

The Trinidad and Tobago Transparency Institute
The National Chapter of Transparency International

**Independent Assessment of the Trinidad and Tobago Government's Response to
the Committee of Experts' First Round Questionnaire on the Implementation of
the Inter-American Convention Against Corruption**

Author: Heather Collins
The Human Rights Consultancy

August, 2004

Prefatory Note

In the report which follows, *The Trinidad and Tobago Transparency Institute* (TTTI) provides a civil society perspective on the Trinidad and Tobago Government's September 2002 Response to the *Questionnaire on Provisions Selected by the Committee of Experts for Analysis Within the Framework of the First Round*. It does this by commenting on the answers given in the Response and must be read in conjunction with that document.

TTTI acknowledges gratefully the assistance of those persons and groups consulted or interviewed in the course of the preparation of the report.

Chapter One

Measures and Mechanisms Regarding Standards of Conduct for the Correct, Honorable, and Proper Fulfillment of Public Functions (Article III, 1 and 2 of the Convention)

1. General standards of conduct and mechanisms

- a. *Are there standards of conduct in your country for the correct, honorable and adequate fulfillment of public functions? If so, briefly describe them and list and attach a copy of the related provisions and documents.*

The Government's Response to the Questionnaire (GRQ) states (on pages 4 and 5) that there are standards of conduct and these are contained in the Codes of Conduct of The Integrity in Public Life Act 2000; The Civil Service (Amendment) Regulations (1996) and The Police Service (Amendment) Regulations (1990). It also refers to the Code of Ethics for Parliamentarians including Ministers. It gives brief descriptions of these codes, providing the full text in the Appendix.

Comments

- i. There is in these legal instruments no explicit, comprehensive statement of standards of conduct.
 - ii. The Schedule to the *Integrity in Public Life Act (IPLA)* initially did not include senators, judges and magistrates, members of the boards of statutory bodies and State enterprises, permanent secretaries and chief technical officers. These were all added by an amendment shortly after the original Act was passed.
 - iii. The GRQ (on page 4) states that the "Integrity Commission based on legal advice has taken the decision that judges will not be subject to the provisions of the Integrity in Public Life Act at this stage." There had been objections from judges that their inclusion was incompatible with Section 136 (6) of the Constitution. It appears, from recent public notices from the Integrity Commission reminding those concerned of the deadline for filing declarations, that the Commission now considers judges subject to the Act.
- b. *Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.*

The GRQ replies (pages 6 and 7) that the IPLA requires the Integrity Commission to report any breach of the Code to the appropriate Service Commission, Board or other Authority and to the Director of Public Prosecutions. These bodies may take such disciplinary action as they think appropriate.

It outlines the procedures to be followed by the Public Service Commission and the Police Services Commission in exercising disciplinary control over public officers and police officers respectively.

The GRQ refers to Regulation 149 of the Civil Service Code of Conduct which lists acts of misconduct.

Comments

- i. In general, the mechanisms are weak.
- ii. The definitions of 'acts of misconduct' in the Codes do not of themselves constitute mechanisms to enforce compliance.
- iii. The Civil Service and Police Codes of Conduct need to be updated to accommodate anti-corruption concerns.

- iv. The codes of conduct are not authenticated or signed when taking office.
- v. While the IPLA Code of Conduct may be described as comprehensive, it does not appear to be widely known by persons in public life.
- vi. The disciplinary processes of the Service Commissions are excessively lengthy and often reach no satisfactory conclusion. Proceedings are often spun out by adjournments which can sometimes number as many as thirty.
- vii. Delays in the work of the Police Service Commission have been partly due to lack of resources. The Commission has no budget. The Commission is really not sufficiently independent. It has to resort to circuitous ways of getting things done. Only recently has the one legal team serving all the Service Commissions been brought to full strength.

c. *Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.*

The GRQ provides (on pages 6 and 7) information only on the number of disciplinary charges preferred against public officers in 2000 and the number of allegations of police misconduct reported between 1995 and 1998.

Comments

- i. Government's response here is very weak, providing no information on results relating to corruption. It hardly needs to be pointed out that charges of unpunctuality, assault and battery referred to as results of the Public Service Commission's implementation of standards and mechanisms are not related to corruption.
- ii. Information on results is in fact available but it needs to be gathered. (The Police Service Commission has recently begun to keep statistics.)
- iii. The Integrity Commission has not indicated in any of its Annual Reports that it has reported any breaches of the Code to the appropriate bodies.
- iv. There has been repeated criticism that the Integrity Commission uses the prohibition in the Act of any or its members revealing the contents of declarations "as a blanket to wrap everything in secrecy". The Commission is seeking legal opinion with regard to possible conflict between the provisions of the Freedom of Information Act (FOIA) and those of the IPLA. There have been many requests for information held by the Commission to be made public which the Commission views as "challenges to its authority".
- v. In January of this year the Integrity Commission received a complaint from an opposition politician that the Prime Minister was in breach of the IPLA Code of Conduct when he accepted a plane ride from Britain to Spain from a company tendering for gas exploration contracts in Trinidad. He asked the Commission to state its position. Subsequently the Prime Minister's office announced that the Commission had exonerated him. There was no statement from the Commission.

2. Conflicts of interest

a. *Are there standards of conduct in your country regarding the prevention of conflicts of interest in the performance of public functions? If yes, briefly describe them, indicating aspects like to whom they apply and the concept on which they are based, and list and attach a copy of the related provisions and documents.*

In answering this question (on pages 7 and 8) the GRQ again refers to the various Codes of Conduct and the Code of Ethics for Parliamentarians, setting out those of their provisions that

deal with conflicts of interest. It quotes the definition of conflict of interest contained in the Code of the IPLA.

It notes that the IPLA provides that, where conflict of interest arises, the Commission shall order that assets be placed in a blind trust.

Comment

It has been suggested that, without increased investigative capacity it would be difficult for the Integrity Commission to apply the blind trust system effectively.

b. Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.

The GRQ states (on page 10) that the response to question 1.b above also applies to this question.

Comments

In addition to the comments already made above on the response to question 1.b:

- i. There used be in the Public Service the practice of public officers making an annual 'Return of Indebtedness'. This practice is reported to have lapsed.
- ii. The GRQ fails to mention that the IPLA provides, in Section 14(1), that "a person in public life shall file...[a] statement of registrable interests", and, in 14(2), "The Registrar of the Commission shall compile and cause to be entered in a Register of Interests, all information furnished pursuant to subsection (1) and shall at the request of any member of the public, permit the inspection of such Register". This could be used to identify conflicts of interest. However, almost four years after the passing of the Act, it is not clear whether such a register exists.
- iii. Questions have been raised about the possibility that information contained in the Register could assist criminals in targeting individuals for kidnapping, a crime that has spiralled in recent years in Trinidad and Tobago.

3. Conservation and proper use of resources entrusted to public officials in the performance of their functions

a. Are there standards of conduct in your country that govern the conservation and proper use of resources entrusted to public officials in the performance of their functions? If yes, briefly describe them, indicating aspects like to whom they apply and whether there are exceptions, and list and attach a copy of the related provisions and documents.

The GRQ refers again (on pages 11 and 12) to the various Codes of Conduct and the Exchequer and Audit Act. The IPLA Code requires a public officer to administer public resources efficiently and effectively. He or she is not to use public property for activities not related to official work. This latter rule appears also in the Civil Service and Police Service Codes. The Exchequer and Audit Act provides for a surcharge to be levied on an employee of the State found responsible for the damage or loss of public property.

Comments

- i. Writing in the *Express* newspaper about a media campaign mounted by the Government earlier this year to convince the public of the need to pass proposed Police Reform legislation, a former senator had this to say on the relation of the Code of Conduct to the improper use of public funds:

We have now gone through hundreds of man-hours and millions of dollars of media coverage on the subject of police reform. If one takes expenditure of the admitted \$1.79 M “marketing programme” and adds say another million or so to cover parliamentarians and support staff perhaps the “debate” cost \$3M.....

.....Did Parliament actually budget the expenditure? Were proper tendering procedures followed? How many advertising agencies won contracts? There is however, even in the absence of answers to the questions, more than ample evidence of breach of the Code of Conduct of the Integrity in Public Life Act 2000. Section 24 (1) covers what persons in public life shall do. He shall ensure that he performs his functions and administers the public resources for which he is responsible in an effective and efficient manner and shall (a) be fair and impartial in exercising his public duty and (b) afford no undue preferential treatment to any group or individual.

Take the phrase ‘administers the public resources for which he is responsible in an effective and efficient manner’. What was the purpose of the advertising programme? The objective was to have perhaps four or five members of the House of Representatives vote with the government side. None did. The secondary objective was to paint a picture of a government of high principle as opposed to an opposition of obstruction. Effectiveness – 0? Efficiency – 0%. And it cost \$1 97M plus the dreadful waste of parliamentary time. The truly remarkable thing about the debate is that most could have predicted the outcome on the basis of the behaviour of the Leader of the Opposition in the past.

Take next the mandatory requirement to be fair and impartial in exercising his public duty. Is spending \$1.97 M of public resources to mount an advertising programme aimed at the electorate essentially belittling the opposition fair and impartial? One would have no quarrel with any political party expending its party resources on political party advertisements. If the Government thinks that it has a responsibility to project its position on matters other than those required by statute and it uses public funds for this purpose, is it fair (or ethical) not to afford the opposition some public resources to project [its] position on the same matter? Where Government is required by statute to advertise, such advertisements usually come in a relatively uniform and neutral format.

Take finally the requirement to afford no undue preferential treatment to any group or individual. Can the public be assured that in awarding contracts to individuals or advertising firms preferential treatment has not been given to anyone [and] all normal tendering procedures have been followed? This really requires clarification and amplification as we are dealing with the management of public resources and not party funds. Again a political party may do anything with its funds to advance its interests. Abuse of public resources by anyone is corruption.

(Julian S. Kenny, Gobbling Integrity)

- ii. In December, 2002 the daily newspaper *Newsday* reported the Attorney General as stating that the one area of activity most prone to corruption was the procurement process. The Attorney General urged all entities not bound by the Central Tenders Board Ordinance to review as a matter of priority their internal procurement procedures.
- iii. Although not strictly embodying standards of conduct, the GRQ should have made mention of the *legal framework governing public contracting*.

The main legislation is contained in the *Central Tenders Board Ordinance, 1961*, which covers Government ministries and departments and some statutory authorities but is limited largely to the tendering stage of the procurement process. Public officials, therefore, are not governed by this legislation in their use of public resources during the design stage of the procurement process in which needs are identified, scope of works

determined, costs estimated and bid packages prepared. Nor are their activities governed by it during the implementation stage in which the performance of the contract is managed.

It should also be noted that there is no overall legislation governing the procurement practices of agencies using public funds that fall outside the ambit of the Ordinance such as State owned enterprises, statutory authorities and civil society bodies.

There is need for a framework that applies objective standards evenly across all stages of the process and to all the actors in the process. A Green Paper on Procurement Reform has been in preparation for some time and should soon be published for public comment. There are signs therefore that a legal regime that will foster greater transparency and accountability and thereby better prevent corruption in public contracting is on its way. But its coming into being needs to be accelerated, an immediate step in this direction being the release of the Green Paper.

b. Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.

The GRQ's response (on pages 12 & 13) refers to the mechanisms described in the answer to question 1.b as also applying here, except in the case of the Exchequer and Audit Act.

Comment

The comments already made above on the response to question 1.b also apply here.

c. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

In its response to this question (on page 13) the GRQ describes the Auditor General's reporting of thefts and losses in Government departments as an effective means of ensuring accountability for Government resources.

Comment

See comments under Chapter 4, question 5.a.

4. 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

a. Are there standards of conduct in your country that establish measures and systems governing the requirement that public officials report to appropriate authorities acts of corruption in public office of which they are aware? If yes, briefly describe them, indicating aspects like to whom they apply and to what resources they refer, and list and attach a copy of the related provisions and documents.

The GRQ replies (on pages 13 to 15) that public officials are not required under any standards of conduct to report acts of corruption. But it suggests that the *Commission of Enquiry* is an effective mechanism through which the Government can require it. The GRQ also notes that, under the IPLA, there is a voluntary mechanism for any member of the public, not just public officials, to report acts of corruption.

Comments

- i. Commissions of Enquiry cannot in fact require reporting by public officials of acts of corruption
- ii. Commissions of Enquiry have not generally been effective mechanisms for corruption

prevention, detection or punishment. Reports have often been shelved. Often no effective use has been made of findings.

- iii. Commissions of Enquiry are often long-drawn-out and very expensive.
- iv. Without effective legal protection for whistleblowers, it is difficult to get people to report acts of corruption.

b. Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.

The GRQ states (on page 15) that there are no mechanisms to ensure reporting of corruption. It refers however to the powers of the Integrity Commission to require any person to furnish information on the affairs of a person being investigated.

Comments

The reference to the Integrity Commission is informative but not strictly relevant

Chapter Two

Systems for Registering Income, Assets and Liabilities (Article III, 4)

a. Are there regulations in your country establishing methods for registering the income, assets and liabilities of those who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public? If yes, briefly describe them, indicating aspects like to whom they apply and when the declaration must be presented, the content of the declaration, and how the information given is verified, accessed, and used. List and attach a copy of the related provisions and documents.

The GRQ, in its response (on pages 16 to 18) sets out the IPLA's requirement for persons in public life to declare income, assets and liabilities in the prescribed form. The list of persons to whom this applies is given in the response to question 1.a of Ch. 1 above. It notes that declaration must cover the declarant's spouse and dependent children and trusts held by the declarant. It lays the onus on the declarant to declare the sources of unexplained accretions in the value of assets between declarations. Before issuing a Certificate of Compliance the Commission may request further particulars. The GRQ notes the Commission's power to advise the President to appoint a tribunal to determine whether there has been full disclosure. Declarations filed with the Commission are secret and confidential.

A person making a false declaration is liable to a fine of \$250,000 and ten years' imprisonment. The names of persons failing to furnish a declaration are published in the Gazette.

The Registrar of the Commission is required to compile a Register of Interests which the public is allowed to inspect.

The GRQ also refers to the Code of Conduct in the IPLA which requires a person holding office under the Service Commissions to make a confidential declaration of the interests and assets of himself, his spouse and his dependent children/

Comments

- i. The GRQ has set out the provisions in the legislation which establish methods for registering the income, assets and liabilities of persons who perform public functions in certain posts. However it has failed to indicate that, at the time of writing, these provisions could not be given effect because the prescribed forms were not available.

The legislation requires that the forms be drafted by the Integrity Commission and

approved by Parliament. The legislation was enacted in 2000. The Commission submitted final draft forms in 2001. The approved forms were published in January, 2004.

It would appear that there was a lack of political will to have these methods of declaration fully established and operative.

- ii. In 2002 the Government announced plans to strengthen the Integrity Commission so that it could better spearhead its anti-corruption strategy. Consultants were engaged to advise on this. A survey of stakeholder opinion was carried out.
- iii. Private sector organisations such as the Chamber of Industry and Commerce and the Trinidad and Tobago Manufacturers' Association have expressed the view that members of the Boards of State Enterprises should be excluded from the purview of the Act, a view rejected by the Integrity Commission.

b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

The GRQ notes (on page 19) that the new Integrity Commission was appointed in 2000 and published annual reports to Parliament for 2000 and 2001. In 2001 the Commission concentrated on reducing the backlog of outstanding declarations due under the previous Act. The 2001 report estimated that the number of persons required to submit declarations under the new Act was 1,120. In the report the Commission recommended that a more effective sanction for defaulting declarants would be the imposition of a penalty.

Comments

- i. In their annual report of 2000 the Integrity Commissioners commented upon deteriorating standards of compliance with the requirements for the submission of declarations, 22% of which were still outstanding at the end of March, 2000. The Commissioners observed "a number of inaccuracies and inconsistencies" and expressed concern, "not only with the apathy shown by persons with regard to filing of declarations, but, in addition, the indifference shown in completing the prescribed form".

Fifty-four declarations which were required to be filed under the old 1987 Act remained outstanding. Despite naming of those who had not declared in the Gazette and daily newspapers, there was still some non-compliance".

Technical assistance was provided to declarants in order to speed up the filing process.

- ii. A major focus of the Commission in 2001 was the conduct of officials in State enterprises. It monitored investigations being carried out by other State agencies into allegations of corruption in State enterprises. The Commission decided in some instances to undertake its own investigations into these allegations in accordance with Section 33 of the Act.

One of the recommendations of the Commission in 2001 was that all charges arising out of breaches of the Act should be laid indictably.

- iii. The Commission's report for the year 2002 directs attention to Section 20 (1) of the Integrity in Public Life Act 2000 which determines the degree of secrecy and confidentiality with which annual declarations of income, assets and liabilities must be handled by members of the Commission. The Report states that a person who wishes to allege or make a complaint that a person in public life is in contravention of the Act, may do so in writing to the Commission.

The 2002 report also states that:

The Freedom of Information Act gives members of the public the statutory right to access official information held by public authorities. This, together with the Register of Interests, when established, will give to the public information upon which mature and responsible opinion can be formed and avoid speculation and rumours.

- iv. Media reports in 2002 advanced “a plethora of corruption charges” against a former administration. The reports claimed that the Integrity Commission did nothing while Ministers “acquired the kind of wealth that could hardly be explained by the income they received as members of the Cabinet”. On July 6, 2002 the *Express* reported that a member of the Integrity Commission had stated that there was no requirement that the findings of the Commission be made public. A *Newsday* editorial of July 7, 2002 questioned whether transparency in matters of public interest could be advanced if the Integrity Commission was a secret body. The editorial continued:

We are at a loss to understand statements made by one of the Integrity Commissioners...that the public has a part to play in maintaining integrity. How is the public to do this when it has no access to information?

- v. The *Express* of 29 May, 2002, referring to an investigation into the former Prime Minister’s alleged undeclared overseas bank account, underscored the importance of transparency in the process. While recognizing the requirement under the Act for strict confidentiality, the report refers to “indications of efforts to manipulate the Commission and to force it to respond to various political agenda [sic]” and to “suggestions that political leverage is being exerted in relation to the investigation underway”.
- vi. The 2001 report of the Commission stated that it was preparing itself to fulfill its public education mandate. The Commission held meetings and consultations during 2001 “to devise or ensure the preparation of a ‘Code of Institutional and Corporate Governance’ which will function as a standard of integrity in public life”. The Commission planned a series of seminars “primarily to educate persons in public life about their expectations under the Act”. None of these was held in either 2001 or 2002. The report stated that the Commission planned to establish a website in the year ahead. This has not yet been done.

The Chairman and a Member of the Commission served as facilitators at a Parliamentary Session on January 3, 2003 which addressed the topic: “The Concept of Accountability – The Integrity in Public Life Act as it relates to Parliamentarians”.

At the end of 2002 a subcommittee of the Commission, with the assistance of a consultant, was in the final stages of preparing its publication Principles of Integrity for Persons in Public Life and Those Exercising Public Functions. This guide, planned since 2001, was completed in 2003 and the Commission began its distribution among persons in public life, public bodies, public libraries and other relevant parties.

The *Express* of January 20th, 2004 noted that Section 5.1 of the Integrity Act made it mandatory that the Commission carry out programmes of public education intended to foster an understanding of standards of integrity. It claimed that there had been no such programmes since the Act came into force over three years previously.

- vii. The Commission recognizes the need to accelerate its public education programme and is hoping that the long-awaited appointment of a firm of consultants to carry out this and other parts of its operations would be expedited by the Central Tenders Board.

Chapter Three

Oversight Bodies

- a. *Are there oversight bodies charged with the responsibility of ensuring compliance with the provisions stated in article III (1), (2) and (4)? If yes, list and briefly describe their functions and characteristics, and attach a copy of the related provisions and documents.*

The GRQ (on pages 19 to 21) identifies the Integrity Commission and the Service Commissions as the oversight bodies charged with the responsibility of compliance with standards of conduct. The IPLA requires that the Integrity Commission report any breach of the Code of Conduct to the appropriate Service Commission, Board or other Authority and to the Director of Public Prosecutions. The response outlines the procedures followed by the Service Commissions in monitoring their respective codes of conduct.

Article III (4) of the Convention deals with the education of government personnel in their responsibilities and ethical rules governing their activities. The response of the GRQ does not relate to this topic but deals with the subject of Article III (5).

Comment

The Code of Ethics for Parliamentarians including Ministers was laid in Parliament for negative resolution in 1987. This provided for an Ethics Committee in each House as the oversight body for these persons. The Committees were formed but it is reported that they have not sat for five years. One senator is of the opinion that the Code should have been put through the positive resolution process to allow for full debate. This would have brought it more to the attention of both Parliamentarians and the public. The senator also recommends that Parliamentarians be required to read and sign the Code.

Chapter Four

Participation by Civil Society (Article III, Number 11)

1. General questions on the mechanisms for participation

- a. *Are there in your country a legal framework and mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption? If so, briefly describe them and list and attach a copy of the related provisions and documents.*

The GRQ reports (on pages 21 and 22) that to date (September 2002) there are no formal or statutory mechanisms aimed at specifically encouraging participation by civil society in efforts to prevent corruption. However it sets out the provisions in the IPLA for members of the public to lodge complaints with the Integrity Commission and notes that the Commission is required to act on these complaints. It also mentions the safeguard against spurious complaints: a \$500,000 fine and ten years in jail.

It then goes on to describe TTTI's aims and activities as the Trinidad and Tobago chapter of Transparency International.

Comments

- i. There is a perception that public involvement in fighting corruption is dangerous for the private individual. There is some mistrust of the Integrity Commission. It is feared that anonymity will not be preserved.
 - ii. For some the Integrity Commission's complaint mechanism is intimidating. The penalty for making a frivolous complaint is seen as too severe. Rather than being encouraged, participation is discouraged.
 - iii. Also discouraging of participation is the lack of information on the Integrity Commission and its activities.
 - iv. The Trinidad and Tobago Transparency Institute can in no way be described as part of the legal framework and mechanisms of the State. The Institute is a strictly non-governmental, civil society organization. References to it in the context of the response to this question could be misleading and should not have been included.
 - v. The GRQ should have noted that the legal and regulatory framework in Trinidad and Tobago allows for free expression, free association and the right to petition. It should have pointed out that there are no restrictions on the ability of civil society to organize itself through the formation of non-governmental organizations.
- c *If no mechanisms, above stated, exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption, in accordance with article III (11) of the Convention.*

The GRQ responds (on page 23) that the Government is working on establishing a formal mechanism to encourage participation by civil society in the fight against corruption.

Comments

- i. In recent years Government has started holding public consultations on reform of systems of governance. There have, for example, been regional consultations on Local Government Reform in which non-governmental organizations have played a significant part.
- ii. Parliamentary committees have begun holding public hearings on the operations of statutory authorities. The Police Service Commission is at present conducting a round of consultations.

2. Mechanisms for access to information

- a. *Are there mechanisms in your country that regulate and facilitate the access of civil society and non-governmental organizations to information in the control of public institutions? Is so, describe them briefly, and indicating, for example, before which entity or agency said mechanisms may be presented and under what criteria the petitions are evaluated. List and attach a copy of the related provisions and documents.*

The response of the GRQ to this question (pages 23 and 24) is to describe the main provisions of the Freedom of Information Act, 1999, (FOIA) which came into force in 2001. It gives the public a right to access information in the possession of public authorities. These include Government agencies, service commissions and State enterprises. However this right is not unrestricted as the Act gives a list of documents that are exempt from disclosure. Each public authority is required to publish a statement of the categories of documents that are maintained in its possession and of

how the public are to access them. If a person is refused access he or she may either complain to the Ombudsman or seek judicial review of the refusal.

The GRQ also notes the establishment of a *Freedom of Information Unit* to monitor, report and advise on compliance by public authorities with the Act.

Comments

- i. In a commentary on the FOIA written shortly after it was passed, TTTI concluded that:

While being an important step in the right direction, the FoI Act falls short of what is required in a truly democratic society.

Contrary to what is emerging in the rest of the world the Act does not accept that information is to be free to the public unless, on a case by case basis, the public authority can show otherwise. The Act gives access to what the State thinks the public should have and for anything else the public has to go to Court. In effect *it makes the State the final arbiter of what is in the interest of the public*. This opens wide the door to abuse and militates against the greatest possible disclosure of information.

The Act should recognise that *the purpose of freedom of information legislation is to facilitate citizens in monitoring the State*. To achieve this noble objective, it must be radically revised.

- ii. It is not easy for most citizens, when unjustly denied information, to gain redress. Judicial Review is long and expensive. The Ombudsman deals mainly with Government departments and can only recommend, not require, action on the part of these bodies.
- iii. The Attorney General was reported in *Newsday* of December 2002 as saying that the FOIA “provides a profound weapon in combating corruption and nepotism”. But she went on to note that unless a proper and dedicated system for accessing information was put in place, the resources of government departments could be severely challenged by being inundated with requests for information. “This is therefore an area in which the Freedom of Information Act is in some need of re-engineering and the Government is proceeding apace with this exercise”. It is not clear whether any re-engineering has in fact taken place since then.

- b. *Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.*

The GRQ notes (on page 24) that, in the first year of the life of the Act there were 66 requests for information of which 4 were refused on the grounds that the applicant was not entitled to the information. There were no applications for judicial review. There was one complaint to the Ombudsman which resulted in the public authority supplying the requested information. At the time of writing the first annual report on the operation of the Act was still being completed.

Comments

- i. In 2003 and 2004 the list of exempt authorities was lengthened when a number of authorities, including some publicly owned financial institutions and the Central Bank, obtained Orders of Exemption from the President.

The application by the Central Bank for exemption of 2004 and the 2003 exemptions of the other financial institutions were assessed by the Statutory Instruments Committee and laid in Parliament for negative resolution. One senator is of the opinion that what is required is positive resolution of Parliament which would allow for a full debate about exemptions. This would require an amendment to the Act.

A question was raised about the Central Bank exemption during the time frame of the negative resolution process, but Cabinet allowed the exemption. There is still the possibility of judicial review of this decision under the Judicial Review Act 2000.

This was in line with the tendency to exclude that TTTI noted in its commentary on the FOIA (see comment under 2.a above).

- ii. The functions of the *Freedom of Information Unit* (FOIU) included educating the public and urging public authorities to support the Act by appointing a designated officer; strengthening information and records retrieval systems; providing reading facilities; publishing statements; sensitizing all staff and liaising with the FOIU. It carried these out with limited resources until October, 2003 when it was incorporated into the Public Management Systems Section of the Public Service Transformation Unit in the Ministry of of Public Administration and Information. The resources are now even more limited. (It was always understood that the FOIU was to exist as a separate entity for a limited period only.)
- iii. The Unit operates with a list of public authorities that is far from comprehensive. The number of authorities that have published statements to date is extremely small.
- iv. Annual reports to Parliament are a requirement of the FOIA. Since the inception of the Act no annual report has been filed. The Public Service Transformation Division plans to file a report for 2001-2003 by the end of 2004.
- v. A legal officer of the Legal Services Division of the Ministry of Public Administration and Information is assigned to give guidance to the public on the FOIA.
- vi. The Unit has recently asked the Solicitor General for full list of judicial review cases under the Act, but has so far not received it. The Unit relies on hearsay evidence to learn about judicial review cases.
- vii. The Ombudsman submits information about complaints in writing to the division on a quarterly basis There were 21 such complaints between February 2001 and December 2003. There was one in the first year which was successful, ten in the second of which two were successful and ten in the third year of which five were successful.
- viii. The Unit is in the process of instituting an online information management system which would, among other functions, facilitate queries from Public Authorities. This system should be operative by the end of 2004.
- ix. There is some evidence that the FOIA has brought a significant increase in the transparency of Government's approach. Things would improve even more if more information were made available early on through such means as public hearings, the Internet and the publication of manuals.

3. Mechanisms for consultation

- a. *Are there mechanisms in your country for those who perform public functions to consult civil society and non-governmental organizations on matters within their sphere of competence, which can be used for the purpose of preventing, detecting, punishing, and eradicating public corruption? If so, briefly describe them and list and attach a copy of the related provisions and documents*

The GRQ speaks (on pages 24 and 25) of the Law Commission consulting as a matter of practice. It also mentions Select and Joint Select Committees of Parliament appointed from time to time to consult with stakeholders.

- b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.*

The case of the IPLA is given by the GRQ (on page 25) as an example of the thorough use of consultation.

Comment

In recent times more use has been made of public consultation. See comments under question 1.c above.

4. Mechanisms to encourage active participation in public administration

- a. Are there mechanisms in your country to facilitate, promote, and obtain the active participation of civil society and non-governmental organizations in the process of public policy making and decision making, in order to meet the purposes of preventing, detecting, punishing and eradicating acts of public corruption? If so, briefly describe them and list and attach the related provisions and documents.*

The GRQ mentions (on pages 25 and 26) ‘The Opinion Leaders Group’ of 2,800 randomly selected persons who in 2002 agreed to be consulted regularly about public service issues.

It notes that freedom of the press and of thought and expression are guaranteed by the Constitution. Government can therefore gauge public opinion by taking note of comments made in the media. In this way, says the GRQ, public comment can sometimes effectively shape government policy.

It also notes that town meetings are used from time to time to obtain public participation in policy and decision making.

Comments

- i. It is not clear what has happened to the Opinion Leaders Group.
- ii. The media cannot be described as a mechanism of government. The description given by the GRQ of media and its activities is irrelevant.
- iii. Although the press is relatively free, thorough investigative reporting is rendered very difficult by the current libel law, which dates back to 1946 with the last amendment being in 1950. This allows a person mentioned in any corruption or integrity related matter to file an injunction in the High Court effectively preventing further publication by the media.
- iv. Despite the Constitutional guarantees, Governments have from time to time adopted a hostile attitude to the media. This has not facilitated active participation.
- v. The legal environment does, however, enable a free, independent and responsible press to operate without intimidation.
- vi. Town meetings are not, in fact, used very frequently. There is room for the full institutionalization of public hearings as a means of public participation in policy and decision making.
- vii. There are no effective citizen complaint mechanisms or hotlines.

- b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.*

The GRQ says (on page 26) that government monitoring of the media has proven to be very effective for ensuring the views of civil society are taken into account.

Comment

It is not clear how the effectiveness of this monitoring activity has been measured.

5. Participation mechanisms for the follow-up of the public administration

- a. *Are there mechanisms in your country to facilitate, promote, and obtain the active participation of civil society and non- governmental organizations in the follow-up of public administration, in order to meet the purposes of preventing, detecting, punishing and eradicating acts of public corruption? If so, briefly describe them, and list and attach a copy of the related provisions and documents.*

The GRQ reports (on page 27) that, at the time of writing (September, 2002), there were no mechanisms for follow-up of the public administration.

Comment

The GRQ could have mentioned the publication of the *Auditor General's reports* as a mechanism that, if it were done in a timely manner, could assist civil society in its monitoring role. In recent years inadequate staffing and technology have made for long delays in the Auditor General's reporting to Parliament. Lately, however, there seems to have been some improvement.

Chapter Five

Assistance and Cooperation (Article XIV)

1. Mutual Assistance

- a. *Briefly describe your country legal framework, if any, that establishes mechanisms for mutual assistance in processing requests from foreign States that seek assistance in the investigation and prosecution of acts of corruption. Attach a copy of the provisions that contain such mechanisms.*

The GRQ responds (on pages 27 to 29) by outlining the provisions of the Mutual Assistance in Criminal Matters Act, 1997 as amended by Act No. 7 of 2000, providing the full text in the Appendix. This is Trinidad and Tobago's domestic legislation for implementing mutual legal assistance in criminal matters.

Comments

Newsday of 17 July, 2003 reported that the Attorney General piloted the Extradition (Commonwealth and Foreign Territories) Order 2003 in Parliament, declaring that it had become necessary to amend the 1995 Extradition Act, in accordance with Articles 6 and 13 of the IACAC, to include corruption as an extraditable offence.

Chapter Six

Central Authorities (Article XVIII)

1. Designation of Central Authorities

- a. *Has your country designated a central authority for the purposes of channeling requests for mutual assistance as provided under the Convention?*

The GRQ states (on page 30) that the Attorney General is the designated central authority, with the functions carried out by the Central Authority Department. It describes the work of the

Department.

Comment

The mandate of the Central Authority refers to “mutual assistance in criminal matters”. It is not specifically directed to fighting corruption. There is therefore need for it to be extended to include mutual legal assistance in fighting corruption.

Submitted by: The Trinidad and Tobago Transparency Institute
Suite 120 Bretton Hall
16 Victoria Avenue
Port-of-Spain
Trinidad and Tobago
Telephone: 868-627-2950