and fifty thousand dollars and to imprisonment for a term of ten years²¹.

Further,

(2) Where, a person in public life is deemed to have been in possession of undisclosed income or assets and fails to account for such further income or assets, or where upon an enquiry, it is determined that such other income or assets have existed and the person in public life deliberately omitted to disclose such information in the declaration filed with the Commission, he shall be liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for a term of ten years, and where the offence involves the deliberate non-disclosure of property the Court may, in addition—

(a) where the property involved is situated in Trinidad and Tobago, declare that it be forfeited to the State;

(b) where the property involved is situated outside of Trinidad and Tobago, order that an amount equivalent to the value of the property (the value to be assessed as directed by the Court), be paid by the person in public life to the State²².

3.1 Question *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, requests for mutual assistance made to other States Parties for the purpose of investigating or prosecuting offences of this nature, and procedures initiated by your country to attend to requests received by it from those states with the same purpose, indicating the results of said procedures. The above information should refer, as far as possible, to the last five years.*

Response:

As noted above Trinidad and Tobago is yet to specifically criminalize illicit enrichment. Notwithstanding this however, the Integrity in Public Life Act 2000 has been used to treat with issues related to illicit enrichment. One major case, which have been brought under the Integrity in Public Life Act 2000, and is currently before the courts involves the former Prime Minister and current Leader of the Opposition. A brief sketch of this case is detailed hereunder:

Basdeo Panday, former Prime Minister and current Leader of Opposition, has been charged with an offense under section 27 of the Integrity in Public Life Act 1987 of filing false declarations over the period 1997-1999. In this matter, evidence given in the courts pointed to the fact that during his tenure as Prime Minister, Mr. Panday and his relatives were in receipt of substantial amounts of monies from private individuals, but that such funds were not declared in their Declarations filed under the Integrity in

²¹ Ibid., Section 21 (1)

²² Ibid., Section 21 (2)

Public Life Act. Mr. Panday in response claimed that his constitutional right to property as set out in Section 4(a) of the Constitution of Republic Trinidad and Tobago had been contravened by having to file declaration to the Integrity Commission. The claim was however thrown out on the basis that the Integrity in Public Life Act, 2000 was passed by the constitutional majority, as required to alter the provisions of the Constitution of the Republic of Trinidad and Tobago. The Court of Appeal held with this finding.²³ Accordingly the issue of the false declaration is still before the courts.

3.1 Question *c) If your State has not criminalized illicit enrichment, briefly mention if your country has taken any steps to do so.*

As noted above the term ‘illicit enrichment’ was only cited in the Prevention of Corruption Bill of 2001, but that Bill lapsed at that time and since then there has been no attempt to bring legislation which utilizes the concept.

3.2 Summary of Findings

- The sole piece of legislation which specifically defined “illicit enrichment” was a bill which went to the Parliament in 2001. That Bill however lapsed.
- There is the use of the Integrity in Public Life Act, 2000 to indirectly track illicit enrichment via the filing of declarations by individuals covered under the Act.
- There have been some positive results from the Integrity in Public Life Act in the case of filing false declarations as well as resolving the issue of the Act contravening the individual(s) to whom the Act applies, constitutional right to the enjoyment of property.

²³ In re the Constitution of Trinidad and Tobago and of the reference by his Worship the Chief Magistrate Mr. Sherman McNicholls pursuant to s.14(4) of the Constitution...Panday, Basdeo v The Attorney General of Trinidad and Tobago, 2005

http://webopac.ttlawcourts.org/LibraryJud/Judgments/coa/2005/warner/CvA_30_04DD22apr05.rtf

CHAPTER FOUR

EXTRADITION (ARTICLE XIII OF THE CONVENTION)

4.1 Question *a) Does your State consider, as an extraditable offense, the offences criminalized in accordance with the Convention, including those contained in Articles VI, VIII, IX, and XI thereof, in every existing extradition treaty that it has signed with other States Parties to said Convention prior to its ratification of the latter? If so, list the respective treaties, specify the offences to which they apply, and attach a copy thereof.*

Response:

- The Extradition (Commonwealth and Foreign Territories)(Amendment) Act, 2004 describes the conditions of extraditable offences as:

An offence in respect of which a person is accused or has been convicted in a declared Commonwealth territory, or a declared foreign territory, is an extraditable offence if—

(a) it is an offence against the law of that territory which is punishable under the law with death or imprisonment for a term of not less than twelve months;

(b) the conduct of the person would constitute an offence against the law of Trinidad and Tobago if it took place in Trinidad and Tobago, or in the case of an extraterritorial offence, if it took place in corresponding circumstances outside Trinidad and Tobago, and would be punishable under the law of Trinidad and Tobago with death or imprisonment for a term of not less than twelve months; and

(c) in the case of a declared foreign territory, extradition for that offence is provided for by a treaty between Trinidad and Tobago and that territory²⁴.

It should be noted that prior to the Amendment of 2004 of the Extradition Act, schedule one of the Act listed specific extraditable offences as listed in Appendix 2. However, this was repealed by the Amendment of 2004, which defines, rather than specifies extraditable offences. In Appendix 3 is a list of Countries which are signatories to the Act²⁵. One such offense was bribery.

²⁴ The Extradition (Commonwealth and Foreign Territories)(Amendment) Act, 2004, Section 6(1).

²⁵ See Extradition (Commonwealth and Foreign Territories) (Declared Commonwealth Territories) Order <http://rgd.legalaffairs.gov.tt/Laws/Chs.%2010-13/12.04/Extradition%20%28Commonwealth%20and%20Foreign%20Territories%29%20%28Declared%20Commonwealth%20Territories%29%20Order.pdf>

- In 1996, the Government of Trinidad and Tobago, and the Government of the United States of America, signed an Extradition Treaty. However, this Treaty was repealed and replaced by the Extradition (United States) Order. This Order defines as an extraditable offense:

(a) whether or not the laws in the Contracting States place the acts or omissions constituting the offence within the same category of offences or describe the offence by the same terminology; or

(b) whether or not the offence is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States Federal Court; or

(c) whether or not under the laws in the Contracting Parties the constituent elements of the offence differ, it being understood the totality of the acts or omissions as presented by the Requesting State shall be taken into account²⁶.

Therefore, in the definition of what offences are extraditable, is dependent on the existence of legislation is in place in the countries involved in the extradition.

4.1 Question *b) Has your country included the aforesaid offences as extraditable offences in all treaties entered into with other States Parties to the Convention since its ratification? If so, list the respective treaties, specify the offences to which they apply, and attach a copy thereof.*

Response:

As stated above in 'a', what constitutes an extraditable offense is based on offences which exist in either or both parties to the extradition treaty (See the Extradition [Commonwealth and Foreign Territories] [Amendment] Act, 2004 and Extradition [United States of American] Order). In conjunction section 6(2) of the Extradition (Commonwealth and Foreign Territories)(Amendment) Act, 2004 states,

(2) For the purpose of this section, in determining whether an offence against the law of a declared Commonwealth territory, or a declared foreign territory, is an offence against the law of Trinidad and Tobago, any special intent, state of mind or special circumstances of aggravation which may be necessary to constitute

²⁶ Extradition (United States of America) Order [http://rgd.legalaffairs.gov.tt/Laws/Chs.%2010-13/12.04/Extradition%20\(United%20States%20of%20America\)%20Order.pdf](http://rgd.legalaffairs.gov.tt/Laws/Chs.%2010-13/12.04/Extradition%20(United%20States%20of%20America)%20Order.pdf)

that offence under the law of Trinidad and Tobago shall be disregarded.

(3) For greater certainty, it is not relevant whether the conduct referred to in subsection (1) is named, defined or characterized by the declared Commonwealth territory, or the declared foreign territory, in the same way as it is in Trinidad and Tobago²⁷.

4.1 Question c) *If your State makes extradition conditional on the existence of a treaty, please indicate if it considers the Convention as the legal basis for extradition with respect to the aforementioned offences when it receives a request for extradition from another State Party with which it does not have an extradition treaty. If so, briefly describe the existing laws and/or other measures in that regard, specify the offences to which they apply, and attach a copy thereof.*

Response:

Trinidad and Tobago makes extradition conditional as expressed in section 5(2) of the Extradition (Commonwealth and Foreign Territories) (Amendment) Act, 2004:

(2) For greater certainty, a person may be returned under this Act whether or not the conduct on which the declared Commonwealth or foreign territory bases its request occurred in territory over which it has jurisdiction²⁸.

However, the State takes into consideration the Convention as expressed in the Extradition (Commonwealth and Foreign Territories) (Amendment) Act, 2004,

(4) An offence constituted by conduct, whether in Trinidad and Tobago or not, that is of a kind over which Contracting States to an international Convention to which Trinidad and Tobago is a party are required by that Convention to establish jurisdiction, and which jurisdiction Trinidad and Tobago has so established, is an extraditable offence for the purpose of this Act²⁹.

4.1 Question d) *If your State does not make extradition conditional on the existence of a treaty, please indicate if it recognizes the aforesaid offences as extraditable offences in dealings with other States Parties to the Convention. If so, briefly describe the existing laws and/or other measures in that regard, specify the offences to which they apply, and attach a copy thereof.*

Response:

²⁷ The Extradition (Commonwealth and Foreign Territories)(Amendment) Act, 2004, Section 6(2)(3)

²⁸ Ibid., Section 5(2)

²⁹ Ibid., Section 6(4)

The response to this question and consideration to dealings with other State Parties to the Convention is as stated in “c” above.

4.1 Question e) *If your State may refuse extradition for the above offences 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, specify the offences to which they apply, and attach a copy thereof.*

Response:

There are no known cases where Trinidad and Tobago has refused extradition based on the offences highlighted in the theme of this chapter.

4.1 Question f) *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, specify the offences to which they apply, and attach a copy thereof.*

Response:

Article 9 of the Extradition (United States of American) Order of 1996 provides for such an instance as describe above under Provisional Arrest:

1. In case of urgency, a Contracting State may request the provisional arrest of the person sought pending presentation of the request for extradition.

A request for provisional arrest may be transmitted through the diplomatic channel or directly between Department of Justice in the United States and the Attorney General in Trinidad and Tobago. The facilities of the International Criminal Police Organization (INTERPOL) may be used to transmit such a request.

2. The application for provisional arrest shall contain—
 (a) a description of the person sought;
 (b) the location of the person sought, if known;

- (c) a brief statement of the facts of the case, including, if possible, the time and location of the offence;
- (d) a description of the law violation;
- (e) a statement of the existence of a warrant of arrest or a finding of guilt or judgment of conviction against the person sought; and
- (f) a statement that a request for extradition for the person sought will follow.

As such the state in a case of urgency may take the person whose extradition is being sought under arrest once Article 9(2) has been satisfied. However, the length of time to which such an individual can be arrested for is as stated in section 4 of Article 9:

4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 7.

Where such an instance arrives where the time under which the individual whose extradition is sought expires. Article 9 (5) provides the basis for re-arrest:

5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent re-arrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

4.1 Question *g) Briefly state the objective results that have been obtained in enforcing the existing rules, measures, or treaties on extradition for the aforementioned offences, such as extradition requests made to other States Parties for the purpose of investigating or prosecuting those offences 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.*

Response:

The main case of extradition where such offences outlined in Articles VI, VIII, IX and XI is encapsulated, in a number of cases surrounding the Construction of the Piarco International Airport. Such cases included the conspiring of and by locals as well as citizens of the United States to defraud the Government of Trinidad and Tobago of some TT\$1.6 billion dollars³⁰. The major parties involved in the cases were local Ishwar Galbaransingh and Steve Ferguson who were together charged with offences of

³⁰ Darren Bahaw (Miami) '2 Americans to Blow Whistle on Piarco Airport Scheme' Trinidad and Tobago Express, 6th November, 2006. http://www.trinidadexpress.com/index.pl/article_archive?id=161046891

corruption arising out of the construction of the Piarco International Airport. While, Eduardo Hillman-Waller a citizen of the United States along with others also engaged in the Transnational Bribery of and influence over the construction of the airport project were also charged. In 2005, both Galbaransingh and Ferguson were indicted by a U.S Court³¹ after being charged locally on different counts of fraud and corruption in 2002 and 2003 respectively.

Both Galbaransingh and Ferguson have so far delayed their extradition firstly by appealing the decision made by Chief Magistrate Sherman McNicolls on the warrant of their arrest as well as challenged the decision of the Attorney General authority to proceed (ATP) in the matter of Extradition. With regard to the claims made by the two appellants, Justice of Appeal Warner refused their appeal in 2007³². Further, judicial review was sought on the basis of the decision by Chief Magistrate Sherman McNicolls committing them to custody to be extradited to the United States³³. This matter is thus still before the courts.

One result which stood out in the lead of events to the two local persons who were extradited was the constant cooperation between the Attorney General of Trinidad and Tobago and the United States District Court for the Southern District of Florida which was provided for in the Extradition (United States of America) Treaty and Order 1996 and the Mutual Assistance in Criminal Matters Act, 1997.

4.2 Summary of Findings

- The Government of Trinidad and Tobago has implemented and enacted up-to-date legislative measures for extradition of persons for offences highlighted in Articles VI, VIII, IX and XI of the Convention.
- There is a strong cooperation between the Federal Government of the United States of America and the Government of the Republic of Trinidad and Tobago in cases involving extradition.

³¹ Ibid.

³² Ferguson, Steve; Galbaransingh, Ishwar v Jeremie, John Attorney General of Trinidad and Tobago; Mc Nicolls, Sherman His Worship Chief Magistrate, 2008
http://webopac.ttlawcourts.org/LibraryJud/Judgments/coa/2008/warner/CA_6013Dec07.pdf

³³ In re the Judicial Review Act No. 60 of 2000. In re an application by Ferguson, Steve; Galbaransingh, Ishwar for leave to apply for judicial review...Ferguson, Steve; Galbaransingh, Ishwar [applicants/intended claimants] v Mc Nicolls, Sherman His Worship Chief Magistrate [intended respondent/defendant], 2008
http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/delzin/2008/CV_08_03639DD07Oct08.pdf

CHAPTER FIVE

RECOMMENDATIONS FROM THE FIRST ROUND

5.1 First Recommendation of the First Round

Consider strengthening the implementation of law and regulatory systems related to conflicts of interest

5.1 Recommendation A) *Please mention the measure or measures suggested by the Committee, or the alternative measure or measures that have been adopted to implement the above recommendation; and briefly describe the concrete steps that have been taken in connection with the measures adopted. As appropriate, please indicate the Internet web site where information may be obtained in greater detail on the measures adopted and steps taken to implement the foregoing recommendation, precisely identifying the relevant information at that site:*

Recommended Measures:

a. *Strengthen the measures related to conflicts of interest with respect to members of the judiciary, as well as those who perform judicial functions, subject to its constitution and the fundamental principles of its legal system, taking into account the following:*

i. Consider the usefulness of defining in a code of conduct for judicial officers what actions or omissions would constitute 'misbehavior'.

ii. Review relevant provisions with an aim towards removing any conflicts that cause the provisions of the Integrity in Public Life Act not to be applied to judges.

iii. Create specific codes of conduct for judicial officers that would promote measures to create, maintain, and strengthen standards of conduct for the correct, honorable, and proper fulfillment of public functions, in addition to mechanisms to enforce these standards of conduct.

d. *Strengthen the provisions within the Integrity in Public Life Act taking into account the following:*

iii. Ensure that the competent oversight agencies have a system to see that public servants comply with the provisions of the Code of Conduct in the Integrity in Public Life Act, including

having public servants sign a written agreement to abide by the Code of Conduct in the Integrity in Public Life Act.

g. Encourage the updating of a more comprehensive version of the proposed Code of Ethics for Parliamentarians including Ministers than the one previously in force, incorporating into the new version provisions similar to those contained in the Code of Conduct in the Integrity in Public Life Act, and enforcement provisions.

h. Establish as a mandatory Committee of the Parliament the Standing Ethics Committee of the Houses of Parliament, and ensure that the Code of Ethics be contained in the Rules of the House of Parliament and the Senate.

Response:

a. Based on this recommendation there has not been the establishment of any Judicial Code of Ethics. More over, since the 2005 Decision to exclude Judges and Magistrates from filing under the Integrity in Public Life Act 2000, as well as adherence to the Code of Conduct applied in Part IV of Act, there exists a high level of autonomy and lack of adequate supervision for Judges and Magistrates. The only provision which exists to investigate and curtail actions of Judges is Section 137 of the Constitution which defines the instances where a Judge can be removed. It is in this regard that there is a need for such Codes of Ethics to be established for Judges.

d. Giving due consideration to this recommendation, it should be noted that the term public servants is vague. Under the Integrity in Public Life Act, only senior public servants are subject to its provisions. In relation to the signing of an agreement to comply, Section 31(1) expresses the where a breach to adhere to the Code exists:

The Commission shall report any breach of this Part to the appropriate House of Parliament, Service Commission, Board, or other Authority and to the Director of Public Prosecutions setting out such details and particulars as it thinks fit.

Further, Section 31(2) states:

The appropriate House of Parliament, Service Commission, Board or other Authority may take such disciplinary action in relation to a report made pursuant to subsection (1) as it thinks appropriate in any particular case.

Recognizing such mechanisms exists to ensure person(s) who fall under the Act, abide with the Code of Conduct expressed in Part IV of the Act, there is no system which (1)

seeks to cover all public servants and (2) facilitate for public servants to sign an agreement to abide with the Code of Conduct.

g. With regards to the recommended measure g. above, there has been change no in the Code of Ethics for Parliamentarians. The present code of Ethics is dated 1987 with Amendments made in 1988. In an interview with the Procedural Clerk of Parliament (see appendix 1), it was confirmed that not only since 1988 no modifications to the Code has been made but there has been no discussions for a more comprehensive and updated version. As such, question 4 was not in the affirmative. In relation to the sanctions under the current code of ethics, the maximum punishment is but a suspension from the Parliament.

h. Based on the interview with the Procedural Clerk, and the Code of Ethics for Parliamentarians 1987 Amended in 1988, there is the provision for the establishment of A Standing Ethics Committee:

13(a) There should be established in each house of Parliament a Standing Ethic Committee empowered to:

(1) report to the House from time to time on any changes in the Code of Ethics that it deemed desirable; and

(2) receive, investigate and report upon any complaints of departures by Members from the Code of Ethics, and in particular, upon allegations involving conflicts of interest; and

(b) determine the procedures for the operation of the Committee and the extent of its powers³⁴.

However, the Committee has never been called to Order. What is most interesting about the Code of Ethics and its Amendments is the lack of a definition for ethics and secondly, the non-obligatory language of the contained in the Code.

5.1 Recommendation *B) Briefly mention any difficulties observed in the process of implementing the above recommendation. As appropriate, please also mention the Internet web site where information may be obtained in greater detail in that regard, precisely identifying the relevant information at that site:*

Response:

In general terms, all of the above recommendations have not been implemented. As such, there was no difficulty in the implementation process.

³⁴ Code of Ethics for Parliamentarians Including Ministers, Government of the Republic of Trinidad and Tobago, April, 1987, Section 13.

5.1 Recommendation *C) Where appropriate, please mention which domestic agencies have participated in implementing the recommendations and identify concrete technical assistance and other needs that you may have in connection with the implementation of the above recommendation. Furthermore, as appropriate, also mention the Internet web site that describes in greater detail the aspects mentioned herein, precisely identifying the relevant information at that site:*

Response:

Consistent with the response for ‘b’ above domestic agencies for the various measures recommended have not taken any steps to implementing the recommendations. It is noteworthy at this stage, that at the start of the interviews with all of the officials, there was a lack of knowledge both of the Rounds of MESICIC as well as the recommendations of the previous Rounds.

5.2 Summary of Findings

- There has been no change or modification to the Code of Ethics for Parliamentarians.
- The Standing Ethics Committee has never been called to Order.
- None of the recommended measures in this section has been implemented

5.3 Second Recommendation of the First Round

Consider strengthening systems for the disclosure of income, assets and liabilities.

5.3 Recommendation *A) Please mention the measure or measures suggested by the Committee, or the alternative measure or measures, that have been adopted to implement the above recommendation; and briefly describe the concrete steps that have been taken in connection with the measures adopted. As appropriate, please indicate the Internet web site where information may be obtained in greater detail on the measures adopted*

and steps taken to implement the foregoing recommendation, precisely identifying the relevant information at that site:

Recommended Measures:

a. Amend the Integrity in Public Life Act at 41(2) so that approval of its form of declaration and regulations will be subject only to a negative resolution of Parliament or to no resolution at all.

c. Review the possibility of making public the proceedings of a tribunal under 16(2) of the Integrity in Public Life Act.

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

Response:

- a.** Section 41(2) of the Integrity in Public Life Act 2000:

Regulations made under subsection (1) shall be subject to the affirmative resolution of Parliament

Has not been amended and no consideration for its amendment has been given in the Integrity in Public Life Amendment Bill 2009.

- c.** Section 16(2) of the Integrity in Public Life Act 2000:

In conducting an enquiry under section 15, the tribunal shall have and exercise the powers of a Commission of Enquiry under the Commissions of Enquiry Act, save that its proceedings shall be held in private.

Has not been amended and no consideration for its amendment has been given in the Integrity in Public Life Amendment Bill 2009.

- i.** There has been the establishment of public register which is housed at the Integrity Commission.

5.3 Recommendation B) *Briefly mention any difficulties observed in the process of implementing the above recommendation. As appropriate, please also mention the Internet web site where information may be obtained in greater detail in that regard, precisely identifying the relevant information at that site:*

Response:

One of the major difficulties in the implementation of the Integrity in Public Life Act and its Amendment is the establishment of the Commission. On February 4th, as a consequence of a call made by former government minister Dr Keith Rowley, for the Commission to resign as it pertained to a case against him and the Commission which he won, the four members of the Commission resigned³⁵. From this point there appears to be a crisis to find adequate persons to serve as Commissions. One of the apparent issues in the search Commissioners is that individuals appear not to want to be subjected to an intense background check, especially nearing the end of their careers³⁶.

5.3 Recommendation *C) Where appropriate, please mention which domestic agencies have participated in implementing the recommendations and identify concrete technical assistance and other needs that you may have in connection with the implementation of the above recommendation. Furthermore, as appropriate, also mention the Internet web site that describes in greater detail the aspects mentioned herein, precisely identifying the relevant information at that site:*

Response:

Due to the Nature of the Commission and the significant autonomy of it, once there are no Commissioners, the function of the Commission is suspended.

5.4 Summary of Findings

- There has been no change from the affirmative resolution for approval of the form of declaration and regulations of the Integrity in Public Life Act 2000, to that of a negative or no resolution of Parliament as the proposed measure.
- Proceedings of the Tribunal of the Integrity Commission remain private contrary to the suggestion to make them public.
- A challenge currently facing the Integrity Commission is locating persons who are willing to serve on the Commission subject to public scrutiny.

³⁵ See “Integrity Commission members resign” in Trinidad and Tobago Guardian, February 5th, 2009 <http://guardian.co.tt/news/general/2009/02/06/integrity-commission-members-resign>

³⁶ Based on a discussion with Mr. Norton Jack on MESICIC.

CHAPTER SIX

RECOMMENDATIONS FROM THE SECOND ROUND

6.1 First Recommendation of the Second Round:

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

6.1 Recommendation *A) Please mention the measure or measures suggested by the Committee, or the alternative measure or measures, that have been adopted to implement the above recommendation; and briefly describe the concrete steps that have been taken in connection with the measures adopted. As appropriate, please indicate the Internet web site where information may be obtained in greater detail on the measures adopted and steps taken to implement the foregoing recommendation, precisely identifying the relevant information at that site:*

Recommended Measures:

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

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

(f) Increase training programs for those responsible for managing public service selection and staffing processes.

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

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

Response:

- a. Currently, a Civil Service wide exercise is being undertaken with regards to the requirement of competitive examinations for permanent appointment in the Civil Service. Accordingly, an Assessment Centre has been established since 2005 and implementation of this initiative is being undertaken in a phased basis.
- b. Based on the interview undertaken with the Director of Personnel Administration, Regulation 15 should not be read in abstraction but relation to that of Regulations 13 and 14 which gives the Department of Personnel Administration discretionary powers. As such no changes have been made to the existing legislation and /or administrative procedures.
- f. Also based on the interview with the DPA, there has been consistency in the training programmes offered to those managing public service selections and staffing processes. Such programs are based on a Needs Gap Analysis and usually account for a significant portion of the financial vote. It must be noted that the Government has been forth coming with finances for these programs.
- g. There has been an increase in induction training programs for new entrants into the public service. The aim of such training is to assist the entrants to understand how they fit within the organization as well as the public service.
- h. Currently, the Public Service Commission (PSC) is awaiting approval for a Document Management System. The aim of this would be to track, what lead to the Judicial Review, why the PSC lost the case, how much money the PSC spends in Judicial Review. It is noteworthy, that the Director of Personnel Administration in an aim to develop further capacity in the area of Judicial Review has embarked upon a PhD program where an assessment would be carried out on how Judicial Review impacts on Human Resource Systems.

6.1 Recommendation B) Briefly mention any difficulties observed in the process of implementing the above recommendation. As appropriate, please also mention the Internet web site where information may be obtained in greater detail in that regard, precisely identifying the relevant information at that site:

Response:

One of the major challenges which the Civil Service has faced is in the implementation of the Assessment Centre (AC) and the promotion of civil servants based on the results from the Assessment Centre. Such a challenge has been highlighted in the 1st Regional Conference of Public Service Commission:

- Competency-based tool (Assessment Centre) has been introduced in Trinidad and Tobago. The use of the tool has been challenged in the courts. Court ruled that regulations did not provide for the AC. Criteria for promotion should have been used instead of AC. Also it was ruled that the Commission was forced by the Executive to implement this method.
- Interviews/AC can only provide evidence of aptitude but not attributes of an individual.
- Results of AC are sometimes not consistent with performance appraisal ratings³⁷.

Therefore, there have been cases of judicial review where the results of the Assessment Centre have been challenged. The most recent of these cases is the application of eight (8) civil servants for Judicial Review concerning their promotion to Deputy Permanent Secretary. The issue of contention was whether the decision to use the Assessment Centre Exercise (ACE) (which used predetermined criteria to determine the promotion of the aggrieved) was in fact right. The court found that the use of the ACE, in determining the promotion of the civil servants was consistent with best practices and as a result the decision by the PSC was held. However, caution was given to the PSC concerning the transparency of the process³⁸.

6.1 Recommendation *C) Where appropriate, please mention which domestic agencies have participated in implementing the recommendations and identify concrete technical assistance and other needs that you may have in connection with the implementation of the above recommendation. Furthermore, as appropriate, also mention the Internet web site that describes in greater detail the aspects mentioned herein, precisely identifying the relevant information at that site:*

Response:

³⁷ Report on the 1st Regional Conference of Public Service Commission, Caribbean Centre for Development Administration, St. Vincent and the Grenadines, 10-12 June, 2008, p. 15
<http://www.caricad.net/UserFiles/File/Regional%20PSC%20Conference%20Report.pdf>

³⁸ 'The Appeal Court Rules for PSC...Bad day for 8 public servants,' Trinidad and Tobago Guardian Newspapers, 11th July, 2009. <http://guardian.co.tt/news/general/2009/07/11/bad-day-8-public-servants>

Consistent with the response from the respondents in the interviews conducted, initiative was taken too by the Public Service Commission in the implementation of the measures suggested. Further, it must be recognized that these measures were taken in abstraction to any knowledge of the MESICIC Second Round Recommendations. As such the initiatives taken were a direct result of the assessed needs and requirements seen by the PSC to increase its efficiency and effectiveness.

6.2 Summary of Findings

- The implementation of a civil service wide examination is being executed in a phased basis since 2005 where the Assessment Centre was established.
- Steps are being taken to document the number and cost of judicial review cases. As such approval is being sought for the establishment of a document management system.
- A significant challenge is being posed to the AC due to its determination of the promotion of personnel with the civil service.

6.3 Second Recommendation of the Second Round

Strengthen systems for the procurement of goods and services by the government.

6.3 Recommendation *A) Please mention the measure or measures suggested by the Committee, or the alternative measure or measures that have been adopted to implement the above recommendation; and briefly describe the concrete steps that have been taken in connection with the measures adopted. As appropriate, please indicate the Internet web site where information may be obtained in greater detail on the measures adopted and steps taken to implement the foregoing recommendation, precisely identifying the relevant information at that site:*

Response

With regards to strengthening systems of Government Procurement, in 2003 a Committee was set up for the Reviewing of Government Procurement. In 2005 a White Paper on the Reform of the Public Sector Regime was produced. At the time of its adoption, the White Paper was seen to be consistent with the Government Policy on Procurement. TTTI at that point submitted an update on the procurement system, which was in response to the Second Round of MESICIC. The TTTI praised Government's efforts to move from the archaic practices based on the Central Tenders Board Ordinance (Act No. 22 – 1961) to that proposed in the White Paper. The core principles on which the Reform was built on was value for money, transparency of the procurement process, and Accountability of participants in the procurement process³⁹. TTTI also highlighted the tardiness in the Government's implementation of the Reforms proposed.

To date, there has been no adoption of the Reform Proposal. More critically the Government seems to have backtracked on the White Paper. Recently, in evidence at an ongoing Commission of Inquiry into the Construction Sector, Minister of Works, Colm Imbert has pointed out that the Reform proposed in 2005, is no longer consistent with current Government's policy⁴⁰. The Minister justified the reasons for Government recant of their earlier position⁴¹:

- a. since the publication of the White Paper the Government has benefited from feedback from industry practitioners and stake holders and this feedback, together with deeper research and reflection into the several complex issues involved in Public Procurement, has led us to the conclusion that the Regime proposed by the White Paper would be simply unworkable
- b. The Government at the time of the publication of the White Paper focused principally on the laudable objectives which the White Paper's regime was intended to serve, namely, accountability, transparency and fairness of the process, and did so without a full examination of the administrative bureaucratic and quasi-judicial machinery which was being proposed,
- c. The Government is as committed now as it has always been to these fundamental principles, but is now satisfied that the means proposed by the White Paper for securing them are not only

³⁹ Mechanism for Follow-Up on the Implementation of the Inter-American Convention Against Corruption (MESICIC), Second Round, Trinidad and Tobago Transparency Institute, 8 November 2006, p.3

⁴⁰ Statement of Colm Imbert, Minister of Works and Transport on the White Paper on the Reform of Public Sector Procurement Regime, Submitted Pursuant to the Procedural Orders and Procedural Directions of the Commission of Enquiry into the Construction Sector, Mar. 17, 2009
<http://www.constructionenquiry.gov.tt/getattachment/99563c32-6edf-441d-82fd-b1a3ee71ceca/Colm-Imbert-statement-03-23.aspx>

⁴¹ Ibid., pp. 3,4 and 5

unworkable but in addition, would be incompatible with and unnecessarily obstructive of the efficient and economic execution of any Government legitimate developmental programmes.

- d. The regime proposed by the White Paper is a theoretical construct, comprised of elements of various systems, with modifications. There is therefore little if any empirical evidence available to prove the practicality and efficiency of such a model.
- e. We are satisfied by our research and mature reflection that the objectives of transparency etc. can be effectively secured, if indeed they are not already adequately secured by other means, such as administrative or legislative standardization of procurement regimes for all State Enterprises and other Government construction projects. Specifically we consider on review that the creation of an overarching “Regulator “ with coercive judicial or quasi-judicial authority would not only be obstructive but conceivably would even be of doubtful judicial competence or integrity and in any event, in essence be would be duplicating a jurisdiction already securely vested in the Supreme Court of Judicature.
- f. The Government recognizes and is of the view that the Commission should similarly recognize, that the construction industry essentially operated within a commercial environment and for the Government to function effectively in such an environment it must be permitted the flexibility to make commercial decisions and to enjoy the right to do so in a competitive manner if it is to operate efficiently and dispose of public funds for the best value. The Government feels strongly any that system designed to guide or regulate public procurement process must provide for the State to operate efficiently without unnecessary bureaucratic restraints⁴².

6.3 Recommendations A) Other Recommended Measures:

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

(b) Implement provisions outlining clear and uniformed procedures for the selection of contractors when either

⁴² Ibid., pp. 3,4 and 5

public tendering or selective tendering procedures are utilized.

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

(i) Implement a mechanism by legislative or administrative means to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons.

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

Response:

- a. Stemming from the White Paper, there was the development and finalization for legislation to harmonize public procurement. However there has been there lack of follow through by the Government.
- b. Section 23 A and B of the Central Tenders Board Ordinance (Act No. 22 – 1961) provides for the CTB to act on behalf of Government. However, State Enterprises, Companies and Regional Health Authorities are responsible for their own tendering process. As such there is not a uniform process for all public procurement which falls under the CTB⁴³.
- c. To date there is not an electronic procurement system. However, a number of steps have been taken by the CTB which seeks to make the processes and awards of contracts electronically available. Tender notices are put up on the Ministry of Finance portal which link to the CTB. In addition, there is information on the awards of contracts and registration forms for contracts⁴⁴. In addition, CTB has been conducting meetings with the Ministry of Public Administration for e-procurement. Training has already started in the use of Micro-soft Outlook and all members of CTB had been outfitted with computers at their desks.
- d. There is no legislative mechanism which gives the CTB directly to black list/exclude or sanction contractors. However, the CTB has a system called the Auctioneer of Past Performance, where ratings are given to the contractors based

⁴³ See Information Booklet, Central Tender Board, Ministry of Finance, The Republic of Trinidad and Tobago, April, 2008

<http://www.finance.gov.tt/documents/publications/pub5E781E.pdf>

⁴⁴ <http://www.finance.gov.tt/services.php?mid=32>

- on their delivery of goods and services. As such, since the CTB has the discretion where awards of contracts are concerned, it has the administrative capacity not to choose contract which were seen to be substandard. In addition, in the annually supplied contracts, the CTB has employed a feedback mechanism post-2007. This mechanism also allows the various Ministries to give feedback as to the performance of contractors and their goods and services.
- e. No statistical reports are published from the CTB. However, details as it relates to the award of contract as published in the National Gazette and the Ministry of Finance Portal for the CTB. Such details include the name of the contractor, a description of the contract and the price. The limit placed on the CTB in terms of publishing contract statistics is as a result of not having a Statistical Officer as well as no computerized database⁴⁵.

6.3 Recommendations B) *Briefly mention any difficulties observed in the process of implementing the above recommendation. As appropriate, please also mention the Internet web site where information may be obtained in greater detail in that regard, precisely identifying the relevant information at that site:*

Response:

The CTB, is committed to accountability, transparency and value for money as stated by the Director of Contracts of the CTB. However, as recognized in the decision of the Government of Trinidad and Tobago to pursue a different route to that initially proposed in the White paper, the direction in which the was initially proposed by the Government has now been scrapped. As such the issue of Government Procurement in Trinidad and Tobago currently, remains under the system prior to the discussion of the White Paper. (See 1⁴⁶ and 2⁴⁷)

6.3 Recommendation C) *Where appropriate, please mention which domestic agencies have participated in implementing the recommendations and identify concrete technical assistance and other needs that you may have in connection with the implementation of the above recommendation. Furthermore, as appropriate, also mention the Internet web site that describes in greater detail the aspects*

⁴⁵ The Responses to 'a' to 'e' is based on the questions asked in the Interview Questions posed to the CTB in Appendix 1.

⁴⁶ Statement of Colm Imbert, Minister of Works and Transport on the White Paper on the Reform of Public Sector Procurement Regime, Submitted Pursuant to the Procedural Orders and Procedural Directions of the Commission of Enquiry into the Construction Sector, Mar. 17, 2009
<http://www.constructionenquiry.gov.tt/getattachment/99563c32-6edf-441d-82fd-b1a3ee71ceca/Colm-Imbert-statement-03-23.aspx>

⁴⁷ <http://www.constructionenquiry.gov.tt/getattachment/58d0b9ca-7cd0-4d71-a6ff-e7d18da4ed36/COE-Construction-Sector-Second-Session-20090324-Me.aspx>

mentioned herein, precisely identifying the relevant information at that site:

Response:

It must be noted that the initiatives described in relation to the measures recommended in 'a' has been a result of the CTB staff and not based on the recommendations of MESICIC generated into Government policy. As stated in the first Round response to this section, the CTB was not aware of MESICIC, the Rounds and its recommendations.

6.4 Summary of Findings

- The current stance of the Government of Trinidad and Tobago on public procurement is inconsistent with the White Paper on the Reform of the Public Sector Procurement Regime, 2005.
- The CTB has sought to make public via a booklet the current practices of the CTB along with placing contracts which have been awarded on the Ministry of Finance Website in an aim to be more transparent in its processes.
- All of the changes which the CTB has made over the years has been as result of its leadership and not based on the recommendation of MESICIC. Rather, the respondents from CTB were not knowledgeable of the MESICIC or its recommendations.

CHAPTER SEVEN

CONCLUSION

7.1 Trinidad and Tobago's performance in the implementation of the Inter-American Convention against Corruption may be rated 'fair'. There are particular areas which need less attention than others. One such area is that on Extradition. As compared to the other chapters, the most headway appears to have been made there. However, in the areas of denial of tax treatment based on contravention to the Anti-corruption laws, more work needs to be done. In chapter three, however, alternative to the concept of illicit enrichment had to be used since the Prevention of Corruption Amendment Bill 2001 lapsed and since that time has not been taken into consideration. In addition, there appears to be the use of the Integrity in Public Life Act 2000 to treat with matter which can only be dealt with through the Prevention of Corruption Amendment Bill 2001.

Of the recommendations from the First Round, there is almost total disregard by the Government of Trinidad and Tobago. Once more, the use of the Integrity in Public Life Act 2000 is used as an umbrella covering Codes of Conduct. A cause for concern is the lack of a special Code of Conduct for Judges and Magistrates, particularly in view of their exclusion from the Integrity in Public Life Act 2000. In the Second Round, the major issue is the discard of the White Paper on the Reform Public Sector Procurement Regime. Given this new position by the Government, it appears that the Government does not seek to implement serious reform of public procurement practices.

7.2 Summary of Findings

- 7.2.1** All of the respondents appear to have no knowledge of the Inter-American Convention Against Corruption as well as the Recommendations given in the Subsequent Rounds of MESICIC.
- 7.2.2** There appears to be an over-shadowing of the Prevention against Corruption (Amendment) Bill, 2001 by the current Integrity in Public Life Act 2000. This over-shadowing by the Integrity in Public Life Act appears to have been responsible for the lapse in the Prevention against Corruption Amendment Bill of 2001, notwithstanding the suspension of Parliament during the 2001-2002 periods as a result of the 18/18 tie between the two political parties.
- 7.2.3** There is a misconception throughout the various arms of government in Trinidad and Tobago that the Integrity in Public Life Act is all-inclusive Act and therefore there is no need for either establishing or modifying special Ethical Codes of Conduct and by extension, anti-corruption legislation like the Prevention against Corruption Amendment Bill 2001.
- 7.2.4** There appears to be a genuine interest on the part of government agencies in the thorough implementation of Inter-American Convention.

- 7.2.5** For offences committed in breach of the Prevention of Corruption Act 1987, which is the main piece of anti-corruption legislation, fines and prison terms are sanctions rather than denial/removal of favorable tax treatment.
- 7.2.6** Any determination of favorable tax treatment to be given is at the discretion of the Minister of the Ministry where the favorable tax treatment is being sought.
- 7.2.7** The high level of discretion placed on the Minister(s) opens up possibilities for corruption. However, it is also recognized that any monetary transfers are scrutinized by the Integrity Commission in the filing of financial declaration of the Minister(s). But this does cover non-monetary transfers
- 7.2.8** The sole piece of legislation which specifically defined “illicit enrichment” was a bill which went to the Parliament in 2001. That Bill, however, lapsed.
- 7.2.9** The Integrity in Public Life Act, 2000 can be used to indirectly track illicit enrichment via the filing of declarations by individuals covered under the Act.
- 7.2.10** The Government of Trinidad and Tobago has implemented and enacted up-to-date legislative measures for extradition of persons for offences highlighted in Articles VI, VIII, IX and XI of the Convention.
- 7.2.12** There is strong cooperation between the Federal Government of the United States of America and the Government of the Republic of Trinidad and Tobago in cases involving extradition
- 7.2.13** There has been no change or modification to the Code of Ethics for Parliamentarians.
- 7.2.14** The Standing Ethics Committee has never been called to Order.
- 7.2.15** None of the recommended measures related strengthening the implementation of law and regulatory systems related to conflicts of interest has been implemented
- 7.2.16** There has been no change to the requirement of an affirmative resolution of parliament for approval of the form of declaration and regulations of the Integrity in Public Life Act 2000.
- 7.2.17** Proceedings of the Tribunal of the Integrity Commission remain private contrary to the suggestion to make them public.

- 7.2.18** A challenge currently facing the President of the Republic is locating suitable persons who are willing to serve on the Commission.
- 7.2.19** The implementation of a civil service wide examination has been taking place on a phased basis since 2005 when the Assessment Centre was established.
- 7.2.20** Steps are being taken to document the number and cost of judicial review cases. Approval is being sought for the establishment of a document management system.
- 7.2.21** The Assessment Centre's recommendations on the promotion of personnel have been facing significant legal challenges.
- 7.2.22** The Government of Trinidad and Tobago on public procurement is in the process of abandoning the policy set out in the 2005 White Paper on the Reform of the Public Sector Procurement Regime.
- 7.2.23** The CTB has sought to make public via a booklet the current practices of the CTB along with placing contracts which have been awarded on the Ministry of Finance Website in an aim to be more transparent in its processes.
- 7.2.24** All of the changes which the CTB has made over the years have been as result of its leadership and not based on the recommendation of MESICIC. The respondents from the CTB were not informed of the MESICIC or its recommendations.

7.3 Recommendations

TTTI urges the Committee of Experts to recommend particularly to the Government of Trinidad and Tobago the following.

- 7.3.1** Provide the Heads of the various State agencies responsible for implementing MESICIC recommendations with the all information needed to carry out their tasks.
- 7.3.2** Re-introduce, for revision, debate and eventual enactment, the Prevention of Corruption (Amendment) Bill 2001 harmonised with an appropriately reformed Integrity in Public Life Act.
- 7.3.3** Require public officials to implement MESICIC recommendations within a definite time-frame.
- 7.3.4** Encourage the Judiciary to establish a code of conduct for judges and magistrates.
- 7.3.5** Establish comprehensive codes of conduct specific to the executive and legislative arms of the State.
- 7.3.6** Reconsider the abandonment of the 2009 White Paper on the Reform of the Public Procurement Regime and implement its essential elements, particularly the establishment of appropriate and effective regulation by an independent body of all transactions involving public money.

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APPENDICES

APPENDIX 1

QUESTIONNAIRES

Name: Ms. Gloria Joseph

Position: Director of Personnel Administration

Organization: Public Service Commission of Trinidad and Tobago

Recommendation: - *Establish, maintain and strengthen the systems of government hiring of public servant, when applicable, that ensure the openness, equity and efficiency of such systems.*

1. Is consideration given to expand the mandatory requirement of competitive examinations for permanent appointment to all classes in the Civil Service?

2. Are there clearly defined criteria for the advertisement of hiring opportunities within the Public Service? If yes, what are they?

3. If no, what are the variations and where do they exist?

4. What are the general criteria for the selection of contract positions?

5. Are there any standards to the manner of advisement of contract positions?

6. Have there been any strengthening of the legal provisions of the Service Commission to ensure the necessary resources(financial, human, technological) are given to enhance the process of appointments?

Names: Ms. Jennifer Jones and Ms. Indranni Rampersaud

Positions: Director and Deputy Director of Contracts (respectively)

Organization: Central Tenders Board of Trinidad and Tobago

Recommendation:- *Strengthen systems for the procurement of goods and services by the government.*

1. Has consideration been given to the establishment of a uniform legal framework for the procurement of goods and services that encompasses all the branches and agencies of the Trinidad and Tobago, without prejudice to those state agencies and branches to establish their own guidelines?

2. Has provisions outlining clear and uniformed procedures for the selection of contractors when either public or selective tendering procedures are utilized been implemented?

3. Has an electronic procurement system been developed and /or implemented so as to facilitate the acquisition of goods and services by this means?

APPENDIX 2

Schedule 1 of the Extradition Act(Commonwealth and Foreign Territories) of 1985

Description of Extraditable Offences

Murder

Manslaughter

Rape

Abduction, kidnapping, false imprisonment or dealing in slaves

Assault occasioning actual bodily harm

Child stealing

Abortion

Unlawful sexual intercourse with a female

Indecent assault

Bigamy

Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company made criminal by any Act for the time being in force.

Any indictable offence against bankruptcy law or company law

Arson

Bribery

Perjury

Piracy

Sinking or destroying a vessel at sea

Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm

Revolt by two or more persons on board a ship on the high seas against the authority of the master

Cruelty to children or young persons under sixteen years of age by persons having their charge or care.

Any indictable offence under the Offences against the Person Act, Chap.11:08 not included in items 1-20

Any indictable offence under the Larceny Act Chap 11:12

Any indictable offence under the Coinage Offences Act, Chap.11:15

Any indictable offence under the Forgery Act, Chap. 11:13

Any indictable offence under the Malicious Damage Act Chap 11:06

Any offence against the law relating to dangerous drugs or narcotics

Contravention of export prohibitions relating to gold

Genocide and any direct and public incitement to commit genocide

Offences under the Hijacking Act, Chap. 11:22

Offences under Part IV of the Airports Authority Act, Chap. 49:02

Offences under the Treason Act, Chap. 11:03

Any indictable offence under the Firearms Act, Chap. 16:01

APPENDIX 3**Extradition (Commonwealth and Foreign Territories) (Declared Commonwealth Territories) Order****Schedule**
List of Signatory Countries

Antigua and Barbuda	Malaysia	Zimbabwe
Guyana	Tanzania	
Sierra Leone	Cayman Islands	
Australia	Malta	
Hong Kong	Tonga	
Singapore	Cook Islands	
Bahamas	Mauritius	
India	Tuvalu	
Solomon Islands	Cyprus	
Bangladesh	Montserrat	
Jamaica	Uganda	
Sri Lanka	Dominica	
Barbados	Nauru	
Kenya	United Kingdom	
St. Kitts-Nevis	Fiji	
Belize	New Zealand	
Kiribati	Vanuatu	
St. Lucia	Gambia	
Bermuda	Nigeria	
Lesotho	Western Samoa	
St. Vincent	Ghana	
Botswana	Papua, New Guinea	
Malawi	Zambia	
Swaziland	Grenada	
Canada	Seychelles	