

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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SAINT VINCENT AND THE GRENADINES

FINAL REPORT

(Adopted at the June 27, 2008 plenary session)

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

**REPORT ON IMPLEMENTATION IN SAINT VINCENT AND THE GRENADINES OF THE
CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND, AND
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY
IN THE FIRST ROUND¹**

INTRODUCTION

1. Contents of the Report

This Report presents, first, a review of the implementation in Saint Vincent and the Grenadines 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 second round: Article III, paragraphs 5 and 8, and Article VI.

Second, the Report examines the follow-up to the implementation of the recommendations that were formulated to Saint Vincent and the Grenadines by the MESICIC Committee of Experts in the first round, which are contained in the Report on that country adopted by the Committee at its Eighth Meeting and published at the following web page: http://www.oas.org/juridico/english/mec_rep_vct.pdf

2. Ratification of the Convention and adherence to the Mechanism

According to the official register of the OAS General Secretariat, Saint Vincent and the Grenadines ratified the Inter-American Convention against Corruption on May 28, 2001 and deposited the instrument of ratification on June 5, 2001.

In addition, Saint Vincent and the Grenadines signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2002.

I. SUMMARY OF INFORMATION RECEIVED

Response of Saint Vincent and the Grenadines

The Committee wishes to acknowledge the cooperation that it received throughout the review process from Saint Vincent and the Grenadines, 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, Saint Vincent and the Grenadines sent the provisions and documents it considered pertinent.

For its review, the Committee took into account the information provided by Saint Vincent and the Grenadines up to November 2, 2007, and that requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and Other Provisions.

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on June 27, 2008, at its Thirteenth meeting, held at OAS Headquarters, June 23-27, 2008.

II. REVIEW OF IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND

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

1.1. SYSTEMS OF GOVERNMENT HIRING

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

Saint Vincent and the Grenadines has a set of provisions related to the above systems, among which the following should be noted:

- Constitutional provisions,² such as those found in section 77, which provide for the establishment of the Public Service Commission as an independent body whose members are appointed by the Governor-General acting on the advice of the Prime Minister. Section 78(1) of the Constitution provides that this Commission has the power to appoint persons to and remove them from public office and to exercise disciplinary control over persons who hold such office, with the exception of the offices listed in section 78(3).³ Section 83 of the Constitution provides that the power to appoint, exercise disciplinary control over, and remove magistrates, registrars, and legal officers shall vest in the Judicial and Legal Services Commission, established pursuant to section 18 of Eastern Caribbean Supreme Court⁴ Order No. 1967 in relation with section 105 (3) (b) and paragraph 8 of the second appendix “transitory provisions” of the Constitution of Saint Vincent and the Grenadines.

- Statutory provisions such as those contained in the Public Service Commission Regulations,⁵ which regulate, among other things, the appointment, promotion, transfer, termination of employment and discipline of public officers. The sections comprising part II of these Regulations stipulate that applications for first appointment shall be addressed to the Chief Personnel Officer in the prescribed form (Regulation 14). Regulation 15 provides that vacancies may be filled through the appointment or promotion of public officers. When a vacancy occurs in any public office in any department or ministry, the Permanent Secretary⁶ shall report the fact to the Public Service Commission (section 15). However the Permanent Secretary does not make appointments to the public service. Appointments are made by the Public Service Commission, an advertisement will be prepared setting out the details of the vacant post, its duties and the minimum qualifications for appointment, pursuant

² Available at: http://www.oas.org/juridico/mla/en/vct/en_vct-int-text-const.pdf

³ Section 78 (3) of the Constitution of Saint Vincent and the Grenadines: “The provisions of this section shall not be applied with relation to the following offices: a) any office to which section 79 of the Constitution; b) the office of the Attorney General; c) the office of Director of the Public Ministry; d) the office of Director of Audit; e) any office to which section 83 of the Constitution applies; or f) any office in the Police Force.”

⁴ The Eastern Caribbean Supreme Court is the highest judicial tribunal in the State under review, whose jurisdiction covers not only Saint Vincent and the Grenadines, but also five other independent States (Antigua and Barbuda, Dominica, Grenada, Saint Christopher and Nevis, and Saint Lucia) and three British Overseas Territories (Anguilla, British Virgin Islands, and Montserrat), since they are not independent states that can become a party to the Convention. The Court came into operation in 1967, replacing the West Indies Associated States Supreme Court and is composed of 19 members presided over by the Chief Justice. Judicial appointments, except that of the Chief Justice, who is appointed by Her Majesty, are made by the Judicial and Legal Services Commission, established pursuant to section 18 of Eastern Caribbean Supreme Court Order No. 1967. The Eastern Caribbean Supreme Court has two divisions: the High Court of Justice and the Court of Appeal. The High Court of Justice has competence in all civil and criminal matters over which the Magistrate’s Courts do not have jurisdiction. The court of last resort is the Judicial Committee of Her Majesty’s Privy Council in London.

⁵ Available at: http://www.oas.org/juridico/spanish/mesicic2_svg_public_service_comm_reg.pdf

⁶ “Permanent Secretary” includes the highest level official in a Ministry and the chief of a department not under ministerial control. (Public Service Commission Regulations, section 2).

to Regulation 18. No appointment to a public office may be made before the Commission has determined the suitability of the candidates (Regulation 16). Moreover, with respect to the principles governing the selection of public servants for promotion, Regulation 19 includes seniority, experience, educational qualifications, merit and ability. Finally, Regulation 24 sets forth the procedure for the appointment of public officers, stating that the Commission shall be responsible “for the conduct of any examination for recruitment” to public offices, “and shall determine whether the candidate has the necessary qualifications for appointment. The Commission may interview candidates for appointment and shall consider in respect of each candidate: (a) his educational qualifications; (b) his general fitness; (c) any previous employment of his in the public service or otherwise; and (d) any reports for which the Commission may call from persons such as the principal, headmaster or headmistress of a candidate’s university, college or school or any referees named by the candidates”.

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

With respect to the constitutional and legal provisions that refer to the systems of government hiring that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention. Notwithstanding, the Committee considers it appropriate to make a number of observations on the advisability of developing and complementing certain legal provisions that refer to those systems.

As stated in the preceding section, the Public Service Commission Regulations, due to its general scope of application and its direct treatment of the issue, is the overarching legal framework responsible for the systems of government hiring in the country under review. Nonetheless, the Committee notes an insufficiency of provisions that develop the different stages of the procedure for personnel selections and appointments, notwithstanding the relevant sections of part II of the Regulations. In the Committee’s view, this insufficiency could adversely affect the objectivity, effectiveness, and transparency of the system for hiring public servants and therefore highlights the importance that the country under review consider developing, through the relevant legal and administrative procedures, the various stages that comprise the process for the selection and appointment of public officers by adopting clearly defined provisions and criteria that ensure access to the public service, bearing in mind the principles of openness, equity, and efficiency as provided in the Convention. (See Recommendation 1.1(a) in Chapter III of this Report)

With respect to the governing or administering authority of the system of government hiring in Saint Vincent and the Grenadines, the Committee observes that while the Constitution and the Regulations to the Public Service Commission accord this body this status and vest it with the powers to carry out this function, the country under review should continue to strengthen that body in order to ensure that it has the necessary human and financial resources and adequate operational independence to administer the hiring system with objectivity and impartiality as well as to objectively discharge its duties. Taking into account the foregoing, the Committee highlights the importance that Saint Vincent and the Grenadines consider adopting, through the relevant legal and administrative procedures, provisions that establish adequate control mechanisms to ensure strict compliance with the norms for the appointment of public servants. (See Recommendations 1.1 (b) and (c) in Chapter III of this Report)

With regard to the advertisement of opportunities to enter the public service, the Public Service Commission Regulations stipulate that vacancies shall be filled generally by means of the promotion or appointment of public officers by the Commission based on the recommendation of the permanent

secretary of the office, agency, or ministry having the respective vacancy. Nonetheless, should it be so inclined, the permanent secretary may also recommend that the vacancy be advertised publicly, although there are no provisions requiring that the permanent secretary justify this recommendation or of the Commission's decision to publicly advertise a vacancy. Therefore, the Committee urges the country under review to consider adopting, through the appropriate legal and administrative procedures, provisions and mechanisms containing clearly defined criteria for the advertisement of opportunities or vacancies to join the public service, their content, and the form and time frame in which they should be advertised, taking into account the use of the mass media, such as newspapers with national circulation and/or websites, among others. (See Recommendation 1.1 (d) in Chapter III of this Report)

With respect to the existence of challenge mechanisms to clarify, modify or revoke substantive actions in government hiring processes in the country under review, the Committee notes an absence of administrative challenge mechanisms in this regard and suggests, therefore, the adoption, in keeping with the principle of due process and through the relevant legal and administrative procedures, of provisions for the establishment of such mechanisms, which guarantee the complainant a timely, objective, impartial, and effective proceeding. (See Recommendation 1.1 (e) in Chapter III of this Report)

Saint Vincent and the Grenadines also might consider the advisability of implementing training programs or courses so that those entering the public service can familiarize themselves with their obligations of probity and the duties inherent to their office. (See General Recommendation 4.1 in Chapter III of this Report)

Finally, it is inappropriate for the Committee to rule on government hiring systems within the judiciary of the state under review, since the appointment of those officials is the job of the Judicial and Legal Services Commission, a supranational body created under section 18 of Order No. 1967 of the Eastern Caribbean Supreme Court, the jurisdiction of which covers, in addition to Saint Vincent and the Grenadines, five additional independent states (Antigua and Barbuda, Dominica, Grenada, Saint Christopher and Nevis, and Saint Lucia) and three British Overseas Territories (Anguilla, British Virgin Islands, and Montserrat).

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

Saint Vincent and the Grenadines did not provide information on results in this area. Accordingly, in addition to highlighting the importance of providing a complete response to the questions on results in the Questionnaire, the Committee will make a recommendation in this regard. (See General Recommendation 4.2 in Chapter III of this Report)

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

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

Saint Vincent and the Grenadines has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- The provisions of the Purchases and Tenders Procedure Orders,⁷ applicable to the three branches of government, which, according to Section 1, govern the procurement of all supplies, works, and services required by the government, except for the specific or general approval of the Ministry of Finance in exceptional cases. Section 7 of these Orders provide that the Minister of Finance will appoint a Central Supply Tenders Board, which shall apply the general policy laid down for the procurement of government supplies and services and for the purpose of authorizing the acceptance of tenders.

- The provisions of the Rules for Tender and Purchasing Procedures, included as an appendix to the Purchases and Tenders Procedure Orders, which establish the powers and duties of the Central Supply Tenders Board (Rule 4); the procedure when tenders are to be invited (Rule 6); and the procedure for selective tendering (Rule 15).

In addition, the country under review states in its Response that in circumstances where projects are financed by external organizations such as the World Bank, those organizations will stipulate the tendering and other financial requirements to be observed by the State.⁸

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

With respect to the legal provisions that refer to the principal government systems for the procurement of goods and services that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention.

The Purchases and Tenders Procedure Orders and their regulations constitutes, due to its general application and specific treatment of the issue, the overarching legal framework with respect to public tenders in the country under review. Nonetheless, the Committee urges Saint Vincent and the Grenadines to consider strengthening, complementing, and updating, taking into account its domestic legal system, the norms that govern the systems for the procurement of goods and services so as to ensure their openness, equity, and efficiency.

In this regard, the Committee suggests the adoption of a legal instrument of general application to regulate the aforementioned system based on the principle of public tendering, notwithstanding the possibility of establishing different modalities of tendering for exceptional cases that are clearly set out in the law, such as, for example, to deal with extraordinary events involving calamities or disasters, in cases where there is a lack of multiple bidders, or based on set thresholds. (See Recommendation 1.2(a) of Section 1.2 in Chapter III of this Report)

The suggested legal instrument could also include provisions to establish control mechanisms and governing or administrative authorities to monitor compliance with the norms governing procurement for goods, works, and services required by the government, ensuring that these authorities have the necessary human and financial resources and operational independence to objectively discharge their duties free from undue interference or pressures. (See Recommendation 1.2(b) of Section 1.2 in Chapter III of this Report.)

⁷ Available at: http://www.oas.org/juridico/spanish/mesicic2_svg_purchases_tenders_procedure.pdf

⁸ Response of Saint Vincent and the Grenadines to the questionnaire, p. 4.
www.oas.org/juridico/spanish/mesicic2_svg_resp_en.doc

The Committee also notes a lack of provisions establishing sanctions for contractors who fail to meet and/or break the rules governing contracting procedures; it consequently urges the State under review to consider developing and implementing, through the corresponding authority, a regime of sanctions for contractors who fail to abide by the principles and duties of public contracting. (See Recommendation 1.2(c) of Section 1.2 in Chapter III of this Report.)

The Committee also deems it advisable that, without prejudice to the provisions of No. 19 of the Rules for Tender and Purchasing Procedures, the proposed instrument include the creation of registries of suppliers or bidders as an eligibility prerequisite for government tendering in certain types of contracts whose implementation requires a particular level of professional qualification, technical expertise or experience. It could include provisions establishing the minimum content of these registries, such as a contractor's history of compliance or noncompliance; its areas of work or specialty; its technical and financial capacity; the type of business, in cases of legal persons, and any limitations on liability derived from that status. It could also consider the use of computer technology to create, access, and update those registries. (See Recommendation 1.2(d) of Section 1.2 in Chapter III of this Report)

With regard to the use of electronic media and information systems for public tendering, the Committee urges the country under review to consider the possibility of adopting provisions for the development of such technology in the systems for the procurement of goods and services, in order to ensure openness, equity, and efficiency as provided in the Convention. (See Recommendation 1.2(e) of Section 1.2 in Chapter III of this Report)

With respect to public works contracts, the Committee believes it is equally advisable that the proposed legal instrument include specific provisions for this type of tendering, including the implementation of control systems for each particular public works contract that, in view of its magnitude, provides for audits or direct monitoring of the execution of the contract by the contracting entity or its designate; allows for citizen oversight or supervision; imposes the obligation to report periodically on the progress of the contract; and makes it possible to determine whether the anticipated cost-benefit ratio was actually achieved and whether the quality of the work is consistent with the agreement. (See Recommendation 1.2(f) of Section 1.2 in Chapter III of this Report)

In the Committee's view, it is also important that the proposed legal regime also include provisions relating to the identification of clear and objective criteria for the selection of contractors. Provisions should be adopted that stipulate the way in which contractors should be selected for each category of contract, clearly establishing the priority to be accorded each of the factors that will be taken into account in awarding the contract, such as price, quality, and technical qualifications. (See Recommendation 1.2(g) of Section 1.2 in Chapter III of this Report)

The Committee suggests that this instrument could contain provisions to regulate, taking into account the principle of due process, challenge mechanisms with respect to substantive acts of the tendering process, such as the bases for the tender or bid, the rejection of bidders, and the designation of the winner, which are designed to clarify, modify or revoke such acts. (See Recommendation 1.2(h) of Section 1.2 in Chapter III of this Report)

Saint Vincent and the Grenadines could also consider the usefulness of introducing programs or training courses for those public officials whose responsibilities involve public contracting procedures. (See General Recommendation 4.1 in Chapter III of this Report)

Finally, the Committee notes that in an appendix to its report, Saint Vincent and the Grenadines provided the Draft Procurements and Contract Administration Bill,⁹ which could be construed as a step toward implementation of the Convention.

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

Saint Vincent and the Grenadines did not provide information on results in this area. Accordingly, in addition to highlighting the importance of providing a complete response to the questions on results in the Questionnaire, the Committee will make a recommendation in this regard. (See General Recommendation 4.2 in Chapter III of this Report)

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

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

In its Response, Saint Vincent and the Grenadines states as follows: “No institutional procedures are in place under the law to specifically offer protection to public servants and private citizens who report acts of corruption.”¹⁰

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

In light of the foregoing, it is inappropriate to pronounce on this matter and therefore, the Committee will formulate the recommendations it deems advisable, so that Saint Vincent and the Grenadines will consider the establishment of systems to protect public servants and private citizens who, in good faith, report acts of corruption, in accordance with paragraph 8 of article III of the Convention. (See Recommendation 2 of Chapter III of this Report)

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

Saint Vincent and the Grenadines did not provide information on results in this area. Accordingly, in addition to highlighting the importance of providing a complete response to the questions on results in the Questionnaire, the Committee will make a recommendation in this regard. (See General Recommendation 4.2 in Chapter III of this Report)

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

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

Saint Vincent and the Grenadines has a set of provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention, among which the following should be noted:

- With regard to paragraph (a) of Article VI(1):

Section 85(a) of the Criminal Code¹¹, which provides: “*Any person who being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly*

⁹ Available at: http://www.oas.org/juridico/spanish/mesicic2_svg_procurement_contract_adm_bill_07.pdf

¹⁰ Response of Saint Vincent and the Grenadines to the questionnaire, p. 4.

solicits, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office, is guilty of an offence and liable to imprisonment for three years .”

- With regard to paragraph (b) of Article VI(1):

Section 85(b) of the Criminal Code, which provides: *“Any person who corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon or for any person, employed in the public service, or to, upon, or for any other person, any property or benefit of any kind on account of such act or omission on the part of the person so employed, is guilty of an offence and liable to imprisonment for three years.”*

- With regard to paragraph (c) of Article VI(1):

Section 86 of the Criminal Code, which provides: *“Any person who, being employed in the public service, takes or accepts from any person for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, or any promise of such reward, is guilty of an offence and liable to imprisonment for three years.”*

Section 87 of the Criminal Code, which provides: *“Any person who, being employed in the public service, receives any property or benefit of any kind for himself on the understanding, expressed or implied, that he shall favour the person giving the property or conferring the benefit, or anyone in whom that person is interested, in any transaction then pending or likely to take place between the person giving the property or conferring the benefit, or anyone in whom he is interested, and any person employed in the public service is guilty of an offence and liable to imprisonment for six months.”*

Section 88 of the Criminal Code, which provides: *“Any person who, being employed in the public service in such a capacity as to require him or enable him to furnish returns or statements touching any sum payable or claimed to be payable to himself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such matter which is, to his knowledge, false in any material particular, is guilty of an offence and liable to imprisonment for two years.”*

Section 89 of the Criminal Code, which provides: *“(1) Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, is guilty of an offence and liable to imprisonment for two years. (2) If the act referred to in subsection (1) is done or directed to be done for purposes of gain, he is liable to imprisonment for three years. (3) A prosecution for an offence under this section shall not be instituted except by, or with the written consent of, the Director of Public Prosecutions.”*

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

With respect to the provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention that have been examined by the Committee, based on the information available to it, including the review conducted in the framework of the technical cooperation project

¹¹ Available in: http://www.oas.org/juridico/spanish/mesicic2_svg_criminal_code_85_96.pdf

for ratification and implementation of the Convention, which was carried out by the OAS with financial support provided by the Inter-American Development Bank (IDB),¹² the Committee observes that they may be said to constitute, as a whole, a set of provisions relevant for promoting the purposes of the Convention.

Nonetheless, the Committee urges Saint Vincent and the Grenadines to adapt and/or complement, as appropriate, its criminal legislation so as to include the acts of corruption described in Article VI(1)(d) of the Convention as well as the forms of participation referred to in Article VI(1)(e).^{13.i} (See Recommendations 3(a) and 3(b) of Section 3 in Chapter III of this Report)

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

Saint Vincent and the Grenadines did not provide information on results in this area. Accordingly, in addition to highlighting the importance of providing a complete response to the questions on results in the Questionnaire, the Committee will make a recommendation in this regard. (See General Recommendation 4.2 in Chapter III of this Report)

III. CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO THE IMPLEMENTATION OF THE PROVISIONS SELECTED IN THE FRAMEWORK OF THE SECOND ROUND

Based on the review conducted in Chapter II of this Report, the Committee offers the following conclusions and recommendations regarding implementation by Saint Vincent and the Grenadines of the provisions contained in Article III(5) (systems of government hiring and for the procurement of goods and services); Article III(8) (systems for protecting public servants and private citizens who, in good faith, report acts of corruption); and Article VI (acts of corruption) of the Convention, which were selected for review within the framework of the second round.

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

1.1. Systems of Government Hiring

Saint Vincent and the Grenadines has considered and adopted measures intended to establish, maintain, and strengthen the systems of government hiring, as discussed in Section 1.1 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that Saint Vincent and the Grenadines consider the following recommendation:

- Strengthen the systems of government hiring.

In meeting this recommendation, Saint Vincent and the Grenadines could take into account the following measures:

¹² This analysis was elaborated by Judge Monica Theresa Joseph (project Consultant), available in: www.oas.org/juridico/spanish/agendas/estudio_final_ecs.doc

¹³ At the plenary session held on June 26, 2008, Saint Vincent and the Grenadines presented provisions of the Criminal Code relating to the forms of participation referred to in paragraph (e) of Article VI.1 of the Convention. However, since this information was received after the deadline for submitting the Questionnaire response, the Committee conducted no analysis thereof. The content of those provisions can be seen in endnote (i) of this Report.

- (a) Develop, through the relevant legal and/or administrative procedures, the different stages that comprise the process of selecting and appointing public servants, by adopting provisions and clearly defined criteria that ensure access to the public service, always taking into account the principles of openness, equity and efficiency as provided in the Convention. (See Section 1.1.2 of Chapter II of this report).
- (b) Continue to strengthen the Public Service Commission so that it has the necessary human and financial resources and the adequate operational independence to administer the hiring system with objectivity and impartiality, and to objectively discharge its duties. (See Section 1.1.2 of Chapter II of this report).
- (c) Adopt, through the relevant legal and/or administrative procedures, provisions establishing adequate control mechanisms to ensure strict compliance with the norms for the selection of public servants. (See Section 1.1.2 of Chapter II of this report).
- (d) Adopt, through the appropriate legal and/or administrative procedures, provisions and mechanisms that contain clearly defined criteria for the advertisement of opportunities or vacancies into the public service, provide for their content and form as well as the time frame in which they should be advertised, and which take into account the use of the mass media, such as newspapers with national circulation and/or websites, among others. (See Section 1.1.2 of Chapter II of this report).
- (e) Adopt, through the respective legal and/or administrative procedures and in keeping with the principle of due process, provisions for the establishment of administrative challenge mechanisms to clarify, modify or revoke substantive acts that are part of the procedures to recruit and select personnel, ensuring a timely, objective, impartial, and effective procedure. (See Section 1.1.2 of Chapter II of this report).

1.2. Systems for government procurement of goods and services

Saint Vincent and the Grenadines has considered and adopted measures intended to establish, maintain and strengthen the systems for government procurement of goods and services, as discussed in Section 1.2 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that Saint Vincent and the Grenadines consider the following recommendation:

- Promote the adoption of standards that guarantee the principles of openness, equity and efficiency as provided in the Convention, in government systems for the procurement of goods and services.

In meeting this recommendation, Saint Vincent and the Grenadines could take into account the following measures:

- (a) Adopt, taking into account the existing legal initiative, a legal instrument of general application and with the force of law to regulate government systems for the procurement of goods and services, based on the principle of public tendering, without detriment to the possibility of establishing different modalities of tendering in exceptional cases that are clearly set forth in the law. (See Section 1.1.2 of Chapter II of this report).

- (b) Develop provisions that establish control mechanisms and governing or administrative authorities to monitor compliance with the norms governing government procurement of goods and services and that ensure that they have the necessary human and financial resources and operational independence to objectively discharge their duties free from undue interference or pressures. (See Section 1.1.2 of Chapter II of this report).
- (c) Develop and implement, through the corresponding authority, a regime of sanctions for contractors who fail to abide by the principles and duties of public contracting. (See section 1.1.2 of Chapter II of this Report.)
- (d) Develop provisions that establish the creation of registries of suppliers or bidders as an eligibility requirement to participate in government contracting processes for certain categories of contracts. These provisions should indicate the minimum content of such registries and allow for the use of information technology to create, access, and update them. (See Section 1.1.2 of Chapter II of this report).
- (e) Develop provisions for the use of electronic media and information systems for public tenders in the systems for the procurement of goods and services, in order to ensure openness, equity and efficiency as provided in the Convention. (See Section 1.1.2 of Chapter II of this report).
- (f) Develop provisions to regulate public works contracts, including the implementation of control systems for each particular contract which, in view of its magnitude, stipulates the audits or monitoring of the execution of the contract by the contracting entity or its designate; ensures citizen oversight or supervision; imposes the requirement to report periodically on the progress of the contract; and makes it possible to determine whether the anticipated cost-benefit ratio was actually obtained and whether the quality of the work is consistent with the agreement. (See Section 1.1.2 of Chapter II of this report).
- (g) Develop provisions that establish clear and objective criteria for the selection of contractors. (See Section 1.1.2 of Chapter II of this report).
- (h) Develop provisions that regulate, in keeping with the principle of due process, challenge mechanisms relating to the substantive acts of the tendering process, such as the basis for the tender or bid, the rejection of bidders, and the designation of the winner, which are designed to clarify, modify, or revoke such acts. (See Section 1.1.2 of Chapter II of this report).

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

Saint Vincent and the Grenadines do not have measures to establish, maintain and strengthen systems for protecting public servants and private citizens who in good faith report acts of corruption, as discussed in Section 2 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that Saint Vincent and the Grenadines consider the following recommendation:

- Adopt, through the corresponding authority, a comprehensive legal and regulatory framework that provides protection of public servants and private citizens who, in good faith,

report acts of corruption, including protection of their identities, in accordance with its Constitution and the basic principles of its domestic legal system, which could include, among others, the following aspects:

- (a) Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings;
- (b) 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;
- (c) 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;
- (d) Mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it;
- (e) Witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens;
- (f) Mechanisms to facilitate international cooperation on the foregoing matters, when appropriate, including the technical assistance and cooperation provided for by the Convention, as well as the exchanges of experiences, training, and mutual assistance;
- (g) A simple whistleblower protection application process.
- (h) Provisions which provide for administrative and criminal sanctions for the failure to observe the rules and/or duties relating to protection;
- (i) The competence of the judicial and administrative authorities in this area, clearly distinguishing one from the other.

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

Saint Vincent and the Grenadines has adopted measures aimed at criminalizing the acts of corruption provided for by Article VI(1) of the Convention, as described in Section 3 of Chapter II of this report.

In view of the comments made in that section, the Committee suggests that Saint Vincent and the Grenadines consider the following recommendation:

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

In meeting this recommendation, Saint Vincent and the Grenadines could take into account the following measures:

- (a) Criminalize the fraudulent use or concealment of property derived from any of the acts referred to in Article VI(1) of the Convention, in accordance with paragraph (d) of the same Article. (See Section 3.2 of Chapter II of this report).
- (b) To include the modalities of participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in Article VI(1) of the Convention, in accordance with paragraph (e) of the same Article. (See Section 3.2 of Chapter II of this report).¹⁴

4. GENERAL RECOMMENDATIONS

Based on the review and contributions made throughout this Report, the Committee suggests that Saint Vincent and the Grenadines consider the following recommendations:

- 4.1. Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.
- 4.2. Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein. (See Sections 1.1.3 and 1.2.3 of Chapter II of this Report).

5. FOLLOW-UP

The Committee will consider the periodic update Reports submitted by Saint Vincent and the Grenadines on its progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with Article 31 of the Rules of Procedure and Other Provisions.

Similarly, the Committee will review the progress of Saint Vincent and the Grenadines in implementing the recommendations made in this Report, in accordance with Article 29 of the Rules of Procedure and Other Provisions.

IV. OBSERVATIONS IN RELATION TO THE PROGRESS IN THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE REPORT FROM THE FIRST ROUND

Based on the information made available to the Committee on the implementation of the recommendations formulated for Saint Vincent and the Grenadines in the Report in the First Round of Review, the Committee observes the following:

¹⁴ The Committee notes the existence of provisions in the Criminal Code of the state under review that could address the forms of participation set out in paragraph (e) of Article VI.1 of the Convention. Since this information was received after the deadline for submitting replies to the Questionnaire, however, it was not analyzed. The content of those provisions can be seen in endnote (i) of this Report.

**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:

Strengthening the implementation of the provisions on conflicts of interest, and ensure that the laws on this matter are applicable to all public officials and employees, so as to permit the practical and effective application of a public ethics system.

▪ Measures suggested by the Committee

- a. *Strengthen, complement and update the standards governing the conduct of public servants in general, including those provisions designed to prevent conflicts of interest, without prejudice to systems intended for specific sectors, whose particular nature might require specialized treatment.*
- b. *Create or strengthen mechanisms to ensure that no appointments are made in breach of the rules in force on ineligibility and incompatibility in public service.*
- c. *Create and implement mechanisms to determine, in concrete cases, if a person who performs public functions is in a situation of conflict of interests, and, at the same time, adopt measures necessary to protect public interests, such as dissociation from the exercise of their functions, withdrawal from official involvement in the matter, relinquishment of the private interests in conflict, or nullity of any decisions adopted by a person in such a position.*
- d. *Establish suitable restrictions for persons leaving public service, such as a prohibition preventing their involvement for a reasonable period in any official matters in which they might have engaged by virtue of their office, or with institutions with which they might have been recently connected in the performance of their official duties.*

In its reply,¹⁵ the State undergoing review submits information on this recommendation, in connection with the ongoing passage through Parliament of the Prevention of Corruption Bill.

The Committee notes the need for the State undergoing review to pay additional attention to its implementation.

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

▪ Recommendation:

Strengthening and updating systems of control and use of resources within the public administration, by developing enforceable standards applicable to all public officials and

¹⁵ Response of Saint Vincent and the Grenadines to the questionnaire, p.7.

employees that make it a duty to conserve and make proper use of the resources entrusted to them in the performance of their functions.

In its reply,¹⁶ the State undergoing review submits information on this recommendation, in connection with the ongoing passage through Parliament of the Prevention of Corruption Bill.

The Committee notes the need for the State undergoing review to pay additional attention to its implementation.

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

Developing and strengthening mechanisms requiring public servants to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

▪ Measures suggested by the Committee

a. *Establish further mechanisms and systems that require public servants to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.*

b. *Adopt and implement protection measures for public servants who report acts of corruption in good faith, so as to provide them with assurances against any threats or reprisals that they might incur as a result of performing their duty in that regard.*

In its reply,¹⁷ the State undergoing review submits information on this recommendation, in connection with the ongoing passage through Parliament of the Integrity in Public Life Bill.

The Committee notes the need for the State undergoing review to pay additional attention to its implementation.

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

▪ Recommendation

Adopting standards to strengthen the systems for registering income, assets, and liabilities and, where appropriate, for making such registrations public.

▪ Measures suggested by the Committee

a. *Implement specific standards, taking into account the existing legal initiative, including reasonable time limits and circumstances for periodic filing of up-to-date disclosures of income, assets, and liabilities by persons who perform public functions in certain posts as specified by law, including sanctions for those that do not comply with the requirement to*

¹⁶ Ibid.

¹⁷ Ibid.

furnish such declarations. These systems for registering income, assets and liabilities by persons who perform public functions would constitute an instrument for preventing and detecting conflicts of interest and illicit acts or activities.

- b. Regulate the conditions, procedures and other relevant aspects as regards making disclosures of income, assets, and liabilities public, as appropriate, in accordance with the laws in force.*

In its reply,¹⁸ the State undergoing review submits information on this recommendation, in connection with the ongoing passage through Parliament of the Integrity in Public Life Bill.

The Committee notes the need for the State undergoing review to pay additional attention to its implementation.

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

▪ Recommendation

Strengthening the functions of, and where appropriate, create oversight bodies that enforce compliance with the matters covered by the provisions of Article III, paragraphs 1, 2, 4 and 11 of the Convention; provide them with the necessary resources to enable them to carry out their functions in full; and establish mechanisms to permit effective institutional coordination, as well as periodic evaluation and monitoring, of the measures they adopt.

In its reply,¹⁹ the State undergoing review submits information on this recommendation, in connection with the ongoing passage through Parliament of the Integrity in Public Life Bill.

The Committee notes the need for the State undergoing review to pay additional attention to its implementation.

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

4.1. General participation mechanisms

▪ Recommendation

Establish a body with specific competence in the efforts destined to prevent corruption that includes civil society and nongovernmental organizations, taking into account the existing legal initiative (Civil Society Organizations Draft Bill).

The country under review did not refer to the above-noted recommendation in its Response. In view of the foregoing, the Committee takes note of the need for Saint Vincent and the Grenadines to give additional attention to its implementation.

¹⁸ Ibid.

¹⁹ Ibid.

4.2. Mechanisms to ensure access to information

- Recommendation

Strengthen the mechanisms to ensure access to information.

- Measures suggested by the Committee

- a. *Adopt, as soon as possible, the necessary measures for the promulgation and full entry into force of the Freedom of Information Act (Act No. 27) of 2003.*
- b. *Establish mechanisms to enforce obligations of public authorities under the Freedom of Information Act (Act No. 27) of 2003, including a system of penalties for public servants who breach those obligations.*
- c. *Consider the establishment of administrative procedures by which decisions of public authorities made under the Freedom of Information Act (Act No. 27) of 2003 may be appealed.*
- d. *Implement training and awareness-raising programs on mechanisms for access to public information, in order to facilitate their comprehension by public servants and members of the public, as well as to improve the use of the technology available for that purpose.*

The country under review did not refer to the above-noted recommendation in its Response. In view of the foregoing, the Committee takes note of the need for Saint Vincent and the Grenadines to give additional attention to its implementation.

4.3. Mechanisms for consultation

- Recommendation 4.3.1:

Create consultation mechanisms to enable civil society and nongovernmental organizations to generate opinions and proposals to be taken into account in preventing, detecting, investigating, and punishing corruption.

- Recommendation 4.3.2:

Design and implement programs to publicize consultation mechanisms and, as appropriate, provide training and instruments necessary for effective implementation of those mechanisms.

The country under review did not refer to the above-noted recommendations in its Response. In view of the foregoing, the Committee takes note of the need for Saint Vincent and the Grenadines to give additional attention to their implementation.

4.4. Mechanisms to encourage participation in public administration

- Recommendation 4.4.1:

Develop -taking into account its system of laws- standards and procedures to establish, maintain and strengthen mechanisms to encourage participation by civil society and nongovernmental

organizations in public policy and decision making processes as part of the efforts to prevent corruption.

▪ Recommendation 4.4.2:

Design and implement specific programs to publicize mechanisms to encourage participation in public administration and, as appropriate, provide the necessary training and tools for the effective implementation of those mechanisms.

The country under review did not refer to the above-noted recommendations in its Response. In view of the foregoing, the Committee takes note of the need for Saint Vincent and the Grenadines to give additional attention to their implementation.

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

▪ Recommendation

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

▪ Measures suggested by the Committee

a. *Promote, where appropriate, methods to allow, facilitate and assist civil society and nongovernmental organizations to engage in activities in the follow-up of public administration and prevention of corruption.*

b. *Design and implement specific programs to disseminate mechanisms to encourage participation in follow-up on public administration and, as appropriate, provide the necessary training and tools for the effective implementation of those mechanisms.*

The country under review did not refer to the above-noted recommendation in its Response. In view of the foregoing, the Committee takes note of the need for Saint Vincent and the Grenadines to give additional attention to its implementation.

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

5.1. Mutual assistance

▪ Recommendation 5.1.1:

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

▪ Recommendation 5.1.2:

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

5.2 Mutual technical cooperation

- **Recommendation 5.2.1:**

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

- **Recommendation 5.2.2:**

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

The country under review did not refer to the above-noted recommendations in its Response. In view of the foregoing, the Committee takes note of the need for Saint Vincent and the Grenadines to give additional attention to their implementation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

- **Recommendation 6.1:**

Designate, in accordance with the prescribed procedures, the central authority or authorities for the purposes of international assistance and cooperation provided in the Convention.

- **Recommendation 6.2:**

Notify the OAS General Secretariat, in accordance with the prescribed formalities, of the designation of the central authority or authorities mentioned in the foregoing point.

The country under review did not refer to the above-noted recommendations in its Response. In view of the foregoing, the Committee takes note of the need for Saint Vincent and the Grenadines to give additional attention to their implementation.

7. GENERAL RECOMMENDATIONS

- **Recommendation 7.1:**

Design and implement, where appropriate, training programs for public servants responsible for application of the systems, standards, measures, and mechanisms included in this report, in order to ensure their proper acquaintance, management, and application.

- **Recommendation 7.2:**

Select and develop procedures and indicators, as appropriate, for verifying follow-up of the recommendations contained in this report, and notify the Committee accordingly through the Technical Secretariat. For said purposes, Saint Vincent and the Grenadines could take into account the list of broader indicators applicable to the inter-American system that were available for selection, as necessary, by the State under review, and which have been published by the Technical Secretariat of the Committee on the OAS Internet web site. The State under review

could also take into account any information arising from the review of mechanisms developed pursuant to recommendation 7.3 below.

▪ Recommendation 7.3:

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

The country under review did not refer to the above-noted recommendations in its Response. In view of the foregoing, the Committee takes note of the need for Saint Vincent and the Grenadines to give additional attention to their implementation.

ENDNOTE

ⁱ At the plenary session held on June 26, 2008, Saint Vincent and the Grenadines presented the following provisions of the Criminal Code relating to the forms of participation referred to in paragraph (e) of Article VI.1 of the Convention:

Section 20(1) When an offence is committed each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say--

- (a) every person who actually does the act or makes the omission which constitutes the offence;
- (b) every person who does or omits to do any act for the purpose of enabling or aiding any other person to commit the offence;
- (c) every person who aids or abets another person in committing the offence; and
- (d) every person who counsels or procures any person to commit the offence (...)

Section 21 When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each is deemed to have committed the offence.

Section 22 When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether that offence actually committed is the same as that counseled or a different one, or whether the offence is committed in the way counseled or in a different way.

Section 310(1) Subject to the following provisions of this Chapter, any person who agrees with any other person or persons that course of conduct shall be pursued with, if the agreement is carried out in accordance with their intentions, either--

- (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement; or
- (b) would do so but for the existence of facts which render the commission of the offences or any of the offences impossible,

is guilty of conspiracy to commit the offence or offences in question (...)

Section 315(1) Any person who, with intent to commit an offence, does an act which is more than merely preparatory to the commission of an offence, is guilty of attempting to commit the offence.

(2) A person may be guilty of attempting to commit an offence even though the facts are such that the commission of the offence is impossible (...)

Section 318(1) Subject to the provisions of subsection (2), where a person has committed an offence punishable with death or imprisonment (other than with imprisonment in default of payment of a fine), any other person who, knowing him to be guilty of that offence or of some other offence similarly punishable, does, without lawful authority or reasonable excuse, an act to impede his apprehension or prosecution is guilty of an offence and is said to be an accessory after the fact (...)