

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

Committee of Experts

Article III, paragraph 9, of the Inter-American Convention against Corruption, covering “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts,”

LEGAL AND INSTITUTIONAL FRAMEWORK OF TRINIDAD AND TOBAGO re: Anti-Corruption Measures

The oversight visit to Trinidad and Tobago (T&T) took place during the period 1-4 October, 2012. During that period the representatives of the member states of the subgroup and the Technical Secretariat met with members of civil society and visited and interviewed each of the selected oversight bodies on location.

The review of T&T’s implementation of Article III (9) of the Inter-American Convention against Corruption focused on the anti-corruption policies and activities of five selected oversight bodies:

1. Integrity Commission
2. Office of the Auditor General
3. Service Commissions
4. Ministry of the Attorney General under which the independent Office of the Director of Public Prosecutions (DPP) as well as the independent body, the Anti-Corruption Investigations Bureau (ACIB) fall. Details of the relationship between the Ministry of the Attorney General and the office of the DPP and the ACIB would be supplied during the course of the review of the Preliminary Report before you.
5. Office of the Ombudsman.

Trinidad and Tobago’s delegation comprises of

- Joan R. Furlonge, Legal Advisor to the Attorney General, Lead Expert,
- Samraj Harripaul, Chairman of the Law Reform Commission,
- Lynette Stephenson, Ombudsman and Yvette Hall, legal officer, Office of the Ombudsman.
- Kathy-Ann Waterman Latchoo, Deputy Director of Prosecutions,
- Anthony Bucchan Ag. Superintendant, Anti-Corruption Investigations Bureau,
- Richard Frederick, Director of Investigations, Integrity Commission.

As the first member state of common law jurisdiction, an insight of the mechanics of the system of government of common law jurisdiction as well as an insight into Trinidad and Tobago's anti-corruption regime is submitted for clarification purposes.

A. ANTI-CORRUPTION FRAMEWORK FOR TRINIDAD AND TOBAGO

The system adopted by Trinidad and Tobago in its fight against corruption involves a framework of domestic legislation, policy initiatives and special institutions, together with international conventions, multilateral and bilateral treaties. A synopsis of the anti-corruption framework is included herein as the system is actively in use to date. The framework is as follows:

- **DOMESTIC LEGISLATION**

The Mutual Assistance in Criminal Matters Act, Chap. 11:24 is an Act to facilitate mutual assistance in criminal matters within the Commonwealth or countries designated under the Act. This facility to provide mutual assistance is generally rendered on the basis of a bilateral treaty or agreement¹ or multilateral convention and it provides a means for one State to obtain evidence from another state for use in a criminal investigation and/or prosecution.

The Central Authority of T&T was established under this Act and section 3 of the Act provides that the Attorney General is the Central Authority. To give effect to the Act, a Unit has been established in the Ministry of the Attorney General and is headed by a Director with the support of legal and administrative staff.

The Extradition (Commonwealth and Foreign Territories) Act, Chap. 12:04 - an Act to provide for procedures of extradition between Commonwealth and non-Commonwealth jurisdictions. This Act states the circumstances in which an offence may be extraditable as well as the circumstances in which the extradition may be refused.

The Prevention of Corruption Act, Chap 11:11 - This Act provide for certain offences and punishment of corruption in public office. The elements of the offence of *corruption if office* (section 3); *corrupt transactions with agents* (section 4); *corruptly using or communicating official documents* (section 5); and the *grounds for the presumption of corruption in certain cases* are set out in section 7. The penalties are set out in section 6.

The Proceeds of Crime Act, Chap. 11:27 - This Act establishes the procedure for the confiscation of the proceeds of certain offences and for the criminalizing of money

¹ Bilateral agreements for the provision of Mutual Legal Assistance exist bet Tdad & Tgo and USA (4/3/96); UK (5/1/98); Canada 27/1/00

laundering. Section 3 of the Act provides a mechanism for the determination of confiscation of the proceeds of specified offences.

The Integrity in Public Life Act, Chap. 22:01 is an Act to provide for the establishment of the Integrity Commission, making provisions for the prevention of corruption of persons in public life by providing for public disclosure; it regulates the conduct of persons exercising public functions and preserves and promotes the integrity of public officials and institutions. An exercise to review the Act and the organisational structure of the Commission is underway with the intent to enhance its ability to achieve its statutory mandate.

The Freedom of Information Act, Chap. 22:02 - This Act gives members of the public a general right (with specified exceptions) of access to official documents of public authorities. The intention of the Act was to address the public's concerns of corruption and to promote a system of open and good governance. In compliance with the Act, designated officers have been appointed in each Ministry and statutory authority to process the applications for information.

The Police Complaints Authority Act, Chap. 15:05. This Act provides for the establishment of the Police Complaints Authority, and establishes a mechanism for complaints against police officers in relation to, among other things, police misconduct and police corruption. The Police Complaints Authority is given the power to receive complaints from members of the public, undertake investigations in relation to those complaints and when a case is established against the officer, refer the matter to the Commissioner of Police or the Director of Prosecutions for necessary action. The PCA is an independent body. Its purpose is to ensure that when a member of the public makes a complaint, it is dealt with thoroughly and fairly. The PCA cannot and does not employ police officers.

The Police Complaints Authority is given extensive functions namely, to:

- (a) *investigate criminal offences involving police officers, police corruption and serious police misconduct;*
- (b) *undertake enquires into, or audits of, any aspect of police activities for the purpose of ascertaining whether there is police corruption or serious police misconduct or circumstances that may be conducive to both;*
- (c) *monitor an investigation conducted by any person or authority in relation to any matter mentioned in paragraph (a) and to undertake all audits of those investigations;*
- (d) *advise the Police Service and other public authorities on ways in which police corruption and serious police conduct may be eliminated;*
- (e) *gather evidence that may be admissible in the prosecution of a person who is not a police officer for a criminal offence in relation to the Police Service and to furnish that evidence to the Director of Public*

- Prosecutions, or where an authority outside the State is concerned, the Attorney General;*
- (f) gather evidence that may be used in the investigation of serious police misconduct and furnish such evidence to the Commissioner of Police or the Police Service Commission for appropriate action;*
 - (g) gather evidence that may be used in the prosecution of a police officer involved in a criminal offence and furnish such evidence to the Director of Public Prosecutions; or*
 - (h) perform any other functions that may be conferred on it by any other written law.*

By section 19 of the Act, the Authority is not subject to the direction or control of any other person in the performance of its functions.

▪ ***SPECIAL INITIATIVES SET UP BY THE STATE TO FIGHT CORRUPTION***

The Caribbean Financial Action Task Force (CFATF)² - This is an organization of states and territories of the Caribbean region which have agreed to implement common counter-measures against money laundering. The CFATF is also an associate member of the Financial Action Task Force (FATF), which is an inter-governmental body established in 1989 by the Ministers of its Member States.

AML/CFT Standards also known as the FATF Recommendation. These standards are important for financial institutions to develop internal controls to protect themselves from exposure to money laundering and the financing of terrorism and to comply with regulations on anti-money laundering (AML) and combating the financing of terrorism (CFT). The Financial Action Task Force on money laundering has developed international standards on AML/CFT. Within this comprehensive, general framework, individual countries are responsible for introducing local legislative and regulatory regimes.

AML/CFT regulations can have serious implications for financial institutions that serve low-income clients, especially in developing countries. The additional costs of compliance and tighter restrictions may have the unintended consequence of driving low-income clients from the formal financial sector. The challenge is to strike a balance that promotes prudential practices.

The Financial Intelligence Unit (FIU)

The Financial Intelligence Unit (FIU) of Trinidad and Tobago, incorporated under the Financial Intelligence Act of 2009, has been established to implement the anti-money laundering policies of the Financial Action Task Force (FATF) – an intergovernmental organization set up by the Group of Seven industrialized

² Online: http://siteresources.worldbank.org/EXTAML/Resources/396511-1146581427871/AML_implications_complete.pdf

countries. The main objective of this Task Force is to develop and provide international policies to combat money laundering and terrorist financing.

The functions of the FIU are:

- *To receive suspicious transactions and suspicious activity reports from financial institutions and listed businesses.*
- *Request financial information from a financial institution or listed business*
- *Analyze and evaluate reports and information*

The Anti - Corruption Investigations Bureau (ACIB) - This is a group of police officers and civilian staff, who are specially trained in investigating white collar crime. The ACIB was established in January 2002 to deal in a holistic manner with the question of investigating corruption, particularly in the public sector. The Bureau was provided with the resources required to carry out its mandate, including personnel with special expertise, legal advice, staff and accommodation. The Bureau is required to keep the Attorney General informed of the findings of its investigations. It is to be noted that the question of prosecutions remains the responsibility of the Director of Public Prosecutions because of his clear and exclusive constitutional mandate.

The Egmont Group of Financial Intelligence - Trinidad and Tobago's FIU is a member of the Egmont group - an informal group of FIUs formed for the stimulation of international co-operation. The goal of the Egmont Group is to provide a forum for FIUs around the world to improve cooperation in the fight against money laundering and financing of terrorism and to foster the implementation of domestic programs in the field.

B. INTERNATIONAL CONVENTIONS

Trinidad and Tobago is party to two major international conventions against corruption:

- (i) Inter-American Convention Against Corruption –ratified on 15th April, 1998;
- (ii) The United Nations Convention against Corruption (UNCAC) - T&T ratified the Convention on 31st May, 2006. Trinidad and Tobago agreed to be reviewed, by selected peer members (Argentina and Palau), in 2013. The focus of UNCAC's review would be:
 - Articles 15-42 UNCAC-Enforcement
 - Articles 44-50 UNCAC International Co-operation

Multilateral and Bilateral Treaties

- (i) **Mutual Legal Assistance**
- (ii) **Extradition**

Trinidad and Tobago has concluded both multilateral and bilateral treaties in relation to rendering and requesting mutual and legal assistance as well as in relation to extradition. Trinidad and Tobago has concluded these Treaties with Commonwealth as well as non-Commonwealth countries, such as the United States of America and the Netherlands (see the Mutual Assistance in Criminal Matters Act, Chap. 11:24; and the Extradition (Commonwealth and Foreign Territories) Act, Chap. 12:04).³

B. PARLIAMENTARY OVERSIGHT

Like so many other Parliaments worldwide, Trinidad and Tobago has found it convenient to refer complex issues to small groups/committees of their Members for detailed study and recommendations.

There are four broad types of committee, which consider matters referred to them, or which fall within their mandate, and report their recommendations to the House.

These are Committees of the Whole; Sessional Select Committees; Special/Joint Select Committees (established on an ad hoc basis) and the Watchdog Committees.

Sessional Select Committees deal with regulatory functions for the House itself (lasting an entire session) and include the Standing Orders Committee; the House Committee; the Committee of Privileges; and the Regulations Committee.

Special Select are ad-hoc committees set up to consider and report on specific matters referred to them. Such issues may be legislative, financial or investigatory and once the Committee has reported to Parliament, the life of the Committee comes to an end. When such a Committee is comprised of Members of both Houses it is termed a *Joint Select Committee*. Eg a joint select committee was established in 2011 to consider and report on the Legislative Proposals on Public Procurement and on the Repeal and Replacement of the Central Tenders Board Act. That Bill is before the Law Review Committee and is expected to be brought before the House before the end of the year.

The **Watchdog Committees** include the Joint Select Committees established under the Constitution (Sec 66a) and encompass Members of the House and the Senate. They are empowered to inquire and report to both Houses of Parliament in respect of Government Ministries; Municipal Corporations; Statutory Authorities; State

³ Supra.

Enterprises and Service Commissions. The Watchdog Committees also include the *Public Accounts Committee (PAC)* and *Public Accounts Enterprises Committee (PAEC)*, which are established under section 119 of the Constitution. Once established these Committees last for the duration of the session of Parliament, which is a period of five (5) years.

The PAC is charged with the responsibility to examine the appropriation accounts of moneys granted by Parliament to meet the public expenditure of Trinidad and Tobago and the PAEC is responsible for examining the audited accounts of all State Enterprises that are owned or controlled by the State. It should be noted that both of these Committees by law must be chaired by a member of the Opposition.

The current Government has taken the approach that the Joint Select Committees (JSCs) should be chaired by one of the nine independent Senators and this practice has undoubtedly assisted the work of the committees and reduced the amount of partisanship. Since there is no assurance that this excellent practice will continue beyond this Parliament, adding this practice to Standing Orders of both Houses would ensure continuity.⁴ A review of the Standing Orders of the Parliament has been recommended.

A motion is on the Senate Order Paper to refer the Standing Orders to the Standing Orders Committee of Parliament for consideration and report.

C. OTHER PRINCIPAL DEVELOPMENTS ON ANTI-CORRUPTION MEASURES

Public Procurement Legislation

A Bill on Public Procurement and the Disposal of Public Property and the Repeal and Replacement of the Central Tenders Board Act is before the Legislative Review committee (a sub-committee of Cabinet responsible for the approval of legislation before it is finally approved to be introduced in Parliament). It is expected to be brought to Parliament before the end of the year (2013).

The purpose of the Bill is to foster efficient, effective and transparent procurement systems which would reflect value for money, transparency and public accountability through legislation and to foster procurement laws and regulations and promote open and good governance.

⁴ Anthony Staddon "A Study on Parliamentary Scrutiny and Existing Parliamentary Practice" A consultancy paper February, 2013. Online: <http://www.ttparliament.org/documents/2181.pdf>