

**DRAFT PLAN OF ACTION TO
IMPLEMENT THE
RECOMMENDATIONS FROM THE
MESICIC COMMITTEE OF EXPERTS**

An OAS/ Government of Trinidad and
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SECTION I. FIRST ROUND OF REVIEW

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

1.1 Standards of conduct geared towards preventing conflicts of interest and mechanisms to enforce compliance.

The Committee suggests that the Republic of Trinidad and Tobago consider strengthening the implementation of laws and regulatory systems related to conflicts of interest. In meeting this Recommendation, the Republic of Trinidad and Tobago may wish to consider the following measures:

(a) Recommendation 1 - Measure 1

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:

- (1) Consider the usefulness of defining in a code of conduct for judicial officers what actions or omissions would constitute >misbehaviour=.*
- (2) 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.*
- (3) 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.*

(i) The provisions which preclude the application of the Integrity in Public Life Act 2000 to judges flow from the doctrine of separation of powers, a doctrine which is enshrined in the Constitution, the supreme law of Trinidad and Tobago. The doctrine

of separation of powers is entrenched in the Constitution of Trinidad and Tobago at the deepest level. Codes of Conduct for judicial officers and functionaries fall within the jurisdictional domain of the Judiciary or more appropriately, the Judicial and Legal Services Commission.

Under the doctrine of the separation of powers, the judiciary must be entirely independent of the Executive. Thus, provisions which permit the Executive to regulate the judiciary conflict with this fundamental precept. This conclusion has in fact been substantiated by case law and in the 2001 Annual Report of the Integrity Commission concluded that the Integrity in Public Life Act, as it is now written, conflicts with section 136(6) of the Constitution, and therefore the Commission has not enforced the provisions of the Act in respect of judges

Indeed, the President is the only public official who may remove judges, and can only do so on the advice of the Judicial and Legal Service Commission, or the Judicial Committee, following the procedure laid out under section 137 of the Constitution.

However, the conflict in relation to the judiciary is wider than the provisions of the Integrity in Public Life Act and encompasses all actions of the Executive that seek to impose on the sanctity of the independence of the judiciary. As such, it would be inappropriate and indeed, unconstitutional, for the Executive to seek to create, enact, or otherwise impose a Code of Conduct for the judiciary.

Likewise, the identified conflict which exists between the Integrity in Public Life Act and section 136 (6) of the Constitution can only be resolved by amendment to the Constitution or, alternatively, by encouraging the Judiciary to create its own Code of Conduct, whether by statute or otherwise, to compel judges to account for their income and liabilities.

Since provisions relating to the independence of the judiciary are entrenched in the Trinidad and Tobago Constitution, this is not a feasible option, nor is it desirable, as it is the foundation of the State's democracy.

Both of these observations suggest that given the existing constitutional framework, it would be necessary to engage the Chief Justice and the Judiciary in discussion about the efficacy and desirability of these proposals. It is vital to grasp that implementation of the recommended proposals depend on a willingness by the Judiciary to accept and actively implement them.

(ii) For the reasons mentioned above, no measures are in place to resolve the apparent conflicts in the integrity of Public Life Act and judges.

(iii) Since the discipline and conduct of the judiciary are outside of the realm of the Executive, the appropriate authority for implementing this measure is the Chief

Justice. As such, the best course of action would be to invite the Chief Justice to formulate, in collaboration with the judges, appropriate principles of conduct for integrity in public life. These would supplement the existing norms and conventions of the Judiciary. This can be done by way of intensive Judicial Workshops.

Judicial Workshops can be facilitated through the Judicial Education Institute by resource persons who will explain the purpose and rationale of the anti-corruption agenda and the Convention. Such judicial workshops should be in collaboration with the Judicial and Legal Services Commission. The Judicial Education Institute is an institute tasked with the provision of training for Judicial Officers including Judges. Through the Institute training programmes are organized and coordinated to address specific areas of concern.

(iv) A period of twelve months is proposed as a satisfactory time period for the judges to conduct workshops on the issue of integrity in public life with a view to formulating relevant principles of conduct.

(v) In order to gauge progress on this initiative, a line item in the Chief Justice's annual review should be created to address issues of corruption. In keeping with the spirit of the Convention, the Bar Association should be invited to make relevant comments on such issues, to be included in the annual review by the Chief Justice. This suggestion should be proposed to the Chief Justice.

(vi) Funding for the workshops to train judicial officers should be considered carefully so as to ensure that the impression is not created that reform of terms and conditions which attach to the judiciary is susceptible to interference by the Executive. This concern is to be noted particularly in view of recent case law, for example, *Sankar v AG*, in which funding facilitated by the State for new assessment mechanisms for promotions in the public service was deemed unwarranted interference and therefore unconstitutional by the courts.

Further, the issue of financial arrangements for judges in Trinidad and Tobago has been a thorny one in the past. In general, once Parliament has allocated funds to the judiciary, the expenditure of these funds should be independent and not depend on the discretion of the Executive. The Judicial Education Institute is an agency funded and operated by the Judiciary of Trinidad and Tobago and as such it is protected from any Executive influence. All financial matters for the Institute are controlled solely by the Judiciary.

Recommendation 1 B Measure 2:

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.

(i) The restriction on pursuing administrative proceedings pending proceedings in the court comes from s. 111 of the Public Service Regulations. However, the authority to discipline public servants resides in the Public Service Commission. Provided that all due process safeguards are in place, a measure to discipline public servants independent of any other proceeding in the courts does not violate the Constitution. Indeed, the Constitution contemplates that disciplinary measures are to be imposed by the Commission. The right to a fair trial in criminal matters is in no way impaired by this provision. Where civil matters are concerned, Public Service Commissions retain the authority and duty to investigate such matters and take appropriate action irrespective of any action before the courts. The restriction is thus self-imposed and the Public Service Regulations should therefore be amended to reflect more accurately this authority of the Public Service Commission.

In assessing this Recommendation, it is also vital to bear in mind that proceedings by the Public Service Commission are civil proceedings. Such proceedings require proof on the 'balance of probabilities.' Prosecution for criminal activities requires 'proof beyond a reasonable doubt.' This distinction is recognized in the law of Trinidad and Tobago and is observed by the Public Service Commission. There is, therefore, no issue of violation of the Constitution save if there are procedural errors or flaws.

What may be needed is greater clarity in the regulatory regime currently in existence to discipline errant public officers. Two primary steps are required:

1. First, the Executive may need to revisit the Code of Conduct governing public officers to ensure greater clarity;
2. Second, definition of the procedural issues falls within the jurisdictional domain of the Public Service Commission. Clearly, this is an issue for the regulatory power of the Public Service Commission.

Further, in general, Public Service Commissions should be appraised of their rightful roles by way of training and other mechanisms, as outlined further in this Report, below, in particular, under General Recommendations. This includes the creation of a training manual.

(ii) The State advises that while it is true that the restrictions are primarily self-imposed, they have come out of circumstances where, with criminal matters pending, persons accused of wrongdoing are advised by their Attorneys not to cooperate with the administrative investigation while the criminal charge is pending. An administrative investigation will, by its very nature, require the person accused to be questioned and/or to give a written or oral response to the accusation. It is in this

context that the practice has developed. Additionally, the method of acquiring evidence for a criminal investigation and that of acquiring evidence for a civil administrative investigation differ in so far as due process measures that touch and concern warrants, the taking of witness statements, and the cautioning of the suspect. The situation is further compounded by the lengthy trial process, whereupon it is possible that after years of waiting the criminal charge is dismissed. The issue is to improve the timeliness of the criminal process. The practice has developed of awaiting the outcome of the criminal trial and if the defendant is found guilty, an administrative charge is brought of “bringing the public service into disrepute,” or “misconduct”.

The Consultant is of the view that where criminal matters are concerned, this is a satisfactory response and an appropriate arrangement for discipline in the public service which does not encroach on the rights of the citizen.

(iii) The primary authorities responsible for implementing this measure are the Public Service Commission and senior public servants to whom managerial powers of a disciplinary nature are delegated.

(iv) A period of six months should be allotted for the completion of the training manual.

After the completion of the training manual, a further period of one year should be allotted for the training sessions. After this initial period, training is envisaged as an ongoing process.

(v) Since training is envisaged as a continuous exercise, this will enable the State to gauge the progress being made.

(vi) The relevant costs are as follows:

Development of a training manual = US \$40,000.00

Training sessions = US \$ 10,000.00.

(c)Recommendation 1 B Measure 3 -

Review and amend Service Commission regulations as appropriate to ensure that investigative and disciplinary processes will not entail lengthy delays.

(i) This measure is a welcome proposal. It is noted that provision is made for amendments to the regulations governing Service Commissions. The review process

should be part of an ongoing public sector reform exercise. Public Sector reform is ongoing already in the State. However, a more targeted review process which will examine investigative and disciplinary processes is appropriate. Such a review will require a professional versed in public sector management to make specific recommendations for efficiency in the disciplinary process.

This process requires more than a management professional. It requires a management expert totally familiar with the Constitution of Trinidad and Tobago. Private sector experts are often selected to undertake assignments in the Public Service only to discover that some proposals cannot be implemented because they conflict with the guarantees provided to public officers by the Constitution.

The process will also benefit from the training of high level public sector managers on an ongoing basis, as indicated below, in particular, under General Recommendations.

(ii) The State advises that 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.

While these are laudable programs, they do not go far enough and cannot address the legislative deficiencies which contribute to delay and inefficiency in the Public Service.

The State can also benefit from the creation of dedicated investigative teams both in relation to criminal investigation and administrative functions. It may be helpful to have a specially trained group of criminal investigators for the police and administrative investigators from within the public service to address these matters. This approach may result in the timely disposal of matters, leading to relative certainty of events, though not certainty of outcomes. This may lead to deterrence to some degree.

(iii) The Minister of Finance should make available funds for the hiring of an appropriate consultant and the process for the consultancy should be overseen by the Attorney-General's office. Service Commissions themselves should be involved in the process.

(iv) A period of two years should be allotted to this measure.

(v) There should be a specific budget line item in the budget of the Public Service for such training exercises to ensure their continuity.

Follow-up initiatives should be taken by the Attorney-General's office to measure the

success of the measure.

(vi) A sum of US\$50,000 should be allocated for this measure.

Recommendation 1 B Measure 4

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

(1) Set up a system to ensure that the Integrity Commission has enough resources to perform its functions.

The State has advised that the Integrity Commission has been provided with all of 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. This meets the recommended measure satisfactorily.

(2) 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.

(i) Adequate review of the existing Regulations will entail either self-assessment by the Integrity Commission guided by a suitable professional, or the hiring of an independent professional who can assess the existing mechanisms that the Integrity Commission has at its disposal to train public servants and otherwise meet their needs. Where legislative deficiencies have been identified through this assessment, specific proposals will need to be made to the Attorney- General's office for the initiation of law reform.

It is noted (below) that the State has commenced training to meet the requirements of this measure. However, it should be noted that while such training is important and necessary, the recommendation contemplates legislative reform and as such, training alone will not suffice.

Further, the proposed amendments to the Integrity in Public Life Act do not address specifically the issue of training and information. As such, further amendments need to be made.

(ii) The State informs that 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.

It further advises that 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. In addition, the Integrity Commission has a separate and independent budget for its operations. General training is part of its constitutional mandate and as such the Commission, as an independent body, is responsible for the design and funding of its own training. This matter may, however, be raised by the Executive to ensure that training is being addressed. The Integrity Commission has in its past reports advised that training is being undertaken. The extent and success of these efforts should be assessed by the Commission.

While training is provided for under the Act, it appears that such training is of a routine, general nature. What is additionally required is a more responsive Integrity Commission that can respond to occasional requests on an individual basis. It is apparent that such responses will require sufficient human resources to carry out this function effectively. It is suggested that the Integrity Commission can appoint an officer, perhaps on a rote basis, who can make himself or herself available to answer important questions that may arise from time to time.

(iii) The appropriate authorities are the Attorney-General's department, in collaboration with the ministry responsible for the Public Service and the Integrity Commission itself.

(iv) A period of two years should be allotted to this exercise.

(v) Oversight by the Attorney-General's department, the body responsible for overseeing the implementation of the Convention, should be sufficient to trace the progress of this measure.

(vi) It is difficult to quantify the cost of this measure at this time.

(d) (3) 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.

(i) These proposals are helpful and salutary. However, the proposals do not appear to take into consideration the experiences of public officers in responding, or providing the usual Declarations required by the Integrity in Public Life Act under section 30. It is, therefore, recommended that a workshop be held to review the Integrity of Public Life Act and suggest possible areas of reform.

As a means of ensuring that the Code of Conduct in the Integrity of Public Life is enforced in the Public Service, the Code can be incorporated into the contracts of employment of civil servants. This will be possible for future employees, but issues of retroactivity will affect current civil servants. Thus, a separate binding agreement can be drawn up incorporating the provisions of the Code and grounding it within the general duties of civil servants to act in the interest of the public and uphold the dignity of the office. Public servants will then be required to consent to this Code by signature.

In this way, training will become part of the recruitment process.

Since the principles to be included in the Code are already evident in existing legislation such as the Integrity in Public Life Act, the process of incorporation should neither be costly nor lengthy. The logistics will include oversight by the Public Service Commission with resource assistance.

The need to ensure that public servants receive the appropriate training on integrity in public life so that they can adequately respond to corruption can also be achieved by way of incorporating appropriate clauses on training into the contract of employment. In many institutions, contemporary norms are in effect which require employees to pursue further training or certification in a particular area as a means of ensuring that the peculiar needs of the job are met. This is a reasonable option for public servants.

The contract of employment would contain a provision that all public servants undergo a program of training of a length to be determined (two weeks is suggested) during which they will receive appropriate instructions on all matters relating to integrity in public life. A certificate would be issued after the training period. Public servants should not be able to be appointed or become permanent unless they obtain such certification.

In the case of higher level posts, the period of training will include training for management of issues relating to corruption etc. This will entail additional certification. Details of ongoing training exercises are given below, under General Recommendations.

(ii) No existing arrangements have been identified which meet *all* aspects of this recommendation. However, it should be noted that the Government of Trinidad and Tobago has established a Public Service Academy under the Ministry of Public Information, to be the primary source of Human Resource Development and Training for Public Servants. The website is www.mpa.gov.tt and indicates that in June 2008 the Academy conducted training for Senior Officers in the Public Service to promote good governance through the observance of acceptable standards of work. In July of 2008 training was conducted to examine the existing regulations and to ensure that correct

disciplinary procedures were being employed in Ministries. As such enhancement in the training of public servants in the fight against corruption may be appropriately spearheaded through the Ministry of Public Administration and in particular, the Public Service Academy.

(iii) The appropriate authorities to effect such changes are the Law Reform Commission, The Ministry of Public Administration and the Attorney-General's office.

(iv) A time period of one year will be sufficient to meet this objective.

(v) Since compliance to the provisions of the Code of Conduct will now be tied to terms and conditions of employment, progress on this measure will be automatic and ongoing.

(vi) No specific costs are identified at this time.

(d) (4) Enact specific measures, where appropriate, to ensure that conflicts of interest that may arise in all branches of government are covered (see section 1.1.2 of Chapter 2).

(i) This measure requires amendment to the Integrity in Public Life Act in order to broaden the scope of the provisions which speak to conflict of interests. Similarly, amendments should be made to the Civil Service Regulations, the Police Service Regulations and the Teaching Service Regulations to enact and expand provisions addressing conflicts of interest.

The limited application of the Integrity in Public Life Act, in accordance with jurisprudence in Administrative Law and Public Service Law, should be noted. The relevant provisions on the Act in relation to conflicts of interests are sections 14, 22 and 29, although in a sense, the entire Act deals with conflicts of interests.

Under section 14 (1) a "person in public life shall file with his declaration under section 11, an additional statement of registrable interests in the prescribed form, which shall contain the information required by subsection (3)" including information relating to: "

(a) particulars of any directorships held in any company or other corporate body;

(b) particulars of any contract made with the State;

(c) the name or description of any company, partnership or association in which the person is

(d) a concise description of any trust to which the person is a beneficiary or trustee;

(e) beneficial interest held in any land;

(f) any fund to which the person contributes;

- (g) particulars of any political, trade or professional association to which the person belongs;
- (h) particulars relating to sources of income; and
- (i) any other substantial interest whether of a pecuniary nature or not, which he considers may appear to raise a material conflict between his private interests and his public duty.

Section 22. (1) provides that where “it appears to the Commission that a breach of this Act may have been committed or a conflict of interest may have arisen, it shall order a person in public life to place his assets or part thereof in a blind trust for the purposes of this Act on such terms and conditions as the Commission considers appropriate and file a copy of the trust deed with the Commission.

Section 29 further provides that a conflict of interest is deemed to arise if a person in public life or any person exercising a public function were to make or participate in the making of a decision in the execution of his office and at the same time knows or ought reasonably to have known, that in the making of the decision, there is an opportunity either directly or indirectly to further his private interests or that of a member of his family or of any other person.”

Nonetheless, while the cited provisions provide widely for prohibitions against conflicts of interests, the scope of the Act in relation to who and what incur these duties, is narrow. Under section 3, the Act “applies to every person in public life and to persons exercising public functions.” The meaning of the terms ‘persons exercising public functions’, ‘public body,’ public officer and persons in public life’ are thereafter defined under section 2, which provides that:

“persons exercising public functions” includes all persons holding office under the Public Service, Judicial and Legal Service, Police Service, Teaching Service and Statutory Authorities’ Service Commission, as well as members of the Diplomatic Service and Advisers to the Government;

“public body” includes local and public authorities of all descriptions;

“public officer” has the meaning ascribed to it in section 3 of the Constitution;

The difficulty with the approach of the Act is the use of the word ‘office’ in the definition of persons exercising public functions.” In law, the notion of an ‘office’ has been deemed to have special meaning and is distinct from a person employed merely on contract. A possible interpretation could exclude persons who are employed by the State, whether on contract for a specified time period in the Public Service, or with a Statutory Authority or other body. Such persons may not be viewed as holding ‘offices’, nor will they qualify as ‘public officer[s]’ or indeed ‘persons in public life’ which is defined in limited terms in the Schedule of the Parent Act.

Consequently, the legislation will fail to capture all of the various categories of persons employed with the State who are in fact in positions of responsibility and to which the provisions against corruption should also apply. As such, it is recommended that the wording of the Integrity in Public Life Act be adjusted by a minor amendment to the Interpretation Section to meet this concern. Terms such as 'employees of the State', or 'persons employed in the public sector,' should be substituted. Interestingly, the Integrity in Public Life (Amendment) Act uses, perhaps inadvertently, the term 'employed in the public sector' when establishing whistle-blowing protections.

(ii) The State advises that currently, legislative reform is ongoing to amend the Integrity in Public Life Act in order to ensure that conflicts of interest that may arise in all branches of government are covered.

Further, the Integrity in Public Life Act will incorporate provisions that will restructure the Integrity Commission so that it can respond effectively to requests for advice from public servants.

(iii) The responsibility for such law reform initiatives lies with the Law Reform Commission and the Office of the Attorney General.

(iv) Since the initiative has commenced, a time period of one year should be sufficient for its completion.

(v) The office of the Attorney -General is in a position to objectively gauge progress in the actions proposed for implementing the measure;

(vi) No further cost is envisaged for completion of this measure.

(e) Recommendation 1 B Measure 5

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.

(i) While the State advises that the Integrity in Public Life (Amendment) Act, No 1 of 2010, was passed in January of 2010, this statutory amendment does not go the distance in fulfilling the requirement of this recommendation.

The Act does not incorporate any provisions in relation to the detection and / or prevention of conflicts of interest into the Civil Service Regulations. However, the

Parent Act, the Integrity in Public Life already makes, inter alia, the following provisions which speak to the detection and prevention of conflicts of interest:

5. (1) The Commission shall –

- (b) Receive, examine and retain all declarations filed with it under this Act;
- (c) Make such enquiries as it considers necessary in order to verify or determine the accuracy of a declaration filed under this Act;
- (d) Compile and maintain a Register of Interests; . . .
- (f) Investigate the conduct of any person falling under the purview of the Commission which, in the opinion of the Commission, may be considered dishonest or conducive to corruption;
- (g) Examine the practices and procedures of public bodies, in order to facilitate the discovery of corrupt practices;
- (h) Instruct, advise and assist the heads of public bodies of changes in practices or procedures which may be necessary to reduce the occurrence of corrupt practices;

A new paragraph (e) has been added, which states that the Commission shall:

“(e) receive and investigate complaints regarding any breaches of this Act or the commission of any offence under the Prevention of Corruption Act ;”)

It is apparent that this is not a substantive change since the original subsection (e) stated that the Commission shall:

“(e) receive and investigate complaints regarding any alleged breaches of this Act or the commission or any suspected offence under the Prevention of Corruption Act;”

The amended legislation does not speak directly to the Civil Service Regulations at all.

In relation to conflicts of interest and detection of corruption, the most significant change with regard to public servants in the Integrity in Public Life (Amendment) Act concern the triggering amount for gifts, declarations and the like, which has been raised to \$5,000. from \$2000.

Further, for persons who are deemed to be ‘persons in public life’ and persons against whom a complaint or investigation has been initiated, which can include public servants, the powers of the Integrity Commission to command relevant information have been increased. In particular, its enforcement powers have been improved, including a provision invoking the jurisdiction of the High Court to force compliance:

“(3) Where a person fails or refuses to disclose any information or to produce any documents required under subsection (2), the Commission may apply to the High Court for an order to require the person to comply with the request.

(4) A person who refuses to comply with an order of the Court commits an offence and is liable to a fine of **one** hundred and fifty dollars and to imprisonment for three years.

(5) A person who knowingly – (a) makes or causes to be made a false complaint to the Commission; or

(b) misleads the Commission or an investigating officer by giving false information or making false statements or accusations, commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.

The limited application of the Integrity in Public Life Act, in accordance with jurisprudence in Administrative Law and Public Service Law, has already been noted, in proposals under Recommendation 1.1 (d), immediately above. If the intention of the current recommendation is to reach all employees of the State, then those proposals also apply here. Simply incorporating the provisions of the Integrity in Public Life Act into the Civil Service Regulations will not suffice, as those Regulations only apply to public servants and not all employees of the State.

The State should therefore consider broadening the provisions of the Integrity in Public Life Act and / or the Civil Service Act.

(ii) The State informs that a prototype for adequate legislative provisions dealing with anti-corruption already exists in the Integrity in Public Life Act. As stated above, the Act does contain significant provisions but are not as far reaching as the recommendation contemplates. Further, the Amendment to the Act passed in 2010 does not speak directly to these concerns where all public servants are concerned.

(iv) The responsibility for such law reform initiatives lies with the Law Reform Commission and the Office of the Attorney General.

(iv) Since an initiative toward ongoing amendment of the Integrity in Public Life has commenced, a time period of one year should be sufficient for its completion.

(v) The office of the Attorney –General is in a position to objectively gauge progress in the actions proposed for implementing the measure;

(vi) No further cost is envisaged for completion of this measure.

Recommendation 1 B Measure 6

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.

(i) The passage of the Police Service Amendment Act of 2006, The Constitution Amendment Act of 2006 and the Police Service Regulations 2006, together with further amendments in 2007 of this package of legislation, removed the power of discipline of police officers from the Police Service Commission to the Commissioner of Police for all ranks under the rank of Deputy Commissioner of Police.

Both the Police Act and Constitutional Amendment Act were designed to reform the service by, inter alia, establishing a new selection process for the appointment of senior police officers and to allow the Commissioner greater autonomy. The power of discipline over the Commissioner of Police and the Deputy Commissioners of Police remained with the Police Service Commission.

It was hoped that this new development would result in a more efficient disciplinary process with fewer delays. Although statistical information is not available on the matter, these changes have been problematic. There have been difficulties in appointing a Commissioner with the result that there have been multiple acting appointments. This undermines the independence of the Commissioner (Ag) and impairs his, or her ability to discipline. The appointment procedure should therefore be reviewed. Part of the difficulty in relation to appointments relates to the power of veto given by law to the Prime Minister. Proposed legislative amendments have removed the Prime Minister's power of veto and made the appointments subject to Parliamentary approval. An independent recruitment process has been implemented for the selection of a Commissioner of Police. A list of five candidates will be placed before the Parliament. It is anticipated, based on statements made by the Police Service Commission, that the process will be completed by June 30th 2010.

It appears also that the Police Complaints Authority (PCA), an independent body established to investigate criminal offences involving police officers and serious police misconduct, is not fully operational, largely because of problems in appointing a Director and Deputy Director. Neither a Director nor a Deputy Director has been appointed. The Ministry of National Security has advised that it is actively seeking to recruit persons to fill the positions of Director and Deputy director.

Trinidad and Tobago needs to review the appointment process in relation to the Police Commissioner, Director and Assistant Director of the Police Complaints Authority. The former will require constitutional reform and is a long term goal.

A specialist managerial program for senior police officers should be instituted in the Police Service so that there is available to the State a cadre of suitable senior officers from which to draw for top level positions in the force. Assistance should be sought

from external sources for training in this managerial program.

Top police officers should also be specially vetted for service in managerial positions in the police service. In Guyana, for example, lie detection and other vetting procedures are now carried out. Such measures should be examined by the Police Service Commission to ascertain their suitability for Trinidad and Tobago. The Police Service Commission should be given suitable tools in this review process, such as, for example, the services of an expert in high level national security.

(ii) The State notes the package of legislation which has been passed by the Parliament of Trinidad and Tobago, that is, the Police Service Amendment Act of 2006, The Constitution Amendment Act of 2006 and the Police Service Regulations 2006, together with further amendments in 2007, which completely enhance and reorganise the administration of the Police Service. This package of legislation seeks, among others, to streamline and simplify disciplinary procedures within the Police Service. As seen above, the passage of such legislation has not cured entirely the problems identified for rectification.

(iii) The measures required are comprehensive and involve more than one authority, including the Cabinet, the Attorney-General's office, and the Parliament and senior police officers.

(iv) A period of five years is recommended.

(v) A select committee comprising of senior police officers, a member of the Police Service Commission, a member of the public and a representative from the government, should be established to monitor progress on this initiative.

(vi) No finite costs are identified at this time.

Recommendation 1 - Measure 7

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.

(i)The Parliament of Trinidad and Tobago is self regulating and is guided by convention and constitutional norms. The Speaker of the House regulates proceedings. A special Parliamentary Committee should be formed to formulate proposals for a new Code of Ethics, taking into consideration the provisions of the Integrity in Public Life Act. Non-parliamentarians may not be included.

The results of the deliberations of this Special Committee should be presented to the Parliament in a special sitting of the House.

- (ii) No measures are yet in place with regard to this measure.
- (iii) The Speaker of the House should seek to implement this measure.
- (iv) Eight months should be allotted for the work of the Committee and a further six months for the special sitting.
- (v) The responsibility for gauging progress in this matter should reside with the Speaker of the House.
- (vi) The cost for implementing this measure is negligible.

Recommendation 1 B Measure 8

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) The Parliament of Trinidad and Tobago is self-regulating and is guided by convention, constitutional norms and standing orders. It would be preferable if the Code of Ethics has a statutory source, that is to say, it is authorized by an Act of Parliament, such as the Integrity in Public Life Act.
- (ii) No measures are as yet in place to effect this recommendation.
- (iii) The appropriate authority to implement this measure is the Parliament, through the Speaker of the House.
- (iv) A suitable time frame to implement the measure is a period of two years.
- (v) The Speaker of the House could appropriately gauge the progress of this measure.
- (vi) The cost of this measure is difficult to identify.

Recommendation 1 B Measure 9

Consider including in appropriate legislation provisions to protect whistleblowers who report acts of corruption from threats and acts of retaliation.

(i) Whistleblowers are not easily accommodated under the Justice Protection Act since this statute focuses on persons who are at serious personal risk because of assistance in crime prevention. As such, persons being considered for witness protection must undergo risk assessment procedures. Persons who are whistleblowers may easily fail such risk assessment and therefore obtain no assistance from the State.

Specific legislative provisions therefore need to be incorporated for persons who may fall short of risk assessment with regard to witness protection since they are not in danger of loss of life or limb, but who may otherwise be prejudiced because of whistleblowing activities. Legislation should include offences within the purview of both the Prevention of Corruption Act and the Integrity in Public Life Act.

However, the State is of the view that, given the significant costs associated with the protection of witnesses who are at risk, the risk based approach is desirable since it is part of international best practice in the protection of witnesses. To expand the protection to persons who are not deemed to be at significant risk may result in additional costs to the programme. This is an issue which should be discussed fully in the national meetings to discuss the Plan of Action.

Provision should be made for anonymous reporting and / or making confidential reports in relation to alleged corruption.

Further, no information is available as to the status of the requisite administrative bodies established under section 4 of the Justice Protection Act.

However, the newly passed Integrity in Public Life (Amendment) Act does contain some specific protections in relation to whistle-blowing. The relevant provision is expressed as a new section 42 A and reads as follows:

42 A. An employee of the State, a public authority or any other body shall not be dismissed, suspended, demoted, disciplined, harassed, denied a benefit or otherwise negatively affected because—

(a) he, acting in good faith and on the basis of a reasonable belief, has—

(i) notified the Commission that his employer or any other person has contravened or is about to contravene this Act;

(ii) done or stated the intention of doing anything that is required to be done in order to avoid having any person contravene this Act; or

(iii) refused to do or stated the intention of refusing to do anything that is in contravention of this Act; or

(b) his employer or any other person believes that he will do something described in paragraph (a).”

The protection against whistleblowing afforded under the new section 42A is, however, quite limited, being restricted to ‘retaliation’ at the workplace. It is not expansive enough to address the kinds of broad protections envisaged by this recommendation, which include threats and retaliation which may occur outside of the workplace and which may even be physical. Accordingly, the new section 42A, while it affords a significant measure of protection, does not meet adequately the requirements of the Recommendation.

Consequently, the progressive developments by the State, as itemized below, will not meet fully the requirements of the Convention. Further amendments need to be made to the Integrity in Public Life Act.

(ii) The State advises that the Justice Protection Act was passed on the 4th of April 2007. The Justice Protection Authority was also established and reportedly has adequate funding and responsibility for the protection of all witnesses considered at risk, including whistleblowers. However, as seen above, it does not adequately contemplate whistle blowing.

Additionally, the State points to the Integrity in Public Life (Amendment) Act 2010, which seeks among other things to protect employees of the State, public or private bodies, from unjust repercussions owing to their action in good faith under the Act. As explained above, this is limited.

Under the consideration of Cabinet is the establishment of Witness Care Protection Agencies as part of criminal justice reform.

Laws relating to the reporting of threats continue to be enforced by the appropriate authority, the Police.

(iii) The Law Reform Commission and the Parliament of Trinidad and Tobago will perform the tasks of the necessary law reform.

(iv) Since the amendment to the Integrity in Public Life Act is an ongoing process, a relatively short time for the passage of new amendments of the Act is needed. A nine month period will therefore suffice. With regard to proposed amendments to the Justice Protection Act, a period of one year should be adequate.

(v) The Attorney-General’s office should have the responsibility for gauging the progress in the actions proposed for implementing the measure.

vi. The cost for this measure is negligible.

Recommendation 1 B Measure 10

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. (See Chapter II, section 1.1.2 of this Report).

(i) The use of restrictive covenants, such as those that will prevent former employees from working in particular areas, or making use of knowledge gleaned from former employment, is common in private employment law, but relatively unknown in public law. However, the increasing trend in private employment law is to constrain such restrictions with principles of reasonableness, as the courts recognize the considerable limitation which such covenants place on a person's right to a livelihood. In developing countries such as Trinidad and Tobago, where unemployment rates are high, such covenants serve as an additional burden to society. Further, the skills base, particularly in high level occupations, may be slim and persons with specialist knowledge and expertise gained from employment in the public service will often be in high demand. It may not be in the public interest to restrain such persons in the manner recommended.

In addition, it should be noted that West Indian constitutional jurisprudence recognizes the principle of proportionality, and this has been specifically addressed in public service law. This means that even if a measure is adopted which seeks to contain public servant employees in such a manner, its use must be exercised in accordance with principles of proportionality and the means employed should be that which least violates rights and interests of individuals.

It is suggested that appropriate ways in which to effect the objectives of the Convention, without infringing on the rights of citizens, are:

- (1) to outline in a written document as concisely as possible the kind of information subject to restriction, for example, on grounds of national security;
- (2) to seek to impose restrictive covenants only on high level public servants;
- (3) to impose such restrictions only for short periods, of no more than five years;
and
- (4) to include a proviso granting a relevant authority the power to exempt persons from such covenants.

(ii) No mechanisms are as yet in place to fulfill the requirements of this recommendation. It would appear, however, that the recommendation is too broad and the Committee may not have received accurate reports on this practice, since the State advises that currently, these restrictions apply only to members of the Judiciary who resign or retire. As such, measures are not required for the entire public sector. Since judges typically retire at a very senior age, it is not envisaged that their employment prospects are significantly impacted.

(iii) The responsible authority should be the Law Reform Commission.

(iv) A period of two years is recommended to implement this measure.

(v) The Office of the Attorney-General can suitably oversee this measure.

(vi) No costing is necessary at this time.

Recommendation 2

1.2 Standards of conduct and mechanisms to ensure the conservation and proper use of resources entrusted to public officials.

The Committee suggests that the Republic of Trinidad and Tobago consider strengthening the system of control of public resources. In meeting this recommendation, the Republic of Trinidad and Tobago may wish to consider the following measures:

(a) Measure 1

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.

(i) The government of Trinidad and Tobago should appoint a Special Investigator skilled in audits and accounts and optimally, versed in public sector management, to review the systems designed to ensure the conservation and proper use of public resources. This is with a view to preventing corruption and ensuring their compliance with the Convention. The Special Investigator should take into account the findings of the White Paper on 'Reform of the Public sector Procurement Regime', August 2005, Ministry of Finance of Trinidad and Tobago. The report of the Special Investigator

should be presented to the Parliament for consideration and to propose legislative and administrative changes to the procurement regimes.

The recommendations of the White Paper on this issue should be implemented.

(ii) The State has already done sufficient background work in the form of the White Paper.

(iii) The Ministry of Finance and the Parliament should oversee this initiative.

(iv) A period of one year is sufficient to implement this measure.

(v) The Speaker of the House should table a Report to Parliament on the issue.

(vi) A sum of US \$40,000 should be allocated.

Recommendation 3

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

The Republic of Trinidad and Tobago has considered but not adopted measures designed to establish, maintain and strengthen standards of conduct and mechanisms related to measures and systems that require public servants to report to the appropriate authorities acts of corruption in the performance of public functions.

In light of this situation, the Committee suggests that the Republic of Trinidad and Tobago 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. In implementing this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

Recommendation 3 B Measure 1

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.*

(i) The duties of public servants should be highlighted to include specific obligations for the reporting of corruption as part of their general duties in the public interest. Such provisions are best placed under the Civil Service Act. Alternatively, such rules should be incorporated into subsidiary legislation.

The Integrity in Public Life Act should also be amended to include positive duties on the part of all public officers to report suspected acts of corruption.

Although s. 52 of the Proceeds of Crime Act imposes duties on persons, including public servants, to report suspected money laundering, the provision is deficient because of the limited definition of money laundering in that statute. The existing definition relates primarily to drug trafficking and not, as in other jurisdictions, to all serious crime. The legislation should be upgraded to encompass a broader scope for money laundering.

However, the Proceeds of Crime (Amendment) Act, Act No. 10 of 2009, has recently amended the Proceeds of Crime Act to expand the application of the Act to all indictable crimes which are now listed as “specified crimes”. References to drug trafficking for the purpose of confiscating the proceeds of crime have now been deleted by the amendment.

While the Justice Protection Act has been passed, it contains no positive duties to report corruption and there are no relevant or specific provisions relating to such duties on the part of public servants. Currently, the Integrity in Public Life Act does not speak to the issue of proactive reporting of corruption. Amendments to the statute to bring this into effect are desirable.

Training programs for senior public servants as described below, under General Recommendations, should include training in relation to proactive duties of reporting corruption. The Public Service Commission should also be required to draw up a Protocol to guide public servants in how to handle reporting mechanisms sensitively and efficiently. The Protocol should include mechanisms for reporting under confidential cover and anonymous reporting and clear measures where a public servant is reporting his or her own supervisor or Head of Department, in which case it will be inappropriate for that public servant to report through the supervisor or Head.

Special attention must be paid to reports by senior public servants, including clear guidelines as to whom they should report. While corruption involves issues of discipline and fall within the jurisdiction of the Public Service, the Integrity in Public Life Act makes this a national issue. Clearly, it will be desirable to avoid duplication. However, the Integrity Commission should be aware of the instances of corruption and is also being asked in this Report (below), to keep a national Register of reports of corruption.

Two possible routes are suggested:

- (a) The Head of Department should transmit reports of alleged corruption received, or being made *ex proprio motu* to the Public Service Commission, which must then send a copy of the Report to the Integrity Commission; or
 - (b) The Head of Department should transmit reports of alleged corruption received or being made *ex proprio motu* directly to the Integrity Commission and copied to the Public Service Commission.
- (ii) The State reports that legislation relating to corruption is currently under review. Further, the Justice Protection Act was proclaimed on April 4, 2007.
- (iii) The relevant legal amendments should be made by the Law Reform Department. The Public Service Commission should establish the relevant Protocol on reporting matters of corruption independently.
- (iv) A period of one year should be allotted for these activities.
- (v) The office of the Attorney General should oversee the progress in relation to this measure.
- (v) The cost associated with this measure is negligible.

Recommendation 3 B Measure 2

- 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.*

This is adequately addressed in the preceding sections of this Report, that is, the sections concerning whistleblowers and in the section immediately preceding, which made suggestions in relation to the establishment of a Protocol for reporting corruption. The Integrity in Public Life Act 2000 has now been amended by the Integrity in Public Life (Amendment) Act 2009 to give protection in terms of job security to whistleblowers in relation to reports of corruption. The Act was recently assented to on 13th January 2010.

The relevant section of the Integrity in Public Life (Amendment) Act is found in a new section 42 A and is as follows:

42 A. An employee of the State, a public authority or any other body shall not be dismissed, suspended, demoted, disciplined, harassed, denied a benefit or otherwise negatively affected because –

- (a) he, acting in good faith and on the basis of a reasonable belief, has –
 - (i) notified the Commission that his employer or any other person has contravened or is about to contravene this Act;
 - (ii) done or stated the intention of doing anything that is required to be done in order to avoid having any person contravene this Act; or
 - (iii) refused to do or stated the intention of refusing to do anything that is in contravention of this Act; or
- (b) his employer or any other person believes that he will do something described in paragraph (a)."

In terms of substance, the new section 42A meets adequately the requirements of the Recommendation.

However, it should be noted that the Recommendation itself is too limited in its scope as it speaks only to 'civil servants'. As indicated above, this is a technical term, as is the term 'public servant' and does not refer to all employees of the State. Interestingly, the new section 42A uses the wider concept of 'employees of the State', although the Parent Act itself applies to a more limited category, as noted above. This is a better formulation, which should be used for all legislation dealing with corruption in the public sector.

Recommendation 3 B Measure 3

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.

- (i) The Commission of Inquiry Act should be amended to provide for automatic review of reports issued by spent Commissions of Inquiry by an independent committee to be appointed by the President within a specific period, preferably, no later than six months.
- (ii) No information is forthcoming from the State as to any developments on this issue.
- (iii) Such amendments must be carried out by the Law Reform Department through the Parliament and with the permission and authority of the President.
- (iv) A period of fifteen months should be allotted for such amendments.
- (v) A select committee comprising members of the public and senior public servants should be established to review the progress of this measure.

- (vi) The cost for this measure is negligible.

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

The Republic of Trinidad and Tobago has considered and adopted measures designed to establish, maintain and strengthen systems for registration of income, assets and liabilities of persons exercising public functions in certain posts as specified by law, and, where appropriate, for making such disclosures public, in accordance with the comments in Chapter 2 of this report.

Recommendation 4

In view of the comments made in the above-mentioned paragraph, the Committee suggests that the Republic of Trinidad and Tobago consider strengthening systems for the disclosure of income, assets and liabilities. In meeting this recommendation, the Republic of Trinidad and Tobago may wish to consider the following measures:

Recommendation 4 B Measure 1

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.

- (i) This can be accomplished by simple and non-contentious legislative reform.
- (ii) No measures are as yet in place.
- (iii) The Law Reform Department should be responsible for this initiative.
- (iv) A period of six months is sufficient for completion.
- (v) The Attorney-General's Office should oversee this measure.
- (vi) The cost for effecting this measure will be negligible.

Recommendation 4 B Measure 2

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.

This recommendation does not take into account the *separation of powers principle* entrenched in the Constitution of Trinidad and Tobago and affirmed in important jurisprudence of the courts. The Integrity Commission is not a court. It cannot retain discretionary power to impose penalties. However, the courts have made a distinction between the power to impose penalties as an independent body and the delegated authority to apply pre-determined penalties, the latter which does not offend the separation of powers doctrine. Consequently, the Parliament of Trinidad and Tobago can affix set penalties for contraventions of the Integrity in Public Life Act and these can be applied by the Integrity Commission.

Legislation may be enacted providing for specific penalties under the Integrity in Public Life Act and granting the power to apply these penalties the Commission.

The State reiterates the Consultant's point that the Integrity Commission was never meant to be a Court. It further argues that contravention of the provisions of the Integrity in Public Life Act already carries sanctions with due process provisions. It is concerned that granting the Commission the capacity to apply penalties may attract constitutional challenges that may defeat the original intent of the Commission. It envisages that this is a decision to be made by the Government of Trinidad and Tobago in the course of reform.

It should be noted, however, that the concern of the State with regard to constitutional challenge is over-stated. Constitutional jurisprudence on the point at issue is now well established in the Commonwealth Caribbean, to the effect that a fixed penalty determined by the Parliament (as opposed to a discretion) is *not* unconstitutional. See, e.g. the case of *JAstaphan & Co (1970) Ltd v The Comptroller of Customs of Dominica*. It is hoped that the Government of Trinidad and Tobago will consider the recommendation to institute carefully calibrated set penalties carefully.

Recommendation 4 B Measure 3

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

(i) A Select Committee comprised of representatives from the public, from the Parliament and from law enforcement, should be established by the President to review this issue, taking into account the rationales for confidentiality in matters of corruption.

It is to be noted, however, that the State is opposed to the idea of making the proceedings of the Integrity Commission public and offers up valid reason for the confidentiality of the proceedings. It advised, for example, that the nature of such proceedings makes this possible approach one of concern in States with small populations. Notwithstanding, it is a recommendation which will be considered by the State.

- (i) The initiative should be spearheaded by the President.
- (ii) The Attorney-General's office should oversee progress on this initiative.
- (iv) The matter of establishing the committee and permitting the committee the opportunity to review should take no more than six months.
- (v) The Select Committee should be asked to make periodic assessments of this measure.
- (vi) A sum to meet ancillary expenses of approximately US\$5,000 would be sufficient to meet this initiative.

Recommendation 4 B Measure 4

Ensure that provisions have been made by the Service Commissions to receive declarations of interests from Commission members.

- (i) This would require administrative procedures and a more targeted enforcement mechanism. Permanent Secretaries should be given direct responsibility with respect to such a measure.
- (ii) No information is forthcoming in relation to this recommendation.
- (iii) The Ministry responsible for the Public Service should be given responsibility for this measure.
- (iv) A period of one year is suggested.
- (v) The Office of the Attorney-General should evaluate progress made in relation to this measure.
- (vi) The cost of this measure is negligible.

Recommendation 4 B Measure 5

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.

(i) This requires amendments to the Integrity in Public Life Act and the Civil Service Act.

The comments made previously in relation to the scope and application of the Integrity in Public Life as a result of the wording used in the Interpretation section, are reiterated here.

(ii) The State has advised that proposed amendments to the Integrity in Public Life Act contemplate that all public employees in appropriate positions are required to file declarations, including members of the Diplomatic Service and Advisers to the Government. If this occurs, the objective will be met.

(iii) The appropriate bodies for such amendments are the Law Reform Department and the Parliament.

(iv) A time period of twelve months should be allotted for this recommendation to take effect.

(v) The Attorney-General's office should oversee the progress of this measure.

(vi) Since amendments are already in train, the cost for implementing this measure should be negligible.

Recommendation 4 B Measure 6

Regulate the conditions, procedures and other aspects related to publicizing the declarations of income, assets, and liabilities, and registrable interests, as appropriate.

(i) There is legitimate opposition to making the declarations of income, assets and liabilities available to the public at large, as opposed to the Integrity Commission which has been established for this purpose. Were this to happen, the most appropriate forum would be a national Register. The Constitution does provide for a general right to privacy, but this relates to personal privacy in the home and within the context of search and seizure. Further, there is no express right to financial privacy. While it may be possible to extrapolate this right from the more general right to privacy, such an interpretation is not well established. Further, abrogation of the right to privacy must be balanced against the national interest, in this case, transparency.

In addition, the threshold for any abrogation of the right to privacy should be high and must also be subject to the principle of proportionality. The needs of law enforcement would normally be sufficient to displace privacy rights. However, since an Integrity Commission already exists and can fulfill the interests of law enforcement, it is suggested that a public Register of declarations might be overreaching and further offend the principle of proportionality, making such a measure unconstitutional. It is therefore not suggested that this recommendation be pursued in its current form. Rather, the State should ensure that the Integrity Commission is able to exercise its functions efficiently and independently. This latter objective is achieved by ensuring that the Integrity Commission has adequate resources to fulfill its mandate, discussed above.

(ii) No information is forthcoming as to any specific developments in relation to this measure.

(iii) Since no further action is proposed for this measure, except in so far as it relates to the increased resources which are to attach to the Integrity Commission, discussed above, no further proposals are necessary.

Recommendation 4 B Measure 7

Utilize the declarations of income, assets and liabilities and registrable interests in order to detect and prevent conflicts of interests and illicit enrichment.

(i) The detection of crime is the responsibility of the police. As such, there should be a special unit in the police force equipped to review information from the requisite declarations of income on a regular basis in order to detect possible crimes. Such a unit will have to be trained, which in turn will require the services of an expert in crime detection of this nature.

Specific provision will need to be made for illicit enrichment in the laws of Trinidad and Tobago.

Currently, the Proceeds of Crime Act itself is deficient since the definition of money-laundering is obsolete and linked to the concept of drug trafficking. This has now changed with the passing of the Proceeds of Crime (Amendment) Act 2010. Under the amendment, the concept of money laundering is now broadened, in keeping with more modern and internationally accepted definitions of the offence. Consequently, money laundering now refers to specified offence which is defined to relate to any indictable offence. This amendment now considerably broadens the scope of anti-money laundering provisions as well as capturing broadly, as money laundering, the many faces of corruption.

However, in the Proceeds of Crime Act, the confiscation procedures are lacking and will fall short of tracing and recovering the proceeds of crime. This is also detrimental to mutual legal assistance efforts which depend on dual criminality, a principle of international evidence, for effect. If such provisions are lacking in Trinidad and Tobago, requests for international assistance will fail even if the requesting country's laws contain such provisions. The Act needs to be amended further. Further, Trinidad and Tobago should consider making exceptions to the dual criminality rule in the mutual legal assistance agreements.

It should be noted in this regard, that section 33 of the Amendment Act attempts to cure this deficiency, at least partially. It amends section 58 of the Act and provides for a new subsection 3A, which provides:

“(3A) The Attorney General may enter into an agreement with the government of any foreign state for the reciprocal sharing of the proceeds or disposition of –

(a) property confiscated, forfeited or seized under this Act; or

(b) property confiscated, forfeited or seized by that foreign state, in circumstances where law enforcement authorities of that foreign state, or of Trinidad and Tobago, as the case may be, have participated in the investigation of the offence that led to the confiscation, forfeiture or seizure of the property or if the law enforcement authorities participation led to the confiscation, forfeiture or seizure of the property under this Act.”

It should be noted, however, that this is a discretionary power on the part of the Attorney General and does not contemplate the kind of mandatory assistance that is envisaged under mutual assistance agreements. Further, since it does not provide for confiscatory powers under domestic law, any such Agreement could still fail because of dual criminality restrictions. What are necessary are an actual Mutual Legal Assistance Agreement or treaty, as well as specific provisions relating to confiscation under domestic law.

Since the declaration of income also involves potential conflicts of interest which may not be of a criminal nature and therefore out of the purview of the police, detection of such conflicts must be left to the Integrity Commission itself. Consequently, the Commission should be given the requisite tools to ensure the efficiency of this process, in particular, adequate administrative assistance and computer programs designed specifically to detect possible conflicts of interest.

With regard to the requisite amendments to the Proceeds of Crime Act, mutual legal assistance treaties and collateral legislation, since these contain issues of a highly specialised nature, a suitable expert should be hired to guide the necessary reforms.

Such a consultant should work closely with a legal draftsman assigned to the task of specific reform in this area.

(ii) The State has advised that proposed amendments to the Prevention of Corruption Act would include criminalizing illicit enrichment.

(iii) A number of agencies will need to be involved in the process of utilizing the results of declarations of income. These include the Police Commissioner, the Executive, the Integrity Commission, the Department of Public Information and the Ministry of Finance.

(iv) The Attorney-General’s office will be responsible for overseeing this measure.

(v) A period of three years should be allotted for these measures.

(vi) It is recommended that consultant fees for specialized law reform for the various legislative instruments should be approximately US \$60,000

Recommendation 4 B Measure 8

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) Specific programs should be designed for public education on issues of corruption. These include the usual government information service, television and radio programs. The government’s information service should also outreach to selected public institutions, including statutory corporations. Since the Integrity Commission is also given duties in relation to public education under s. 5 of the Integrity in Public Life Act, they should spearhead these activities with the facilitation of the government information service.

In addition, a special website should be designed which contains the relevant information in these matters.

A confidential anti-corruption hot-line should also be developed to facilitate members of the public who wish to comment on matters of corruption or report alleged corruption.

(ii) The State advises that 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.

(iii) The Ministry responsible for public information, in collaboration with the Integrity Commission and the office of the Attorney General, are the appropriate bodies to carry out these functions.

(iv) A period of two years should be allotted for this measure.

(v) Self-assessment involving non-governmental organizations should be utilized to gauge progress in relation to this recommendation.

(vii) US\$ 20.000 is suggested.

Recommendation 4 B Measure 9

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

(i) The Register of registrable interests to be established under s. 14 of the Integrity in Public Life Act does not require information as to the actual amount of income, assets etc. held by a person in public life. In fact, the Register of interests is *not* a public Register. It is a confidential Register with access to the public upon specific requests, an important distinction. As such, it does not attract the same considerations in relation to the Constitution as those considered above for making ordinary declarations fully public. This objective is therefore easily achievable.

Logistical arrangements are required to establish the requisite Register. Administrative assistance, including assistance in computer data management will be necessary to meet this objective. The Registrar of the Integrity Commission should also establish guidelines for the proper receipt of requests, such as, for example, a requirement that the request be made in writing.

(ii) No information has been received in relation to any developments in relation to this measure.

(iii) The appropriate body to implement this measure is the Integrity Commission.

(iv) A suitable time frame is twelve months.

(v) The Attorney-General's office should measure the progress of this measure.

(vi) The cost for this measure is approximately US\$10,000.

Recommendation 5

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

The Republic of Trinidad and Tobago has considered and adopted measures designed to establish, maintain and strengthen oversight bodies that carry out functions related to the effective enforcement of the provisions selected for review within the framework of the first round (Article III, paragraphs 1, 2, 4, and 11 of the Convention), in accordance with the comments in Chapter 2, paragraph 3 of this report.

Measure 1

In view of the comments made in the above section, the Committee suggests that the Republic of Trinidad and Tobago consider establishing mechanisms that allow for improved functioning and coordination among oversight bodies such as:

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. In carrying out this recommendation, the following could be taken into account:

(1) *Clarify the role of the Permanent Secretary or Head of Department under the Civil Service (Amendment) Regulations.*

(i) The general training manual and sessions described in this Report under General Recommendations should be employed to clarify the role of the Permanent Secretary or Head of Department in relation to the Convention’s objectives. This should also be part of the ongoing public sector reform exercise. No additional measures are necessary.

(ii) The State has advised that 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. This, together with the ongoing training suggested below, satisfactorily meets the measure recommended.

(2) *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.*

(i) The State's response (below) to this measure is insufficient to meet the recommendation. While training is necessary and laudable, there is need for legislative support for such activities. Legislative reform will need to take place. While reporting is legitimately placed under wide duties of public servants in relation to the public interest, provision in the Regulations will elevate this requirement. The comments in relation to this measure should be read in conjunction with earlier suggestions in this Report relating to proactive duties to report alleged corruption.

(ii) The State advises that recent training has stressed that Permanent Secretaries and Heads of Departments are under a duty to report acts of corruption.

(iii) The Law Reform Department should oversee this process, with input from the Public Service Commission.

(iv) A period of two years is suggested for this measure to be realized.

(v) Part of the ongoing evaluation of this measure will be realized through annual reviews of the Public Service. In addition, the general oversight of the Convention's objectives given the Attorney-General's office will assist in gauging progress.

(vii) Cost for this measure is difficult to establish at this time.

(3) 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.

(i) The need for oversight requires an annual review exercise on the part of those trusted to administer the system and processes designed to prevent corruption in the State. An annual review process would logically include the recommended statistical information.

All relevant authorities, including the Public Service Commission, Heads of Department, the Integrity Commission and the law enforcement agencies, should perform annual reviews in relation to corruption as a matter of routine. Training programs as outlined in this report, in particular, under General Recommendations, should emphasise such reviews as a means of good administrative governance and performance appraisal.

(ii) No information is available from the State in relation to this measure.

(iii) The Integrity Commission, the Public Service Commission and the Police Service Commission should be responsible for implementing this measure, with oversight from the Ministry responsible for the Public Service.

(iv) A time period of eighteen months should be allocated for this measure.

(v) The cost for such a measure is better assessed after the national meeting to discuss the Plan of Action.

4. MECHANISMS TO PROMOTE PARTICIPATION BY CIVIL SOCIETY AND NON- GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11).

The Republic of Trinidad and Tobago has considered and adopted measures designed to establish, maintain and strengthen mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption, in accordance with Comments in Chapter 2, paragraph 4 of this report.

In view of the comments made in that section, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendations:

4.1 General Participation Mechanisms

The Committee encourages the Republic of Trinidad and Tobago to continue working on the implementation of formal mechanisms or statutory provisions expressly designed to stimulate the participation of civil society and of the non-governmental organizations in efforts intended to prevent corruption.

The State has been advised of the Committee's urging and encouragement and is eager to continue to work towards this objective.

4.2 Mechanisms for Access to Information

Strengthen the mechanisms for ensuring public access to information. In meeting this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

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.

(i) This measure will require legislative reform, but should not be contentious, since Commissions of Inquiry are envisaged as instruments designed for the elucidation of the public. Given the measures prescribed above for the public access to such reports, it

is unclear whether amendment to the Freedom of Information Act is necessary. Reports laid in the Parliament, as are reports of Commissions of Inquiry, are also available to the public. A more efficient and time-saving measure would be to ensure that Commissions of Inquiry Reports are posted on the relevant government websites.

The President may dictate that reports of Commissions of Inquiry be posted on the government website after being reviewed by the Parliament.

- (ii) No further information from the State is forthcoming on this measure.
- (iii) The President should be responsible for this initiative.
- (iv) A period of four months is adequate.
- (v) The cost of this measure is negligible.

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.

(i) The President is already under a legal obligation to exercise his discretion to exempt documents of public authorities from the purview of the Freedom of Information Act objectively and reasonably. In fact, contemporary law indicates that the exercise of the Prerogative is reviewable in certain circumstances. However, it will be useful to outline some guidelines for the exercise of this power, although such a list cannot be exhaustive.

Suitable criteria for exemption from freedom of information include matters relating to national security and unproven allegations which may amount to libel or slander.

The President should establish a select committee to examine this issue.

- (ii) No information on this measure is available from the State.
- (iii) The President should oversee this measure.
- (iv) A time period of six months should be allotted for the implementation of this measure.
- (v) The Attorney-General's office should evaluate progress made on this measure.
- (v) The cost of this measure is negligible.

(c) *Consider reviewing the scope of the exemption on Cabinet documents.*

(i) Despite information assessed by the reviewing body, the scope of the exemption on Cabinet documents is not as wide as once thought, although the general and entrenched principle of parliamentary privilege remains. Further, the deliberations of Cabinet are now reviewable in certain circumstances as recently reiterated in *Anthony v AG of Saint Lucia*. It is not useful therefore for any committee, or other body to review the scope of these exemptions. The courts are well equipped to do so and have in fact, done so increasingly. Such a review is accordingly best left to the judiciary, those to whom the Constitution has entrusted to review the exercise of powers exercised on the behalf of the State.

Because of the above, no further proposals are made in relation to this measure.

4.3 Consultative Mechanisms

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. In meeting this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

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.

(i) Given the nature of the parliamentary system of Government in Trinidad and Tobago, it is appropriate for representatives of the State, including the Office of the Attorney-General and parliamentarians themselves, to input in relation to this recommendation - measures (a) and (b). The danger is that such a recommendation, which makes civil society mandatory instead of voluntary, may offend the principles of parliamentary representation fundamental to the mode of constitutional governance.

The Consultant suggests that this issue be carefully calibrated in the national meeting to discuss the Plan of Action. *She further suggests that the Attorney-General solicit the views of Parliamentarians in preparation for this meeting.*

4.4 Mechanisms to encourage participation in public administration

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

recommendation, the Republic of Trinidad and Tobago could consider the following measures:

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

(i) This is an ongoing process and information is that the recommendation is being met in accordance with good governance.

No further proposals are made in relation to this measure.

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.

(i) The Integrity Commission should consider creating a special public information unit within its offices which would take on the responsibility for public education and participation. Such a unit should also be equipped with an interactive website for the stated purpose which would allow for both public information gathering and elucidation.

(ii) No information has been received from the State in relation to this measure.

(iii) The Ministry responsible for public information should work together with the Integrity Commission to give effect to this proposal.

(iv) A period of eighteen months is suggested for this proposal.

(v) The Integrity Commission should evaluate the progress of this measure in its annual review and report.

(vi) A sum of US \$ 30,000 is adequate.

c. Make the response of the Opinion Leaders Group available to the public.

(i) A website as described in the preceding proposal, would facilitate adequately this recommendation.

No further proposals are made with respect to this measure.

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.

Information from the State is necessary to evaluate this measure. Such a measure can be easily planned at the forthcoming national meeting.

e. Modify existing libel law in order to ensure that it cannot be used to silence public reporting on corruption and integrity issues.

(i) Where information is accurate, this will be a defence to an action to libel. As such, the existing law does not silence persons who report accurately and in good faith. Moreover, the provisions proposed for anonymous reporting, to be filtered through the relevant authorities, will protect persons from the laws of libel.

Accordingly, no further proposals are made in relation to this measure.

4.5. Participation mechanisms in the follow-up of public administration

Strengthen and continue implementing mechanisms that encourage civil society and nongovernmental organizations to participate in the follow-up of public administration. To comply with this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

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.

(i) The measures indicated at Recommendation 4.4 are again relevant here. However, as yet, there are no rules or standards on participation in public administration, so that when these rules are created, as proposed *infra*, there is the opportunity to establish concurrent mechanisms for follow up.

In addition, as a monitoring mechanism, the Integrity Commission should be required to report its outreach activities. This can be achieved by simple amendment of the Integrity in Public Life Act. Other proposals in this Report advocate improved reporting by the Integrity Commission, so that this can easily be incorporated into those other proposals, requiring no further action.

(ii) No further information has been received from the State with regard to follow up measures.

(iii) The Ministry responsible for public information should oversee these activities.

(iv) No further time is necessary considering that this proposal will form part of other similar proposals;

(v) The Attorney-General’s office, which has general responsibility for implementing the Convention, should gauge progress on this measure.

(vi) No additional budget is required.

b. Design and implement programs that publicize participatory mechanisms concerning the monitoring of public administration and, where appropriate, that train and provide the necessary tools to civil-society and nongovernmental organizations in order to use such mechanisms.

(i) The website and public outreach programs indicated earlier in this Report will satisfactorily meet the participatory mechanisms envisaged in this recommendation.

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.

(i) The public outreach programs described earlier in this report should facilitate this measure. However, a more formal mechanism should also be adopted to ensure that the views of civil society organizations are heard and internalized. This can be achieved through periodic meetings of the Integrity Commission at set intervals (such as quarterly or bi-annual meetings) with members of such organizations.

(ii) No information on this measure has been received from the State.

(iii) The Ministry responsible for public information should oversee these public outreach activities.

(iv) Eighteen months should be allocated for the development of suitable public outreach programs.

(v) The Attorney-General’s office, which has general responsibility for implementing the Convention, should gauge progress on this measure.

(vi) A budget of US \$5,000 should be allocated.

d. Review whether the fine for knowingly and mischievously making a false complaint to the Integrity Commission is an impediment to civil society participation.

(i) A select committee comprised of the members of the Integrity Commission and

other persons appointed by the President should be established to meet this objective.

- (ii) No steps have as yet been taken by the State.
- (iii) The entity to oversee this measure is the Integrity Commission.
- (iv) A period of one year is adequate.
- (v) The Office of the Attorney-General should gauge progress in this matter.
- (vi) The cost of this initiative is negligible.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

The Republic of Trinidad and Tobago has adopted measures in relation to mutual technical cooperation and mutual assistance, in accordance with the provisions of Article XIV of the Convention, as described and reviewed in Chapter 2, paragraph 5 of this report.

In view of the comments made in that section, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendations:

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.

- (i) This Report has already suggested that a Consultant be appointed to review the terms of the mutual legal assistance treaty and collateral legislation. Such a Consultant should also be required to consider areas where international technical cooperation is needed from other States Parties. The Consultant should be versed in matters relating to anti-money-laundering, mutual legal assistance and proceeds of crime, including its procedural aspects.
- (ii) No information is available from the State on this issue.
- (iii) The Office of the Attorney-General should oversee the process.
- (iv) A time period of two years should be allocated to this project.
- (v) The Office of the Attorney-General should evaluate progress made on this measure.
- (vi) A budget of US\$30,000 should be made available for this project.

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.

No information has been forthcoming with regard to the commitment of the State in this regard.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

The Republic of Trinidad and Tobago has adopted certain measures relative to the designation of the central authority referred to in Article XVIII of the Convention, as discussed in section 6, chapter II of this report.

In view of the comments made in section 6 Chapter II of this report, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendation:

6. 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.

(i) Trinidad and Tobago has indicated that the Central Authority Department within the Office of the Attorney General will be the central authority for the purposes of the Convention and has undertaken to inform the OAS Secretariat of this development.

No further proposals are necessary in relation to this recommendation.

7. GENERAL RECOMMENDATIONS

Based on the review and the contributions that appear throughout this report, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendations:

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.

(i) The several mechanisms outlined in this report, in particular, as detailed under General Recommendations with regard to the training of public servants should be

adopted expediently. In particular, the use of targeted training upon recruitment, described more fully below, should be employed.

No further proposals are necessary to give effect to this 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.

(i) Provisions for annual reviews and submission of annual reports should be written into all legislation relevant to the prevention of corruption.

(ii) No information is available from the State in relation to this measure.

(iii) The Attorney General’s office should examine such legislation to determine any gaps in the existing legislation.

(iv) A period of one year should be allocated for achieving this objective.

(v) Self –assessment by the Office of the Attorney- General is appropriate.

(vi) The cost of this measure is negligible.

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.

(i) The Attorney-General’s office, which has overall responsibility for ensuring the implementation of the Convention, should assume the responsibility to analyze the mechanisms and recommendations mentioned in this report with a view to determining their implementation. This should be part of the annual review and reporting mechanism mentioned above.

(ii) Currently, the State, through the Office of the Attorney-General, is assessing the means by which the Convention is being implemented.

(iii) The Attorney-General is the appropriate authority to oversee this exercise.

- (iv) A period of eighteen months should be allocated to this exercise
- (v) The Office of the Prime Minister should have an oversight role in measuring progress on the implementation of the Convention by the Office of the Attorney-General.
- (vi) The cost for this measure is negligible.

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.

- (i) This measure would require the professional input of a statistician, which is not available in the Attorney-General's office, the office responsible for oversight of the convention.
- (ii) No information is forthcoming on this objective.
- (iii) Collaboration between the Central Statistical Office and the Attorney General's office will be required to effect this recommendation.
- (iv) A period of two years is appropriate.
- (v) The Office of the Attorney-General should evaluate progress on this measure.
- (vi) A budget of US \$10,000 should be allocated.

8. 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 30 of the Rules of Procedure.

Similarly, the Committee will review the progress in implementing the recommendations made in this report, in accordance with the provisions of both Article 31 and, when and if appropriate, Article 32 of the Rules of Procedure.

SECTION II SECOND ROUND OF REVIEW

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.

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 11 of this Report).*

(i) Changes of this nature to the operations of the Public Service should be effected only after a comprehensive public sector reform exercise, as consideration will have to be given, not only to the aims of an anti-corruption agenda, but also to other important variables such as developing the skills base of the service, competitive hiring regimes, efficiency and the like.

(ii) The State is in fact engaged in ongoing public sector reform. This recommendation should be included in the issues being considered.

- (iii) The Ministry responsible for the Public Service is the appropriate authority.
- (iv) A period of three years should be allotted for this measure.
- (v) The Office of the Attorney –General should evaluate the progress made on this measure.
- (vi) Since public sector reform is already in train, an additional budget is not required.

(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).*

(i) This is a useful recommendation. Such positions are required to be advertised, but clear mechanisms do not exist. The Public Service Commission should be required to establish such mechanisms and ensure that they are posted in the media, including the government website. Notwithstanding, the Commission does not have the authority to hire persons arbitrarily and its decisions are subject to judicial review. More clearly defined criteria and mechanisms for hiring can potentially reduce the need for judicial intervention.

(ii) No information is forthcoming from the State.

(iii) The Public Service Commission is an independent, constitutionally entrenched authority. As such, it is not appropriate to have its operations supervised by a governmental authority, or other authority. It should therefore be appraised of the recommendations relating to the Convention and be invited to take responsibility for this measure.

(iv) A period of one year is appropriate for the development of hiring mechanisms.

(v) There should be self-assessment by the Public Service Commission.

(vi) A budget of US \$ 5,000 should be allotted annually for this purpose.

(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).

(i) The hiring of judicial and legal officers is done through an independent Judicial and Legal Services commission. There is a clearly defined selection criterion which reflects the principles of merit and equality. In fact, the mechanisms that do exist are far more transparent and based on non-political criteria than in many countries, including developed countries, where such appointments are made by the political directorate.

However, in one respect, with regard to the appointment of certain such offices, the Judicial and Legal Services Commission must consult with the Prime Minister and the Prime Minister has the power to veto an appointment. This power of veto is reserved for the very highest judicial offices (excluding the judiciary) and is made under section 111 of the Constitution of Trinidad and Tobago. The relevant section reads:

“111.- 1. Subject to the provisions of this section, power to appoint persons to hold or act in the offices to which this section applies, including power to make appointments on promotion and transfer and to confirm appointments, and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Judicial and Legal Service Commission.

2. Before the Judicial and Legal Service Commission makes any appointment to the offices of Solicitor General, Chief Parliamentary Counsel, Director of Public Prosecutions, Registrar General or Chief State Solicitor it shall consult with the Prime Minister.

3. A person shall not be appointed to any such office if the Prime Minister signifies to the Judicial and Legal Service Commission his objection to the appointment of that person to that office.

4. This section applies to such public offices as may be prescribed, for appointment to which persons are required to possess legal qualifications.”

It is to be noted that there is a pre-requisite that the person so appointed, must, in all cases, “possess legal qualifications.”

This veto power of the Prime Minister has recently been brought under public scrutiny. However, there is no doubt that the power is constitutionally protected. Moreover, since this is an entrenched constitutional provision, it cannot be deviated from unless the Constitution itself is changed, a longwinded and complex exercise, which requires special Parliamentary majorities.

It is suggested that the public scrutiny afforded to such appointments itself provides checks and balances against any perceived arbitrariness.

With regard to Magistrates, who are also judicial officers, the following should be noted. The Judicial and Legal Services Commission which is provided for under the Constitution, has the authority to appoint Magistrates on a contractual basis. The Judicial and Legal Services Commission is also vested with the power of disciplinary control, including the power of removal. The State advises, however, that most Magistrates in Trinidad and Tobago are not hired on contract but as part of the Judicial and Legal Service as a permanent part of the establishment. Magistrates in Trinidad and Tobago are subject to the provisions of the Judicial and Legal Service Act, the Magistrates Protection Act, and the Summary Courts Act. Only in a few instances have Magistrates in Trinidad and Tobago been hired on contract.

Under the separation of powers doctrine, as members of the judiciary, Magistrates must also enjoy independence. However, Magistrates do not enjoy the specific constitutional protection, including entrenched provisions relating to their security of tenure, that judges have. Rather, their terms and conditions of employment are defined by contract. Notwithstanding, the Judicial and Legal Services Commission's powers of appointment and discipline are reviewable by the courts, which enhances the independence of the magistracy. In recent times, the courts have enlarged the protections relating to security of tenure for magistrates, thereby underscoring their independence. For example, the Privy Council has determined that the State is compelled to renew the contract of a magistrate although it had fixed time limits.

For example, in *Innis v AG of St. Kitts and Nevis*, PC Appeal, No 29 of 2007, decided 30 July, 2008, the appellant held the offices of Registrar of the High Court and Magistrate. The Government of St. Kitts and Nevis wrote to her terminating her contract with immediate effect, without any mention of a recommendation by the Judicial and Legal Services Commission that her contract should be terminated before the expiry of its term of two years.

The Privy Council rejected the government's claim that this was a mere contractual matter for which judicial review was absent. It held that the constitutional right to have the terms of her appointment regulated by the Judicial and Legal Services Commission had been breached. Vindictory damages were awarded.

The *Innis* case followed another Privy Council decision which enlarged the constitutional protection afforded to magistrates, in particular, rejecting the notion that the contractual nature of magisterial appointment overrode the constitutional implications of their tenure. This was the case of *Horace Fraser v Judicial and Legal Services Commission and the Attorney-General of St. Lucia* [2008] UKPC 25. The appellant in that case had served under successive annual contracts as a magistrate in St Lucia. He was dismissed from his office by a letter from the Permanent Secretary of the Ministry of Public Service on the recommendation of the Judicial and Legal Services Commission after allegations of improper conduct. The Commission admitted that it

had made an error in not complying with its code for disciplinary proceedings when, without any inquiry into the question whether Mr Fraser had misconducted himself, it advised the Ministry that his contract should be terminated. However, the Commission maintained that his employment as a Magistrate could be terminated summarily by invoking a clause to that effect in his contract. In support of this view it relied before the Board on the decision of the Court of Appeal in this case. It was said to show that there was nothing to prevent the exercise of the contractual right, even though this was done without reference to the protection that the Constitution gave against removal by the Executive.

The Board held that provisions in his contract fell within the constitutional protection, and the decision of the Court of Appeal in that case was set aside.

It is apparent therefore that the current legal framework does not offend the provisions of the Convention.

It may be the case that the public as a whole does not share such confidence in these appointments, but it is suggested that this is largely because of misconceptions. The State, or the Service Commission itself, can consider a public education exercise which aims to build public confidence in the system of judicial and legal appointments.

Further, it should be reiterated that, as with other officers who serve the State, and as discussed elsewhere in this Report, vacancies in the judicial and legal posts should be advertised. This should be done, not only in the Gazette, but also in the daily national newspapers. It is suggested too that a radio program, such as 'Government Notebook' in Barbados, where government and other vacancies are constantly advertised, would be helpful both in relation to transparency, and to allay fears of impropriety. It has been the practice of the Judicial and Legal Service Commission to advertise vacant positions of both Magistrates and Judges. This practice has endured over the past decade or more. Advertisements are usually in all three daily newspapers.

No further proposals are made with respect to this measure.

(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).

(i) Currently, two types of contracts (non public servants) exist. On the one hand are highly skilled top level contractual employees, who are often brought in for a specific task and on the other lower level employees, who are employed for basic clerical functions. The latter may, or may not meet the exam requirements for appointment to the public service. The two types of contracts should be viewed differently since different employment objectives are at stake.

For higher level employees, the nature of the task required would mandate the criteria and type of advertisement. More flexibility is appropriate for such positions, which would often be envisaged as short term. Where such positions are political in nature, such as, for example, a Personal Assistant to the Prime Minister, the nature of the job should be specified and selection, rather than election may be appropriate. All positions, should however, be duly advertised in the Gazette, the media and the proposed website, to meet the obligations of transparency.

An important issue to be clarified is the extent to which such persons fall within the purview of judicial review in relation to the appointment or firing process, since their positions are not regulated by the Public Service Commission. This is a matter which should be clarified by statute since considerable uncertainty exists in relation to the status of such persons in employment / administrative law. In some countries, for example, it is made explicit that the power to appoint and fire persons in such posts is subject to judicial review as an exercise of public power and not mere private contract of employment principles.

With regard to lower level employees, much less flexibility should be encouraged as these are jobs which can easily be filled by traditional public servants who sit the requisite public service examinations.

Further, the practice of employing persons under what may be described as 'permanently temporary contracts', for work which is envisaged as the work of public servants, should be examined by the Public Service Commission. While the Commission's purview is with regard to appointed public servants, this is a route used by the State to avoid public servant status and as such, concerns the Commission. Further, such persons are not brought into the examination mechanism which will enable them to be considered for permanent appointment. Such an examination should be automatic after a period of at maximum, two years performing such functions. At the very least, the Public Service Commission should issue guidelines with respect to the use of such employment tactics.

(ii) No information is available from the State on this measure.

(iii) The Public Service Commission should collaborate with persons involved in the ongoing public sector reform exercise, to examine concrete proposals for improved hiring practices.

The Law Reform department should also draft appropriate legislation setting out the employment parameters for all types of contracts of employment in the public sector.

(iv) A period of two years should be allotted.

(v) The Office of the Attorney-General should evaluate progress on this proposal.

(vi) The cost allocated to this measure is negligible.

(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).

(i) Public sector reform, as described earlier in this Report, should be adequate to meet this recommendation. No further proposals are necessary.

(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).

(i) The training mechanisms already proposed in this report, in particular, under General Recommendations, are sufficient to meet the requirements for this recommendation.

To further facilitate this recommendation, a special training workshop, with emphasis on the basic principles of administrative law, in particular, the principle of fairness should be included.

(ii) No information is forthcoming from the State.

(iii) In this regard, it is the Public Service Commission which is responsible for selection and staffing under the Constitution.

(iv) A period of two years should be allocated.

(v) The Office of the Attorney-General should evaluate progress on this measure.

(vi) Since this proposal can ‘piggy-back’ on similar proposals made in this Report, no additional budget is necessary.

(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).

(i) A mechanism to address this recommendation was prescribed earlier in this Report and is reiterated here. Details of such training are provided under General Recommendations, below.

(ii) No further information is forthcoming from the State.

(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) This is an ambitious project. In general, Trinidad and Tobago, like its other Caribbean neighbours, has considerable challenges in relation to efficient law reporting. Some decisions are posted online by the courts, but these are insufficient and inconsistent. Further, it will require the services of a legal consultant to extrapolate the judicial review cases from the rest of the decisions reported and to case brief them, tedious and time consuming tasks. It should also be noted that, in a common law jurisdiction such as Trinidad and Tobago, the case law will be dynamic and voluminous and as such, will need to be updated on a regular basis. The training document mentioned earlier in this report, can assist in this endeavour, since it is envisaged that the consultant will be building upon the relevant administrative law and human rights cases. However, this will not be a comprehensive law reporting exercise.

A formal arrangement can be made with the law courts, seeking their assistance in forwarding relevant cases to the Attorney General's office. Such an arrangement already exists with the Faculty of Law's Library. This is not a perfect process however. In addition, such information will still need a legal practitioner to analyse the cases received, a difficult task. It is impractical to suggest that the Attorney General's office can do this routinely. There will be a need for a legal consultant to do to this at regular intervals, a costly exercise.

(ii) No information is available from the State in relation to this recommendation. Given the broad-reaching nature of the proposals necessary to effect this recommendation, input from the State is necessary to properly evaluate the feasibility of such a measure.

(i) Adopt, through legislative or administrative procedures, a control mechanism to address noncompliance of the requirements to Register all contracted officers on the relevant database. (See Section 1.1.3 of Chapter II of this Report).

(i) The White Paper mentioned *infra* in this Report, addresses such concerns and if implemented, will fulfill this recommendation. No further proposals are necessary.

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).

(i) A uniform framework for the procurement of goods and services will address the inconsistent mechanism currently in use. The key issue would be the establishment of a knowledgeable, impartial task force which would be able to address these issues coherently. A multi-disciplinary task force is suggested which should include a public auditor, a representative from a private accounting firm, a legal practitioner, a representative from the ministries involved in procurement of goods and services and a legal draftsman or other representative from the Attorney-General's office. The task force should be required to formulate concise, but broad-reaching proposals for legislation and guidelines for procurement in relation to mechanisms which are unsuitable for legislation.

If possible, the Task Force should obtain the assistance of regional agencies, such as the Caribbean Development Bank, which has experience in the necessary mechanisms for the transparent procurement of goods and services.

Such a task force should be appointed by the Prime Minister.

The Task Force should take into account the findings of the White Paper on 'Reform of the Public sector Procurement Regime', August 2005, Ministry of Finance of Trinidad and Tobago. The report of the Special Investigator should be presented to the Parliament for consideration and to propose legislative and administrative changes to the procurement regimes.

The recommendations of the White Paper on this issue should be implemented.

(ii) No information is forthcoming from the State.

(iii) The Ministry of Finance should oversee this project.

(iv) This project should be allotted a time period of two years.

(v) The Office of the Attorney-General should evaluate progress made on this project.

(v) It is difficult to identify costs at this time.

(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).

(i) The Task Force prescribed above should include in its mandate the outlining of clear and uniformed procedures for the selection of contractors in tendering procedures.

No further proposals are necessary.

(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).

(i) The Task Force prescribed above should include in its mandate the necessary factors to be taken into account for the objective selection of contractors and the criteria for the evaluation of bids.

No further proposals are necessary.

(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).

(i) The recommendations of the White Paper on the Procurement of Goods and Services, as discussed above, which include measures to improve the procurement process, should be implemented.

Further, the Task Force, as described previously, can prescribe mechanisms for the efficient interaction between Government Departments, thus ensuring that planning is productive.

(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).

(i) The recommendations of the White Paper on the Procurement of Goods and Services, as discussed above, which include measures to improve the procurement process, should be implemented and will satisfy the concerns which gave rise to the recommendation.

No further proposals are necessary.

(ii) No further information has been received about this measure.

(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).

(i) The use of a government website has been advocated throughout this Report. This website should make provision for publicizing tender opportunities, status of bids and awards and the progress in the execution of major projects.

(ii) No information is forthcoming from the State.

(iii) The Ministry responsible for Public Information should be responsible for implementation.

(iv) A period of eighteen months should be allocated.

(v) The Office of the Attorney-General should evaluate the progress made.

(vi) A budget of US \$5,000 should be allocated.

(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).

(i) A feasible study should be established to inquire into this recommendation securing the services of a consultant.

(ii) No information is available from the State.

(iii) The Attorney-General should make intervention to the Minister of Finance for the establishment of such a study.

(iv) A period of eighteen months is to be allocated.

(v) The Office of the Attorney-General should evaluate progress.

(vi) The recommended cost is US\$430,000.

(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) A special central Register should be established and housed in the office of the Auditor. It is perhaps necessary to sub-contract this task. All departments and procurement agencies should be mandated to Register contacts with this Register. The public should be given access to the Register upon request. Legislation will need to be enacted to give effect to this mechanism.

(ii) No information is forthcoming from the State.

(iii) The Ministry of Finance should be responsible for implantation.

(iv) The time period should be two years.

(v) The Office of the Attorney-General should evaluate progress.

(vi) A sum of US\$20,000 should be allotted.

(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).

(i) The relevant provisions for the exclusion and / or sanction of certain contractors should be made under the Central Tenders Board Ordinance, which will require amendment. Specific criteria should be established for the exclusion and sanction of contractors, for reasons such as fraud, corruption etc. Such persons should also be included in the national Register.

(ii) No information from the State is forthcoming.

(iii) The Law Reform Department should be responsible for amending the legislation with input from the Auditor's Department.

(iv) A period of two years is appropriate.

(v) The Office of the Attorney-General should evaluate progress.

(vi) The cost for this measure is negligible.

(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).

(i) The provision of public access to a central Register will in some measure facilitate this recommendation. Further, an oversight committee should be established under the auspices of the Central Tenders Board Ordinance, which should be expanded to include oversight of contracts awarded. The committee should include among its members, persons from the public. Such changes will require legislative amendment.

(ii) No information is forthcoming from the State.

(iii) The Central Tenders Board and the Law Reform Authority are the responsible authorities.

(iv) The time period allotted is eighteen months.

(vi) The cost suggested for the creation of the national Register should suffice for this measure.

(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 - 22 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).*

(i) The laws of Trinidad and Tobago already contain mechanisms for challenges to the procurement process at the administrative level, under the principles of judicial review of administrative action. What is required is relevant information and transparency to enable such challenges. The provisions for openness and public participation will facilitate the requirements for transparency which in turn will facilitate desired challenges where needed.

The sections previous to this recommendation discerned adequate measures to improve transparency and are reiterated here.

In addition, authorities involved in the procurement process should be required to give reasons for their decisions and such reasons should be communicated to all bidders for contracts, including information as to the winning bid. In keeping with international practices, a point system demonstrating the points received for financial considerations, for skills etc. should be adhered to and made available.

(ii) No information is forthcoming from the State.

(iii) The Law Reform Department is responsible for amending the legislation to make the giving of reasons for the procurement of contracts mandatory.

(iv) A period of two years is appropriate.

(v) The Attorney-General should evaluate progress made.

(vi) Costs will be negligible.

(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).

Further information is awaited on this measure.

(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).

(i) An annual review and report on all contracts should be established by all procurement agencies and departments. Such a report should detail the factors recommended, such as the number and nature of contracts awarded. Such annual reviews should be forwarded to the central Registry prescribed above.

However, government departments are not in a position to detail judicial review applications for the reasons discussed above in relation to the recommendation for judicial review reports.

(ii) No information is available from the State.

(iii) Each government department should be responsible for implementing this proposal.

(iv) A period of one year is sufficient.

(v) The Office of the Attorney –General should be the evaluator.

(vi) Cost is negligible.

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.

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;

(i) Measures in relation to whistleblowing were addressed previously in this Report. As indicated above, the Justice Protection Act 2007 does not target whistleblowers or public servants who report acts of corruption. As such, amendments to the Integrity in Public Life Act, the Prevention of Corruption Act and the Civil Service legislation will have to be made. Such provisions should include mechanisms for anonymous and confidential reporting.

The Integrity in Public Life Act was in fact amended in January of 2010. The relevant section of the Integrity in Public Life (Amendment) Act is expressed as a new section 42A and is as follows:

42 A. An employee of the State, a public authority or any other body shall not be

dismissed, suspended, demoted, disciplined, harassed, denied a benefit or otherwise negatively affected because—

(a) he, acting in good faith and on the basis of a reasonable belief, has —

(i) notified the Commission that his employer or any other person has contravened or is about to contravene this Act;

(ii) done or stated the intention of doing anything that is required to be done in order to avoid having any person contravene this Act; or

(iii) refused to do or stated the intention of refusing to do anything that is in contravention of this Act; or

(b) his employer or any other person believes that he will do something described in paragraph (a).”

The new section 42A provides general protection for whistleblowers, but is confined to protection at the workplace. As such, it is not as broad as the recommendation contemplates. Further amendment is necessary to the Act and/ or to the Justice Protection Act.

(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;

(i) The new section 42A of the Integrity in Public Life (Amendment) Act meets adequately the recommendation to provide protection in the workplace, but it falls short with respect to the aspect of the recommendation which speaks to the physical integrity of whistleblowers and their families. Accordingly, it does not meet the kind of overall protection necessary for persons who report corruption. Further amendment to the Act and / or to the Justice Protection Act is necessary.

Since the need for these amendments have been fully aired in the Report, *infra*, no further proposals are necessary. Further amendment should not be a costly or protracted exercise, particularly in view of the fact that the State speaks of an existing prototype.

(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;

(i) While the Integrity in Public Life Act makes provision for confidentiality in relation to declarations of interest made to the Integrity Commission, no similar provisions for confidentiality, or for protecting the identity, instance, or nature of a complaint are made either in the Parent Act, or in its Amendments, including the newly enacted Integrity in Public Life (Amendment) Act 2010. This aspect of the legislation should be amended so as to give life fully to the recommendation and protect whistleblowers from possible danger by incorporating provisions which protect the identity of a whistleblower.

Further, there are no additional provisions which speak to personal security.

Since the need for these amendments have been fully aired in the Report, *infra*, no further proposals are necessary. Further amendment should not be a costly or protracted exercise, particularly in view of the fact that the State speaks of an existing prototype.

(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;

(i) While the Integrity in Public Life (Amendment) Act , under a new section 42 A makes considerable provision for the protection of whistleblowers, there are no specific provisions relating to mechanisms to report any threats, or reprisals against whistleblowers, nor is it clear which body is responsible for processing protection requests.

Such amendments should also address confidentiality concerns, as discussed above.

(ii) Amendments to the Integrity in Public Life Act, the Prevention of Corruption Act and the Civil Service legislation will have to be made to facilitate this measure. These were addressed previously in this Report.

(e) Witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens;

(i) Currently, the Justice Protection Act provides ordinary citizens higher protection than public servants. This recommendation has therefore been overtaken by recent legislation.

No further proposals are necessary.

(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.*

(i) A Consultant should be appointed to review the terms of existing mutual legal assistance treaties and collateral legislation and to draft appropriate mutual legal assistance treaties or amendments and new legislation as necessary. Such a Consultant should also be required to consider areas where international technical cooperation is needed from other States Parties. The Consultant should be versed in matters relating to anti-money-laundering, mutual legal assistance, dual criminality restrictions, principles of international evidence gathering, relevant Conventions and proceeds of crime law, including its procedural aspects.

(ii) No information is available from the State on this issue.

(iii) The Office of the Attorney-General should oversee the process.

(iv) A time period of two years should be allocated to this project.

(v) The Office of the Attorney-General should evaluate progress made on this measure.

(vi) A budget of US\$ 60,000 should be made available for this project.

(g) A simplified whistleblower protection application process.

(i) Since additional whistleblowing protections are necessary, care should be taken in their design to ensure that they are simple and effective. Assistance can be gleaned from whistleblowing protections found in other States. It is particularly important that the usual public service beaurocracy be avoided so that, for example, rules are not so rigid such as to force a whistleblower to have to go through his usual and immediate supervisor, since that person may be the one being complained about.

It should be noted that the Integrity in Public Life (Amendment) Act passed in January of 2010, does not contain specific provisions for *applying* for whistleblower protection. It merely provides for general protection where a person reports another for corruption. In other words, it is not proactive, but is reactive, since it is targeted at the whistleblower who has already taken action. The State should consider a specific provision for making and indeed, encouraging complaints. The comments made above in relation to confidentiality in whistle-blowing actions, are also pertinent here.

- (ii) No further information is available from the State.
- (iii) The Office of the Attorney-General should be responsible for the appropriate legislative reform.
- (iv) A period of eighteen months is appropriate.
- (v) The Office of the Attorney-General should evaluate the progress made.
- (vi) Costs will be negligible.

(h) Provisions which sanction the failure to observe the rules and/or duties relating to protection.

- (i) Currently, the Justice Protection Act does provide for sanctions.

There should also be positive duties to report corruption as outlined previously in this Report and positive duties to protect in related legislation such as the Integrity in Public Life Act and the Prevention of Corruption Act.

- (ii) No further information from the State is forthcoming.

No further proposals are necessary since this issue was addressed in Round One.

(i) The respective competence of judicial and administrative authorities with respect to this area, clearly distinguishing one from the other.

- (i) The Justice Protection Act clearly outlines the duties of administrative authorities which are distinctly separate from the duties of the judicial authorities. As such, this condition is satisfied. Recommended amendments to the Integrity in Public Life Act should also satisfy these criteria.

No further proposals are required.

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).

- (i) Minor legislative amendment is necessary to correct this legislative anomaly.
- (ii) No information is forthcoming from the State.
- (iii) The Law Reform Department should be responsible for this measure.
- (iv) A period of one year is sufficient.
- (v) The progress of the measure should be evaluated by the Office of the Attorney-General.
- (v) Costs are negligible.

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).

- (i) The Consultant is not in agreement that sections 45 and 46 of the Proceeds of Crime Act currently exclude public servants from the offences of concealing, disguising, receiving or otherwise facilitating money laundering. In anti-money laundering legislation elsewhere, similar provisions have been interpreted as extremely broad. The sections refer simply to ‘a person’, which means any person. The Law Reform Department should examine carefully the offending sections to determine their import in accordance with the Interpretation Act. If they are deemed to be exclusive, rectification is by way of a minor legislative amendment which can easily be accomplished. The State agrees that sections 45 and 46 are sufficiently broad to include all persons and by virtue of section 16 of the Interpretation Act “a person” is extended to include a corporate entity.
- (ii) No information from the State has been given in relation to this recommendation.
- (iii) The Law Reform Department should be responsible for this change, under the auspices of the Attorney- General.

(iv) A period of six months is sufficient.

(v) The progress of the measure should be evaluated by the Office of the Attorney-General.

(v) Costs are negligible.

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.

(i) Powers to hire and disciplinary powers are granted to the Public Service Commission and, in the case of disciplinary powers, to senior public servants where such powers have been delegated to them by the Public Service Commission. However, there is no evidence that Public Service Commissions are thoroughly briefed about the finer points of their legal powers. Given the expanding jurisprudence in relation to public service law, it is to be expected that Public Service Commissions will have difficulty keeping abreast of important legal developments. It is suggested that a consultant should be employed to create a comprehensive training manual for persons appointed as Public Service Commissioners.

The manual should address appropriate legal issues of public service law, administrative law and, where appropriate, human rights law, since more recent decisions such as *De Freitas v AG of Antigua*, have imported relevant human rights principles into traditional public service norms.

The manual should include a training component and aim for selected training sessions. It should also aim at training for future trainers so as to provide continuity and reduce the costs of further training. The manual should also encompass other training needs identified in this Report. Provision should be made for the updating of such a manual at periodic intervals, approximately every five years.

Since certain disciplinary powers may be delegated to high level public servants, such persons should also be targeted for the proposed training manual and training sessions.

(ii) The State has indicated that some training has taken place, but this is not on the level proposed in this report.

(ii) The primary authorities responsible for implementing this measure are the Public Service Commission and senior public servants to whom managerial powers of a disciplinary nature are delegated. This means that the Ministry of the Public service should be involved.

(iii) A period of six months should be allotted for the completion of the training manual.

After the completion of the training manual, a further period of one year should be allotted for the training sessions. After this initial period, training is envisaged as an ongoing process.

(iv) Since training is envisaged as a continuous exercise, this will enable the State to gauge the progress being made under the auspices of the Office of the Attorney-General.

(iv) The relevant costs are as follows:

Development of a training manual = US \$45,000.00

Training sessions = US \$ 10,000.00.

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.

(i) In many respects, this recommendation was dealt with above, in the section pertaining to Round One. A unit in the Office of the Attorney General has already been established to perform the task of oversight in relation to the recommendations in this Report. The unit should be required to collate information from the various institutions and departments mentioned in this Report, which have specific functions in relation to the fight against corruption.

Further, the unit should be required to make bi-annual reports to the Attorney-General.

(ii) No further information has been received from the State.

(ii) The Office of the Attorney-General should be responsible for the process.

(iii) This is a continuous process, but a period of six months should be allotted to set up the necessary arrangements.

(iv) The Attorney-General should over view progress on this system.

(v) Costs will be negligible.

SECTION III

Briefly refer to any other matters connected with the purpose of the consulting services that the Executing Agency believes should be included in the Plan of Action.

It should be noted that there are a few outstanding matters which require comment from the State of Trinidad and Tobago. It is suggested that these may be appropriately addressed during the consultation stage, whereupon a national meeting of stakeholders will be held.