

# National Integrity Systems

## Country Study Report

### **Trinidad & Tobago 2001**

## **Report Authors**

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# Trinidad & Tobago

## Overview

Trinidad and Tobago has been governed since Independence by mainly one political party. From 1956 – 1986 it was ruled by the Peoples' National Movement (PNM) and again by that party during the period 1991 - 1995. During the period 1986 – 1991 the National Alliance for Reconstruction (NAR) came to power on an anti-corruption ticket. The NAR was formed as a result of the merging of all opposition parties at the time; the Organisation for National Reconstruction (ONR), the Democratic Action Congress (DAC), the United Labour Front (ULF) and the Tapia House Movement (TAPIA). It is worth mentioning here that the ULF was mainly made up of Indo-Trinidadians and the PNM mainly Afro-Trinidadian.

The NAR was swept from power as a result of the harsh economic measures it had to take after it had approached the IMF for Structural Adjustment support, caused by the sudden fall in oil price (the main staple), on finding an empty treasury. The previous Government had maintained as far as possible the standard of living which its citizens had enjoyed during the oil boom by drawing down on its monetary reserves.

There is another view that the electoral defeat followed after the NAR lost its credibility when the ULF faction of the party left the alliance after only 18 months into its term of office.

The election of 1995 brought about a 17-17-2 result, 17 for the PNM, 17 for the United National Congress (UNC), the reborn ULF, and the 2 seats in Tobago which were retained by the NAR. The NAR joined with the UNC to form the Government. The current President of the Republic was the then leader of the NAR.

He gave up his seat in the House of Representatives when invited by the Prime Minister to become President of the Republic. He was nominated by the Prime Minister and elected by majority vote by the Parliament's Electoral College.

The election of 2000 brought the UNC back to power with a majority of 2 seats with the NAR retaining only 1 seat in Tobago and the PNM picking up the other Tobago seat plus 16 seats in Trinidad. However the results of two seats are before the courts as two of the UNC candidates have been challenged on the basis that they were voluntary citizens of another country besides Trinidad and Tobago on nomination day, something which is not allowed according to the Constitution, Section 48 (1):

"No person shall be qualified to be elected as a member of the House of Representatives who (a) is a citizen of a country other than Trinidad and Tobago having become such a citizen voluntarily, or is under a declaration of allegiance to such a country".

One candidate was a citizen of the USA and the other that of Canada.

The country has taken notice, probably one of the few times it has done so, of the details of the Constitution – the Government printery ran out of copies. There may be a long drawn out process in the resolution of this legal challenge since it can go all the way up to the UK Privy Council, the country's highest Appeal Court.

## Constitution

The Constitution of the Republic of Trinidad and Tobago, Act No. 4 of 1976, states that the people of Trinidad and Tobago:

- have affirmed that the nation state is founded upon principles that acknowledge the supremacy of God, faith in fundamental human rights and freedoms
- respect the principles of social justice and therefore believe that the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good.
- have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority:

- recognize that men and institutions remain free only when freedom is founded upon respect for moral, and spiritual values of the rule of laws and
- desire that their Constitution should enshrine the above mentioned principles and beliefs and make provision for ensuring the protection in Trinidad and Tobago of fundamental human rights of freedoms.

### **Enshrined Rights**

The Rights enshrined in the Constitution include non-discrimination by reason of race, colour, religion or sex and the freedoms emanating from fundamental human rights include:

- freedom of movement
- freedom of conscience and religion beliefs and observance
- freedom of thought and expression
- freedom of association and assembly and
- freedom of the press.

### **The President**

At the time of Independence (1962) Trinidad and Tobago replaced the Queen as Head of State by the Governor General. The President replaced the Governor General when Trinidad and Tobago became a Republic in 1976.

The President is the Head of State and Commander-in-Chief of the armed forces. If the President is absent from the country for any time period then the President of the Senate holds the office of President. The President's term of office is for five years and s/he is elected by the Electoral College which is a unicameral body consisting of all the members of the Senate and all the members of the House of Representatives assembled together.

### **Immunities of the President**

The President is not answerable to any Court for the performance of the functions of his office or for any act done by him in the performance of these functions. Without the fiat of the Director of Public Prosecutions (DPP), no criminal proceedings shall be instituted or continued against the President in any court during his term of office and no process for the

President's arrest or imprisonment shall be issued from any court or shall be executed during his term of office.

### **The Composition Of Parliament**

The parliament consists of the President, the Senate and the House of Representatives.

#### **The Senate**

The Senate consists of 31 Senators-

- 16 appointed by the President on advice of the Prime Minister
- 6 appointed by the President on advice of the Leader of the Opposition and
- 9 appointed by the President in his discretion from outstanding persons from economic or Social or Community organisations and other major fields of Endeavours

#### **The House of Representatives**

This House consists of members who are elected in the manner provided by Parliament.

There are 36 members of the House of Representatives which corresponds with the number of constituencies as provided by an order made by the President under the procedures as laid down in Section 72.

Parliament makes laws for the peace, order and good government of Trinidad and Tobago.

Parliament may also alter the provision of the Constitution provided they are approved by Parliament in the percentages of votes as prescribed by the Constitution..

## **Committees of Parliament**

### **The Public Accounts Committee**

The Chairman of this Committee is a member of the Opposition in the House and comprises members of the House of Representatives and Senate as the House of Representatives may determine. Its functions are to report to the House of Representatives on -

- appropriation accounts of moneys expended out of sums granted by Parliament for public expenditure.
- any other accounts referred to the Committee by the House of Representatives and
- the Report of the Auditor General on any such account.

### **Joint Select Committees**

These bodies shall enquire into

- Government Ministries
- Municipal corporations
- Statutory Authorities
- Enterprises owned or controlled by or on behalf of the State

## **Independent Commissions**

Certain Commissions are established under the constitution to ensure the independence of certain functions that relate to their charges from the Executive.

These are:-

- The Elections and Boundaries Commission
- The Judicial and Legal Services Commission
- The Auditor General
- The Public Service Commission
- The Police Service Commission
- The Teaching Service Commission

In all of these Commissions, the Chairman and members shall be appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition,

A member of the House of Representatives, Senators, Parliamentary Secretaries, Ministers of Government or public officers are not qualified to hold office as a member of a Commission.

## **Other Offices**

### **The Director of Public Prosecution**

The Director of Public Prosecution -(DPP) office is a public office.

The DPP shall have Power in any case:

- to institute and undertake criminal proceedings against any person before any court in respect of any offence under the Trinidad and Tobago Laws.
- to take over and continue any such criminal proceedings instituted by any other authority.
- to discontinue at any stage before judgement is delivered any such criminal proceeding instituted or undertaken by himself or any other person or authority.

The powers conferred upon the DPP... shall be vested in him to the exclusion of the person or authority who instituted or undertook the criminal proceedings:

### **The Ombudsman**

The Ombudsman is an officer of the Parliament who is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. The Ombudsman's Office according to the Constitution shall be provided with staff adequate for the efficient discharge of his functions. The staff of the Ombudsman shall be public officers i.e. appointed by the Public Service Commission.

### **The Supreme Court**

There is a Supreme Court of Judicature consisting of a High Court of Justice and a Court of Appeal. The judges of the High Court are the Chief Justice, who shall be *ex officio* a Judge of the Court, and such number of Puisne Judges as may be prescribed. The High Court is the superior court of records and save as otherwise provided by Parliament, shall have all the powers of such a Court.

### **The Appeal Court**

The Judges of the Court of Appeal is the Chief Justice, who is the President of the Court of Appeal and such number of Justices of Appeal as may be prescribed. The Chief Justice is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. The Judges, other than the Chief Justice shall be appointed by the President acting in accordance with the advice of the Judicial and Legal Services Commission.

### **Other Institutions**

#### **The Public Service Appeal Board.**

The Public Service Appeal Board to which appeals shall lie from such decisions against public officers from any decision of a Service Commission, or of any person to whom the powers of the Commission have been delegated, as result of disciplinary proceedings brought against a public office.

The Chairman of the Appeal Board shall be a judge, appointed by the President after consultation with the Chief Justice and two other members appointed by the President in consultation with a the Prime Minister. One member of the Appeal Court shall be a retired public officer.

#### **The Integrity Commission**

The Commission is charged with the duty of -

- receiving declarations in writing, of assets, liability and income of members in public life and such other offices as may be prescribed.
- the supervision and monitoring of standards of ethical conduct prescribed by Parliament to be observed by the holders of offices referred to above
- the monitoring and investigating of conduct practices and procedures of the member in public life which are dishonest or corrupt..

#### **The Salaries Review Commission**

All of its members are appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

The Commission shall from time to time, with the approval of the President review the salaries and other conditions of services of the President, Members of Parliament, including Ministers of Government and Parliamentary Secretaries and such other offices as may be prescribed. The Report of the Salaries Review Commission is submitted to the President, who shall forward a copy thereof to the Prime Minister for presentation to the Cabinet for laying, as soon as possible thereafter, on the tables of both Houses of Parliament.

## The Issues.

The following issues have been identified from this research work which included discussions with a wide range of stakeholders.

- New Integrity Legislation #88, of 2000 requires judges and senior public servants together with their spouses to declare assets, liabilities and income to the Integrity Commission. This appears to conflict with current contracts.
- The Integrity Commission's staffing and technology are inadequate to enforce legislation.
- There has been severe erosion of the powers of the Central Tenders Board
- There is a perception that the independence of the Elections and Boundaries Commission has been eroded by corrupt practices.
- The Chief Justice claims political interference
- The President has warned of a 'creeping dictatorship' by the Executive.
- Many public statements by politicians are seen as attempts at intimidation of the judiciary and/or indirect censorship of the media.
- There is no regulation of political parties or their financing.
- There is a lack of adequate staff and technology at the Auditor General's office.
- There is a perception of unaccountability and lack of transparency in the use of public funds by certain government or government appointed agencies.
- Procurement decisions are not always publicly disclosed
- Not all Government contracts are advertised publicly
- Government Ministers are sometimes directly involved in contract negotiations for price adjustments in violation of Tender Procedures of the Central Tenders Board Act.
- There is no Anti-Corruption Bureau established.
- The Ombudsman is an officer of the Parliament
- The funding of the Office of the Ombudsman is inadequate to allow it to effectively operate.
- Investigative reporting by the media is virtually impossible because of the current Libel Law.
- The Freedom of Information Act is not yet proclaimed nor is the associated monitoring unit established.
- Local government bodies inadequately funded and depend on the central Government for release of funds that are allocated in the budget..
- There is no announced governmental anti-corruption strategy.
- There are few registers established for recording of gifts and hospitality to public officers.
- The Constitution is a constraint to Government's implementation plans.

## The Issues in Detail

### Integrity Legislation and the Judiciary

The Integrity Commission was established by the Scope of the Integrity in Public Life Act No.83, of October 2000.

The reason for the Act was to make new provisions for the prevention of corruption of persons in public life by providing for public disclosure of their financial status, to regulate the conduct of persons exercising public functions, to preserve and promote the integrity of public officials and institutions.

The Act mandates that within three months of becoming a person in public life, the person shall complete and file with the Commission on the prescribed form, a declaration of his assets and liabilities in respect of the previous year and thereafter annually on a particular date whilst he remains a person in public life.

The declaration required under this Act, shall include particulars as are known by the declarant of the income, assets and liabilities of himself, his spouse and his dependent children.

The scope of the IPL Act, 2000 i.e. persons in public life included Members of Parliament, Government, Parliamentary Secretaries, Members of the Tobago House of Assembly, Members of Municipalities, Local Government Authorities and Boards of Statutory Bodies and State Enterprises.

In November 2000, the IPL (Amendment) Act #88 of 2000 amended Act #83 to include among other people, Senators, Judges and Magistrates (appointed by the Judicial and Legal Services Commission), Members of the Boards of all Statutory Bodies and State Enterprises, including those bodies in which the State has a controlling interest and Chief Technical Officers.

An anomaly inherent here is that Section 30 of Act #83, 2000 (which has not been amended by Act 88 of 2000) reads:-

“A person holding office under the Public Service, Judicial and Legal Service, Police Service, Teaching Service or Statutory Authorities Service Commission, shall upon his appointment, and from time to time as may be required, declare to their appropriate Commission”

(i.e. The Judicial & Legal services Commission, the Public Services Commission etc):

“(a) all business, commercial and financial interest and activities:- which he is engaged and

(b) all personal property, assets and liabilities in respect of himself, his spouse and dependent children.”

Since the Amendment of IPL Act #88, 2000, the judges and magistrates, Permanent Secretaries and Chief Technical Officers must now submit their declarations to both the Integrity Commission and the independent Commissions to which they belong.

The current public opinion recognises that no person is above the law and people in public life should be accountable for their actions and finances. However, it is felt that there should be a distinction in the administration and control of affairs between the Legislature (defined as ‘persons in public life’ i.e. Parliamentarians, members of the Municipalities and Statutory bodies) and the following:

- the Executive which could be defined as persons exercising public functions and
- the Judiciary which are herein defined as persons exercising public functions.

The thinking is that persons subject to the various commissions, (other than the Integrity Commission) could be more effectively monitored in their financial affairs by the Commission to which they are subject, rather than the Integrity Commission.

In fact, the Commission to which he belongs is the body charged under the law with the duty of exercising discipline over him.

The argument then is that there is no need for judges and magistrates, or for Permanent Secretaries and Chief Technical Officers, to be subject to the requirement of submitting returns to the Integrity Commissions. Since the Commission to which they are subject are the legally constituted bodies to monitor both the financial affairs and the conduct of its members.

## **Inadequate Staffing & Technology at the Integrity Commission**

The Integrity in Public Life Act states that the Commission shall be provided with a staff adequate to perform its functions. The Commission has been established with responsibility for receiving, analysing and investigating where appropriate data on the assets, liabilities and income of over 600 persons who are mandated to report to it. .

This implies that it will be sufficiently funded to enable it to employ the necessary technology and staff to perform its functions effectively. The legal framework may be in place but without the administrative machinery it cannot effectively do its duty under this law. The Commission is also mandated to educate the public on matters within its ambit-much more resources must be allocated to it if it is to be an effective agency.

An increase in funding is to be sought in order to solve these constraints.

## **Erosion of powers of the CTB**

The Central Tenders Board (CTB) Ordinance #22 of 1961, was established to manage the procurement for the Government of Trinidad and Tobago and certain Statutory Bodies.

The entities listed were -:

- All Municipal and County Councils (10)
- Central Water Distribution Authority
- The Railway Board
- The Marketing Board
- Planning and Housing Commission
- The Trinidad and Tobago Tourist Board
- The Cocoa Board -

By 1991, this Schedule was amended to include "Items and Services required for the purposes of the Trinidad and Tobago Defence Force and the Protective Services".

In 1992 the ordinance was amended by establishing within the Ministry of National Security- a Special Tenders Committee which had powers to award a contract of up to \$100,000. For amounts over that amount a representative of the Central Tenders Board would be invited to take part in the consideration or discussion of the award and to vote on the matter.

Since then, the following bodies have been empowered by legal notices to solicit bids and award contracts on behalf of the Government such as-

- The National Insurance Property Development Company Ltd.
- Ministries of Government
- Departments of Government
- The Industrial Development Cooperation
- The Public Transport Service cooperation
- The Water and Sewerage Authority
- The Port Authority

The controlling influence and the Powers of the Central Tenders Board have been continuously eroded. At this time their responsibility remains only for the Municipal and Regional Corporations and in the case of Government Ministries where the amount exceeds TT \$500,000 (TT\$ 6.3 = 1 US\$)

The major problem is that there is no *de facto* controlling power on the spending of public funds, particularly where it relates to large government contracts, in spite of the power allocated to the CTB.

Some Ministers assume power outside their jurisdictions. The last Minister of Finance stated publicly that there is no harm in giving a party supporter preference in the award of contracts if he is qualified for the task and his bid is comparable.

The Prime Minister took certain decisions on the award of licenses for cellular services which were challenged in the Courts. The decision went against the Prime Minister but an appeal has been lodged.

With the new Judicial Review Act there are now ways and means of seeking redress from apparent partial governmental decisions, provided one can afford the litigation involved. No legal aid is available in such matters.

### **Perception of Erosion of Independence of the EBC**

The Elections and Boundaries Commission (EBC) was established as an independent body under the Constitution Act #4 Part 1V, Section 71. Its Board is appointed by the President, after consultation with a the Prime Minister and the Leader of Opposition. However, prior to the December election of 2000, there were several instances of police investigation with persons being charged for 'voter padding' i.e. persons registering to vote in constituencies in which they have not lived or are not living. This appears to have taken place in the five main marginal constituencies. Investigations are continuing by the police and also by the main opposition party. The latter claims that there are over 100,000 more names on the voters list than could be possible, taking into account the death rate and the numbers of persons reaching age 18 (the voting age) since the last list was published in 1995.

There have been calls by the political parties and some civil society organisations for a full investigation into the activities of the Elections and Boundaries Commission over the past 3 years. However, the Elections and Boundaries Commission has admitted that they were able to identify 252 persons, during the two weeks of official registration prior to the last election, who were suspected of election irregularities and these were reported to the police. Some of these persons have already been charged.

There is a widely held view that the independence of the Election and Boundaries Commission has been destroyed by corrupt practices. The opposition in Parliament lays this charge at the feet of the current Government. The Prime Minister has publicly stated that no useful purpose would be served by a Commission of Enquiry being established. However, very recently Cabinet approved \$10 million to clean up the voters' list. This perception, the lack of independence within the EBC, it is felt will not go away until a Commission of Enquiry on this issue is established.

There are two large issues in the case of two of the government's candidates signing their nomination papers after making false declarations as to their citizenship. Their nomination forms were accepted by the returning officers in each of the two constituencies. However, it is felt that the EBC could have taken some action before the elections. These two matters are now before the courts.

### **The Chief Justice's (CJ) Claims of Political Interference**

In the opening of the 1999 Law Term the CJ claimed that there existed threats to the independence of the Judiciary. He claimed political interference by the Attorney General and that he was being hounded out of office. In his address the CJ pointed out that under the existing rules, which he wished to amend, cases took an average of seven years to trial and sometimes a good deal longer. There have also been claims that the political directorate wishes to have a larger input into the appointment of judges.

- The Constitution states that judges shall be appointed by the President in consultation with the Judicial and Legal services Commission.
- The Chief Justice is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.
- The AG has an input in the recommendation to the Judicial & Legal services Commission only on the appointments of senior legal officers.

The Attorney General claims there is a lack of accountability by the judiciary. He also lists incompetence as a serious problem in that there are too many judges and magistrates who unjustifiably fail to give judgements within a specified time. He has suggested a judicial reform programme which will require Constitutional changes to implement. He also plans legislation to provide for dismissal of judges for incompetence and asked that the CJ provide him with a list of those judges who have long outstanding judgements.

It has been pointed out to the nation that in recent times, particularly since the appointment of this CJ, there have been administrative improvements resulting in a reduced backlog in outstanding reserved

judgements by 33% during the year 1998 – 1999 and civil appeals heard in 1998 increased by 9% over the previous law term

The administration of justice faces a number of handicaps. Courts, including the prestigious hall of Justice, have had to be closed because of failure of air-conditioning units. If hearings are to be speeded up more judges are required as in the area of civil appeals the caseload doubled between 1997 and 1999 .

The CJ claims that a lack of funds does not allow the employment of CAT reporters in the courts necessitating manual transcription of proceedings.

Public statements made by both the AG and the Prime Minister (PM) recently such as "the UNC party cannot expect justice in the courts" have caused much concern and are seen as being possible intimidation of judges in the political matters now before the courts. The Attorney General who according to public opinion ought to be an impartial arbiter in matters of State, donned his political hat in order to suggest that the judge who was to determine a legal matter involving two UNC candidates was refused a House by the Government. The Prime Minister reported on the same night that the UNC party would not get justice under the present system. The Law Association has only recently offered to mediate in order to bring about a more harmonious relationship between the Judiciary and the Executive.

### **The President Warns of a Creeping Dictatorship**

The President of the Republic of Trinidad and Tobago in his role of leader of the National Alliance for Reconstruction in 1995 was one of the major players who negotiated the alliance which brought the UNC to power that year. The negotiation secured the appointment of two Government senators from Tobago.

Early in 2000, the Prime Minister requested that the President revoke the appointments of the two Senators from Tobago as they had voted contrary to the Government in the Senate. As these two Senators were representatives from the coalition partner the NAR it was seen by the President as a *desire to alter the relationship between Trinidad and Tobago*. No consultation had taken place with the Tobago House of Assembly which had always happened in the past whichever party was in government. The President claimed that would it have profoundly adverse effects on the unitary state.

The Government, on the other hand, focused on the constitutional point i.e. Section 43 of the Constitution states that the President shall act in accordance with the advice of the Prime Minister. So that in order to act constitutionally they claimed, then logically the President had to revoke the appointments and appoint the two new people.

The appointments were eventually made and two new government Senators were appointed; they were not members of the NAR, however.

Near the end of 2000, and before the December election, there were charges that the UNC party had been involved in 'voter padding' and then, just prior to election day, that two UNC candidates had filed illegal nomination forms.

After the last general election which resulted in 19-16-1 there were calls in some of the marginal constituencies for a re-count. Also, there were, and still are, two seats in contention because of the questions pertaining to the eligibility of the two candidates relating to their status on nomination day.

The President did not immediately swear in the Prime Minister but waited until he received from the Elections and Boundaries Commission the official results.

The PM then requested that the President appoint seven (7) of the UNC candidates, who had faced the polls and lost their seats, as Senators and Ministers. The President's response was that he could not appoint these seven persons and used the preamble to the Constitution widely in elucidating his rationale. He appeared twice on national TV to educate and to elucidate on his rationale . His rationale was based primarily on the preamble to the Constitution focusing on the principles of democracy, the spirit of the Constitution and social justice; advising that losers should not be given more power in the society than those who had won seats as this went against the traditions of our society. He implied that if these appointments were to be made with no resistance then, as he said, we must remember that 'streams run into rivers and rivers into seas". What next would we expect from the Executive. He warned in his address of the beginnings of a creeping dictatorship. There was a perception among the general public that if these seven candidates who had failed to win their seats, now controlled by the opposition, were appointed senators and then Ministers of Government, they would be able to service

those constituencies better than the opposition members who won the seats; by the time the next general election came around those who were best able to service the constituents would be voted in, thus wiping out opposition in those areas. The Opposition Leader stated that those seven losing candidates would also have a higher salary than those who legitimately won their seats in Parliament.

The President admitted that he could be wrong and had informed the nation that if he should receive rational arguments informing him why he was wrong then he would make the appointments.

The Prime Minister and the Attorney General went on a public campaign and also invited legal opinions from overseas lawyers which were made public. These opinions focused on the constitutional provisions and not on the moral issues or the democratic principles raised by the President.

Opinion in the country appeared to become more divided along racial lines and the President finally agreed to make the appointments of the seven senators and not long afterwards two of those seven were also appointed Ministers of Government. Some compromise therefore has been given by both sides.

It was a time in our history when people took the opportunity to read and understand the country's constitution. It is evident that our system of government is evolving and that although the constitution served us well since 1976, one cannot foresee all eventualities nor can all eventualities be written into a constitution.

We have had several calls for an examination of the suitability of the Westminster system and a review of the constitution overall.

### **Public Statements by Politicians**

Public Statements by politicians are seen as attempts at intimidation of the judiciary and/or indirect censorship of the media.

The recent public meeting of the Executive continue in certain constituencies and at these meetings public statements are being made by the most senior members of the Government including the Prime Minister and the Attorney General.

At this time there are critical political matters before the courts relating to the two candidates signing apparently false declaration on nomination day. Other matters concerning two opposition members of Parliament who apparently declared that their employment status was that of 'member of Parliament' although Parliament had been dissolved in order to facilitate the holding of elections.

On the eve of a recent court hearing the Prime Minister declared at one such public meeting, that he did not expect that the UNC would get justice before the courts. The Attorney General informed the audience that they have to be mindful that the Judge hearing the matter had applied to the Attorney General's department for an upgraded residence as allowed under his contract. The Attorney General told us that he had turned down the request. When challenged by the public and senior lawyers in the society he stated that he was only stating facts; that he did not imply anything, he knows that judges are not so capable of being swayed and that the media blew the statements out of proportion besides taking them out of context.

Fifty seven lawyers signed a document calling for his resignation and a contempt of court charge to be laid against him. The Law Association a few days later also came out against his statements and said that although they were in contempt of court it would not be good for the country to charge him for contempt. The Media Association of T&T met on the matter and afterwards made a statement saying that they did not report irresponsibly, both radio and TV stations having played actual tapes from the public meeting.

### **Absence of Regulations for Political Parties**

There are no regulations binding political parties. There is no process to register a political party and therefore no regulations to bind them.. The party's symbol is registered with the Elections and Boundaries Commission.

There is a regulation that a candidate may spend only up to \$50,000 (US \$8,000) each on their election campaigns Representation of the people's Act; Section 48. There are no regulations pertaining to the spending by the political parties as separate entities.

It operates its financial affairs as any Social Club.

The only accounting that has to be done is that the candidates must submit on the required forum a statement of all payments made by the election agent (of every candidate) together with all bills, and receipts. (Rep. of People's Act, Section 52). The political party's accounts do not have to be published.

Substantial donations to political parties are not made public. In recent years, major corporations have funded the political parties. In the past five years members of corporations have also been able to secure Government appointments at all levels, for example as Minister of Finance, Chairman of State Boards. Major contracts have gone to those who supported financially the ruling party e.g. the airport contract was awarded to a sole bidder, a party financier. The Minister in charge quite openly stated that even though the Bid Price was higher than the Engineer's recommended price, the contract was awarded, and negotiations took place to bring down the cost nearer to the Engineer's estimate.

There is public discussion by individuals and organisations and they are of the view that political parties should be brought under the control of, for example, Registration Regulations and funding requirements that include annual disclosure of donors and amounts donated.

Good governance principles also dictate that party spending at election time as well as candidate spending must be controlled and accounted for.

Other related rules under discussion for inclusion are as follows:

- Advertising Time Equity
- Campaign Term constraints
- Public Funding of Political Parties and
- Annual Audit by the Auditor General with reports being laid in the Parliament.

The Trinidad and Tobago Transparency Institute is at this time examining other countries' regulations and has identified 'Regulation and Funding of Political Parties' as a major project for research during this year.

### **Inadequate Staffing and Technology at the Office of the Auditor General**

The Auditor General is appointed under the Constitution, Chapter 8, Finance Section 116.

In the exercise of his functions, the Auditor General is not subject to the direction or control of any person or Authority, thereby ensuring his independence.

The Auditor General is also one of those independent persons appointed by the President after consultation with the Prime Minister and The Leader of the Opposition. He remains in that post until the age of 65 (unless vacated by him voluntarily or removed because of some infirmity of mind or body etc.)

The Auditor General's office requires a staff adequate for the efficient discharge of his functions according to the Constitution. The staff of the Auditor General's department are public officers appointed by the Public Service Commission in consultation with the Auditor General.

The duties of the Auditor General are to audit all the public accounts of Trinidad and Tobago of all officers, courts and authorities of Trinidad and Tobago and report annually. The Auditor General must submit these reports annually to the Speaker of the House of Representatives and the President of the Senate and the Minister of Finance. The Reports are laid before the members of both Houses of Parliament at the sitting of the House after their receipt by the Speaker and the Senate President.

Notwithstanding all of the above, several reports are ten years overdue. There exists an extreme staff shortage at the office of the Auditor General which is due to

- funding shortages and
- P.S. Commission inefficiencies in appointments.

It is the general perception that there is subtle political control of the independent agencies and commissions (not withstanding the fact that the constitutional arrangements provide for adequate staffing) by inadequate release of funds so that staff and technological requirements are not adequately met.

### **Unaccountability in the Spending of Certain Public Funds**

There is growing public concern on the uses to which public funds are put and on the lack of accountability thereof in the spending of such funds. Over the past years the Government has initiated

several major projects such as the Airport contract, the Miss Universe Pageant, National Football Stadia projects, the National Road Paving exercise, the Churchill Roosevelt Highway Interchange.

There has been little or no proper tendering procedures, transparency and accountability. Several instances of public indignation and calls for enquiries are on the public record. The Trinidad and Tobago Transparency Institute and the Joint Consultative Council of Contractors jointly called for a Commission of Enquiry into the Airport Contract over two years ago. The President was asked as a last resort to institute this Commission of Enquiry. His advice was that he did not have such power although he saw the need for one. [documentation attached]. The executive has been silent in most cases and when there is a response it is invariably of this kind - "If you have evidence of corruption take it to the police" This particular response frequently comes from the Prime Minister. The public's view is that the public enquiries called for would inform as to whether there is corruption and if there is then that would be a matter for the police.

There is a perception by the Prime Minister and the Executive that certain provisions of the Constitution, and other acts of parliament, are contributing to the bureaucracy of governance. Hence, there are evolving executive action that seeks to undermine these provisions, in spite of the fact that these provisions are the checks and balances that seek to inhibit corruption..

### **Public Disclosure of Procurement Decisions**

The issue of "no public disclosure of procurement decisions" is closely linked to that of the concern for the use of public funds. All contracts awarded by the Central Tenders Board are published in the official gazette.

Although there is a Public Accounts Committee (PAC) of Parliament which is mandated to audit Public Accounts i.e. public funds authorised by Parliament and there also exists the Public Enterprises Accounts Committee (PEAC) of Parliament. Set up to review the audited accounts of State Enterprises these do not appear to be operating effectively.

Also, amendments have been made over the years to the Central Tenders Board Act to exclude various State Authorities and Corporations. Ministers and Boards of these State entities are directly involved in awarding contracts and in many case this is not done through open tendering. In fact, the Build, Own Operate, Transfer (BOOT) techniques have been utilized to get around public tender.

Recent examples of such spending without accountability are the Miss Universe Pageant, 1999, The National Stadia project 2000-01, the Road Paving Exercise 2000-01 and the Churchill Roosevelt Highway Interchange project. The Minister responsible for this last project was removed this month (March 2001) because of an outcry by victimised contractors. The charge was one of non-transparency in the contract. Award. This award was made on the specific say-so of the Minister concerned. New bids are now being invited.

### **Advertising of Government Contracts**

Not all Government contracts are advertised publicly. Government Ministers are sometimes directly involved in contract awards.

The issue of the Non-transparent tendering process is interrelated to the non-disclosure and accountability discussed above.

In many cases there is an open flouting of the rules of the Tenders Board. There are no public tender procedures and awards are just announced in some cases. Contracts appear to be awarded based on friendship and/or who funded the party in power. The correlation is high between contracts and friends of the Government.

There appears to be a serious case of state capture by political financiers in both contracts awards and appointments to State Boards and Authorities. For example the Minister of Energy is a known party financier of this administration. His position in the previous administration was Minister in the Office of The Prime Minister, in charge of Information and Telecommunications though he and his family business are involved in Telecommunication. Further, his business was short-listed in the license process to implement a cellular Service by the Prime Minister, while he was de facto Minister in charge of Telecommunications. This action was challenged in the Courts by the Company who was allegedly removed from the Ministry's appointed Committee's short list. The Prime Minister was found guilty of strong bias and was instructed to have nothing further to do with the award of these licenses by the Government. This decision has since been appealed and awaits the process of law.

## Anti-Corruption Bureau

There is no Anti-Corruption Bureau established. There is in place an Anti-Corruption Act of 1987. An amended Act is apparently being drafted which will incorporate an Anti-Corruption Agency. It has been suggested that this Agency may be established under the Integrity Commission.

At this time the 1987 Act provides for penalties for persons either giving or receiving illicit gifts, fees, rewards etc. Also, it covers persons who indulge in corrupt transactions, which involve agents who give or receive gifts on behalf of another person or agent

The penalty includes upon summary conviction or upon conviction on indictment a fine of \$500,000 and imprisonment of ten (10) years and, in such manner as the Court directs, the repayment of amount or value of the gift, loan received by him.

## Ombudsman

The funding of the Office of the Ombudsman is inadequate to allow it to effectively operate.

The Ombudsman is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. The Ombudsman is an officer of the Parliament.

Section 92 (1) of the Constitution states: "The Ombudsman shall be provided with a staff adequate for the efficient discharge of his functions. The budget for the office of the Ombudsman goes through the Speaker of the House to the Cabinet for approvals. Notes to the Cabinet go through the office of the Attorney General.

There is inadequate funding provided to properly staff an office which has been established in Tobago and there are no regional offices in any other part of Trinidad. Technology requirements are obviously affected. Therefore, staff of the office of the Ombudsman have no alternative but to travel from place to place in order to fulfil their functions. This can be time consuming and tedious.

There is no accounting department within the structure of the office; this function is carried out by the staff of the Parliament under the direction of the Clerk of the House of Representatives.

Decentralisation of the office could bring about more economically and technically efficient operations.

## Investigative Reporting

Investigative reporting is virtually impossible because of the current Libel Law. The Libel and Defamation Act dates back to 1946 and was amended in 1950. This states in part that, in any action for a libel contained in any public newspaper or other periodical publication, it is sufficient for the defendant to plead that the libel was inserted in the newspaper or other periodical publication without actual malice, and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in the newspaper or other periodical a full apology for the libel, and every such defendant upon filling such plea, be at liberty to pay into court a sum of money by way of amends for the injury sustained by the publication of the libel; and the payment into the court shall be of the same effect and be available in the same manner and to the same extent as any payment into court under the rules of the Supreme Court.

Also, according to Section 10 (1) 'On the trial of any indictment for a defamatory libel, the defendant having pleaded the plea as mentioned in this section, the truth of the matters charged may be inquired into, but shall not amount to a defence unless it was for the public benefit that the matters should be published; and to entitle the defendant to give evidence of the truth of the matters charged as a defence to the indictment, it shall be necessary for the defendant in pleading to the indictment to allege the truth of the matters charged in the manner required in pleading a justification to an action for defamation, and further to allege, that it was for the public benefit that the matters charged should be published, to which plea the prosecutor shall be at liberty to reply generally denying the whole thereof; but if after the plea the defendant is convicted on the indictment, it shall be competent to the Court pronouncing sentence to consider whether the guilt of the defendant is aggravated or mitigated by the plea, and by the evidence given to prove or disprove it.

The practice in Trinidad and Tobago is that a person mentioned in any corruption or integrity related matter may file an injunction in the High Court preventing further publication. This ensures silence on the matter thereafter by the particular newspaper as it is then defined 'sub-judice' until the matter is heard before the Court. There are cases libel pending for many years in some cases. There is also a large backlog of cases which might explain these delays.

However, very recently the Trinidad Express successfully challenged one such injunction before the Court that the newspaper intended to publish an article which reported that a current Government Minister had been involved in the buying and the reselling of a Bank instrument from which his family business gained profit. This story would not have been told only the particular newspaper challenged the injunction. The Judicial Review Act will now allow such actions in the future.

### **The Government's proposed Reform of Media Law**

A Green Paper on Media Law Reform states at Section 1.3 (a)

“ A Government's job is to exercise power as elected politicians think best, and the media's job is to criticise them for any perceived mistake in that exercise. ...The law should provide the media with machinery for access to information and for it to be encouraged to expose corruption and malfeasance, while at the same time providing the government with power to punish or stop media behaviour which imperils national security or undermines the democratic fabric”.

The Green Paper realises that:

“laws which relate to freedom of expression are old, vague and frequently anachronistic. They mainly comprise the English common law i.e. decisions in particular cases made by Judges in London over the past four centuries. Often these decisions are antagonistic to press freedom”.

The paper goes on:

“Such media law statutes as do exist are mainly taken direct from British equivalents ..... One bad example is the Libel and Defamation Act, which dates from 1846 and embodies British law as it existed at that time. It contains the offence of criminal libel which many believe should be abolished, and includes none of the necessary reforms achieved in Britain by the Defamation Act of 1952. Even this legislation has now been found defective in several respects, and has been updated by a new Defamation Act. Thus the media in Trinidad and Tobago is denied the statutory extension of the defences of justification and fair comment”.

It is proposed that once the public debate the Green Paper and the consultation process is completed, the Parliamentary draftsmen will produce a single statute – The Press and Broadcasting Bill - repealing all previous statutes and containing those reforms which receive a larger measure of public agreement.

It is also being proposed that the new Act should provide special protection for journalists against punishment for contempt for refusing to disclose their sources of information, unless the identity of the source is essential to prevent serious crime or major disorder or to defend national security

The paper is not yet out for public comment.

### **The Freedom of Information Act**

The Freedom of Information Act is not yet in Operation. The country's first Freedom of Information Act was passed in September 1999. This Act was enacted

“to give members of the public a general right (with exceptions) of access to official documents of public authorities and for matters related thereto”.

Complaints pertaining to this Act are the constraints to public access to official information.

In Section 11(1) Rights of Access to Information it states:

“Nothing in this Act shall prevent a public authority from -

- (a) giving access to documents or information
- (b) amending documents,

other than as required by this Act where it has the discretion to do so or where it is required to do so by any written law or order of a court”.

In Section 13(1) Requests for Access it states:

“A person who wishes to obtain access to an official document shall make a request in the form set out in the Schedule, to the relevant public authority for access to the document”.

And in 13(5) it states:

An application for access to an official document held by a public authority (identified as a Service Commission, a Body Corporate or an unincorporated entity which is supported ... by government funds and over which government is in a position to exercise control) shall be made to the responsible Minister.

Section 24 – Section 32: *Exempt Documents* identifies the following as exemptions under the Act:

- Official records of any deliberation or decision of Cabinet
- A document prepared by a Minister of Government or by a public authority on his behalf for the purpose of submission for consideration to Cabinet
- Copies of the above or a draft thereof
- Documents pertaining to defence and national security
- Document pertaining to international relations or prejudicial to relations between the government of Trinidad and Tobago and any other State or international organisation of States or a body thereof
- Internal working documents that may disclose an opinion, advice or recommendation prepared by an officer or Minister of Government for the...deliberative processes involved in the functions of a public authority and would be contrary to the public interest. Documents of this type are listed as factual information, a statistical survey, a report by a valuator, an environmental impact statement, a record of a test carried out on a product for the purpose of purchasing equipment for a public authority or a consumer test report etc.
- Law enforcement documents
- Documents
  - affecting legal proceedings or subject to legal professional privilege
  - affecting personal privacy
  - relating to trade secrets
  - containing material obtained in confidence
  - affecting the economy, commercial affairs and certain documents concerning operations of public authority etc.

Notwithstanding any law to the contrary a public authority shall give access to an exempt document where there is justification that it is in the public interest having regard both to any benefit and to any damage that may arise from doing so.

(This latter clause was included after TTTI's submission to all Parliamentarians which suggested the 'public interest' clause).

However the Act states that where a request is made for access to a document held by the National Broadcasting Network (the state owned radio and TV station), that company shall not be required to give access under this Act to any part of the document which discloses the source of any information obtained in the course of making any programme or broadcast.

The Act although in place is thus far inoperable. It has not yet been proclaimed by the President. The last Minister of Public Administration was in the process of setting up a Monitoring Unit to oversee the Act and had commenced a training programme for public officers to facilitate its implementation. This Ministry has since been disbanded and there has been so far been no announcement on its implementation. We have been informed that it must also revert to the Parliament for amendment; as the Minister of Public Administration mentioned in the Act no longer exists. It is the intention to amend this with 'the Minister responsible....'

## Local Government

Local Government Bodies are inadequately funded. Funding of local government bodies is done through the Central Government's Ministry of Finance. Local government municipalities present their

budget annually to the Ministry; such budget to include capital, income and expenditure information which the Minister has the right to amend as necessary.

Each local government body has powers to collect taxes such as property taxes based on an annual rateable value which is decided upon by an assessor. The portion of these taxes to be retained by the local body is determined by the Minister of Finance.

Monies received by the Municipality are to be applied to salaries and pensions of employees present and past, expenses incurred in maintenance and formation of streets, footways, squares and public places within the Municipality and does not include natural ravines, main drains and watercourses. It included maintenance and management of markets, pastures, slaughter houses, recreation grounds and cemeteries under their control and of course their Corporate property.

Over the past years it has been a common complaint that opposition controlled government bodies are not given sufficient funds to enable them to conduct the works under their legal arrangements as stated by the Act.

Instead, funds are routed through government controlled bodies which in turn award the required contracts. This can result in employees and equipment moving in from other areas and conducting the necessary works. This has already resulted in one Municipality challenging this practice in court and winning the judgment. Before the recent Tobago house of Assembly in Tobago the central government moved in materials and equipment and began a paving exercise in several roads which resulted in the filing of an injunction which succeeded in stopping work on one of the major roads in Tobago.

There have been several charges of corruption in the award of contracts particularly in the 'roads programmes'; one contractor also had a successful court matter which resulted in new bids having to be invited.

A past Local Government Minister is now on 27 charges of receiving corruptly cash for contracts awarded to one contractor. He has also more recently been charged with murder of a Chairman of a Regional Corporation who had blown the whistle on alleged corruption.

No whistle blower protection exists in Trinidad and Tobago.

The present practice of routing funds through government controlled bodies is seen as part of the alleged 'creeping dictatorship'.

### **Government Anti-Corruption Strategy**

The Government has not announced an Anti-Corruption Strategy.

There have been charges of corruption over the past years of past administrations in the country.

Trinidad and Tobago has signed the OAS convention and is one of the countries recently allowed access to the USA market under conditions similar to those of Canada and Mexico under the NAFTA Agreement. Under both of these agreements the country is required to implement certain arrangements including introducing anti-bribery clauses and establishing an anti-corruption bureau. We have been informed that an Anti-Corruption Bureau is under review but there has been no official announcement of a Government Strategy to date.

An anti-corruption Act of 1987 exists which is apparently to be updated.

### **Registers for Gifts and Hospitality**

Registers are generally not kept for Gifts and Hospitality with all Ministries and Commissions. The general feeling is that although several laws have been established, all have not been proclaimed, and/or the required regulations whereby e.g. the Integrity Commission will proceed to conduct its business are not yet completed.

The Integrity Commission still has not got adequate staff or technology to allow it to fulfill its mandate. Although in many cases there are rules concerning gifts and hospitality registration, Registers are not kept in most cases.

### **Constitutional Constraints**

Constitutional control devices are working against Government's implementation plans.

The political executive of the T&T Government has to work in close association with other bodies, to whom it may also be called upon to direct. To limit the influence on, and power over these bodies by

the Executive the Constitution and other Acts of Parliament have created certain measures that isolate the selection of, for example, the Public Service from the direct power of the Executive by the creation via the Constitution of Service Commissions. Also, other control devices have been put in place e.g. Central Tenders Board, to prevent unilateral decisions by the political directorate in the award of contracts.

Many of the Governments at one time or the other have complained about the unnecessary bureaucracy created by these control devices in getting things done. It may be that indeed delays are created but these may be because of inadequate staff, equipment and the use of obsolete procedures. (A common problem it seems among most of the independent Commissions and the bodies set up under the Constitution).

But there is suspicion that these controls inhibit the ability of the politicians to unilaterally make crucial decisions. When these decisions relate to procurement and even employment the specters of corruption and partisanship raise their ugly heads.

Further, Governments have used its state enterprises (not under the Public Service Commission) to give employment to their cronies. In fact, during the oil boom days much employment in these organisations was a Ministerial prerogative. Employment in the public service did not suffer though there is an evolving practice of Ministers directly employing advisors and consultants.

There is a perception by the current Prime Minister and the Executive that certain provisions of the constitution, and other Acts of Parliament, are contributing to the bureaucracy of governance. Hence, there are evolving executive actions that seek to undermine these provisions. For example, the Build, Own, Operate and Transfer (BOOT) technique has been used to get around the award of tenders by the Central Tenders Board for the building of five stadia for the upcoming world youth football competition.

Governments have been increasingly employing directly personal assistants and specialists within Ministries (without reference to the Public Service Commission) so as to increase their ministerial control of the Public Service. So much so, that there is now a Bill before Parliament which seeks to allow the employment of Permanent Secretaries on contract. The Bill is silent on procedures for their employment. TTTI has just issued a press release which adequately describes the fears of many and includes a recommendation that will continue to ensure the control of these new contract officers and their independence from the political executive.

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