Guyana's Compliance with the Inter-American Convention Against Corruption and the United Nations Convention Against Corruption

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Introduction

"Corruption is an insidious plague that has a wide range of corrosive effects on society. It undermines democracy and the rule of law, leads to violations in human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human society to flourish…It hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development."

These are the words of former United Nations Secretary-General Kofi Annan in his foreword to the United Nations Convention against Corruption (UNCAC). Mr. Annan goes on to state that UNCAC's adoption will warn the corrupt that betrayal of the public trust will no longer be tolerated and that it will reaffirm the importance of core values such as honesty, respect for the rule of law, accountability and transparency in promoting development, and making the world a better place for all. He suggested that if the Convention is fully enforced, it will make a real difference to the quality of life of millions of people around the world, and by removing the biggest obstacles to development, it can help achieve the Millennium Development Goals. According to the United Nations, there is no single, universally accepted definition of corruption. For example, the United Nations Convention Against Corruption does not contain a single definition of corruption, but lists several specific types or acts of corruption[1]. There are however several co-called "working definitions" of corruption. For example, the definition used by Transparency International is "the abuse of entrusted power for private gain"[2]. The working definition of corruption adopted by the World Bank Group is more oriented to the public sector. That definition is: "The abuse of public funds and/or office for private or political gain"[3]. Corruption results in the misallocation of scarce resources, and areas in genuine need of developmental assistance are overlooked in preference to those that offer the greatest rewards for the corrupt official. Investor confidence is shaken, and countries that are in dire need of foreign investment are deprived of it. As a result, international flow of goods, services and capital is affected, and investment ratios deteriorate. High levels of corruption are associated with low ratio of investment to GDP, low foreign inflows of direct investment and low levels of capital inflows. They also result in the perpetuation of weak governments through the loss of skills.

[1] *The United Nations Anti-Corruption Tooklit*, 3rd Edition, UNODC, 2004. Available at www.undoc.org/documents/corruption/publications_tooklit_sep04.pdf, p. 10.

[2] *Frequently asked questions about corruption*, Transparency International, Available at www.transparency.org/news_room/faq/corruption_faq.

[3] Available at www.u4.no/pdf?file=/document/literature/publications_adb_manyfacesofcorruption.pdf.

Inter-American Convention against Corruption

The Inter-American Convention against Corruption (IACAC) came into force in 1997 and is the first international anti-corruption treaty that has influenced the adoption of a number of other international instruments, including UNCAC and the African Convention against Corruption. The main objectives of IACAC are: (a) to promote and strengthen the development of the mechanisms needed to prevent, detect, punish and eradicate corruption; and (b) to promote, facilitate and regulate cooperation among the Member States to ensure the effectiveness of measures and actions in place to fight corruption.

Preventive measures

The most important aspect of the Convention relates to preventive measures. It covers the following key areas:

- Internal controls and maintenance of books of account;
- Written rules and instructions for the proper execution of duties;
- Conservation and proper use of public resources;
- Government hiring and compensation;
- Procurement of goods and services, and the execution of works;
- Revenue collection and control;
- Codes of conduct, conflicts of interest and other ethical considerations;
- Declaration of income, assets and liabilities;
- Participation of civil society;
- Reporting acts of corruption and whistleblower protection; and
- Oversight arrangements.

Other measures

Other aspects of the Convention include measures to combat transnational bribery; illicit enrichment; unauthorized use of classified or confidential information; extradition proceedings; assistance and cooperation among State parties; identifying, tracing, freezing, seizure and forfeiting property or proceeds from corrupt activities; and bank secrecy laws.

United Nations Convention against Corruption

UNCAC came into force in 2005 and is more detailed than IACAC. The related UN resolution referred to the World Summit on Sustainable Development in South Africa in 2002 where corruption was declared a threat to sustainable development of people. Accordingly, the General Assembly expressed concern about "the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice, and jeopardising sustainable development and the rule of law".

In addition, the General Assembly expressed concern about the links between corruption and other forms of crime, including money laundering; and cases of corruption that involve vast quantities of assets, which may constitute a substantial portion of State resources. It also considered that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential.

The General Assembly further stated that it is convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law. Accordingly, it asserted that the prevention and eradication of corruption is a responsibility of all States. As such, they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective.

Preventive measures

Parties to UNCAC are to develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. UNCAC specifically refers to the establishment of a body or bodies to promote effective practices aimed at preventing corruption. These bodies should be granted the necessary independence and resources to carry out their functions effectively, free of undue influence.

In relation to the public sector, State parties are to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and non-elected officials based on, among others, efficiency, transparency and objective criteria such as merit, equity and aptitude. In addition, they ensure that appropriate systems are in place for public procurement, based on transparency, competition and objective criteria in decision-making that are effective in preventing corruption.

Other measures include:

- Establishing criteria concerning candidature for and selection to public office, enhanced transparency in the funding of candidates for elected public office, and funding of political parties;
- Maintaining and strengthening systems that promote transparency and prevent conflicts of interest;
- Facilitating simplified access by members of the public to information on government programs and activities;
- Strengthening the integrity of the judiciary and prosecution services to prevent opportunities for corruption among its members;
- Enhancing accounting and auditing standards for the private sector, and ensuring cooperation between law enforcement agencies;
- Participation of individuals and groups outside the public sector to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.
- Ensuring comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions as well as other bodies particularly susceptible to money laundering, including the establishment of a financial intelligence unit;
- Criminalizing laundering of proceeds of acts of bribery, embezzlement, abuse of functions and other related acts as well as concealment and obstruction of justice; and
- Freezing, seizure and confiscation of proceeds of crime as well as property derived from such proceeds.

Compliance with IACAC and UNCAC

Guyana acceded to the two conventions in 2000 in the case of the IACAC and 2008 in the case of UNCAC. The Organization of American States (OAS) recently completed its fourth round review of Guyana's compliance with IACAC relating to oversight bodies, which include the Audit Office, Director of Public Prosecution (DPP), Service Commissions and the National Tender and Administration Board (NPTAB). The main recommendations are: (a) these bodies are provided with adequate financial and human resources to enable them to discharge their responsibilities effectively; and (b) an anti-corruption agency be established with specialized units within the Police Force and the Office of the DPP.

Guyana has consistently scored poorly on the Corruption Perception Index (CPI). In 2013, it ranked 136 out 177 countries surveyed with a score of 27 out of 100. In addition, allegations of corrupt behavior are being highlighted in the print media on a routine basis. In view of the current workload of the Police and the Office of the DPP, and their lack experience and expertise in dealing with white collar crimes, it would be more appropriate for anti-corruption legislation to be promulgated to provide for, among others, the establishment of an anti-corruption agency clothed with powers of prosecution, and a special anti-corruption court to deal with offenders.

Anti-money laundering efforts

Guyana is a transit country for cocaine destined for North America, Europe and West Africa. In addition, money laundering is linked to trafficking in drugs, firearms and persons as well as corruption and fraud, and appears to prop up the economy. Only recently, Guyana once again made the international news following the arrest in the United States and Italy of at least two dozen persons attached to criminal networks in New York, Mexico, Southern Italy and Malaysia for planning to ship 1,000 lbs of cocaine from Guyana valued at US$1 billion. Quite recently also, Guyana reportedly joined Mozambique at the bottom of the list of 55 countries that had been evaluated in terms of their anti-money laundering efforts.

Guyana's record of dealing with drug trafficking and money laundering can best be described as very cosmetic. After many years, legislation was eventually enacted in 2009 but many of the requirements were not implemented, especially as regards the Financial Intelligence Unit. There have also been no significant arrests and prosecutions. In addition, the Caribbean Financial Action Task Force (CFATF) found the legislation to be significantly deficient in terms of its conformity with the standard recommendations used to evaluate countries' efforts to combat money laundering and terrorist financing. Faced with repeated threat of sanctions, the Government tabled the related amendments. It wanted their urgent passage as presented, contending that: (a) the proposed amendments addressed all the concerns that the CFATF had raised; and (b) if they are not approved, Guyana would be blacklisted.

The combined Opposition felt that the opportunity should be taken to carry out a more comprehensive review of the legislation in view of the problems identified above. The Government was, however, unwilling to consider other aspects of the legislation and insisted that its concern was only with the deficiencies identified by CFATF. As of now, there is still no agreement on the proposed amendments.

The Supreme Audit Office

The main oversight body is the Supreme Audit Office (SAO) whose main responsibility is to audit the public accounts and to report the results to the Legislature. The Organization of American States report commented on the prolonged acting arrangements involving the Auditor General who acted for eight years before being appointed at a time when he was about to retire in his substantive position. The Chancellor of the Judiciary and the Chief Justice have also been

acting in their positions since 2005. Although the report did not refer to the latter two positions, it did concur with the widely held view that lengthy acting arrangements involving holders of key constitutional positions militate against their ability to discharge their responsibilities in an independent, objective and professional manner. These officials are required to be independent of the Executive in the performance of their duties.

The report emphasized the need for the Supreme Audit Office to have more qualified accountants. The Auditor General himself is, however, not a professionally qualified accountant although he is required to supervise the work of Chartered Accountants in public practice contracted to undertake audits on his behalf. In addition, among senior management, there is only one such qualified person. Further, there is an urgent need to promulgate specific rules to avoid, among other things, situations where close family relations are responsible for preparing, certifying and transmitting financial statements for audit on the one hand, and those who oversee the audit of those statements on the other hand. Appearance of recusal is not an option, especially when one occupies a position of influence in the audit entity, and is more than likely to raise questions of credibility in terms of the results. This is more so when one considers that public accountability is far more rigorous, stringent and demanding than that which prevails in the private sector.

The Stabroek News editorial of 30 December 2013, reflecting on the current state of affairs of the Supreme Audit Office, had the following to say:

> *The Auditor General's Office – the premier watchdog on accountability- would now be considered a satellite of central government as opposed to a fearless champion of financial rectitude. The government's hold on this constitutional office through upper level appointments has seriously eroded its independence as evidenced by its increasingly innocuous annual reports on government accounts and the lack of investigation of major and questionable expenditures by the government.*

In order to strengthen the independence from the Executive of this key oversight body, the relevant legislation should be amended to provide for qualification requirements for the Auditor General as well as limiting his/her tenure of office to, say ten years, in keeping with current trends. The present arrangement is one in which, once appointed, the Auditor General serves until age 65. The first post-Independence Auditor General served for 21 years while the incumbent would have served 18 years upon retirement.

The Public Service Commission and government hiring

The Public Service Commission is the constitutionally mandated body responsible for ensuring competitiveness, fairness and transparency in recruitment, transfer, promotion, discipline and retirement of public servants, including setting emoluments and conditions of service. Public servants who are dissatisfied with the decisions of the Commission can address their grievances to the Public Service Appellate Tribunal. However, the Tribunal has not been operational since 1995.

While the OAS report recommended that the Tribunal should be reactivated, some 20 per cent of public servants are employed on a contractual basis at emoluments and conditions of service superior to those employed in the traditional public service. These contracted employees are recruited without the involvement of the Public Service Commission, and there is a lack of transparency. Most of these employees are handpicked individuals, some of whom are retained beyond their retirement age.

It is evident that the Public Service needs to be reformed to provide for, among others, a unified system for recruiting and remunerating public officials, and for the Public Service Commission to be involved, as provided for by the Constitution.

Public procurement

Public procurement is governed by the constitutional amendment of 2001 and the Procurement Act of 2003. The OAS report highlighted the need for new regulations to be issued under the Act for debarment procedures and penalties for contractors who perform unsatisfactory work and who pay bribes. The recommendation was based on the widespread concerns over the quality of work produced by contractors and of overpayments made.

A significant shortcoming in the Act relates to the power of the Minister of Finance to appoint the members of the National Procurement and Tender Administration Board (NPTAB) with the reporting relationship to him. The Minister is a key member of Cabinet that offers "no objection" to contracts of G$15 million and over, based on recommendations by the NPTAB. That apart, the continuing failure since 2001 to establish the Public Procurement Commission to ensure that the procurement of goods and services and the execution of works are conducted in a fair, equitable, transparent, competitive and cost-effective manner, remains a source of major concern. Many stakeholders hold the view that the present system in place does not provide them with confidence as to the fairness and transparency in the award of contracts.

The Government is, however, insisting that Cabinet should continue to be involved in the procurement process although the constitutional amendment removes that involvement and vests it with the Commission. As a result, the stalemate between the Government and the political opposition remains unresolved.

Internal controls and maintenance of books of account

The Government is yet to promulgate accounting standards to provide a basis for financial accounting and reporting although the related law was passed in 2003 requiring the Minister of Finance to do so. The current system is a cash-based one inherited from the British with little or no modifications over the years. It is therefore outmoded and not reflective of international best practice. Many countries have found it necessary to move away from the cash-based accounting system to one based on accrual accounting, and have adopted the International Public Sector Accounting Standards.

There is also no organized system of internal auditing, especially at larger Ministries, though efforts are being made to implement one at the Ministry of Finance. Strong and effective internal audits will ease the workload of the Audit Office since reliance can be placed on such audits.

Revenue collection and control

The Constitution provides all public revenues to be collected promptly and paid over to the central Treasury, out of which all public expenditures are incurred only with the approval of the Legislature. However, since 2002 the Government has been using a state-owned company as a "parallel Treasury" through the diversion of certain state revenues. These include dividends from public enterprises; proceeds from the sale of state properties and other assets; and transfers from other state institutions.

The Government also uses the "intercepted" revenues to meet expenditure without parliamentary approval and there is a lack of transparency. As a result, the National Assembly passed a resolution almost two years ago, calling on the Minister of Finance to, among others: (a) account for the properties that the company has been entrusted with; (b) explain the basis

upon which such properties were disposed of; and (c) hand over the monies and excess funds to the Treasury. To date, the Minister, who is also the Chairman of the company, is yet to comply.

Declaration of income, assets and liabilities

The Integrity Commission Act 1997 provides for the establishment of the Integrity Commission and for securing the integrity of persons in public life. More specifically, the Commission is responsible for monitoring and reviewing annual declarations of assets and liabilities of all politicians and senior government functionaries; and the promulgation of a code of ethics.

The work of the Commission has, however, been stymied for some years now because of the non-appointment of the Commissioners. This prompted the main Opposition Members of Parliament to decline to submit their annual returns. As a result, a significant gap in the fight against corruption remains undefended especially when one considers that quite a number of public officials are flouting unexplained wealth with impunity. Numerous calls for the appointment of members of the Commission remain unheeded.

Other matters

The only civil society organization that is devoted to fighting corruption is the Transparency Institute Guyana Inc. (TIGI) which was established in 2010. It is an affiliate of Transparency International. TIGI's main role is to create an awareness of the effects of corruption among citizens and what they can do about it. Because of its defensive approach whenever the issue of corruption is raised, the Government, however, is yet to embrace TIGI's work.

No legislation is in place to protect persons who report, in good faith, allegations of corrupt behavior. There is also an urgent need to regulate campaign financing for political parties. While an Access to Information Act is in place, there have been no requests for information since the appointment of a Commissioner of Information some nine months ago.

Conclusion

The Government of Guyana needs to do more to secure satisfactory compliance with IACAC and UNCAC and to win public confidence that it is seriously committed to tackling corruption. If its efforts are to succeed, the Government needs to cease being in a state of denial about the existence of corruption; stop "circling the wagons"; accept the results of the Corruption Perception Index (CPI) in good faith; and sincerely commit itself to improving the country's score and ranking on the CPI. Key areas that have fallen short of expectation have been highlighted in this presentation.

Finally, the Government of Guyana needs to embrace the work of Transparency International in a genuine partnership to rid the country of the scourge of corruption that benefits the rich at the expense of the poor and vulnerable.