

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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REPUBLIC OF TRINIDAD AND TOBAGO

FINAL REPORT

(Adopted at the March 25, 2010 plenary session)

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

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

INTRODUCTION

1. Contents of the Report

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

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

2. Ratification of the Convention and adherence to the Mechanism

[3] According to the official records of the OAS General Secretariat, the Republic of Trinidad and Tobago deposited the instrument of ratification of the Inter-American Convention against Corruption on April 15, 1998.

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

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of the Republic of Trinidad and Tobago

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

¹ This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 25, 2010, at its Sixteenth Meeting, held at OAS Headquarters, March 22 - 25, 2010.

[6] For its review, the Committee took into account the information provided by the Republic of Trinidad and Tobago up to August 14, 2009, and that furnished and requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and the review Methodology.

2. Documents received from civil society organizations

[7] The Committee also received, within the deadline established in the schedule for the third round, a document from the Trinidad and Tobago Transparency Institute, the national chapter of Transparency International, which was submitted by that organization by electronic mail.²

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

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT³ FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

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

[8] The Republic of Trinidad and Tobago has a set of provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, among which the following should be noted:

[9] – Statutory provisions such as the Income Tax Act, of which the following should be noted:⁴

[10] Section 5 which provides that income tax shall be payable at the rate or rates specified for each year of income upon the income of any person⁵ accrued or derived from Trinidad and Tobago, and lists the type of income to be taxed;

[11] Section 6, which provides that tax shall be charged for each year of income upon the chargeable income⁶ of any person for that year;

[12] Section 10, which sets out the manner to compute income generally, by which in computing the income of any person for a year of income, all outgoings and expenses wholly and exclusively incurred during that year are to be considered;

² This document was received electronically on August 14, 2009, and is available in English at:

www.oas.org/juridico/english/mesicic3_tto.htm

³ For the purposes of this report, the MESICIC Committee of Experts defines favorable tax treatment as all exemptions and any deductible items used for the purposes of determining the income tax base, and other treatment that gives rise to favorable reductions in the amount of tax payable by taxpayers.

⁴ Income Tax Act, www.oas.org/juridico/english/mesicic3_tto_income_act.pdf

⁵ Section 2(1) of the Act defines person to include a company. Company is further defined as having the same meaning as that set out in Section 2(1) of the Corporation Tax Act. This Act defines company as any body corporate or unincorporated association, but does not include a partnership, Corporation Tax Act, www.oas.org/juridico/english/mesicic3_tto_corp_tax.pdf

⁶ Section 7 sets out what is meant by chargeable income for persons engaged in carrying on any trade, business, profession or vocation. Section 8 also provides the exemptions from tax, Income Tax Act, *supra* note 4.

[13] Section 10(A), which allows for promotional expenses that are wholly and exclusively incurred in order to create or promote the expansion of foreign markets for the export of architectural, engineering, design, *et al*, in connection with the building industry where such services are performed by a person resident in Trinidad and Tobago for a recipient who is outside Trinidad and Tobago; or for the promotion of goods and agricultural products manufactured or produced in Trinidad and Tobago;⁷

[14] Section 11, which provides allowances in ascertaining the chargeable income of any person for any year of income from trade, business, profession or vocation, such as sums expended for replacing plant or machinery; a reasonable amount for wear and tear of any plant and machinery; bad debts incurred in any trade, business, profession or vocation; and rates and taxes on real estate;

[15] Section 12, which seeks to ascertain the chargeable income of any person provides a list of what cannot be deducted from the income of a person, such as any disbursements or expenses not being moneys wholly and exclusively used for the purpose of producing income; domestic or private expenses; and any capital employed in improvements;

[16] Section 17, which provides that deductions are allowed in ascertaining the chargeable income of an individual, upon due claim and subject to such evidence as required by the Board;

[17] Section 83, which provides that the Board of Inland Revenue may accept a return and make an assessment accordingly; or refuse to accept the return and, to the best of its judgment, determine the amount of the chargeable income of the person and assess him accordingly;

[18] Section 89(1), which provides that the Board may, within the year of income or within six years of the expiration of the year of income or three years from the date the tax return is filed, whichever is later, assess such person at such amount or any additional amount that according to its judgment, out to have been charged. In addition, section 89(2)(b) provides that the Board may reassess an assessment where it is found that any fraud or gross or willful neglect has been committed by or on behalf of any person in connection with or in relation to any claim, deduction or relief that might have had a direct or indirect effect on the amount of tax for the former years of assessment or for any subsequent years of income;

[19] Section 97, which provides that the Board may require any person to attend before it and give evidence with respect to his income, and to produce all books or other documents in his custody or under his control relating to such income. If a person, without lawful excuse, refuses or neglects to produce such books or other documents, or who refuses to answer any lawful question touching the matters under consideration or knowingly or willfully gives any false evidence under this section, he is guilty of an offence;⁸

[20] Section 116, which provides that every person engaged in any trade, business or profession, and every person who is required to deduct or withhold and to pay taxes or other amounts shall keep

⁷ Section 10(A) provides what is meant by promotional expenses, which are: a) advertising in foreign markets; b) providing promotional literature for overseas distribution; c) participating in trade fairs, trade missions and similar promotional activities; d) overseas travel for the purposes of conducting promotional activities; e) providing free samples and technical information on products; f) inviting buyers to Trinidad and Tobago; g) recruitment of specialist sales personnel operating in foreign markets for a maximum of two years; and h) conducting foreign market surveys.

⁸ Section 121(1) provides that the penalty for this offence is, liable on summary conviction, a fine of thirty thousand dollars or imprisonment for two years or both. Moreover, section 121(2) provides that a person guilty of an offence under the Act may in addition to any penalty be ordered by the Court to make immediate payment of any tax or both to pay such tax and penalty.

proper records and books of account, including an annual inventory, at his place of business or residence in Trinidad and Tobago or at such other place as may be approved by the Board, and in such form as required by the Board and containing such information as in the opinion of the Board will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or paid to be determined. These records and books of account are to be held for 6 years. Any person who does not keep these records or books of account is guilty of an offence;

[21] Section 118, which provides the Board the power of entry into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or any books or where records are or are required to be kept pursuant to this Act, and audit or examine books, accounts, vouchers, letters or other documents as it relates to the information that is or should be in the books and records or to the amounts of tax payable. In addition, the owner or manager of the property or business and any other person on the premises to give it all reasonable assistance with the audit examination and answer all questions. This section further provides that if during the course of the audit or examination it appears that there has been a violation of the Income Tax Act, the Board may seize and take away the records, books of accounts, vouchers, letters, telegrams and other accounts;

[22] Section 119, which provides that any person who, among other things, knowingly or recklessly makes a false or deceptive statement or representation in a return; or willfully evades or attempts to evade compliance with the Income Tax Act or payment of taxes; is guilty of an offence and is liable on summary conviction to a fine of fifty thousand dollars and/or to imprisonment for three years;

[23] Section 120, which provides that any person who fails or neglects to perform any duty required under the Income Tax Act is guilty of an offence;

[24] Section 121, which is a general penalty provision, provides that unless some other penalty is specifically provided, a person is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for two years or both. In addition, where a person is found guilty of an offence, the Court may, in addition to any penalty, make an order for the immediate payment of any tax or for the penalty imposed or for both such tax and penalty.

[25] – Statutory provisions such as the Corporation Tax Act, of which the following should be noted.⁹

[26] Section 3, which provides that corporation tax shall be paid at the rate specified of income upon the profits of any company,¹⁰ accruing in or derived from Trinidad and Tobago or elsewhere and whether received in Trinidad and Tobago or not;

[27] Section 4, which provides for the general scheme of corporation tax. A resident company shall be chargeable to corporation tax on all its profits wherever arising whereas the profits that are chargeable to a non-resident company are from income directly or indirectly accrued in or derived from Trinidad and Tobago;

[28] Section 5, which provides that corporation tax shall be charged for each year of income upon the chargeable profits of the company arising in that year;¹¹

⁹ Corporation Tax Act, *supra* note 5.

¹⁰ Company is defined under Section 2 of definitions as any body corporate or unincorporated association, but does not include a partnership.

¹¹ Section 6 provides the exemptions from corporation tax.

[29] Section 7, which provides that the chargeable profits of a company are to be computed in accordance with the income tax principles relating to the provisions of the Income Tax Act as applied by section 19 of the Corporation Tax Act. Among the provisions of the Income Tax Act that are applicable are Sections 3 and 4 (administration by the Board of Internal Revenue), Sections 10 and 12 (Deductions and Allowances), Section 83 (Assessments); Section 97 (Power of the Board to require attendance), Section 116 (Obligation to keep accounts books and records), Section 118 (Power of the Board of entry into premises, and Sections 120 – 121 (Sanctions);¹²

[30]Section 10(B), which allows for promotional expenses that are wholly and exclusively incurred in order to create or promote the expansion of foreign markets for the export of architectural, engineering, design, *et al*, in connection with the building industry where such services are performed by a person resident in Trinidad and Tobago for a recipient who is outside Trinidad and Tobago; or for the promotion of goods and agricultural products manufactured or produced in Trinidad and Tobago.¹³

[31] The country under review also notes that it has recently enacted the Financial Obligations Regulations, 2010, which creates a reporting regime for financial institutions that come upon suspicious financial activities.¹⁴

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

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

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

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

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

[35] With respect to results in this field, the Republic of Trinidad and Tobago states that no data is available at this time.¹⁵

[36]Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the

¹² Section 19 provides a list of provisions from the Income Tax Act that are applicable in relation to corporation tax.

¹³ Section 10(B)(5) provides what is meant by promotional expenses, which are: a) advertising in foreign markets; b) providing promotional literature for overseas distribution; c) participating in trade fairs, trade missions and similar promotional activities; d) overseas travel for the purposes of conducting promotional activities; e) providing free samples and technical information on products; f) inviting buyers to Trinidad and Tobago; g) recruitment of specialist sales personnel operating in foreign markets for a maximum of two years; and h) conducting foreign market surveys.

¹⁴ Information provided by the country under review in its observations to the draft preliminary report. These Regulations are found at: http://www.oas.org/juridico/english/mesicic3_tto_obligations_10.pdf

¹⁵ Response of the Republic of Trinidad and Tobago to the Questionnaire for the Third Round, pg. 3: http://www.oas.org/juridico/english/mesicic3_tto_resp_en.pdf

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

1.4. Conclusions and recommendations

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

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

[39] In light of the comments formulated in the above-noted sections, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendation:

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

- a. Consider adopting the measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment, such as the following: (see Section 1.2 of Chapter II of this Report)
 - i. Manuals, guidelines or directives that will guide them in reviewing those applications, so that they are able to verify that the applications contain the established requirements, to confirm the truthfulness of the information provided, and to confirm the origin of the expenditure or payment on which the claims are based.
 - ii. The possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests for information from financial institutions, taking into account relevant bank secrecy and confidentiality laws.
 - iii. Computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.
 - iv. Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, and such aspects as certifying the authenticity of the documents submitted with the applications.
 - v. Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications.

vi. Channels of communication so that they may promptly report to those who must decide on favorable treatment and warn them of the anomalies detected or of any irregularity that could affect the decision.

b. Select and develop, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto. (See section 1.3 of Chapter 2 of this Report)

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

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

[41]The Republic of Trinidad and Tobago has a set of provisions related to prevention of bribery of domestic and foreign government officials, among which the following should be noted:

[42]– Statutory provisions such as the Companies Act,¹⁶ of which the following should be noted:

[43]Section 151, which provides the requirement that the directors of a company are to place before the shareholders at every annual meeting the 1) comparative financial statements, 2) report of the auditor, if any, and 3) any further information respecting the financial position of the company.

[44]Section 154, which provides that the directors of a company are to approve the financial statements referred to in section 151. These statements cannot be issued, published or circulated unless they are approved and signed by the directors and accompanied by a report of the auditor of the company, if any.

[45]Section 157, which provides that a public company¹⁷ shall, and any other company may, have an audit committee. This committee is to review the financial statements of the company before they are approved by the directors under section 154 and report its findings to the Board of Directors.

[46]Section 158, which provides for the appointment of an auditor to a company. This auditor must be a practicing member of the Institute of Chartered Accountants of Trinidad and Tobago and is eligible for appointment under the rules of said Institute. Section 161 further provides for the disqualification of a person or a partnership from being an auditor of a company if he or any of the partners is not independent of the company, any of its affiliates or the directors or officers of any such company or its affiliates.

[47]Section 172, which provides that an auditor shall make the examination necessary to enable him to report in the prescribed manner on the financial statements required by this Act.

¹⁶ The Companies Act, http://rgd.legalaffairs.gov.tt/Laws2/Chs_81-84/81.01/81.01_aos.htm. Article 4 provides that a ‘company’ means a body corporate that is incorporated or continued under the Act. Furthermore, ‘body corporate’ includes a company or other body corporate wherever or however incorporated, other than a corporation sole.

¹⁷ ‘Public company’ is defined as meaning a company any of whose issued shares or debentures are or were part of a distribution to the public within the meaning of Section 6 of the Act.

[48] Section 173, which provides that present or former directors, officers, employees or agents of the company are to furnish to the auditor 1) such information and explanations; and 2) such access to records, documents, books, accounts and vouchers of the company or any of its subsidiaries, which, in the opinion of the auditor, will enable him to make the examination and report required under Section 172.

[49] Section 174, which provides the director or an officer of a company are to notify the audit committee and the auditor of any error or misstatement in a financial statement.

[50] Section 187, which provides that a company are to prepare and maintain adequate accounting records. These records are to be kept at the registered office of the company and shall at all reasonable times be available for inspection by the directors.

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

[52] Section 189, which provides that a company and its agents, in regard to the records to be prepared and maintained under the Act, are to take reasonable precautions to 1) prevent their loss or destruction; 2) prevent falsification of entries in; and 3) facilitate detection and correction of inaccuracies.

[53] Section 510, which provides that any person who makes or assists in making a report, return, notice or other document that contains an untrue statement of a material fact or omits to state a material fact required in the report, return, notice or other document is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for a term of six months.

[54] Section 511, which provides that a person is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to an imprisonment for a term of six months who, without reasonable cause, contravenes section 189. Moreover, a director or officer is guilty for knowingly contravening section 174.

[55] Statutory provisions, such as the Companies Regulations,¹⁸ which under section 11, provides that the financial statements referred to under section 151 of the Companies Act and the auditor's report referred to in section 172 of said Act are to be prepared in accordance with the standards approved by the Institute of Chartered Accountants of Trinidad and Tobago. In addition, section 12 further provides that the financial statements referred to in section 151 of the Companies Act are to contain at least the following: 1) a balance sheet; 2) a statement of retained earnings; 3) a statement of income; and 4) a statement of changes in financial position.

[56] Statutory provisions such the Proceeds of Crime (Amendment) Act 2009,¹⁹ which under section 30 provides that accountants, who know or have reasonable grounds to suspect that funds are proceeds to a specified offence,²⁰ shall make a suspicious transaction or a suspicious activity report to the Financial Intelligence Unit of Trinidad and Tobago.

¹⁸ Companies Regulations, http://rgd.legalaffairs.gov.tt/Laws2/Chs_81-84/81.01/Companies%20Regulations.pdf

¹⁹ Proceeds of Crime (Amendment) Act 2009, http://www.oas.org/juridico/english/mesicic3_tto_crime_09.pdf

²⁰ Specified offence includes an indictable offence committed in Trinidad and Tobago whether or not the offence is tried summarily.

[57] Statutory provisions such as Trinidad and Tobago Act No. 30 of 1970,²¹ which incorporated the Institute of Chartered Accountants of Trinidad and Tobago. Section 3 of the Act provides that the objects of the Institute are, among others, to regulate ethics, discipline, professional conduct and standards of its members and students and to promote and increase the knowledge, skill and proficiency of its members and students.²²

[58] The Institute also has Rules of Conduct²³ for its members. These Rules derive their authority from the rules of the Institute and apply to all services performed in the practice of public accounting.²⁴ Among these rules are those for confidentiality, whereby, information acquired in the course of professional work should not be disclosed except where consent has been obtained from a client, employer or other proper source or where there is a public duty to disclose or where there is a legal or professional right or duty to disclose.²⁵ Rule 301 further provides that a member is not to disclose any confidential information obtained in the course of a professional engagement unless with the consent of a client. The Rule states, however, that a member is still obligated to comply with the auditing standards and accounting principles issued by the Council of the Institute and comply with a validly issued subpoena or summons enforceable by a court.²⁶

[59] In addition, there are also provisions in the Cooperative Societies Act,²⁷ which regulate cooperative societies, credit union societies and agricultural credit societies; the Securities Industry Act,²⁸ which regulates the security market in Trinidad and Tobago; and the Financial Institutions Act,²⁹ which regulates banks and other financial institutions. It should also be noted that the Auditor General, is empowered to carry out audits of the accounts, balance sheets and other financial statements of all enterprises that are owned or controlled by or on behalf of the State.³⁰

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

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

²¹ Trinidad and Tobago Act No. 30 of 1970, http://www.icatt.org/downloads/members/icatt_actofincorporation.pdf

²² The Committee notes that the Institute has produced two documents to help improve the application of the International Financial Reporting Standards and the International Standards of Auditing within Trinidad and Tobago. These are the Guidance notes on International Financial Reporting Standards, <http://www.icatt.org/downloads/ifrs-guidancenotes.pdf> and the Guidance notes on International Standards of Auditing, <http://www.icatt.org/downloads/isa-guidancenotes.pdf>

²³ Rules of Conduct of the Institute of Chartered Accountants of Trinidad and Tobago, <http://www.icatt.org/downloads/members/icatt-rules-of-conduct.pdf>

²⁴ *Ibid.*, pg. 3.

²⁵ *Ibid.*

²⁶ *Ibid.*, Rule 301. The Institute also provides Interpretations of the Rules of Conduct, <http://www.icatt.org/downloads/members/icatt-int-rules-of-conduct.pdf>. For Rule 301, the Interpretations provide that the prohibition against disclosure of confidential information obtained in the course of a professional engagement does not apply to disclosure of information when required to properly discharge the member's responsibility according to professional standards.

²⁷ Cooperative Societies Act, http://rgd.legalaffairs.gov.tt/Laws2/Chs_81-84/81.03/81.03_aos.htm

²⁸ Securities Industry Act, http://rgd.legalaffairs.gov.tt/Laws2/Chs_81-84/83.02/83.02_aos.htm

²⁹ Financial Institutions Act, http://rgd.legalaffairs.gov.tt/Laws2/Chs_79-80/Ch_79.09/79.09_aos.htm

³⁰ Constitution of the Republic of Trinidad and Tobago, Section 116(3), http://rgd.legalaffairs.gov.tt/Laws2/The_Constitution_folder/The_Constitution_aos.htm

[61]Notwithstanding, the Committee considers it appropriate to express some comments regarding the advisability of developing and complementing certain legal provisions that might be useful for the country under review to consider.

[62]With respect to the Rules of Conduct of the Institute of Chartered Accountants of Trinidad and Tobago, the Committee notes that information acquired by members of the Institute in the course of professional work should not be disclosed except where consent has been obtained from a client, employer or other proper source or where there is a public duty to disclose or where there is a legal or professional right or duty to disclose. The Committee believes it necessary for the country under review to consider adopting, taking into account of the relevant laws governing professional confidentiality and through the appropriate means, pertinent measures to ensure that “professional confidentiality” is not an obstacle for professionals whose activities are governed by the Rules to bring to the attention of the appropriate authorities any acts of corruption that they discover in the course of their work. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4(a) in Section 2.4 of Chapter II of this Report)³¹

[63]The Committee believes it would be useful for the country under review to consider holding awareness campaigns targeted at persons responsible for maintaining accounts and verifying their accuracy, on the importance of observing the rules issued to guarantee the truthfulness of those records and the consequences of violation, and also to consider implementing training programs designed specifically for internal comptrollers in publicly held companies and other types of associations who are required to keep accounts, to instruct them in ways of detecting acts of bribery in the course of their work. (see Recommendation 2.4(b) n Section 2.4 of Chapter II of this Report)

[64]In addition, the Committee believes that it would be useful for the country under review to consider holding awareness and integrity promotion campaigns that target the private sector and to consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption. (see Recommendation 2.4(c) n Section 2.4 of Chapter II of this Report)

[65]The Committee also believes that it would be beneficial for the country under review to consider strengthening measures as it deems appropriate to make it easier for the organs and agencies responsible for the prevention and/or investigation of noncompliance with measures designed to safeguard the accuracy of accounting records to detect sums paid for corruption concealed in those records. (see Recommendation 2.4(d) in Section 2.4 of Chapter II of this Report)

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

[66]With respect to results in this field, the Republic of Trinidad and Tobago states that no data is available at this time.³²

[67]The Committee points out the importance that the country under review complete the Questionnaire, including the Results section, in order to be able to make a comprehensive assessment of any progress made and the areas that need to be strengthened for the implementation the Convention.

³¹ The country under review in its comments to the draft preliminary report stated that the recent passage of Financial Obligations Regulations 2010, the Financial Intelligence Unit Act 2009, and the Proceeds of Crime (Amendment) Act 2009 which sets up a reporting and monitoring in the fight against money-laundering, and the financing of terrorism, would help address the issues raised by the Committee on this point. These laws are available at http://www.oas.org/juridico/english/mesicic3_tto.htm

³² Response to the Questionnaire, *supra* note 15 at pg 7.

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

2.4. Conclusions and recommendations.

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

[70] The Republic of Trinidad and Tobago has considered and adopted measures intended to create, maintain and strengthen provisions for the prevention of the bribery of domestic and foreign government officials, as described in section 2 of Chapter II of this report.

[71] In light of the comments formulated in the above-noted sections, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendation:

[72] Strengthen the standards and measures on the prevention of bribery of domestic and foreign government officials. To comply with this recommendation, the Republic of Trinidad and Tobago could take the following measures into account:

- a. Adopt, taking account of the relevant laws governing professional confidentiality and in accordance with its legal framework, through the means as it deems appropriate, measures to ensure that “professional confidentiality” is not an obstacle for professionals whose activities are governed by the Rules of Conduct of the Institute of Chartered Accountants of Trinidad and Tobago to bring to the attention of the appropriate authorities any acts of corruption that they discover in the course of their work. (see Section 2.2 of Chapter II of this Report)
- b. Conduct awareness campaigns that target individuals responsible for the entry and accuracy of accounting records, on the importance of abiding by the standards in force to ensure the veracity of said records and the consequences of their violation, in addition to implementing training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect corrupt acts through their work. (see Section 2.2 of Chapter II of this Report)
- c. Consider holding awareness and integrity promotion campaigns that target the private sector and consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption. (see Section 2.2 of Chapter II of this Report)

- d. Consider the adoption of the instruments necessary to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records and protect their contents, of sums paid for corruption that are concealed in those records, such as the following (See section 2.2 of chapter II of this report):
 - i. Review methods, including account inspections and analysis of periodically requested information, by which to detect anomalies in accounting records that could indicate the payment of sums for corruption;
 - ii. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred;
 - iii. Handbooks, manuals or guidelines for those organs or entities on how to review accounting records in order to detect sums paid for corruption;
 - iv. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based; and
 - v. Institutional coordination mechanisms that enable those organs or entities to easily obtain the necessary collaboration from other institutions to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity.
 - vi. Training programs for the officials of these organs and entities, specifically designed to alert them to the methods used to disguise payments for corruption in those records and to instruct them on how to detect them.
- e. Select and develop, through the authorities responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records and protect their contents, as well as the other authorities or entities that have responsibility in this area, procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations formulated in this report in relation thereto. (see Section 2.3 of Chapter II of this Report)

3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

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

[73]The Republic of Trinidad and Tobago has not yet established transnational bribery as an offense as provided in Article VIII of the Convention, although the country under review states that the matter is currently under consideration by the Ministry of the Attorney General.³³ The country under review also notes that the provisions of the Prevention of Corruption Act can be applied to help combat transnational bribery, as set out in the response to the Questionnaire.³⁴

³³ *Ibid.* at pgs. 9 and 11.

³⁴ *Ibid.* at pgs. 7 – 8.

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

[74]Based on the observations contained in the preceding section, the Committee will formulate the relevant recommendations to the country under review so that, subject to its Constitution and the fundamental principles of its legal system, it establish transnational bribery as an offense as provided in Article VIII of the Convention. (see Recommendation 3.4.1 in Section 3.4 of Chapter II of this Report)

[75]Similarly, the Committee believes it advisable for the country under review to consider the possibility of adopting the measures necessary to ensure, with respect the provisions that would, in due course, prohibit and punish the acts described in Article VIII of the Convention, that there is clarity as regards what should be understood by the term “government official of another state.” (see Recommendation 3.4.2 in Section 3.4 of Chapter II of this Report)

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

[76]With respect to results in this field, the Republic of Trinidad and Tobago states that information is currently unavailable.

[77]Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies charged with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (see Recommendation 3.4.3 in Section 3.4 of Chapter II of this Report)

3.4. Conclusions and recommendations

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

[79]The Republic of Trinidad and Tobago has not adopted certain measures on the offense of transnational bribery as provided in Article VIII of the Convention, as described in Chapter II, Section 3 of this report.

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

- 3.4.1. Criminalize, subject to its Constitution and the fundamental principles of its legal system, the conduct of transnational bribery as described in Article VIII of the Convention, which defines it as the offering or granting, directly or indirectly, by nationals of a state party, 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. (See Chapter II, Section 3.2 of this report).

- 3.4.2. Consider the possibility of adopting the necessary measures to ensure, with respect to the provisions that ultimately do prohibit and punish the acts described in Article VIII of the Convention, that there is clarity as regards what should be understood by the term “government official of another state.” (See Chapter II, Section 3.2 of this report).
- 3.4.3. Select and develop, through the organs and agencies responsible for providing assistance and cooperation with respect thereto, as provided in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Chapter II, Section 3.3 of this report).

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

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

[81] The Republic of Trinidad and Tobago has not yet established illicit enrichment as an offense as provided in Article IX of the Convention, although the country under review states that the matter is currently under consideration as part of a comprehensive justice reform initiative embarked upon by the Ministry of the Attorney General.³⁵

4.2 Adequacy of the legal framework and/or other measures

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

4.3 Results of the legal framework and/or other measures

[83] With respect to results in this field, the Republic of Trinidad and Tobago states that information in this regard is currently unavailable.³⁶

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

³⁵ *Ibid.*, pgs. 9 – 10. It should be noted that in the document from the Trinidad and Tobago Transparency Institute, it notes that the country under review intended to put the issue of illicit enrichment within the confines of the law when the Prevention of Corruption Amendment Bill of 2001 was brought to Parliament. Nevertheless, the Bill was never passed as Parliament was prorogued and an election called, *supra* note 3 at pg. 16.

³⁶ *Ibid.*, pg. 11.

4.4 Conclusions and recommendations

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

[86] The Republic of Trinidad and Tobago has not adopted certain measures on the offense of illicit enrichment as provided in Article IX of the Convention, as described in Chapter II, Section 4 of this report.

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

- 4.4.1. Criminalize, subject to its Constitution and the fundamental principles of its legal system, the conduct of illicit enrichment as described in Article IX of the Convention. (See Chapter II, Section 4.2 of this report).
- 4.4.2. Select and develop, through the organs and agencies responsible for requesting and/or providing assistance and cooperation, in so far as its laws permit, with respect to the offense of illicit enrichment, as provided in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Chapter II, Section 4.3 of this report).

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

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

[88] The Republic of Trinidad and Tobago has not criminalized transnational bribery and illicit enrichment as provided in Articles VIII and IX, respectively, of the Convention, as was noted in Chapter II, Sections 3 and 4 of this Report.

5.2 Adequacy of the legal framework and/or other

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

5.3 Conclusions and recommendation

[90] On the basis of the analysis conducted in foregoing sections 5.1 and 5.2, the Committee offers the following conclusions and recommendation with respect to implementation in the country under review of the provisions contained in Article X of the Convention.

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

6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

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

[92] The Republic of Trinidad and Tobago has a set of provisions related to extradition, among which the following should be noted:

[93]- Statutory provisions such as the Extradition (Commonwealth and Foreign Territories) Act,³⁷ which applies to Commonwealth Territories³⁸ and Foreign Territories³⁹ designated by the Attorney General. The following provisions should be noted:

[94] Section 5, which 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.

[95] Section 6(1), which provides that an extraditable offence is one that is against the law of that territory which is punishable under the law with death or imprisonment of not less than twelve months; if the conduct of the person would constitute an offence against the law of Trinidad and Tobago if it took place there; and in the case of a declared foreign territory, extradition for that offence is provided for by a treaty between Trinidad and Tobago and that territory. Section 6(4) further provides that an offence established in an international Convention can also be considered an extraditable offence for the purpose of the Act.

[96] Section 8(1), which provides that a person shall not be returned under the Act or committed or kept in custody for the purposes of a return if it appears that the offence in respect of which that person is accused or was convicted, i) is an offence of a political character;⁴⁰ ii) that the request for return is in fact made for the purpose of prosecuting or punishing on account of race, religion, gender, sexual preference, nationality or political opinions; or iii) if returned, the returnee might be prejudiced at trial or punished, detained or restricted by reason of race, religion, gender, sexual preference, nationality or political opinions. In addition, section 8(2) provides that a person will not

³⁷ Extradition (Commonwealth and Foreign Territories) Act, http://rgd.legalaffairs.gov.tt/Laws2/Chs._10-13/12.04/12.04_aos.htm

³⁸ See the Schedule to the Extradition (Commonwealth and Foreign Territories) (Declared Commonwealth Territories) Order, which provides a list of countries that have been designated Commonwealth Territories, http://www.oas.org/juridico/english/mesicic3_tto_extradition.pdf. The following State Parties to the Inter-American Convention against Corruption are on this list: Antigua and Barbuda, the Bahamas, Belize, Canada, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines.

³⁹ Foreign Territories are so designated when a treaty has been concluded between the Republic of Trinidad and Tobago and any foreign territory. Such a treaty has been entered into with the United States of America, Extradition (United States of America) Order, http://www.oas.org/juridico/english/mesicic3_tto_extradition.pdf

⁴⁰ Section 8(7) provides that the offence of a political character does not include “(a) an offence against the life or person of a Head of State, Head of Government, or Minister of Government, or of his spouse, or of any dependant relative of his; (b) an act declared, under any multilateral international convention having the force of law in Trinidad and Tobago, to constitute an offence for which a person may be returned under this Act to a declared Commonwealth or foreign territory, notwithstanding the political character or motivation of such act.” Section 8(8) further provides that “an offence against a declared Commonwealth or foreign territory may be regarded as being an offence of a political character notwithstanding that there are not competing political parties in that territory,” Extradition (Commonwealth and Foreign Territories) Act, *supra* note 37.

be returned if it appears that if charged in Trinidad and Tobago, he would be entitled to be discharged under any rule of law relating to a previous acquittal or conviction.

[97]Section 10, which provides that a provisional warrant for the arrest of the person accused of an extraditable offence or alleged to be unlawfully at large after conviction of an extraditable offence may be issued by a Magistrate. This arrest warrant may be executed in any part of Trinidad and Tobago.

[98]Section 12, which provides the procedure for arresting a person in pursuance of a warrant issued under section 10. Under section 12(2), a Magistrate has the same jurisdiction and powers, including the power to adjourn the case and remand the person arrested under the warrant either in custody or in bail.

[99]Section 13(3), which provides that on application of *habeas corpus*, the High Court may order the person committed to be discharged from custody if it appears to the High Court that it would, having regard to all circumstances, be unjust or oppressive to return the person if it finds that, in the case of a declared Commonwealth territory, the extraditable offence of which he is accused or was convicted is of a trivial nature and in the case of a declared Commonwealth or foreign territory, because of the passage of time; or the accusation was not made in good faith; or any other sufficient cause.

[100] Section 18, which provides that a person remanded or committed to custody under section 12 shall be committed to the same institutions as a person charged with an offence before a Magistrate.

[101] The country under review has also entered into a bilateral extradition treaty with the United States of America.⁴¹

[102] The country under review also states in its Response to the Questionnaire that the Inter-American Convention against Corruption serves as a legal basis to solicit and grant extradition requests for the offenses in that treaty that it has criminalized.⁴²

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

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

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

[105] While section 6(4) of the Extradition (Commonwealth and Foreign Territories) Act can serve as a legal basis to grant extradition requests for the offenses the country under review has criminalized with respect to the Inter-American Convention against Corruption, it is only applicable to declared Commonwealth and foreign territories. In this case, the granting of extradition requests could only be made to the following States Parties to the Convention: Antigua and Barbuda, the Bahamas, Belize, Canada, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines and the United States of America. As such, it leaves out the remaining States Parties to the Convention and thus in those cases, there is no legal basis to be found

⁴¹ Extradition (United States of America) Order, *supra* note 39.

⁴² Response to the Questionnaire, *supra* note 15 at pg. 19.

in the country under review to grant an extradition request. The Committee believes that the country under review should consider using the Convention as a legal basis for extradition with those State Parties to the Convention that are not currently covered by the Act. (see Recommendation 6.4(a) in Section 6.4 of Chapter II of this Report)

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

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

[107] With respect to results in this field, the Republic of Trinidad and Tobago presented information on the number of extradition requests sent and received from October 2008 – September 2009, which is found as follows:

Requests made by Trinidad and Tobago

COUNTRY	NO. OF PERSONS	STATUS
U.S.A.	3	1 Denied 2 Pending

Requests received by Trinidad and Tobago

COUNTRY	NO. OF PERSONS	STATUS
U.S.A	3	3 Extradited
Canada	1	1 Extradited

[108] Nevertheless, there is no data on the content of these extradition requests, therefore it is not possible for the Committee to determine how many of these requests were based on the Convention.

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

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

6.4. Conclusions and recommendations.

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

[112] **The Republic of Trinidad and Tobago has adopted measures regarding extradition as provided in Article XIII of the Convention, as described in Chapter II, Section 6 of this report.**

[113] In light of the comments formulated in that section, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendations:

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

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

[114] Regarding the progress made with the implementation of the recommendations issued in the Report adopted during the First and Second Round of Review, the Republic of Trinidad and Tobago provided no information in its Response to the Questionnaire.

[115] In connection with this, the Committee notes its concern at not having received any specific information from the country under review in the terms set out in Article 29 of the Rules of

Procedure and elaborated upon in the questionnaire and methodology adopted by the Committee for the Third Round. The Committee consequently offers the following remarks:

1. The Committee believes it should note the following background details regarding what the MESICIC State Parties agreed on for following up on implementation of recommendations:
 - a. The Document of Buenos Aires – which created the MESICIC and was signed by all of the Mechanism’s member states – establishes that one of its goals is “to follow up on the commitments made by the States Parties to the Convention and to study how they are being implemented.” It also states that its characteristics include ensuring “equal treatment among States Parties” and being “conducted on the basis of consensus and on the basis of the principle of cooperation among States Parties.”
 - b. Article 29 of the Rules of Procedure, adopted through the consensus of all the members of the Committee at its Eighth Regular Meeting (September 2005) provides that:

“Article 29. Follow-up within the framework of future rounds. 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. 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.”

“With respect to the implementation of recommendations, the State Party shall refer to any difficulties that may have arisen in the process. 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.”

“During the second and subsequent rounds, the country report of each State Party shall address the steps taken to implement the recommendation adopted by the Committee in previous country reports. The country report shall note those recommendations that have been satisfactorily considered and those that need additional attention by the country under review.”
 - c. In accordance with the terms of Article 29 of the Rules of Procedure, the Committee adopted, by consensus and as a part of the Third Round questionnaire,⁴³ the standard form to be used by the states to present information on the progress made with the recommendations extended during the First and Second Round. Similarly, the Committee adopted by consensus the methodology for review in the Third Round,⁴⁴ which establishes all provisions and considerations regarding the scope of the follow-up that the Committee is to conduct with respect to the recommendations extended to each country in the First and Second Round country reports.
2. The report adopted in connection with the Republic of Trinidad and Tobago as a part of the First and Second Round of Review, including the recommendations formulated for

⁴³ See Questionnaire at: http://www.oas.org/juridico/english/mesicic_quest_IIIround.doc

⁴⁴ See Methodology at: http://www.oas.org/juridico/english/mesicic_method_IIIround.pdf

that country therein, was adopted with the consensus of the Republic of Trinidad and Tobago as the country under review and in accordance with the procedure established in the Document of Buenos Aires and the Rules of Procedure.

3. Related to each of the recommendations set out in the country reports, the Committee includes, in each case and in accordance with the review carried out, a series of measures that it believes the country under review could take into account in order to make progress with the implementation of those recommendations.

In accordance with the consideration given to the recommendations, the country under review can always make progress with their implementation by adopting the measures suggested by the Committee or other alternative measures that it deems appropriate.

Consequently, the standard form adopted by the Committee for States to report on their progress with implementing the First and Second Round recommendations allows the State to indicate the measure or measures suggested by the Committee or the measure or measures taken by the State to implement the corresponding recommendation and to briefly describe the specific steps it has taken in connection with those measures.

4. In accordance with the provisions of Article 29 of the Rules of Procedure, this standard form allows the country under review to set out the possible difficulties it sees in the implementation of the various recommendations and, in addition, to identify which of its domestic agencies have participated in the implementation of the corresponding recommendation and to identify specific needs (such as technical assistance or help in other areas) associated with its implementation.
5. The Committee would like to stress that in accordance with the decisions taken by the MESICIC States Parties, the information sought on each State's progress with implementing the recommendations and the standard form in which it is to be provided is intended, as one of its basic aims, to facilitate, promote, and strengthen cooperation among the States Parties, in compliance with the terms of the Convention, the Document of Buenos Aires, and the Rules of Procedure.

Thus, Article 29 of the Rules of Procedure establishes that: "During the second and subsequent rounds, the country report of each State Party shall address the steps taken to implement the recommendation adopted by the Committee in previous country reports. The country report shall note those recommendations that have been satisfactorily considered and those that need additional attention by the country under review."

6. All the above underscores the importance of the reviewed State's supplying adequate, detailed information in the fashion agreed on by the Committee.

Clearly, without that information, the Committee cannot address any measure taken or difficulty encountered by the State, nor can it note any recommendation that has been satisfactorily implemented or that requires additional attention. Without that information, the Committee is essentially unable to perform any review or to comply with the mandate imposed by Article 29 of the Rules of Procedure.

7. The lack of information on the implementation of the recommendations has the more serious implication of making it impossible to pursue the basic goal of facilitating, promoting, and strengthening cooperation among the States Parties, in accordance with the terms of the Convention, the Document of Buenos Aires, and the Rules of Procedure.

Thus, in the absence of relevant information, it is impossible to identify those areas where progress has been made or to share them with other States to which those experiences could be of use. Furthermore, it prevents the sharing of any difficulties detected by the country under review and the facilitation of international cooperation for the State in overcoming those problems.

[116] Bearing in mind the considerations set out above, the Committee urges the Republic of Trinidad and Tobago to report on its progress with implementing the recommendations extended to it in the First and Second Round Reports at the forthcoming meetings of the Committee, in compliance with Article 31 of the Rules of Procedure.

[117] The Committee will continue to duly monitor the implementation of the recommendations it extended to the Republic of Trinidad and Tobago, in accordance with the terms of its Rules of Procedure.

FIRST ROUND

[118] With respect to the implementation of the recommendations issued to the Republic of Trinidad and Tobago in the report from the First Round on which it did not supply information with regard to progress in their implementation or on those for which it supplied information but which the Committee considered in Section IV of the report for that round that they needed additional attention, the Committee offers the following observations with respect to the implementation of the recommendations made, based on the information available to it from the Progress Report⁴⁵ presented at the Fifteenth Meeting of the Committee of Experts:

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

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

Recommendation 1.1:

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

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁴⁶

- a. *Strengthen the measures related to conflicts of interest with respect to members of the judiciary, as well as those who perform judicial functions, subject to its constitution and the fundamental principles of its legal system, taking into account the following:*
 - i. *Consider the usefulness of defining in a code of conduct for judicial officers what actions or omissions would constitute 'misbehaviour'.*

⁴⁵ Progress Report, http://www.oas.org/juridico/english/mec_avance_ttoXV.pdf

⁴⁶ Report on Implementation in the Republic of Trinidad and Tobago of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 24 – 26, http://www.oas.org/juridico/english/mesicic_II_rep_tto.pdf

- 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.*
- i. *Consider including in appropriate legislation provisions to protect whistleblowers who report acts of corruption from threats and acts of retaliation.*
- j. *Subject to compatibility with the constitutional right of the individual to freedom of work, incorporate into the legal system relevant and appropriate restrictions for those who leave public sector employment, within a reasonable period of time after leaving their position, regarding activities that could involve them taking undue advantage of their status as a former public servant.*

[119] With respect to measure a(ii) of the foregoing recommendation, in its Progress Report⁴⁷ presented at the Fifteenth Meeting of the Committee of Experts, the country under review presents information additional to that reviewed by the Committee in the Second Round:

[120] – *“By High Court Action 1735 of 2005 the Integrity Commission asked the Court to rule as to the applicability of the reporting requirements of the Integrity in Public Life Act 2000 to Judges and Magistrates. On the 15th October 2007 the Court ruled that to require Judges to report to the Integrity Commission would constitute a breach of their terms and conditions and as such they should not be required to report. The Court further ruled that Judges and Magistrates in Trinidad and Tobago were not subject to the Integrity in Public Life Act 2000.”*

[121] The Committee takes note of the Court ruling that found that filing annual declarations of income, assets and liabilities, as set out in the Integrity in Public Life Act, was unconstitutional as applied to the Judiciary. Nevertheless, the Committee reiterates the need for the country under review to continue to give attention thereto, by providing alternative measures to address the concerns raised in measure a(ii) of the foregoing recommendation. As noted earlier, the standard form adopted by the Committee allows for States to report on their progress in implementing the First and Second Round recommendations by adopting the measures suggested by the Committee or other alternative measures that it deems appropriate.

[122] With respect to measure f) of the foregoing recommendation, in its Progress Report⁴⁸ presented at the Fifteenth Meeting of the Committee of Experts, the country under review did not present additional information that was not already reviewed by the Committee in the Report of the Second Round with respect to the measure of the foregoing recommendation. As such, the Committee reiterates the need for the country under review to give additional attention to implementation thereto.

[123] With respect to measure g) of the foregoing recommendation, in its Response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

[124] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization Trinidad and Tobago Transparency Institute notes the following:

⁴⁷ Progress Report, *supra* note 45 at pgs, 1 – 2.

⁴⁸ *Ibid.*, at pg. 2.

[125] *“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.”*⁴⁹

[126] With respect to measure h) of the foregoing recommendation, in its Response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

[127] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization Trinidad and Tobago Transparency Institute notes the following:

[128] *“[T]here is the provision for the establishment of A Standing Ethics Committee:*

[129] *“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 powers.”*

[130] *However, the Committee has never been called to Order.”*⁵⁰

[131] With respect to measure i) of the foregoing recommendation, in its Progress Report⁵¹ presented at the Fifteenth Meeting of the Committee of Experts and in its comments to the draft preliminary report, the country under review presents information additional to that reviewed by the Committee in the Second Round. In this regard, the Committee notes the following as steps that leads it to conclude that said measure has been satisfactorily considered:

[132] - The Justice Protection Act 2000 was proclaimed on April 4, 2007. The Act establishes an Authority for the administration of the protection of witnesses. Additionally laws relating to the making of threats and to assault continue to be enforced by the police. Prior to its proclamation the programme functioned informally. With the proclamation of the Act a formal witness protection structure has now been put in place.

[133] - The Integrity in Public Life (Amendment) Act, which came into force on January 13, 2010, allows for the protection of employees of the State, a public authority or any other body from dismissal, suspension, demotion, disciplinary action, harassment, denial of benefits or being otherwise negatively affected where such a person acting in good faith reports acts of corruption or misbehavior.

[134] The Committee takes note of the satisfactory consideration by the country under review of measure i) of the foregoing recommendation, which, by its nature, requires a continuation of efforts in its implementation, without entering into an analysis of the substance of the Laws.

⁴⁹ Trinidad and Tobago Transparency Institute, *supra* note 2 at pg. 28.

⁵⁰ *Ibid.*

⁵¹ Progress Report, *supra* note 45 at pg. 2.

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

Recommendation 1.2:

Consider strengthening the system of control of public resources.

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

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

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

Recommendation 1.3:

Consider creating measures requiring public officials to report to the appropriate authorities acts of corruption in the performance of public functions of which they are aware.

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

- a. *Incorporate into existing legislation a requirement that all public servants must report acts of corruption of which they become aware during the course of their public functions, and make the corresponding Commission responsible for training.*
- b. *Assess the relevance of offering greater protection to civil servants who report acts of corruption, especially in cases where their superiors are involved in the acts being reported.*
- c. *Review the results of the investigations carried out by the Commissions of Enquiry in order to analyze the effectiveness of any legislation already in place.*

[135] With respect to measure b) of the foregoing recommendation, the country under review presents information in its comments to the draft preliminary report. In this regard, the Committee notes the following as a step that leads it to conclude that said measure has been satisfactorily considered:

[136] - The Integrity in Public Life (Amendment) Act, which came into force on January 13, 2010, allows for the protection of employees of the State, a public authority or any other body from

⁵² Report of the Second Round, *supra* note 46 at pgs. 26 – 27.

⁵³ *Ibid.*, at pg. 27.

dismissal, suspension, demotion, disciplinary action, harassment, denial of benefits or being otherwise negatively affected where such a person acting in good faith reports acts of corruption or misbehavior.

[137] The Committee takes note of the satisfactory consideration by the country under review of measure b) of the foregoing recommendation, which, by its nature, requires a continuation of efforts in its implementation, without entering into an analysis of the substance of the Law.

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

Recommendation 2:

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

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

- a. *Amend the Integrity in Public Life Act at 41(2) so that approval of its form of declaration and regulations will be subject only to a negative resolution of Parliament, or to no resolution at all.*
- b. *Give more enforcement powers to the Integrity Commission so that it can impose penalties directly on a person in public life who is in violation of sections 11, 13 or 14, of the Integrity in Public Life Act.*
- c. *Review the possibility of making public the proceedings of a tribunal under 16(2) of the Integrity in Public Life Act.*
- d. *Ensure that provisions have been made by the Service Commissions to receive declarations of interests from Commission members.*
- e. *Review the provisions on declarations of interest to ensure that all public employees in appropriate positions are required to file declarations, including members of the Diplomatic Service and Advisers to the Government.*
- f. *Regulate the conditions, procedures and other aspects related to publicizing the declarations of income, assets, and liabilities, and registrable interests, as appropriate.*
- g. *Utilize the declarations of income, assets and liabilities and registrable interests in order to detect and prevent conflicts of interests and illicit enrichment.*
- h. *Create mechanisms, or implement those that already exist, such as mass media campaigns, information in educational establishments and public institutions, aimed at citizens in general and those who are interested in performing public functions, that help ensure broad knowledge about the purpose and scope of the provisions regarding the registration of income, assets, and liabilities and the public registry of interests.*

⁵⁴ *Ibid.*, at pgs. 27 - 29.

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

[138] With respect to measure a) of the foregoing recommendation, in its Response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

[139] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization Trinidad and Tobago Transparency Institute notes the following:

[140] *“Section 41(2) of the Integrity in Public Life Act 2000:*

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

[142] *Has not been amended and no consideration for its amendment has been given in the Integrity in Public Life Amendment Bill 2009.”*⁵⁵

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

[144] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization Trinidad and Tobago Transparency Institute notes the following:

[145] *“Section 16(2) of the Integrity in Public Life Act 2000:*

[146] *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.*

[147] *Has not been amended and no consideration for its amendment has been given in the Integrity in Public Life Amendment Bill 2009.”*⁵⁶

[148] With respect to measure i) of the foregoing recommendation, in its Response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

[149] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization Trinidad and Tobago Transparency Institute notes the following:

[150] *“There has been the establishment of public register which is housed at the Integrity Commission.”*⁵⁷

⁵⁵ Trinidad and Tobago Transparency Institute, *supra* note 2 at pg. 30.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

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

Recommendation:

Strengthen oversight bodies in their functions related to enforcement of Articles 1, 2, 4 and 11 of the Convention, in order to ensure that such control is effective; give them greater support and the resources necessary to carry out their functions; and establish mechanisms for coordinating their activities, as appropriate, and for their continuous evaluation and monitoring.

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

- i. *Clarify the role of the Permanent Secretary or Head of Department under the Civil Service (Amendment) Regulations.*
- ii. *Amend the Public Service Commission Regulations to specifically provide that Permanent Secretaries and Heads of Department must report acts of misconduct that are not minor in nature to the Public Service Commission.*
- iii. *Have all oversight agencies keep and systematize statistical information for the purpose of performing an objective evaluation of the results of the legal framework and other measures.*

[151] With respect to measure i) of the foregoing recommendation, in its Progress Report⁵⁹ presented at the Fifteenth Meeting of the Committee of Experts, the country under review presents information additional to that reviewed by the Committee in the Second Round. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[152] - Programs have been implemented for the extensive training of Permanent Secretaries and Heads of Department with respect to the carrying out of their functions within the Public Service.

[153] - Permanent Secretaries have also been given greater disciplinary powers in respect of public servants.

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

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

4.2. Mechanisms for access to information

Recommendation 4.2:

Strengthen the mechanisms for ensuring public access to information.

⁵⁸ Report of the Second Round, *supra* note 46 at pgs. 29 - 30.

⁵⁹ Progress Report, *supra* note 45 at pg. 4.

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

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

4.3. Mechanisms for consultation

Recommendation 4.3:

Supplement existing consultative mechanisms, establishing, as appropriate, procedures that will offer greater opportunities to hold public consultations before designing public policies and approving legal provisions.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁶¹

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

4.4. Mechanisms to encourage participation in public administration

Recommendation 4.4:

Strengthen and continue to implement mechanisms that encourage civil society and nongovernmental organizations to participate in public administration.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁶²

- a. *Continue to make comments from the media available to any area of government which may stand to benefit from them.*

⁶⁰ Report of the Second Round, *supra* note 46 at pg. 30.

⁶¹ *Ibid.* at pgs. 30 – 31.

⁶² *Ibid.* at pg. 31.

- b. *Develop and promote mechanisms and laws to encourage participation in public administration, and consider the advisability of creating new mechanisms to make it possible to monitor public administration for the purposes of the Convention.*
- c. *Make the response of the Opinion Leaders Group available to the public.*
- d. *Examine the advisability of an increase in the number of town meetings by holding them at regularly scheduled times and allow civil society to convene such meetings.*
- e. *Modify existing libel law in order to ensure that it cannot be used to silence public reporting on corruption and integrity issues.*

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

Recommendation 4.5:

Strengthen and continue implementing mechanisms that encourage civil society and nongovernmental organizations to participate in the follow-up of public administration.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁶³

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

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

Recommendations suggested by the Committee that require information on its implementation or which required additional attention within the Framework of the Second Round:⁶⁴

Recommendation 5(a):

Determine and prioritize specific areas in which the Republic of Trinidad and Tobago considers that it needs the technical cooperation of other state parties to strengthen its capacity to prevent, direct, investigate and punish acts of corruption.

⁶³ *Ibid.* at pgs. 31 – 32.

⁶⁴ *Ibid.* at pg. 32.

Recommendation 5(b):

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

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

Recommendation suggested by the Committee that require information on its implementation or which required additional attention within the Framework of the Second Round:⁶⁵

Recommendation 6.1:

Inform the General Secretariat of the OAS of the designation of the central authority or authorities for purposes of the international assistance and cooperation provided for in the Convention.

7. GENERAL RECOMMENDATIONS

Recommendations suggested by the Committee that require information on its implementation or which required additional attention within the Framework of the Second Round:⁶⁶

Recommendation 7.1:

Design and implement, as appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.

Recommendation 7.2:

Select and develop procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.

Recommendation 7.3:

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, as well as the recommendations in this report.

Recommendation 7.4:

Systematize statistical records generated by the competent oversight agencies in order to make it possible to conduct an objective analysis of the results of the legal framework and other measures adopted.

⁶⁵ *Ibid.* at pgs. 32 – 33.

⁶⁶ *Ibid.* at pgs. 33 – 34.

SECOND ROUND

[155] The Committee offers the following observations with respect to the implementation of the recommendations made to the Republic of Trinidad and Tobago in the Report from the Second Round, based on the information available to it from the Progress Report⁶⁷ presented at the Fifteenth Meeting of the Committee of Experts:

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

1.1. Systems of Government Hiring

Recommendation:

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

Measures suggested by the Committee:

- a. *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).*
- c. *Strengthen the existing administrative mechanism regarding the hiring of judicial and legal officers, in order to ensure that there is clearly defined selection criteria that reflects the principles of merit and equality and that there is a clearly defined procedure for advertisement.*
- d. *Clarify and expand, through the appropriate legislative or administrative procedures, the selection criteria for positions on contract as well as the manner to advertise their vacancies.*
- e. *Strengthen the legal provisions regarding the Service Commissions, so that these authorities have the necessary financial, human and technological resources to carry out their functions so that they can ensure that the laws in place are being followed regarding the appointment process in the Republic of Trinidad and Tobago.*
- f. *Increase training programs for those responsible for managing public service selection and staffing processes.*

⁶⁷ Progress Report, *supra* note 45.

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

[156] With respect to measure a) of the foregoing recommendation, in its Response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

[157] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization Trinidad and Tobago Transparency Institute notes the following:

[158] *“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.”*⁶⁸

[159] With respect to measure g) of the foregoing recommendation, in its Response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

[160] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization Trinidad and Tobago Transparency Institute notes the following:

[161] *“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.”*⁶⁹

[162] With respect to measure h) of the foregoing recommendation, in its Response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

[163] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization Trinidad and Tobago Transparency Institute notes the following:

[164] *“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.”*⁷⁰

⁶⁸ Trinidad and Tobago Transparency Institute, *supra* note 2 at pg. 33.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

1.2. Government Systems for the Procurement of Goods and Services

Recommendation:

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

Measures suggested by the Committee:

- 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 public tendering or selective tendering procedures are utilized.*
- c. *Implement provisions that provide for objective selection factors or criteria in the evaluation of bids, including those of public works.*
- d. *Implement provisions that require prior planning sufficiently in advance of the launch of procurement process, such as preparing studies, designs and technical evaluations, and to assess the appropriateness and timeliness of the purchase.*
- e. *Strengthen existing mechanisms responsible for the internal and external audit, control and oversight of the government procurement system and the monitoring of execution of contracts.*
- f. *Strengthen and increase the scope of use of electronic communications, such as the internet for publicizing the tender opportunities, status of bids and awards and the progress in the execution of major projects.*
- g. *Develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means.*
- h. *Establish a centralized registry of contractors of works, goods or services, mandatory to all State bodies and dependencies, to foster the principles of openness, equity and efficiency provided for in the Convention.*
- i. *Implement a mechanism by legislative or administrative means to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons.*
- j. *Implement provisions that facilitate the participation of citizen oversight mechanism to monitor the execution of contracts where the nature, importance or magnitude so warrants, in particular public works contracts.*
- k. *Implement specific provisions allowing for challenges to the procurement process at the administrative level, which detail the procedure to be followed by government entities in handling and responding to such challenges and appeals, notwithstanding the procedures provided for by the Judicial Review Act and the Constitution.*

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

[165] With respect to measure a) of the foregoing recommendation, in its Response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

[166] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization Trinidad and Tobago Transparency Institute notes the following:

[167] *“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.”*⁷¹

[168] With respect to measure b) of the foregoing recommendation, in its Response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

[169] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization Trinidad and Tobago Transparency Institute notes the following:

[170] *“Section 23 A and B of the Central Tenders Board Ordinance (Act No. 22 – 1961) provides for the CTB [Central Tenders Board] 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 CTB.”*⁷²

[171] With respect to measure g) of the foregoing recommendation, in its Response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

[172] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization Trinidad and Tobago Transparency Institute notes the following:

[173] *“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 contracts. In addition, CTB has been conducting meetings with the Ministry of Public Administration for 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.”*⁷³

[174] With respect to measure i) of the foregoing recommendation, in its Response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

⁷¹ *Ibid.*, pg. 38

⁷² *Ibid.*

⁷³ *Ibid.*

[175] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization Trinidad and Tobago Transparency Institute notes the following:

[176] *“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 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.”*⁷⁴

[177] With respect to measure m) of the foregoing recommendation, in its Response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

[178] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization Trinidad and Tobago Transparency Institute notes the following:

[179] *“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 database.”*⁷⁵

[180] With respect to difficulties observed in the process of implementing the foregoing recommendation, the civil society organization, Trinidad and Tobago Transparency Institute notes the following:

[181] *“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.”*⁷⁶

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

Recommendation:

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

Measures suggested by the Committee:

⁷⁴ *Ibid.*, pgs. 38 – 39.

⁷⁵ *Ibid.*, pg. 39.

⁷⁶ *Ibid.*

- i. *Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings;*
- ii. *Measures to protect not only the physical integrity of whistleblowers and their families, but also to provide protection in the workplace, especially when the person is a public official and the acts of corruption involve his superior or co-workers;*
- iii. *Mechanisms for reporting, such as anonymous reporting or protection of identity reporting, that guarantee the personal security and the confidentiality of the identity of public servants and private citizens who in good faith report acts of corruption;*
- iv. *Mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it;*
- v. *Witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens;*
- vi. *Mechanisms to facilitate international cooperation on the foregoing matters, when appropriate, including the technical assistance and cooperation provided for by the Convention, as well as the exchanges of experiences, training, and mutual assistance.*
- vii. *A simplified whistleblower protection application process.*
- viii. *Provisions which sanction the failure to observe the rules and/or duties relating to protection.*
- ix. *The respective competence of judicial and administrative authorities with respect to this area, clearly distinguishing one from the other.*

[182] With respect to measure i) of the foregoing recommendation, the country under review presents information in its Progress Report presented at the Fifteenth Meeting of the Committee of Experts.⁷⁷ In this regard, the Committee notes the following as a step that leads it to conclude that said measure has been satisfactorily considered:

[183] – The proclamation of the Justice Protection Act on the 4th April 2007 and the establishment of the Justice Protection Authority with adequate funding and responsibility for the protection of all witnesses considered at risk, including whistleblowers, provides protection for persons who report acts of corruption.

[184] The Committee takes note of the satisfactory consideration by the country under review of measure i) of the foregoing recommendation, which, by its nature, requires a continuation of efforts in its implementation, without entering into an analysis of the substance of the Law.

[185] With respect to measure ii) of the foregoing recommendation, the country under review presents information in its comments to the draft preliminary report. In this regard, the Committee notes the following as a step that leads it to conclude that said measure has been satisfactorily considered:

⁷⁷ Progress Report, *supra* note 45 at pg. 5.

[186] - The Integrity in Public Life (Amendment) Act, which came into force on January 13, 2010, allows for the protection of employees of the State, a public authority or any other body from dismissal, suspension, demotion, disciplinary action, harassment, denial of benefits or being otherwise negatively affected where such a person acting in good faith reports acts of corruption or misbehavior.

[187] The Committee takes note of the satisfactory consideration by the country under review of measure ii) of the foregoing recommendation, which, by its nature, requires a continuation of efforts in its implementation, without entering into an analysis of the substance of the Law.

[188] With respect to measure iii) of the foregoing recommendation, the country under review presents information in its comments to the draft preliminary report. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:

[189] - The Integrity in Public Life (Amendment) Act, which came into force on January 13, 2010, allows for the protection of employees of the State, a public authority or any other body from dismissal, suspension, demotion, disciplinary action, harassment, denial of benefits or being otherwise negatively affected where such a person acting in good faith reports acts of corruption or misbehavior.

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

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

Recommendation 3.1:

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

Recommendation 3.2:

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

4. GENERAL RECOMMENDATIONS

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.

Recommendation 4.2:

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