

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 June 29, 2007 plenary session)

**COMMITTEE OF EXPERTS OF THE MECHANISM FOR FOLLOW-UP ON
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
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 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 second round: Article III, paragraphs 5 and 8, and Article VI.

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 first round, which are contained in the Report on that country adopted by the Committee at its Seventh meeting, and published at the following web page: http://www.oas.org/juridico/english/mec_rep_tto.pdf

2. Ratification of the Convention and adherence to the Mechanism

According to the official register of the OAS General Secretariat, the Republic of Trinidad and Tobago both signed the Inter-American Convention against Corruption and deposited the instrument of ratification on April 15, 1998.

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 INFORMATION RECEIVED

1. Response of the Republic of Trinidad and Tobago

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.

For its review, the Committee took into account the information provided by the Republic of Trinidad and Tobago up to November 10 2006, and that requested by the Secretariat and the members of the

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 29, 2007, at its Eleventh meeting, held at OAS Headquarters in Washington D.C., United States, June 25-29, 2007.

review subgroup, to carry out its functions in keeping with its Rules of Procedure and Other Provisions.

2. Document submitted by civil society

The Committee also received, within the deadline established in the Calendar for the Second Round adopted at its Ninth Meeting,² a document from the Trinidad and Tobago Transparency Institute – the Trinidadian Chapter of Transparency International.

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

The Republic of Trinidad and Tobago has a set of provisions related to the above systems, among which the following provisions related to the principal systems should be noted:

- Constitutional provisions, such as those that establish independent bodies of the Judicial and Legal Services Commission (Section 110) and the Public Service Commission (Section 120), which are vested with the power to appoint persons to hold or to act in the relevant offices.³ The Judicial and Legal Service Commission is responsible for appointing judicial and legal officers such as magistrates and state counsel in accordance with Section 111(4) of the Constitution. Pursuant to Section 121(7) of the Constitution, the Public Service Commission is responsible for appointment to all public offices except those within the purview of the Judicial and Legal Services Commission, the Police Service or the Teaching Service or offices to which the appointments are made by the President.¹

- Statutory provisions, such as the Public Service Commission Regulations, which provide that candidates for permanent appointment to public offices in the clerical or secretarial classes and to such other cases in the public service as the Commission may specify, shall be selected on the basis of written competitive examination and interviews (Regulation 12(1)).⁴ Where the Commission decides that a vacancy is to be filled by someone who does not already work within the Service, the Commission may authorize the advertisement of such vacancy.ⁱⁱ In addition, the Commission may appoint one or more Selection Boards to assist in the selection of candidates and an Examination Board may be appointed as well.⁵

² This Meeting was held from March 27 to 31, 2006, at OAS Headquarters in Washington D.C., United States

³ The powers to appoint persons to hold or act in offices are found in Section 111 for the Judicial and Legal Service Commission and Section 121 for the Public Service Commission, The Constitution of the Republic of Trinidad and Tobago, <http://rgd.legalaffairs.gov.tt/Laws/The%20Constitution%20folder/The%20Constitution%20aos.htm>.

⁴ Similarly, Regulations 150(2) and 166(5) provide that appointments to the Fire Service and Prison Service, respectively, are made on the basis of merit, tests and an interview.

⁵ Regulations 16 and 17, respectively of the Public Service Commission Regulations.

- Statutory provisions such as the Civil Service Regulations, which sets out the classes of employment in the Civil Service (Administrative, Professional and Scientific, Technical, Clerical, Secretarial and Manipulative) and provides the minimum requirements for entry into each class.⁶
- Statutory provisions such as the Judicial and Legal Service Act, which in its First and Second Schedules outlines the public offices that fall under the purview of the Judicial and Legal Services Commission.⁷
- Statutory provisions such as the Judicial Review Act, whereby the High Court of the Supreme Court of the Judicature may, on an application for judicial review, grant relief to any person whose interests were adversely affected by a decision made by a public body, public authority or a person acting in the exercise of a public duty, among others.⁸ Grounds for review reflect the common law principles of judicial review and include that the decision was in any way unauthorized or contrary to law; acting in excess of jurisdiction; an exercise of power in a manner that is so unreasonable that no reasonable person could have so exercised the power; deprivation of a legitimate expectation; and breach of the principles of natural justice.⁹
- Administrative provisions such as the “Notification – Guidelines for Contract Employment in Government Ministries, Departments and Statutory Authorities” published in the Trinidad and Tobago Gazette on July 11, 2000. The Notification sets out the situations in which these contracts are used as well as the terms and conditions for employment. It further states that, where applicable, a fair and transparent process be utilized in the selection process and that it should include advertisement of the position and the conduct of interviews by a Committee set up for this purpose.

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.

The Constitution provides that the Public Service Commission is responsible for public offices including those in the Civil Service, Fire Service and Prison Service. The Regulations further provide the method of entry into these Services, which in the case of the Civil Service, under Regulation 12(1), is based on written competitive examinations and interviews.¹⁰ However, this provision makes this method of entry mandatory for solely the clerical and secretarial classes, leaving discretion on its applicability to other classes such as the administrative, professional, scientific, technical and manipulative class (such as skilled and general laborers). The Committee therefore advises the

⁶ See Regulations 4 – 12 and Parts I – VI of the Schedule to the Civil Service Regulations, which set out the positions that fall under these classes,

<http://rgd.legalaffairs.gov.tt/Laws/Ch.%2023/23.01/Civil%20Service%20Regulations.pdf>

⁷ Judicial and Legal Service Act, <http://rgd.legalaffairs.gov.tt/Laws/Chs.%204%20-%206/6.01/6.01%20aos.htm>

⁸ Judicial Review Act, Section 5, <http://rgd.legalaffairs.gov.tt/Laws/Chs.%207-8/7.08/7.08%20aos.htm>

⁹ *Ibid.* Section 5(3). In addition, the Constitution, under Section 4(d) provides that one of the fundamental human rights and freedoms a person has is to the right of the individual to equality of treatment from any public authority in the exercise of any functions.

¹⁰ See footnote 5 on how this is conducted for the Fire Service and Prison Service.

Republic of Trinidad and Tobago to assess the relevance and necessity of applying this mandatory requirement to other posts within the public service. If the basis upon which the requirement was applied to the secretarial and clerical classes is the same for other classes, then the requirement should also be applied to those other classes, in the interest of equity and efficiency. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(a) in Section 1 of Chapter III of this Report).

The Committee also notes that there are provisions for the advertising of positions in the Public Service. However, the provisions applicable to the Civil Service under Regulation 15 of the Public Service Commission Regulations state that when the Commission considers that there is no suitable candidate already in a particular service available for the filling of any vacancy or that having regard to those qualifications, experience and merit, it would be advantageous and in the best interest of the particular service that the services of a person not already in that service be secured, the Commission may authorize the advertisement of such vacancy. The Committee notes that the language in this provision is discretionary rather than obligatory, which does not guarantee that these vacancies, when they arise in these circumstances, are available to the general public.¹¹ Moreover, the legislation appears to be silent on the content and form of these advertisements as well as the timeframe for their publication. As well, the vacancies appear to receive limited publication and, as such, candidates may not become aware of them as they arise. For instance, Regulation 15, regarding vacancies in the Civil Service, does not state how these vacancies are to be advertised.¹² In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(b) in Section 1 of Chapter III of this Report).

With respect to the Judiciary, while Section 111(4) of the Constitution provides that judicial and legal officers are required to possess legal qualifications, the Committee notes that there appears to be an absence of legislation regarding the manner those positions are appointed. While the Judicial and Legal Services Act, the governing legislation in regards to the establishment, classification, remuneration and entitlement of officers of a Judicial and Legal Service, does make reference to the modes by which an appointment may terminate, it is silent on the manner these officers are initially appointed.¹³ The Committee considers that the apparent lack of laws or regulations on the manner to conduct recruitment for these posts as well as for their advertisement may not properly assure the openness, equity and efficiency of the government hiring system. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(c) in Section 1 of Chapter III of this Report).

The Committee also notes that the Republic of Trinidad and Tobago, in its Response to the Questionnaire, makes reference to persons employed by the Government on contract.¹⁴ According to the country under review, these types of contracts are expanding,¹⁵ and they are subject to cabinet approval of the job descriptions and justification for hiring in relation to these posts, and applicants are short listed for interviews based on selection criteria that normally entail: (a) meeting the minimum qualifications; (b) having the relevant and required experience; and (c) having relevant

¹¹ This same concern arises in the case of advertisements for vacancies in the Fire Service, see Regulation 149(2).

¹² In the case of the Fire and Prison service, those provisions only refer to press, electronic media or radio, see Regulations 149 and 166(1).

¹³ See Section 11 of the Judicial and Legal Service Act, <http://rgd.legalaffairs.gov.tt/Laws/Chs.%204%20-%206/6.01/6.01.htm#sec1>

¹⁴ Response to the Questionnaire, p. 4, http://www.oas.org/juridico/spanish/mesicic2_tto_resp_en.doc

¹⁵ As seen in the Response to the Questionnaire, a table is provided demonstrating a significant increase in the use of these types of contracts. For example, in 2001, 809 individuals were registered as being hired on contract, while in 2006, this total increased to 5289, *ibid.* p. 7.

knowledge of the public service procedures, when applicable.¹⁶ Evaluation sheets are developed using the criteria mentioned above, as well as other criteria such as attitude, interpersonal skills, and competence. Interviews are conducted by a panel consisting of several persons and the candidate who gets the highest aggregate score is normally offered the position.¹⁷ The Committee notes that the Republic of Trinidad and Tobago has issued the “Notification – Guidelines for Contract Employment in Government Ministries, Departments and Statutory Authorities” which governs these types of contracts. The Committee nevertheless observes that while the Notification provides that Ministers are to ensure, where applicable, that selection of the person to fill a contract position should be fair and transparent and through the conduct of interviews, it does not specify as to how this is to be undertaken, such as through merit based competitions. Moreover, while advertisements are to be conducted for the recruitment of these posts, the Notification does not specify as to how they are to be carried out, their scope and content, nor provide a timeframe. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(d) in Section 1 of Chapter III of this Report).

The Committee takes note of the observations by the Republic of Trinidad and Tobago, in its Response, to the challenges faced by the Service Commissions in carrying out their duties.¹⁸ Those stated include: delegation of functions by the Service Commissions to Permanent Secretaries are not properly exercised; failure of Ministries to strictly adhere to regulations; heavy workload due to, among others, the vast increase in the number of offices in the Civil Services and increase in the disciplinary matters arising out of allegations of misconduct in office made against public officers; slow response to clients needs; and delay in the confirmation of appointments. Moreover, these challenges have led to low customer satisfaction to the work of the Service Commissions. The Committee believes that the country under review should consider ensuring that these Commissions 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. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(e) in Section 1 of Chapter III of this Report).

Finally, the Committee considers it advisable that the country under review implement training programs for those responsible for managing the selection and staffing processes, as well as training and induction programs for those persons recently hired into public service. In this regard, the Committee will formulate a recommendation. (See Recommendations 1.1(f) and 1.1(g) in Section 1 of Chapter III of this Report).

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

With respect to results, the Committee notes that the Republic of Trinidad and Tobago provided statistics obtained from the Public Service Commission on its hiring for the period 2002-2004, of which the following is noted.¹⁹

¹⁶ *Ibid.* p. 5

¹⁷ *Ibid.*

¹⁸ Response to the Questionnaire, *supra* note 14 at p. 6.

¹⁹ *Ibid.* pp. 22 – 23

PUBLIC SERVICE COMMISSION STATISTICS FOR 2002-2004			
	2002	2003	2004
Appointments	915	994	876
Civil Service	915	994	876
Fire Service (Delegated Authority)	-	-	-
Prison Service (Delegated Authority)	-	-	-
Acting Appointments	6375	7049	6643
Civil Service	6105	6729	6492
Fire Service	109	186	64
Prison Service	161	134	87

On page 7 of its Response to the Questionnaire, the Republic of Trinidad and Tobago states that there are judicial review precedents in relation to pending cases. The Republic of Trinidad and Tobago could perhaps maintain data regarding these decisions, in order to demonstrate the efficiency or lack thereof of measures for redress. For example, specific data can be maintained in relation to the number of cases brought, the number of cases decided and a summary of the decisions made in relation to the government hiring process. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(h) of Chapter III of this Report).

Also on page 7 of its Response to the Questionnaire, the Republic of Trinidad and Tobago states that the figures noted in Appendix I as the total number of contracted officers may be marginally understated since, according to the Treasury Division, some Ministries do not always follow the requirement to register all contracted officers on the IHRIS database.²⁰ A mechanism could be put in place to deal with non-compliance of the requirement to register all contracted officers on the relevant database. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(i) of Chapter III of this Report).

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, it will formulate a recommendation to the Service Commissions in this regard. (See 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

The Republic of Trinidad and Tobago has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- Statutory provisions such as the Central Tenders Board Act²¹ and the Central Tenders Board Regulations,²² which establish that the Central Tenders Board (Board) has, with certain exceptions, the sole and exclusive authority to act for the Government and the relevant statutory bodies in inviting, considering, accepting and rejecting offers for the supply of works and services to the

²⁰ See footnote 1 on page 7 of the Response to the Questionnaire, *supra* note 14.

²¹ Central Tenders Board Act, <http://rgd.legalaffairs.gov.tt/Laws/Chs.%2069-73/71.91/71.91.htm#sec1>.

²² Central Tenders Board Regulations, <http://rgd.legalaffairs.gov.tt/Laws/Chs.%2069-73/71.91/Central%20Tenders%20Board%20Regulations.pdf>.

State.ⁱⁱⁱ Section 3 provides that the Act is applicable to the statutory bodies set out in its First Schedule.²³ The following provisions of the Act and Regulations should be noted:

- Section 20(1) of the Act, which provides that whenever articles or works or any services are required to be supplied to or undertaken on behalf of the Government or statutory body to which the Act applies, the Government or statutory body must make a written request to the Board to invite offers for the supply of the articles or works or any services. Section 20(3) of the Act further states that, on receipt of the request, the Board must either invite members of the public in general to make offers (Section 20(3)(a)) or, whenever the Board considers it expedient or desirable to do so, invite such bodies or persons as may be selected by the Board. This selective invitation is subject to the approval of the Minister (Section 20(3)(b)).^{iv} Section 7 of the Regulations further provide that notices inviting members of the public to make offers shall be in the form as determined by the Board, and shall be advertised in not less than two issues of local or overseas newspapers, for a period not less than 14 days. The Chairman of the Board may also advertise the notice by radio or television when it is deemed expedient.²⁴
- Section 16 of the Act, which provides that all statutory bodies to which the Act applies shall establish a Committee of the Board to consider offers for the supply of articles or the undertaking of works or services and make recommendations to the Board for its acceptance or rejection of such offers. Section 19 further provides that this Committee may act for the Board where the value of the articles to be supplied or the works and services to be undertaken does not exceed five hundred thousand dollars.²⁵ Similarly, Section 11 of the Regulations provide that every Ministry or Department of the Government not under Ministerial control shall establish a Committee, which can act for the Board where the total value of the articles to be supplied or the works and services to be undertaken does not exceed one million dollars.²⁶ The Regulations, under Sections 12 and 13, further provide the financial limits for the various tendering committees empowered to act for the Board, including that of the Office Machines, Appliances and Furniture Committee.²⁷
- Section 24 of the Act which provides that the Board or Committee shall consider the offers received and, except for good reason, the sufficiency of which is in the discretion of the Board or Committee, must accept the lowest offer which represents the best value.²⁸ The Board may also require that any person who has made an offer to the Board attend one of its

²³ This First Schedule is found at the following address: <http://rgd.legalaffairs.gov.tt/Laws/Chs.%2069-73/71.91/First%20Schedule-71.91.pdf>. In addition to various cities, boroughs and regions, the House of Assembly and various other boards, committees and authorities are found in this Schedule.

²⁴ Central Tenders Board Regulations, Section 7(3).

²⁵ Section 19(1) of the Act and Section 11(2) of the Regulations further provides that the Committee is not allowed to subdivide this value in order to give itself authority. If the Committee cannot reach a unanimous decision on the matter being dealt with, the Board is to make this decision.

²⁶ As with the Committees of the statutory bodies, they are not allowed to subdivide a tender in order to give itself authority, Section 11(2) of the Regulations.

²⁷ Response to the Questionnaire, *supra* note 14 at p. 9. The Regulations under Section 14 also establish the Drugs and Hospital Supplies Committee to act for the Board in the purchase of drugs and hospital supplies, which has no financial limit. The statutory authorization for the establishment of Ministerial, departmental or special committees to deal with departmental contracts and their financial limits is found in Section 35 of the Act.

²⁸ Section 24(2) further provides that the Board is not bound to accept the lowest or any offer.

meetings and furnish the Board with information with respect to that person's finance, equipment or professional or technical qualification or any other information that in the opinion of the Board is necessary for the proper assessment of the offer and the offerer's capacity to execute the project.²⁹ Once a contract is awarded, the name of the selected person or body is published in the Gazette along with the amount of the tender and the date on which the award was made.³⁰

- Sections 27A and 27C(1) of the Act, which provide that a registry is maintained of consultants who the Board believes to be qualified to be registered for a project, such as a person who is an architectural or engineering consultant, a quantity surveyor, a marketing consultant or a technical or managerial consultant. Section 27C(2) further provides that the Board shall publish annually in the Gazette and in at least one other daily newspaper inviting these consultants to register with the Board. Moreover, Section 27C(3) provides the Board with the competence to deny registration where it is satisfied that it is not in the public interest to do so.
- Section 12(3) of the Act, which provides that a Board member shall disclose whether he or she is a member of a company or other body, or is a partner or is in the employment of a person or a company or other body, or is married to or who is or whose husband or wife is a relative of, a person who has submitted an offer for the supply of articles or for the undertaking of works or any services in connection therewith which is the subject of consideration by the Board, and shall not take part in the consideration or discussion of, or vote on any question relating to such offer. Any person who contravenes this provision is guilty of an offence and liable on summary conviction to a fine of five hundred dollars, unless it can be proven that the Board member did not know that an offer for the supply of articles or for the undertaking of works or any services was the subject of consideration at the meeting. Similarly, Section 16(1) of the Regulations provides that a public officer or employee of the Government or Statutory Body or the spouse or any child of such person is prohibited from entering into any contract for the Government or Statutory Body. In addition, when a person becomes a public officer or employee of the Government or Statutory Body and he or she, or the spouse or any child has entered into a contract, that contract is terminated upon terms that the Board deems appropriate. Any person who contravenes this provision is guilty of an offence and liable on summary conviction to a fine of five hundred dollars, imprisonment for six months or both.
- Section 32(3) of the Act, which provides that a person commits an offence by providing a gift of money or other thing to a Board member with the intention of gaining an advantage or concession for himself or another person. This Article further states that the person is disqualified from being awarded a contract and is liable on summary conviction to a fine of five hundred dollars or imprisonment for one year or to both fine and imprisonment.

- As aforementioned under section 1.1.1, statutory provisions such as the Judicial Review Act, whereby the High Court of the Supreme Court of the Judicature may, on an application for judicial review, grant relief to any person whose interests were adversely affected by a decision made by a public body, public authority or a person acting in the exercise of a public duty, among others.³¹

²⁹ Section 30(1)(c)

³⁰ Section 26(3)

³¹ Judicial Review Act, Section 5, <http://rgd.legalaffairs.gov.tt/Laws/Chs.%207-8/7.08/7.08%20aos.htm>

Grounds for review include that the decision was in any way unauthorized or contrary to law; acting in excess of jurisdiction; an exercise of power in a manner that is so unreasonable that no reasonable person could have so exercised the power; deprivation of a legitimate expectation; and breach of the principles of natural justice.³²

- Statutory provisions such as the Exchequer and Audit Act, which provides that the Auditor General is responsible for auditing and reporting annually on public expenditure matters.³³

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

With respect to the legal provisions governing public procurement systems, the Committee notes that, on the basis of the information available to it, they may be said to constitute a set of measures that are relevant for promoting the purposes of the Convention.

The Committee nevertheless deems it appropriate to express some comments for the country under review to consider in supplementing, developing or adapting the legal framework and the government procurement measures now in force, in light of the following:

- Though Section 4(1) of the Central Tenders Board Act provides that the Board is the sole and exclusive authority for government procurement, according to a White Paper published by the Government of the Republic of Trinidad and Tobago in August 2005 titled, “Reform of the Public Sector Procurement Regime,” not all statutory bodies are covered by the Act.³⁴ Since the enactment of the Act in 1961, the country under review has gradually decentralized the tendering process through two mechanisms, a) providing newly established statutory bodies with their own contracting capability outside the purview of the Board and b) removing statutory bodies from the First Schedule.³⁵ Indeed, Section 20A(1)(c) provides that the Government may act on its own behalf when contracting with the National Insurance Property Development Company (NIPDEC) or a company which is wholly owned by the State while Article 3(2) provides that the President may amend the First Schedule by adding or removing statutory bodies. As a result, according to the White Paper, most statutory bodies, state owned enterprises and the NIPDEC are responsible for their own procurement activities and establish their own policies and procedures managed through their own tender committees.³⁶ This has led some of these enterprises to be hired by Government ministries for major capital works or the supply of other property and services outside of the purview of the

³² *Ibid.* Article 5(3), in addition, the Constitution, under Section 4(d) provides that one of the fundamental human rights and freedoms a person has is to the right of the individual to equality of treatment from any public authority in the exercise of any functions.

³³ Exchequer and Audit Act, Section 9,
<http://rgd.legalaffairs.gov.tt/Laws/Chs.%2069-73/71.91/71.91.htm#sec1>.

³⁴ *Reform of the Public Sector Procurement Regime: A White Paper*, Government of the Republic of Trinidad and Tobago, p. 8,
http://www.finance.gov.tt/documentlibrary/downloads/17/procurement_reform.pdf.

³⁵ *Ibid.*, p. 12, in addition, according to the document submitted by civil society, the Trinidad and Tobago Transparency Institute, a number of new statutory corporations and State enterprises were established in 1979 that were placed outside the purview of the Board, while at the same time, others were removed from its ambit, *Report on Measures Taken By Trinidad and Tobago to Create, Maintain and Strengthen Government Systems for Procurement of Goods and Services*, p. 2, http://www.oas.org/juridico/spanish/mesicic2_tto_inf_sc_en.pdf.

³⁶ White Paper; *supra* note 34 at p. 18.

Board.³⁷ Because of these circumstances, there is an absence of uniformity in the tendering process within the Republic of Trinidad and Tobago. As stated in the White Paper,

*“State-owned enterprises and NIPDEC are fully responsible for their own procurement activities. These procuring entities tend to use their own standard bidding documents (SBD’s) and procedures, thereby creating unnecessary parallel systems. While the CTB (the Board) has striven for uniformity in the tendering process, in practice this uniformity has not been achieved. The net result is a complete lack of standardisation at all levels of the procurement cycle, and particularly so in the standardisation of bidding documents. Standardisation is an essential prerequisite for the utilisation of digital technology and the modernisation of organisational processes.”*³⁸

Additionally, when the Government has used the exceptions under Section 20A of the Act, the selected State owned enterprises often lack the technical capacity to conduct the activities under contract and award subcontracts using their own procurement rules and procedures.³⁹ Given these circumstances the Committee believes that the Republic of Trinidad and Tobago should consider establishing a legislative regime that encompasses all the essential branches and organs of the State in a uniform, standardized manner. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(a) in Section 1 of Chapter III of this Report).

- With regard to the differing methods of public contracting provided for in Central Tenders Board Act, the Committee finds that provisions are inadequate in ensuring transparency, in the public and selective tendering processes. In these cases, the legislation does not provide clear provisions establishing the proper procedures to be followed in carrying out these tender processes. Section 20 (3) of the Central Tenders Board Act simply states that the Central Tenders Board has the general discretion to solicit public tenders or opt for selective tendering. However, there is no legislative provision regarding factors to be taken into account in going public or being selective. For instance, while the country under review in its Response states that for selective tendering procedures, a minimum of three to a maximum of seven pre-qualified suppliers or contractors are asked to submit a tender, the legislation is silent in this respect.⁴⁰ In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(b) in Section 1 of Chapter III of this Report).
- With respect to the criteria to be used in the evaluation of bids, including those of public works, the Committee takes note of the absence of such norms in the legislative regime in place. There appears to be no evaluation guidelines that provide objective selection factors or criteria. Though the country under review in its Response does provide such a list when

³⁷ *Ibid.*

³⁸ *Ibid.* p. 20

³⁹ *Ibid.* p. 21

⁴⁰ Response to the Questionnaire, supra note 14 at p. 8. The White Paper touches upon this concern when discussing the concerns of local suppliers when selective tendering procedure is being utilized, as it is felt that state owned enterprises use it to negate fair competition. It also observes that “[t]he Ordinance [the Act] does not stipulate any guidelines or restrictions limiting the use of this method of procurement,” White Paper, supra note 34 at p. 22.

selecting contractors, these are not found in the legislation in place.⁴¹ The only criteria found is in Section 24 of the Act, which states that the Board or Committee, when applicable, shall consider the offers received and, except for good reason, the sufficiency of which is in the discretion of the Board or Committee, must accept the lowest offer which represents the best value. Given these circumstances, the Committee believes this does not provide the necessary guarantees that decisions are made that are not discretionary, arbitrary and subjective. Therefore, to preserve impartiality, transparency and equality of opportunity, the Committee believes that the Republic of Trinidad and Tobago should consider adopting objective criteria for the evaluation of bids that are reflected in legislation or formulated in an administrative document. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(c) in Section 1 of Chapter III of this Report).

- The Committee observes that there are no provisions within the legislative regime in place 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.⁴² The Committee believes that adopting measures that require prior planning would assure the openness, equity and efficiency of the system in place for the procurement of goods and services. The Response from Civil Society, the Trinidad and Tobago Transparency Institute, in this regard also highlights these concerns, where it states that the scope of the Board's authority is

*“[L]imited to the award of the contract and does not extend to the involvement in project design or implementation. Yet it is precisely in these areas that the greatest possibilities for corruption lie.”*⁴³

In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(d) in Section 1 of Chapter III of this Report).

- With regard to control mechanisms, the Committee notes that there is insufficiency in the existing mechanism for the audit, control and oversight of the procurement system. It is critical to the development of a sound government procurement system for a fully operational and functional external and internal control system. The White Paper makes reference to this lack of regulatory oversight, observing that the partially decentralized nature of the current system lends itself to inadequate monitoring.^v In addition, the Board does not have the authority to regulate and *“the regulatory procurement framework lacks the authority to audit the procurement system and ensure compliance with the rules and procedures for the award and implementation of contracts.”*⁴⁴ The Committee nevertheless notes that there is some oversight of the procurement system per the Auditor General.⁴⁵ This existing mechanism could therefore be strengthened and expanded, with particular focus on management control

⁴¹ The list of criteria listed in the Response are the following; (i) past performance; (ii) financial standing; (iii) availability of manpower and expertise; (iv) present and projected workload; (v) delivery time-frame; (vi) method statement; (vii) quality plan; and (viii) cost, Response to the Questionnaire, *ibid.* p. 9.

⁴² As noted in the White Paper, the Board does not play any role in the design of terms of reference nor the preparation of requests for proposals, White Paper; *supra* note 34 at p. 19.

⁴³ Response from Civil Society, *supra* note 35 at p. 2.

⁴⁴ White Paper; *supra* note 34 at p. 18.

⁴⁵ See Sections 116 and 117 of the Constitution and Section 9 of the Exchequer and Audit Act. The White Paper also acknowledges the role of the Auditor General; *supra* note 34 at p. 21.

of the system and award of contracts. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(e) in Section 1 of Chapter III of this Report).

- The use of electronic methods and information systems for government procurement assists in adequately informing the public and ensuring openness. Transparency International Trinidad raised concerns regarding the fact that insufficient information was available to the public concerning tender opportunities, the status of bids and awards and the progress of major projects.⁴⁶ The Committee notes that access to tender notices and contracts awarded is available via the link on the website of the Ministry of Finance. However, the information regarding contracts awarded appears to have not been updated since 2005.⁴⁷ The Committee believes that the Republic of Trinidad and Tobago could consider further enhancing the use of electronic means to provide information regarding procurement, including the status of bids and awards and the progress of major projects. The Republic of Trinidad and Tobago may also wish to consider using an electronic procurement system or electronic bidding in order to carry out the contracting needs of the State. In this regard, the Committee will formulate a recommendation. (See Recommendations 1.2(f) and 1.2(g) in Section 1 of Chapter III of this Report).
- In regards to registration of contractors, the Committee notes that Section 27A provides for the Board to maintain a registry of consultants to projects. However, there appears to be no other provision regarding the obligation to keep and publish registries of contractors. Notwithstanding the foregoing, the White Paper notes, in this regard, the lack of a national registry for contractors, suppliers and consultants:

“Each procurement agency keeps its own register for inviting bids, and uses its own procedures for prequalification registration. There is no national registry of contractors, consultants and suppliers. The absence of such a registry creates additional work for consultants and contractors by having to register with the various agencies.”⁴⁸

The Committee feels that the country under review should consider the advisability of amending the existing legislation in order to create a centralized registry of contractors of works, goods and services. This registry should be compulsory for all State bodies and dependencies, its purpose being to foster the principles of openness, equity and efficiency provided for in the Convention. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(h) in Section 1 of Chapter III of this Report).

- In addition, the Committee also notes on page 13 of the Republic of Trinidad and Tobago’s Response to the Questionnaire that the Central Tenders Board Act does not give the Central Tenders Board authority to blacklist or ban any contractor. The Committee suggests that when formulating its new legislative framework in relation to the procurement of contracts, that the country under review consider granting such authority to its Regulatory Body, as circumstances may warrant the ban or blacklisting of a contractor for a certain period of time. There could, for example, be provisions outlining the reasons for an intended ban or

⁴⁶ Response from Civil Society, *supra* note 35 at p. 2.

⁴⁷ The links for the contracts awarded and the tender notices are, respectfully:

www.finance.gov.tt/applicationloader.asp?app=articles&id=530 and

www.finance.gov.tt/applicationloader.asp?app=articles&id=526

⁴⁸ White Paper; *supra* note 34 at p. 21.

blacklisting upon consultation with the Minister. In this regard, the Committee will formulate a recommendation (see Recommendation 1.2(i) in Section 1 of Chapter III of this report).

- The Committee has no information regarding provisions that allow for the establishment of citizen overseers or watchdogs to monitor the execution of contracts where the nature, importance or magnitude so warrants, in particular public works contracts.⁴⁹ In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(j) in Section 1 of Chapter III of this Report).
- With respect to mechanisms for challenges or appeals to the bid process, the country under review in its Response states, “[n]either the Ordinance [the Act] nor the Regulations contain provisions setting out ways to challenge a selection,”⁴⁹ though other avenues are available such as the Judicial Review Act and Section 4(d) of the Constitution.⁵⁰ Notwithstanding the opportunity to challenge aspects of particular procurements through these means, the Committee considers that there is a need for a specific mechanism allowing for complaints and dispute resolution at the administrative level, as well as a written procedure as to how government entities should receive and respond to challenges or complaints. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(k) in Section 1 of Chapter II of this report).
- The Committee takes note of the Board’s human resource limitations. Currently, the Board is not endowed with sufficient resources to carry out its various prescribed functions. As noted in the White Paper, the current staffing and training of current personnel constrain the Board’s ability to adequately service the ministries and departments. Moreover, the Office responsible for preparing all major contracts in goods, works and services is neither staffed nor structured to deal efficiently with the volume and complexity of the work involved.⁵¹ As a consequence, it is viewed as being a major deficiency in the system as it leads to delays in the preparation and execution of contracts.⁵² This problem is not only limited to the Board, but to also bodies that do not fall under the purview of the Central Tenders Board Act.⁵³ In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2(l) in Section 1 of Chapter III of this report).

Finally, the Committee would like to highlight that important steps are being taken to address many of the issues addressed in this section by the country under review. In particular, as mentioned before, the Republic of Trinidad and Tobago has undertaken various studies analyzing the current system in

⁴⁹ Response to the Questionnaire, *supra* note 14 at p. 12. See also the comments in the White Paper: “Although the CTB [the Board] receives and acts upon supplier complaints with respect to the procurement process, there is no formal independent complaint and dispute resolution mechanism in place,” White Paper, *supra* note 34 at p. 21.

⁵⁰ This Section states: “4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely... (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions...”

⁵¹ White Paper; *supra* note 34 at p. 20.

⁵² *Ibid.*

⁵³ *Ibid.*, the White Paper states: “Many State-owned enterprises, NIPDEC [National Insurance Property Development Company] and Statutory Bodies, also lack staff properly trained in procurement. In fact, procurement is not looked upon as a professional discipline in its own right.”

place and have made proposals for its reformation. This is evidenced by the production of the aforementioned White Paper.⁵⁴

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

With respect to results, the Committee notes that the Republic of Trinidad and Tobago provided the following table regarding the number contracts awarded between October 2004 – September 2006:⁵⁵

	2004/2005	2005/2006	TOTAL
Total Contracts Awarded	236	310	546
Contracts Advertised Internationally on a pre qualification basis	3	7	10

The Committee suggests that the Republic of Trinidad and Tobago consider formulating contract statistics that reflect the nature of contracts awarded, the proportions that are by public tender and those that are by selective tender, and the number of judicial review contract cases. In this regard, the Committee will formulate a recommendation (see Recommendation 1.2(m) in Section 1 of Chapter III of this report).

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, it will formulate a recommendation to the Central Tenders Board in this regard. (See 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 provisions in the legal framework and/or other measures

The Republic of Trinidad and Tobago in its Response states that there exists an informal but effective witness protection program, under operation of Executive Authority that is adequately funded and managed.⁵⁶ Nevertheless, the country under review also states that the legislation in place does not provide protection for persons who report acts of corruption nor is there a formal legislative framework for the protection of persons who raise accusations of corruption against an alleged offender.⁵⁷

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

Taking into account the previous section, it is not appropriate to make observations in this regard. As such, the Committee will formulate recommendations that it deems advisable for the Republic of Trinidad and Tobago to consider, in accordance with Article III(8) of the Convention, in establishing systems for protection public servants and private citizens who, in good faith, report acts of corruption. (See recommendation 2 in Section 2 of Chapter III of this Report).

⁵⁴ In addition to the Green Paper on the Reform of Government's Procurement Regime, see endnote vi.

⁵⁵ Response to the Questionnaire, *supra* note 14 at p. 13.

⁵⁶ *Ibid*, p. 15

⁵⁷ *Ibid*.

Notwithstanding the foregoing, the Committee wishes to acknowledge the efforts by the Republic of Trinidad and Tobago to have a comprehensive regulation on the protection of persons who report acts of corruption, as evidenced by the proclamation of the Justice Protection Act on April 4, 2007. The Committee has not been able to analyze the legislation as it was proclaimed after the deadline for submission of the Response to the Questionnaire (November 10, 2006). The Committee is therefore not able to assess whether or not the legislation satisfies the requirements of Article III(8) of the Convention.

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

The Republic of Trinidad and Tobago states in its Response that there is no available statistical data.⁵⁸

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, it will make a recommendation in this regard. (See 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

The Republic of Trinidad and Tobago 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 3(1) of the Prevention of Corruption Act,⁵⁹ which provides: “Every person who, by himself or by or in conjunction with any other person, corruptly solicits or receives, or agrees to receive, for himself or for any other person, any gift, loan, fee, reward, or advantage whatsoever, as an inducement to, or reward for, or otherwise on account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the State or a public body is concerned, is guilty of an offence.”

The Act defines ‘agent’ as any person employed by or acting for another and any person serving under the State or other public body or holding a public office. It also defines ‘principal’ to include an employer.

- Section 4(a) of the Prevention of Corruption Act, which provides: “Any person who being an agent, corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the commencement of this Act done or forborne to do, any act in relation to his principal’s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business is guilty of an offence.”

- Section 6 of the Prevention of Corruption Act, which provides: “(1) A person who commits an offence under section 3, 4 or 5, notwithstanding section 100(5) of the Summary Courts Act, is liable,

⁵⁸ *Ibid*, p. 16

⁵⁹ Prevention of Corruption Act, <http://rgd.legalaffairs.gov.tt/Laws/Chs.%2010-13/11.11/11.11%20aos.htm>

whether upon summary conviction or upon conviction on indictment, to a fine of five hundred thousand dollars and to imprisonment for ten years and, in addition, shall be ordered to pay to such public body and in such manner as the Court directs, the amount or value of any gift, loan, fee, or reward received by him. Such person shall also be adjudged forever incapable of being elected or appointed as a member of a public body or of holding any other public office and shall forfeit any such office held by him at the time of his conviction.

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

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

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

- Section 3(2) of the Prevention of Corruption Act, which provides: “Every person who, by himself or by or in conjunction with any other person, corruptly gives, promises or offers any gift, loan, fee, reward, or advantage whatsoever, to any person, whether for the benefit of that person or of another person, as an inducement to, or reward for, or otherwise on account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the State or a public body is concerned, is guilty of an offence.”

- Section 4(b) of the Prevention of Corruption Act, which provides: “Any person who corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the commencement of this Act done or forborne to do, any act in relation to his principal’s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business is guilty of an offence.”

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

- In addition to the aforementioned, Section 5 of the Prevention of Corruption Act provides: “(1) Any person who being an agent—

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

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

is guilty of an offence.

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

- With respect to paragraph (d) of Article VI(1):

- Section 44 of the Proceeds of Crime Act,⁶⁰ which provides: “A person is guilty of an offence if he—

(a) conceals or disguises any property which is, or which, in whole or in part directly or indirectly represents, his proceeds of a specified offence or drug trafficking; or

(b) converts, transfers or disposes of that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for a specified offence or the making or enforcement in his case of a confiscation order or a forfeiture order.”⁶¹

- Section 45 of the Proceeds of Crime Act, which provides: “A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents another person’s proceeds of a specified offence or drug trafficking, he—

(a) conceals or disguises that property; or

(b) converts, transfers or disposes of that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for a specified offence or the making or enforcement of a confiscation order or a forfeiture order.”

- Section 46 of the Proceeds of Crime Act, which provides: “(1) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any money or other property is, or in whole or in part directly or indirectly represents another person’s proceeds of a specified offence or drug trafficking, he receives, possesses or converts that money or other property.

(2) It is a defence to a charge of committing an offence under this section that the person charged acquired the property for adequate consideration.

(3) The provision for any person of services or goods which are of assistance to him in drug trafficking shall not be treated as consideration for the purposes of subsection (2).”

- With respect to paragraph (e) of Article VI(1):

- Section 65 of the Interpretation Act,⁶² which provides: “Where a written law creates an offence, the written law shall be deemed to provide also that an attempt to commit that offence is an offence under the written law and that such attempt is punishable, in the case of a capital offence, with imprisonment for life and, in the case of any other offence, with the same penalty as if the offence had been committed.”

⁶⁰ Proceeds of Crime Act, <http://rgd.legalaffairs.gov.tt/Laws/Chs.%2010-13/11.27/11.27.htm#sec1>

⁶¹ A specified offence are the indictable offences listed under the Second Schedule of the Summary Courts Act, <http://rgd.legalaffairs.gov.tt/Laws/Chs.%204%20-%206/4.20/420%20aos.htm>. The Second Schedule lists Sections 3, 4 and 5 of the Prevention of Corruption Act as indictable offences.

⁶² Interpretation Act, <http://rgd.legalaffairs.gov.tt/Laws/Ch.%203/3.01/3.01.htm>

- Section 2 of the Accessories and Abettors Act,⁶³ which provides: “Any person who aids, abets, counsels or procures the commission of any indictable offence may be indicted, tried and punished as a principal offender.”
- Section 5(1) of the Criminal Law Act,⁶⁴ which provides: “Where a person has committed an arrestable offence, any other person who, knowing or believing him to be guilty of the offence or of some other arrestable offence, does without lawful authority or reasonable excuse any act with intent to impede his apprehension or prosecution is guilty of an offence.”
- Section 6(1) of the Criminal Law Act, which provides: “Where a person has committed an arrestable offence, any other person who, knowing or believing that the offence or some other arrestable offence has been committed, and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, is liable on conviction on indictment to imprisonment for two years.”
- With regard to the crime of conspiracy, the country under review relies upon the common law definition of conspiracy as stated in the decision by the Privy Council, which is the highest court of appeal in the Republic of Trinidad and Tobago, of Yip Chiu-Cheung v. The Queen:

*“The crime of conspiracy requires an agreement between two or more persons to commit an unlawful act with the intention of carrying out.”*⁶⁵

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

With respect to 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 made available to it, they constitute, as a whole, a set of provisions relevant for promoting the purposes of the Convention.

Nonetheless, the Committee considers it appropriate to make certain observations regarding the advisability that the Republic of Trinidad and Tobago consider complementing and implementing certain provisions in this area, taking into account the following:

- With respect to paragraph (c) of Article VI(1):
 - The Committee observes that the offence set out in Section 5 of the Prevention of Corruption Act only contemplates the act of a public servant for the purpose of illicitly obtaining benefits for himself or another regarding the corrupt use or communication of official information, but not in other cases where an act or omission to act could also lead to the illicit obtainment of benefits for himself or another. In this regard, the Committee will formulate a recommendation. (see Recommendation 3.1 in Section 3 of Chapter III of this Report).

⁶³ Accessories and Abettors Act, <http://rgd.legalaffairs.gov.tt/Laws/Chs.%2010-13/10.02/10.02%20aos.htm>

⁶⁴ Criminal Law Act, <http://rgd.legalaffairs.gov.tt/Laws/Chs.%2010-13/10.04/10.04%20aos.htm>

⁶⁵ Yip Chiu-Cheung v. The Queen [1995] 1 Appeals Court 111.

- With respect to paragraph (d) of Article VI(1):

- The Committee notes that the provisions cited in Sections 44, 45 and 46 of the Proceeds of Crime Act are relevant for the purposes of the Convention. However, Section 54(1) of said Act, provides that the Minister responsible for Public Administration may make Regulations to prescribe circumstances in which Sections 45 and 46 shall apply to persons in the employ of the State, in the execution of their duties. The Committee has not found legislation providing that this has occurred, thus excluding public servants from the purview of these offences. In this regard, the Committee will formulate a recommendation. (See Recommendation 3.2 in Section 3 of Chapter III of this Report)

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

The Republic of Trinidad and Tobago in its Response states that “[t]here is no available empirical data. There are at present a number of prosecutions currently before the Courts in Trinidad and Tobago. These are yet to be completed.”⁶⁶

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 the criminal investigations referred to, it will formulate a recommendation to the Judicial Branch in this regard (See 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 the Republic of Trinidad and Tobago 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

The Republic of Trinidad and Tobago has considered and adopted certain 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 the Republic of Trinidad and Tobago consider the following 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.

⁶⁶ Response to the Questionnaire, *supra* note 14 at p. 19.

In meeting this recommendation, the Republic of Trinidad and Tobago could take into account the following measures:

- (a) Assess the relevance of expanding the mandatory requirement of competitive examinations for permanent appointment to all classes in the Civil Service. (See Section 1.1.2. of Chapter II of this Report).
- (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). (See Section 1.1.2. of Chapter II of this Report).
- (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. (See Section 1.1.2. of Chapter II of this Report).
- (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. (See Section 1.1.2. of Chapter II of this Report).
- (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. (See Section 1.1.2. of Chapter II of this Report).
- (f) Increase training programs for those responsible for managing public service selection and staffing processes. (See Section 1.1.2. of Chapter II of this Report).
- (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. (See Section 1.1.2. of Chapter II of this Report).
- (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. (See Section 1.1.3. of Chapter II of this Report).
- (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. (See Section 1.1.3 of Chapter II of this Report).

1.2. Government Systems for the Procurement of Goods and Services

The Republic of Trinidad and Tobago 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 the Republic of Trinidad and Tobago consider the following recommendation:

- Strengthen systems for the procurement of goods and services by the government. In meeting this recommendation, the Republic of Trinidad and Tobago could take into account the following measures:
 - (a) Consider establishing a uniform legal framework for the procurement of goods and services that encompasses all the branches and agencies of the State, without prejudice to those State agencies and branches to establish their own guidelines. (See Section 1.2.2. of Chapter II of this Report).
 - (b) Implement provisions outlining clear and uniformed procedures for the selection of contractors when either public tendering or selective tendering procedures are utilized. (See Section 1.2.2. of Chapter II of this Report).
 - (c) Implement provisions that provide for objective selection factors or criteria in the evaluation of bids, including those of public works. (See Section 1.2.2. of Chapter II of this Report).
 - (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. (See Section 1.2.2. of Chapter II of this Report).
 - (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. (See Section 1.2.2. of Chapter II of this Report).
 - (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. (See Section 1.2.2. of Chapter II of this Report).
 - (g) Develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means. (See Section 1.2.2. of Chapter II of this Report).
 - (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. (See Section 1.2.2. of Chapter II of this Report).
 - (i) Implement a mechanism by legislative or administrative means to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons. (See Section 1.2.2. of Chapter II of this Report).
 - (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. (See Section 1.2.2. of Chapter II of this Report).
 - (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. (See Section 1.2.2. of Chapter II of this Report).

- (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. (See Section 1.2.2. of Chapter II of this Report).
- (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. (See Section 1.2.3 of Chapter II 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)

The Republic of Trinidad and Tobago does not have in place measures intended 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 3 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that the Republic of Trinidad and Tobago consider the following 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.⁶⁷

In meeting this recommendation, the Republic of Trinidad and Tobago could take into account the following measures:

- (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;

⁶⁷ The Committee wishes to acknowledge the efforts by the Republic of Trinidad and Tobago to have a comprehensive regulation on the protection of persons who report acts of corruption, as evidenced by the proclamation of the Justice Protection Act on April 4, 2007. The Committee has not been able to analyze the legislation as it was proclaimed after the deadline for submission of the Response to the Questionnaire (November 10, 2006). The Committee is therefore not able to assess whether or not the legislation satisfies the requirements of Article III(8) of the Convention.

- (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 simplified whistleblower protection application process.
- (h) Provisions which sanction the failure to observe the rules and/or duties relating to protection.
- (i) The respective competence of judicial and administrative authorities with respect to this area, clearly distinguishing one from the other.

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

The Republic of Trinidad and Tobago has adopted measures aimed at criminalizing the acts of corruption provided for by Article VI(1) of the Convention, as discussed in Section 3 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendations:

- 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. (See Section 3.2. of Chapter II of this Report).
- 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. (See Section 3.2. of Chapter II of this Report).

4. GENERAL RECOMMENDATIONS

Based on the review and contributions made throughout this Report, the Committee suggests that the Republic of Trinidad and Tobago 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, 1.2.3, 2.3 and 3.3 of Chapter II of this Report).

5. FOLLOW-UP

The Committee will consider the periodic update Reports submitted by the Republic of Trinidad and Tobago concerning progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with the provisions of Article 31 of the Rules of Procedure and Other Provisions.

Similarly, the Committee will review the progress in implementing the recommendations made in this Report, in accordance with the provisions of Article 29 of the Rules of Procedure.

IV. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN THE FIRST ROUND

The Committee observes, in relation with the implementation of the recommendations formulated for the Republic of Trinidad and Tobago in the Report in the First Round of review, based on the information at its disposal, the following:

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

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

▪ Recommendation 1.1:

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

▪ Measures suggested by the Committee:

- 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'.*
 - ii. *Review relevant provisions with an aim towards removing any conflicts that cause the provisions of the Integrity in Public Life Act not to be applied to judges.*
 - iii. *Create specific codes of conduct for judicial officers that would promote measures to create, maintain, and strengthen standards of conduct for the correct, honorable, and proper fulfillment of public functions, in addition to mechanisms to enforce these standards of conduct.*
- b. *Create a mechanism that would allow the Service Commissions to hold administrative hearings and dismiss public servants based on a finding of involvement in corrupt activity independent of whether proceedings are taken against the public servant in any Court.*

- c. *Review and amend Service Commission regulations as appropriate to ensure that investigative and disciplinary processes will not entail lengthy delays.*
- d. *Strengthen the provisions within the Integrity in Public Life Act taking into account the following:*
 - i. *Set up a system to ensure that the Integrity Commission has enough resources to perform its functions.*
 - ii. *Undertake a review of existing regulations and amend them where appropriate to ensure that the Integrity Commission has a system to train, inform and respond to requests for advice and consultation by public servants, in compliance with its mandate.*
 - iii. *Ensure that the competent oversight agencies have a system to see that public servants comply with the provisions of the Code of Conduct in the Integrity in Public Life Act, including having public servants sign a written agreement to abide by the Code of Conduct in the Integrity in Public Life Act.*
 - iv. *Enact specific measures, where appropriate, to ensure that conflicts of interest that may arise in all branches of government are covered.*
- e. *Incorporate into the Civil Service Regulations and the Civil Service (Amendment) Regulations, as appropriate, provisions dealing specifically with the detection and/or prevention of conflicts of interest.*
- f. *Review and amend where appropriate existing regulations to ensure that the disciplinary process of the Police Service Commission is efficient and effective, and ensure that the Commission has resources to operate accordingly.*
- g. *Encourage the updating of a more comprehensive version of the proposed Code of Ethics for Parliamentarians including Ministers than the one previously in force, incorporating into the new version provisions similar to those contained in the Code of Conduct in the Integrity in Public Life Act, and enforcement provisions.*
- h. *Establish as a mandatory Committee of the Parliament the Standing Ethics Committee of the Houses of Parliament, and ensure that the Code of Ethics be contained in the Rules of the House of Parliament and the Senate.*
- 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.*

In its Response, the Republic of Trinidad and Tobago presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- Service Commissions have sought to address the lengthy delays in the investigative and disciplinary processes by embarking upon intensive training of Permanent Secretaries and Heads of Departments to minimize complications and delays associated with disciplinary proceedings. In addition to training, Commissions have increasingly used “one man” enquiry Commissions to expedite investigations of public officers.⁶⁸
- The Integrity Commission has been provided with all the financial and human resources required to fulfill its mandate including the provision of separate financial vote for expenditure and thus having complete control of its expenditure with accountability only to the Parliament.⁶⁹
- Training seminars were held in early 2006 with Permanent Secretaries and other public sector personnel in an effort to clarify to them their obligations in the fight against corruption and to enhance their relationship with the Commission. Moreover, proposed amendments to the Integrity in Public Life Act will incorporate provisions that will restructure the Commission so that it can respond effectively to requests for advice from public servants.⁷⁰
- A draft bill is being prepared to modify the Integrity in Public Life Act that ensures that conflicts of interest that may arise in all branches of government are covered as well as providing protection to whistleblowers who report acts of corruption from threats and acts of retaliation.⁷¹
- A package of legislation has been passed by the Parliament of Trinidad and Tobago that completely enhances and reorganizes the administration of the Police Service. This package of legislation seeks, among others, to streamline and simplify disciplinary procedures within the Police Service. It will be assented to once the appropriate Regulations have been prepared.⁷²

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Trinidad and Tobago to continue giving attention to the implementation of this recommendation. In addition, the Committee takes note of the need for the country under review to give additional attention to the implementation of measures (a), (d)(iii), (e), (g), (h) and (j).

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.

⁶⁸ *Ibid*, p. 26

⁶⁹ *Ibid*, pp. 26-27

⁷⁰ *Ibid*, p. 27

⁷¹ *Ibid*, pp. 27-28

⁷² *Ibid*, p. 28, this package of legislation includes Act No 6 of 2006 The Constitution (Amendment) Bill, Act No. 7 of 2006, The Police Service Act 2006, and Act No. 8 of 2006, The Police Complaints Authority Act 2006. This package of legislation was proclaimed on January 1, 2007 and is now the law in the Republic of Trinidad and Tobago.

▪ Measure suggested by the Committee:

- 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.*

In its Response, the country under review provided no information with respect to the above recommendation.⁷³ The Committee takes note of the need for the country under review to give 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 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:

- 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.*

In its Response, the country under review provided information with respect to the above recommendation:⁷⁴

- All legislation relating to corruption is currently under review.

- The Justice Protection Act was proclaimed on April 4, 2007.

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Trinidad and Tobago to continue giving attention to the implementation of this recommendation.

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

⁷³ *Ibid*, p. 29

⁷⁴ *Ibid*, p. 30

▪ Recommendation 2:

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

▪ Measures suggested by the Committee:

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

In its Response, the Republic of Trinidad and Tobago presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- Proposed amendments to the Integrity in Public Life Act will ensure that all public employees in appropriate positions are required to file declarations, including members of the Diplomatic Service and Advisers to the Government.⁷⁵

⁷⁵ *Ibid*, p. 30

- Proposed amendments to the Prevention of Corruption Act would include criminalizing illicit enrichment.⁷⁶

- The Integrity Commission has carried out education campaigns and continues to hold meetings and training seminars for public servants that fall under the purview of the Integrity in Public Life Act.⁷⁷

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Trinidad and Tobago to continue giving attention to the implementation of this recommendation. In addition, the Committee takes note of the need for the country under review to give additional attention to the implementation of measures (a), (c), (d), (f) and (i).

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:

- 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.*

In its Response, the Republic of Trinidad and Tobago presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- Recent training seminars for Permanent Secretaries have taken place to help clarify their role and that of the Head of Department under the Civil Service (Amendment) Regulations.⁷⁸

- Recent training has stressed that Permanent Secretaries and Heads of Departments are under a duty to report acts of corruption.⁷⁹

⁷⁶ *Ibid*, p. 31

⁷⁷ *Ibid*.

⁷⁸ *Ibid*, p. 32

⁷⁹ *Ibid*.

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Trinidad and Tobago to continue giving attention to the implementation of this recommendation.

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.

▪ Measure suggested by the Committee:

- 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.*

In its Response, the country under review provided no information with respect to the above recommendation.⁸⁰ The Committee takes note of the need for the country under review to give additional attention to its implementation.

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:

- 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.*

⁸⁰ *Ibid*, pp. 32-33

In its Response, the country under review provided no information with respect to the above recommendation.⁸¹ The Committee takes note of the need for the country under review to give additional attention to its implementation.

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:

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

In its Response, the country under review provided no information with respect to the above recommendation.⁸² The Committee takes note of the need for the country under review to give additional attention to its implementation.

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:

- 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*

⁸¹ *Ibid*, p. 33

⁸² *Ibid*, p. 34

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.*

In its Response, the country under review provided no information with respect to the above recommendation.⁸³ The Committee takes note of the need for the country under review to give additional attention to its implementation.

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

▪ 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.

In its Response, the country under review provided no information with respect to the above recommendation.⁸⁴ The Committee takes note of the need for the country under review to give additional attention to its implementation.

▪ 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.

In its Response, the country under review provided no information with respect to the above recommendation.⁸⁵ The Committee takes note of the need for the country under review to give additional attention to its implementation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

▪ 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.

In its Response, the country under review provided information with respect to the above recommendation:⁸⁶

⁸³ *Ibid.*

⁸⁴ *Ibid.*, pp. 34-35

⁸⁵ *Ibid.*, p. 35

⁸⁶ *Ibid.*

- Trinidad and Tobago proposes to inform the OAS Secretariat that the Central Authority Department within the Office of the Attorney General will be the central authority for the purposes of the Convention.

The Committee takes note of the need for the country under review to give additional attention to its implementation.

7. GENERAL RECOMMENDATIONS

▪ 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.

In its Response, the country under review provided information with respect to the above recommendation.⁸⁷

- The exercise is ongoing.

The Committee takes note of the need for the country under review to give additional attention to its implementation.

▪ 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.

In its Response, the country under review provided no information with respect to the above recommendation.⁸⁸ The Committee takes note of the need for the country under review to give additional attention to its implementation.

▪ 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.

In its Response, the country under review provided no information with respect to the above recommendation.⁸⁹ The Committee takes note of the need for the country under review to give additional attention to its implementation.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid*, p. 36

▪ 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.

In its Response, the country under review provided no information with respect to the above recommendation.⁹⁰ The Committee takes note of the need for the country under review to give additional attention to its implementation.

⁹⁰ *Ibid.*

ENDNOTES

ⁱ It should be noted that in the Republic of Trinidad and Tobago, Regulation 126 of the Public Service Commission Regulations provides the basis for appointment to the Teacher Service, whereby every application for first appointment to an office of teacher is to be sent to the Permanent Secretary of the Ministry of Education, which is then forwarded to the Director of Personnel Administration. If a vacancy should arise in either an assisted or government school, a circular memorandum is sent by the Director advertising the vacancy in all public schools, Regulations 128(1) and 129(1), <http://rgd.legalaffairs.gov.tt/Laws/Chs.%201-2/1.01/Public%20Service%20Commission%20Regulations.pdf>

The Police Service Regulations, under Regulation 4, sets out the minimum requirements to be considered a candidate for appointment as a police constable, <http://rgd.legalaffairs.gov.tt/Laws/Chs%2014-16/15.01/Police%20Service%20Regulations.pdf> The Police Service Commission Regulations further states that application for appointment to the office of constable shall be made to the Director in response to an advertised vacancy that was issued to the press and radio. All candidates are placed on order of merit on the basis of an education test and interview, see Regulations 13 and 18,

<http://rgd.legalaffairs.gov.tt/Laws/Chs.%201-2/1.01/Police%20Service%20Commission%20Regulations.pdf>

ⁱⁱ Regulation 15 of the Public Service Commission Regulations. Similarly, in the case of the Prison Service, this requirement for advertisement of a vacancy is found in Regulation 166(1), whereby every appointment to the office of Prison Officer I shall be made in response to any advertisement issued through the press and radio, stating the place, date and time at which a candidate may present himself for selection. In the case of the Fire Service, the requirement for advertisement of a vacancy is found in Regulation 149, whereby the vacancy is to be advertised through the Press and electronic media.

ⁱⁱⁱ Article 4 of the Central Tenders Board Act. In terms of exceptions to Article 4, Article 20A provides various scenarios in which the Government may act on its own behalf, such as the following: a) as a result of agreement for technical or other co-operation between it and the Government of a foreign state, the latter designates a company to supply the articles or to undertake the works or any services; b) it enters into a contract with a company which is wholly owned by the State or the National Insurance Property Development Company Limited or a foreign State, for the supply of articles or for the undertaking of works or service therewith; c) it enters into a contract with a company for the purchase of books for official purposes; d) as a result of the occurrence or anticipation of a natural disaster, such as flooding, hurricane, landslide or earthquake and the Minister is of the opinion that an emergency situation has arisen which necessitates the obtaining of articles or the undertaking of immediate works or services by the Government; and e) items and services are required for the Republic of Trinidad and Tobago Defence Force or for the protective services.

^{iv} Article 20(4) of the Act provides that when a procurement notice is sent out, it shall contain the following: (a) a sufficient description of the articles required or of the works or services to be undertaken and shall whenever necessary also contain the place where and the time when additional information relating thereto can be obtained; (b) the form or manner in which an offer is to be made; (c) the date and time within which an offer is to be made; (d) the place where and the manner in which the offer is to be submitted; and (e) the date and time for the opening of the offers.

^v Response to the Questionnaire, *supra* note 15 at p. 21. Note also the following found on page 18 of the White Paper:

“In 2001, Cabinet by Minute No 1266 agreed on the establishment of a Central Audit Committee within the Ministry of Finance, charged with the major responsibility of approving the issuance of contracts of \$5 million and higher by all State agencies. Other duties of the Committee include the evaluation and analysis of the procedures and practices of State agencies as they relate to the procurement of property and services. Furthermore, the Committee is expected to ascertain whether State agencies are conforming to agreed guidelines when spending public funds. In July 2005, the requirement for State agencies, outside the purview of the CTB Ordinance, to obtain the prior approval of the Minister of Finance to award contracts of \$5 million and higher was discontinued.”

^{vi} It should be noted that the Government of Trinidad and Tobago in 2003, in order to address many of the growing deficiencies in the procurement system, established a committee to produce a *Green Paper on the Reform of Government’s Procurement Regime*, a precursor to the White Paper (found at the following link:

<http://www.finance.gov.tt/documentlibrary/downloads/17/Procurement%20Reform%20-%20A%20Green%20Paper.pdf>). This committee was made up representatives of both the public and private sector, including a representative of Trinidad and Tobago Transparency Institute. This was also the case in the production of the White Paper, see page 57 of the White Paper as well as page 2 of the Response from Civil Society.