

TRANSPARENCY INSTITUTE (GUYANA) INC.

Presentation to the OAS Team

8 October 2013

The Transparency Institute (Guyana) Inc. wishes to express its gratitude for being afforded an opportunity to meet with the OAS team on the implementation of the Inter-American Convention Against Corruption. TIGI had submitted in June 2013 its response to the Fourth Round Questionnaire. This presentation draws largely from the response and covers the topic “Civil society perspectives on government oversight bodies that prevent, detect, punish and eradicate corrupt acts.

The Audit Office of Guyana

The Auditor General is required to audit annually the public accounts of Guyana and to submit his reports to the National Assembly. The Constitution defines the public accounts to include: (a) all central and local government bodies and entities; (b) all bodies and entities in which the State has controlling interest; and (c) all projects funded by way of loans or grants by a foreign State or organization. The Auditor General’s mandate is therefore very wide and the task is highly complex technically, professionally and otherwise, requiring the services of a highly trained, skilled, competent and respected person with a proven track record to serve as Auditor General. This is why the Auditor General’s salary, superannuation, benefits and other conditions of service are commensurate with those of the Chief Justice, recently upgraded to those of the Chancellor of the Judiciary. In addition, the Auditor General needs to be supported by a well-resourced, competent, efficient and effective Audit Office.

While the current Auditor General has been making some efforts to discharge his responsibilities, he has his own shortcomings. He is not a professionally qualified accountant although he is required to supervise the work of Chartered Accountants in public practice contracted by him. In addition, unlike several other countries, there are many State-owned/controlled companies, statutory bodies and public corporations for which the Auditor General has audit responsibility. However, the Companies Act requires the auditors of companies to be issued with practicing certificates from the Institute of Chartered Accountants of

Guyana before undertaking the audits of companies. Since he is not a professionally qualified accountant, the Auditor General is not in possession of such a certificate. Regrettably, neither the Constitution nor the Audit Act 2004 specifies qualification requirements for appointment as Auditor General.

The effect of not having a suitably qualified person to serve as Auditor General is the inability to attract and retain suitably qualified and trained persons to serve under him or her. This would therefore have an adverse effect on the quality of the work undertaken and the reports issued. To a large extent, this is true of the Guyana Audit Office, as many of the findings are routine findings resembling those of internal audit. Several significant issues on national importance are given superficial treatment or are avoided in their entirety.

TIGI recommends that the Audit Act be amended to include qualification requirements for appointment as Auditor General. The person to be appointed should possess at least a professional accounting qualification such as the ACCA (UK), CPA (USA), CGA (Canada). He or she must also have appropriate experience in an external audit environment at a very senior level, preferably at the level of a partner of a reputable chartered accounting firm. Alternatively, in addition to having an advanced degree in one of the related disciplines – accounting, finance, economic and public management - the person should be an expert in public finance and administration. In both situations, it would be imperative for the Audit Office to be staffed with professionally qualified accountants at the senior management level.

The Constitution states that there shall be an Auditor General for Guyana. We interpret this requirement to mean that the holder of this office must be a substantive appointee, and that any acting arrangement should be for a short period not exceeding six months usually to allow time for the proper selection as a replacement to the previous holder. This requirement is to preserve the independence of the Auditor General which is one of the fundamental concepts in auditing. Any prolonged acting arrangement is likely to put pressure on the Auditor General to be as critical as he/she would like to be of the operations of the Government since he/she is dependent on the Government for a continuation of the acting arrangement and possibly to be appointed

substantively at some future point in time. Prior to his substantive appointment last year, the Auditor General acted in the position for eight years. It was only when it was pointed out publicly that he was about to attain retirement age in his substantive position and will therefore have to demit office that he was substantively appointed, thereby extending his tenure by another ten years. We view this as an unfortunate occurrence.

TIGI recommends that the Audit Act 2004 be amended to make it a requirement that in the event of the position of Auditor General being vacant, any acting arrangement should not exceed six months.

The Audit Act provides for the appointment of the Auditor General by the President based on a recommendation by the Public Service Commission (PSC). This is an anomaly since the PSC no longer has jurisdiction over the Audit Office in terms of appointment of staff members of the Audit Office. Since the Auditor General serves the Legislature, the latter should have a say in the appointment of an Auditor General. This is necessary to ensure that the person so appointed enjoys the confidence of the Legislature.

TIGI recommends that all future appointments of the Auditor General be based on a recommendation from the Public Accounts Committee (PAC). In this regard, the Committee could propose three candidates from which the President makes a selection, subject to ratification by two-thirds of the membership of the National Assembly.

There is only one professionally qualified accountant among the staff members of the Audit Office and there is no evidence that efforts were made over the years to recruit qualified accountants for the Office. Persons are promoted based on years of service and completion of internal training and external training at the technician level, and to a certain extent participation in fellowship programmes through the generosity of mainly the Canadian and Indian National Audit Offices. But these are no substitute from formal academic and professional qualifications, as provided for in the job specifications.

There was an unfortunate incident recently where the Auditor General sought to have the PAC ratify the appointments of 11 senior officers, most of whom did not meet the job specifications. The PAC was divided on the matter, with the members of the Opposition not in favour of the appointment of persons who did not satisfy the job requirements. On the day the PAC was in session, the Government side, observing that a member from the Opposition was absent, called for a vote on the matter. The vote was carried since the Government side had the majority.

TIGI recommends that whenever a vacancy arises in the Audit Office, appointments should be based on public advertisement, short-listing of candidates, and assessments based on interviews and other means before the selection is made.

The Minister of Finance is responsible for preparing, certifying and submitting the public accounts of Guyana to the Auditor General for audit. His wife is, however, the only professionally qualified accountant in the Audit Office and holds the position of Audit Director which is the next level position below the Auditor General. Given that the Auditor General is not a professionally qualified accountant, the general view is that wife of the Minister is the de facto head of the Audit Office. In addition, she has overall responsibility for the audit of public enterprises of which the National Industrial and Commercial Industries Ltd (NICIL) is one such entity. The Minister of Finance is the Chairman of NICIL. The operations of NICIL are shrouded in controversy involving the vesting of State properties and other assets, their disposal and the retention of the proceeds to meet expenditure in complete violation of Articles 216 and 217 of the Constitution. We view this situation as a serious conflict of interest.

TIGI recommends that the Auditor General, in collaboration with the Government, take appropriate measures to remove the conflict of interest that has been existing in the Audit Office since the appointment of the Minister of Finance in 2006. This could be done by re-assigning the Minister to another ministerial portfolio, or if this is not considered desirable, having the concerned officer relocated to another State-owned/controlled entity.

Once appointed, the Auditor General serves until the age of retirement, which is 65. The first local Auditor General served for 21 years while the second served for 15 years. The current Auditor General, upon attaining retirement age would have served for 17 years. Many countries

have considered it necessary to introduce fixed term appointments. For example, South African Auditor General serves for seven years while in Canada, the Auditor General demits office after ten years. India has a five-year term limit while for the United Nations Board of Auditors the term limit is six years. This practice enhances the independence of the Office and allows for the incumbent to give of his/her best and possibly to leave a lasting legacy for someone else to continue. Experience has shown that lengthy appointments only serve to stagnate the Office.

TIGI recommends that the relevant legislation be amended to limit the term of office of the Auditor General to ten years with the proviso that current Auditor General be given the option to retire on completion of this period of service, given that he is not a professionally qualified accountant.

The Public Accounts Committee

The PAC's main function is "to examine the accounts showing the appropriations of sums granted by the Assembly to meet Public Expenditure and such other accounts laid before the Assembly as the Assembly may refer to the Committee together with the Auditor General's report thereon". In conducting its examination, the PAC invites accounting officers and other officials to provide the necessary explanations and clarifications. At the end of its examination, the PAC issues a report to the National Assembly which usually adopts it. The report is then referred to the Government for a response in the form of a Treasury Memorandum setting out what actions have been taken or proposed to be taken in relation to the findings and recommendations of the PAC.

In the past, the PAC has been slothful in discharging this responsibility, though the situation has somewhat improved with its reconstitution following the 28 November 2011 National Elections. The following table shows the trend in finalizing and presenting of the PAC's reports in the National Assembly as well as the Government's response:

<u>Year</u>	<u>Date PAC report laid</u>	<u>Date Treasury Memorandum laid</u>
2000 & 2001	2 March 2006	30 October 2006
2002 & 2003	14 February 2008	3 December 2008
2004 & 2005	15 February 2010	15 July 2010
2006	4 November 2010	3 March 2011
2007 & 2008	2 June 2011	1 September 2011
2009	17 December 2012	27 June 2013
2010	Not yet finalised	Awaiting PAC report
2011	Not yet finalized	Awaiting PAC report

Ideally, the accountability cycle, culminating in the issuance of the Treasury Memorandum, should be completed in a manner to facilitate the budget process. In reviewing the budget for a particular fiscal year, and for a more meaningful process to take place, legislators should benefit from the results of the audit of the previous fiscal year, including the completion of the PAC examination and the issuance of the Treasury Memorandum. For this to happen, the accountability cycle needs to be revised. For example, given the rapid advances in information technology, there is no valid reason why financial statements cannot be submitted earlier to enable the Auditor General to issue its report within six months of the close of the financial year. This will facilitate the PAC's examination of the public accounts in early July, its reporting by September, and the issuance of the Treasury memorandum by October. The budget process for the next fiscal year could then begin in November, and by 31 December the budget is approved.

TIGI recommends that consideration be given to revising the timetable for the various activities, from budget preparation and approval to the issuance of the Treasury Memorandum, to facilitate the National Assembly's more informed consideration of the National Estimates and approval before the fiscal year begins.

The PAC has been focusing on the Auditor General's report as the basis for its examination, almost to the exclusion of the public accounts. As indicated above, given the staffing situation in the Audit Office, many significant issues of national importance are not reflected in the Auditor General's report, or are treated superficially without any detailed analysis and review.

Mention was also made of what constitutes the public accounts but the PAC examination is restricted to the results of the audit of central government activities. There is no evidence that the audited accounts of statutory bodies, public enterprises and other entities in which controlling interest vests with the State are referred to the PAC after they have been tabled in the National Assembly.

TIGI recommends that that the PAC's examination of the public accounts be extended to include all statutory bodies, public enterprises and other bodies in which controlling interest vests with the State.

National Procurement and Tender Administration Board (NPTAB)

The NPTAB was established by section 16 of the Public Procurement Act 2003 as an agency that reports to the Minister of Finance. It consists of seven members appointed by the Minister, not more than five from the Public Service; and not more than three from the private sector after consultation with their representative organizations. TIGI believes that the over-involvement of the Minister in the appointment of members of the NPTAB and the requirement of the Chairman to report to him are not considered good practices, especially when one considers that all procurements in excess of G\$15 million require the approval of the Cabinet of which the Minister is a key member.

The term of membership of the NPTAB is for two years, with two members serving full-time while the rest serve on a part-time basis. Although the Procurement Act is silent on the re-appointment of members of the NPTAB, in practice, members are re-appointed. However, there is no limit in terms of how long a member can serve, contrary to international best practices.

TIGI recommends that: (a) the term of office for members of the NPTAB be extended to three years; and (b) no member should serve for more than two consecutive terms.

The NPTAB is responsible mainly for exercising jurisdiction over tenders the value of which exceeds an amount prescribed by regulations, and for appointing a pool of evaluators. All procurements which exceed G\$15 million are referred to the Cabinet for review based on a streamlined tender evaluation report. Cabinet can only object to an award if it determines that the procuring entity failed to comply with the applicable procurement procedures. However,

there is no publicly available evidence of the Cabinet objecting to an award, and one suspects that to do so is to call into question the work of the Minister. Therein, lies an apparent conflict of interest.

TIGI recommends that to the extent that the Cabinet retains the right to review all procurements in excess of G\$15 million, the Minister of Finance should divest himself from the appointment of members of the NPTAB and its reporting relationship to him. In the circumstances, it would be more appropriate for the PAC to appoint members of the NPTAB and to oversee its work.

Article 212 W of the Constitution provides for the establishment of the Public Procurement Commission (PPC), with responsibility for monitoring public procurement and the related procedures to ensure that the procurement of goods, services and the execution of works are conducted in a fair, equitable, transparent, competitive and cost effective manner.

This amendment was mainly in response to persistent criticisms by the Auditor General over the years of the failure of government ministries and departments to adhere to the Tender Board Regulations. There was also public pressure to reform the government's tendering procedures. In particular, many stakeholders held the view that the arrangements in place did not provide them with confidence as to the fairness and transparency in the award of government contracts, and there was no mechanism in place to address their concerns.

The PPC is independent of the Executive and reports to the Legislature. It is required to consist of five members with expertise and experience in procurement, legal, financial and administrative matters. The members are to be appointed by the President after they have been nominated by the PAC and approved by no less than two-thirds of the elected members of the National Assembly. A member can only be removed from office except as provided for in the Constitution.

These are important safeguards to not only secure the independence and impartiality of the Members but also ensure that they enjoy the confidence of Members of the National Assembly from both the Government and Opposition sides. In addition, none of the functions of the Commission can be removed or varied except by the votes of not less than two-thirds of the elected Members of the National Assembly. However, any addition thereto requires the votes of a majority of elected Members.

Section 17 of the Procurement Act acknowledges the non-establishment of the PPC and vests the Commission's responsibilities with the NPTAB with the proviso that upon the establishment of the PPC, those responsibilities will cease. In addition, Section 54(1) provides for the progressive phasing out of the Cabinet's involvement in the procurement process upon the establishment of the PPC. However, Section 54(6) states that the Cabinet's involvement shall cease upon the establishment of the Public Procurement Commission except for pending matters. Despite the important constitutional amendment aimed at securing public confidence in the public procurement process, after 12 years the PPC Commission is not yet in place.

TIGI recommends that the Public Accounts Committee take urgent measures to advertise both locally and internationally for suitably qualified and experienced Guyanese in public procurement to express an interest in becoming a member of the Public Procurement Commission. Based on a system of short-listing and interviews, the five candidates should be selected for the President to make the appointment. Once the appointments are made, the names of the persons are submitted to the National Assembly for ratification.

Office of the Director of Public Prosecutions

TIGI does not wish to offer any comments.

Public Service Commission (PSC)

The Constitution vests with PSC the power to make appointments to public offices, and to remove and to exercise disciplinary control over persons holding or acting in such offices. This

arrangement provides for a high degree of assurance that government employment practices are fair, equitable and transparent. There are detailed rules for the recruitment, transfer, promotion and removal of public officers.

A review of the estimates of revenue and expenditure for 2012, as presented in the National Assembly, revealed that a significant number of persons are employed on a contractual basis without the PSC's involvement. In addition, there is no evidence to indicate how the concerned agencies selected and remunerate these persons, and therefore the issue is one of transparency.

The table below, which does not include teachers and police, summarises the staffing for 2012:

Ministry/Department/Region	Total Staffing	Contracted Employees	% of Contracted Employees
Office of the President	238	156	66
Office of the Prime Minister	18	11	61
Ministry of Finance	236	124	53
Ministry of Foreign Affairs	238	75	32
Parliament Office	87	54	62
Public and Police Service Commission	34	13	38
Teaching Service Commission	40	15	38
Guyana Elections Commission	310	68	22
Ministry of Local/Regional Development	51	30	59
Public Service Ministry	41	24	59
Ministry of Amerindian Affairs	79	60	76
Ministry of Agriculture	219	129	59
Ministry of Tourism, Industry and Commerce	78	57	73
Ministry of Natural Resources and Environment	10	10	100
Ministry of Public Works	82	27	33
Ministry of Education (excluding teachers)	791	186	24
Ministry of Culture, Youth and Sport	350	222	63
Ministry of Housing and Water	25	18	72
Georgetown Hospital Corporation	1,427	240	17
Ministry of Health	1,336	749	56
Ministry of Labour, Human Services and Social Security	483	214	44
Ministry of Home Affairs (excluding Police Force)	927	108	12
Ministry of Legal Affairs	111	33	30
Guyana Defence Force	No information		
Supreme Court	362	138	38
Public Prosecution	22	9	41
Office of the Ombudsman	4	0	0
Public Service Appellate Tribunal	2	0	0
SUB-TOTAL	7,601	2,770	36
Region 1: Barima/Waini	743	74	10
Region 2: Pomeroon/Supernaam	1,220	131	11
Region 3: Essequibo Islands/West Demerara	1,828	135	7

Region 4: Demerara/Mahaica	1,801	97	5
Region 5: Mahaica/Berbice	928	61	7
Region 6: East Berbice/Corentyne	2,288	284	12
Region 7: Cuyuni/Mazaruni	586	111	19
Region 8: Potaro/Siparuni	280	38	14
Region 9: Upper Takatu/Upper Essequibo	551	36	7
Region 10: Upper Demerara/Upper Berbice	983	69	7
SUB-TOTAL	11,218	1,036	9
TOTAL	18,819	3,806	20

On an overall basis, out of 18,809 employees, 3806 or 20 per cent are contracted employees. For individual Ministries, Departments and Regions, the figure varies from 5 per cent for Region 4 to as high as 100 per cent for the Ministry of Natural Resources and the Environment. (The Office of the Ombudsman and the Public Service Appellate Tribunal are non-functional, except for a few clerical staff.) In terms of actual numbers, the Ministry of Health topped the list with 749 contracted employees, followed by Region 6 (284); the Georgetown Hospital Corporation (240); Ministry of Culture, Youth and Sport (222); and Ministry of Labour (214).

The Office of the President has 156 contracted employees out of 238, or nearly two-thirds, and their emoluments account for 88 per cent of the wages and salaries paid by that office. Similarly, at the Ministry of Finance, contracted employees account for a little over 50 per cent (124 out of 236) and their emoluments represent 69 per cent of the wages and salaries.

Regardless of the justification offered, the practice of employing contracted employees on a scale undertaken by the Government dilutes the authority of the PSC and is very costly to the taxpayers. The whole effort appears to be one of short-termism in that should there be a change in government, most of these employees, especially if they are politically aligned, are likely to be replaced by a new set of contracted employees. This could very well be a never ending cycle. Meanwhile, the traditional Public Service is allowed to die a slow death.

Article 215A of the Guyana Constitution establishes the Public Service Appellate Tribunal to hear appeals "...in respect of any matter so specified, being a matter in respect of which the Public Service Commission, the Teaching Service Commission, and the Police Service Commission or the Commissioner of Police is empowered to make a decision..." In other words, a public servant, a teacher or a police officer has a right of appeal to the Tribunal against

any decision by the relevant Service Commission if he/she feels that there has been unfair treatment.

An examination of the estimates of expenditure for 2012 indicates that there are over 22,000 authorised positions that fall under the jurisdiction of the three Service Commissions in terms of appointment, discipline and removal. With such a large number of public officials to deal with, it is inconceivable that some officers will not have grievances regarding the decisions of these bodies. It is mainly for this reason that the Constitution provides for the establishment of the Tribunal

The Tribunal, however, has not been in place since August 1995. As a result, aggrieved public officers seeking redress have no alternative than to petition the Courts in the form of a civil action. This is not only expensive in terms of legal costs but the matter could also take years to be brought to a satisfactory closure, given the backlog of cases to be handled by the Courts. In addition, there is the fear factor in that a public officer challenging the decision of a Service Commission may very well find himself/herself out of employment, thereby losing the accumulated benefits of serving the State. Invariably, most if not all of the aggrieved persons will choose to remain silent, move on to other employment, or migrate overseas.

TIGI recommends that the Government severely restrict the appointment of contracted employees. Where it is considered necessary to do so, the Public Service Commission should be involved in the recruitment of these employees and in the setting of their remuneration. The ultimate objective is to have a unified, open and accountable system in place for the hiring of all government employees.

The Ombudsman invariably described as the “poor man’s lawyer, is a government official who investigates citizens’ complaints against the government or its functionaries. According to Prof. Fiadjoe, the Ombudsman adjudicates over issues of maladministration and injustice in an informal setting without the normal trappings of formal process or associated costs. He/she brings to bear in a conciliatory process a high degree of informality and simplicity involving parties with unequal resources. The work of the Ombudsman encourages good government and helps to bring transparency to the decision-making process.

Article 191 of the Guyana Constitution provides for the President to appoint an Ombudsman acting after consultation with the Opposition Leader. The tenure of appointment is for a non-renewable period of four years. The main responsibility of the Ombudsman is to investigate any action taken by a government department or other authority, or by the President, Ministers, officers or members of such a department or authority in relation to the exercise of the administrative functions of that department or authority.

It is indeed very disappointing that no Ombudsman has been in place since the last person, Mr. S.Y. Mohamed, demitted office around 2005. Citizens have therefore been without the services of the “poor man’s lawyer” for seven years. Whatever the reason(s) for this unfortunate state of affairs, Guyana cannot be viewed in good light when compared with its Caribbean counterparts - Jamaica, Barbados, Trinidad and Tobago, Dominica, St. Lucia, and Antigua - that have a functioning system to investigate citizens’ complaints via the Ombudsman.

It is encouraging that the President and the Leader of the Opposition are in dialogue to have, among others, the Tribunal reconstituted and become operational. This will be a welcome relief for public officers notwithstanding the untold damage to the morale of affected public servants over the last 16 years for the disregard of the important constitutional safeguard.

The Office of the Ombudsman is indispensable to the effective functioning of the State. It provides for a check on possible abuse of authority and promotes transparency, good governance and accountability. With its origins in the Scandinavian countries, particularly Sweden, it is no wonder that over the years these countries have been rated among the best in the world in terms of living standards and the quality of governance and accountability. These countries also ranked among the best in relation to perceptions of corruption. The time has come for Guyana to embrace the good practices of other countries if it is to realize its true potential.

TIGI recommends that the Government take urgent measures to reconstitute the Public Service Appellate Tribunal and to appoint an Ombudsman.

Judicial Service Commission

TIGI does not wish to offer any comments, except to state that the prolonged acting arrangements involving the Chief Justice and the Chancellor of the Judiciary remain a source of concern for many stakeholders.

Integrity Commission

TIGI is disappointed that for some years now, the Integrity Commission is without the services of the Commissioners. This matter is discussed further in our next presentation.

Office of the Commissioner of Information

TIGI's comments are dealt with in our next presentation.

-End of presentation-