



# Transparency International Canada

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

**(MESICIC)**

**OFFICES OF THE ORGANIZATION OF AMERICAN STATES  
WASHINGTON, DC  
USA**

**MARCH 21, 2011**



# Authority

- **PRESENTATION IN RELATION TO THE REPLY BY TRANSPARENCY INTERNATIONAL CANADA – A CIVIL SOCIETY ORGANIZATION - TO THE QUESTIONNAIRE ON PROVISIONS OF THE CONVENTION SELECTED FOR REVIEW WITHIN THE FRAMEWORK OF THE THIRD ROUND.**
- **PURSUANT TO THE PROVISIONS OF ARTICLES 34 (B) AND 36 OF THE RULES OF PROCEDURE AND OTHER PROVISIONS REPECTING THE OPERATION OF THE COMMITTEE OF EXPERTS.**



# Transparency International Canada Inc.

- **TRANSPARENCY INTERNATIONAL CANADA INC (TI-CANADA) IS THE CANADIAN CHAPTER OF TRANSPARENCY INTERNATIONAL , THE GLOBAL CIVIL SOCIETY ORGANIZATION LEADING THE FIGHT AGAINST CORRUPTION .**
- **THE MISSION OF TI-CANADA IS TO BE AN INFORMED VOICE THAT PROMOTES ANTI-CORRUPTION PRACTICES AND TRANSPARENCY IN CANADA'S GOVERNMENTS BUSINESSES AND SOCIETY AT LARGE**
- **TI-CANADA IS A NOT-FOR-PROFIT CHARITY GOVERNED BY A BOARD OF DIRECTORS COMPOSED OF REPRESENTATION FROM THE LEGAL AND ACCOUNTANCY PROFESSIONS, ACADEMIA AND BUSINESS.**
- **TI-CANADA PREPARED AND SUBMITTED AS THE CIVIL SOCIETY PARTICIPANT FROM CANADA A REPLY TO THE QUESTIONNAIRE RESPECTING SECTIONS SELECTED FOR REVIEW IN THE THIRD ROUND OF MESICIC.THE AUTHORS ARE THOMAS C. MARSHALL, Q.C., LAWYER AND PETER DENT, CA, PARTNER & NATIONAL PRACTICE LEADER , FORENSIC AND DISPUTE SERVICES , DELOITTE & TOUCHE LLP. BOTH ARE TI-CANADA BOARD MEMBERS.**



# General Observation

**CANADA IS A FEDERATED STATE COMPOSED OF A CENTRAL FEDERAL GOVERNMENT, TEN PROVINCIAL GOVERNMENTS, AUTONOMOUS WITHIN SPECIFIED AREAS OF RESPONSIBILITY, THREE TERRITORIES AND A MULTITUDE OF MUNICIPALITIES .**

**CRIMINAL LAW IN CANADA IS A FEDERAL RESPONSIBILITY .**

- **THE ENFORCEMENT OF THE CRIMINAL LAW IN CANADA IS LARGELY THE RESPONSIBILITY OF THE PROVINCES, INVESTIGATED IN ONTARIO AND QUEBEC BY PROVINCIAL POLICE FORCES OR THE FEDERAL POLICE SERVICE UNDER CONTRACT TO THE PROVINCE AND PROSECUTED IN ALL PROVINCES BY AGENTS OF THE PROVINCIAL ATTORNEY GENERAL.**
- **ACCORDINGLY, A COMPREHENSIVE EXAMINATION OF PROVINCIAL, TERRITORIAL AND MUNICIPAL INITIATIVES TO PROMOTE TRANSPARENCY AND ACCOUNTABILITY IN PUBLIC ADMINISTRATION SHOULD BE UNDERTAKEN TO COMPLEMENT THE REVIEW OF ACTION TAKEN AT THE FEDERAL LEVEL IN MEETING CANADA'S OBLIGATIONS UNDER IACAC AND OTHER INTERNATIONAL ANTI CORRUPTION CONVENTIONS.**
- **IN THE OPINION OF TI-CANADA SUCH AN INITIATIVE IS HIGHLY DESIREABLE.**



**ARTICLE III(7) OF THE IACAC. THIS PROVISION DEALS WITH THE DENIAL OF FAVOURABLE TAX TREATMENT FOR INDIVIDUALS OR CORPORATIONS MAKING EXPENDITURES IN VIOLATION OF THE CORRUPTION OF FOREIGN PUBLIC OFFICIALS ACT**

- **TI-CANADA REVIEWS CANADIAN LEGISLATION AND PRACTICE SECTION 1 OF ITS REPLY STARTING AT PAGE 6.**
- **TI-CANADA OBSERVES THAT, IN THE CONTEXT OF INCOME TAX ENFORCEMENT ACTIVITY AND PROSECUTIONS, MORE DETAILED STATISTICAL INFORMATION WOULD BE USEFUL IN ASSESSING TRENDS .**
- **AS PART OF THE RANGE OF ENFORCEMENT MECHANISMS, THE CRA (CANADIAN REVENUE AGENCY) ADMINISTERS A VOLUNTARY DISCLOSURE PROGRAM AND CONSEQUENT PROTECTION FROM PROSECUTION. THE CRA DOES NOT EXPRESSLY SHARE INFORMATION WITH OTHER AUTHORITIES . THIS ISSUE IS EXAMINED AT PAGES 10 AND 11 OF THE REPLY.**
- **TI-CANADA SUGGESTS THAT THE VOLUNTARY DISCLOSURE PROGRAM MAY NEED TO BE ALTERED SO THAT, IF A DETERMINATION IS MADE THAT THE FUNDS BEING DISCLOSED FORM PART OF ANOTHER CRIME, THE PROTECTION OFFERED BY THE PROGRAM SHOULD NOT BE AVAILABLE.**

**REFERENCE REPLY PAGE 11 PARAGRAPH D “CONCLUSIONS AND RECOMMENDATIONS”**



**ARTICLE III(10) OF IACAC. THIS PROVISION DEALS WITH MEASURES TO DETER OR IMPEDE BRIBERY OF DOMESTIC AND FOREIGN PUBLIC OFFICIALS – REFERRING SPECIFICALLY TO ACCOUNTING AND RECORD KEEPING OBLIGATIONS.**

- **TI-CANADA REVIEWS THE RELEVANT RECORD KEEPING OBLIGATIONS IN CANADA AND CONCLUDES THAT THERE IS GENERALLY A LACK OF EXPLICIT DESCRIPTION OF THE KIND OF RECORDS TO BE MAINTAINED WITH THE VIEW TO IMPEDE OR DETER BRIBERY OF DOMESTIC OR FOREIGN PUBLIC OFFICIALS.**
- **TI-CANADA CONSIDERS THAT IT WOULD BE DESIREABLE TO AMEND THE CORRUPTION OF FOREIGN OFFICIALS ACT (CFPOA) TO INCLUDE A MEANINGFUL EXPLICIT AND ENFORCEABLE BOOKS AND RECORDS PROVISION SIMILAR TO THAT OF THE UNITED STATES UNDER THE FOREIGN CORRUPT PRACTICES ACT (FCPA)**
- **TI-CANADA CONSIDERS THAT AMENDMENTS TO THE CRIMINAL CODE OF CANADA, THE CANADA BUSINESS CORPORATIONS ACT AND INCOME TAX ACT (MATTERS OF FEDERAL LEGISLATIVE COMPETENCE) TO PROVIDE EXPLICIT DESCRIPTIONS OF WHAT TYPES OF RECORDS CONSTITUTE ADEQUATE RECORDS WOULD BE DESIREABLE.**

**REFERENCE REPLY PAGE 19-20 “CONCLUSIONS AND RECOMMENDATIONS”**



## ARTICLE VIII DEALING WITH TRANSNATIONAL BRIBERY

- **TI-CANADA EXAMINES THE PROVISIONS OF THE CORRUPTION OF FOREIGN PUBLIC OFFICIALS ACT AND VARIOUS ENFORCEMENT MECHANISMS BEGINNING AT PAGE 20 OF THE REPLY TO THE QUESTIONNAIRE.**
- **TI-CANADA UNDERSTANDS THAT THE INTERNATIONAL ANTI CORRUPTION UNITS ESTABLISHED BY THE RCMP ( CANADA'S NATIONAL POLICE SERVICE) ARE CURRENTLY ENGAGED IN SOME 23 INVESTIGATIONS ALTHOUGH SPECIFIC INFORMATION IS NOT AVAILABLE. REFERENCE IS MADE TO CONCLUDED CASES OR CASES WHERE THERE HAS BEEN PRESS COVERAGE – PAGES 25-27 OF THE REPLY.**
- **TI-CANADA IS OF THE VIEW THAT CONSIDERATION SHOULD BE GIVEN TO AMENDING THE CFPOA TO INCLUDE NATIONALITY JURISDICTION**
- **TI-CANADA IS OF THE VIEW THAT THE EXCEPTION UNDER THE CFPOA FOR FACILITATION PAYMENTS SHOULD BE ELIMINATED, EXCEPT PERHAPS IN LIFE THREATENING SITUATIONS, WHICH NEED TO BE REPORTED.**
- **TI-CANADA COMMENTS ON CIDA ADMINISTRATIVE PROTOCOLS FOR ADDRESSING ALLEGATIONS OF CORRUPTION AND ON THE CIRCUMSTANCE THAT DFAIT DISCLOSURE OF WRONGDOING PROCESS DOES NOT SEEM TO PROVIDE FOR ANONYMOUS “WHISTLEBLOWER” DISCLOSURE.**



**ARTICLE IX OF THE IACAC. THIS  
PROVISION DEALS WITH THE CREATION OF AN OFFENCE OF  
ILLICIT ENRICHMENT**

- **CANADA HAS NOT PROVIDED FOR THE CREATION OF AN OFFENCE OF ILLICIT ENRICHMENT AND HAS RECORDED ITS RESERVATION IN THAT REGARD.**
- **NOTWITHSTANDING THIS RESERVATION IT MAY BE APPROPRIATE TO REVIEW THE FINANCIAL DISCLOSURE OBLIGATIONS OF ELECTED OFFICIALS AND OTHERS TO ENSURE THAT SUCH REPORTING IS ADEQUATE**