

Turks and Caicos Islands (TCI) Integrity Commission- A Model of Anti-Corruption Institution: Lessons for the Region

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By

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Introduction

1. On Friday March 14, 2014, at Port of Spain, Trinidad, Sir David Simmons,¹ Chairman of the TCI Integrity Commission delivered a paper on similar subject at a Conference organized by the Transparency International of Trinidad and Tobago. I had the honour and privilege of his invitation to proof –read the paper, and with his kind permission, to make reference to and or adopt the content as necessary in my presentation in this Conference.

Background to the inauguration of the Commission

2. The TCI Integrity Commission (the Commission) was established in 2008 by the Integrity Commission Ordinance and formally inaugurated in May 2010 as an independent anti-corruption agency. It is now enshrined in the TCI Constitution as one of the Institutions protecting good governance.

3. The antecedent circumstances to the coming into existence of the Commission were summarized with remarkable clarity and simplicity in the above-mentioned paper² of Sir David Simmons. The immediate catalyst is probably now of common knowledge, namely, the Hon. Sir Robin Auld’s Commission of Enquiry and its report. For a better understanding of the disturbing state of affairs then with regards to corruption, and how far TCI has come since then, I have deliberately reproduced, *in extenso*, Sir David Simmons’s paper relevant to that report in paragraph 4 below.

4. He said at pages 3-5: ‘On the economic front, between 2000 and 2008, the TCI experienced growth which was rated “among the highest in the world”. There was considerable overseas investment. In the words of the Rt. Hon. Sir Robin Auld, an English Court of Appeal judge, much of that investment-

¹ Former Attorney General and retired Chief Justice of Barbados

² “Pursuing Anti-Corruption Initiatives in a Caribbean Jurisdiction”

“was hungry for Crown land at the disposal of the Governor in Cabinet and brought with it continued governmental maladministration and a mix of incompetence and perceived corruption in public officers – whichever of the two parties was in power.”

He observed:

“There is nothing new about allegations of governmental incompetence and abuse of power in the TCI.”

In February 2007 the economy was booming and the PNP won a handsome election victory. But the Island’s public finances and their management attracted trenchant criticism. When the global economic recession hit in 2008, the former buoyant sources of revenue diminished. But as Sir Robin Auld said –

“[The] diminution was not matched by a reduction in extravagant spending by Ministers on various projects and themselves.”

At the end of fiscal year 2007/2008, the public deficit was \$38 million. The U.K. Foreign Affairs Committee took note and investigated. It received a plethora of *prima facie* evidence of large scale corruption among the political class and voted in favour of Enquiry. Within a month of publication of the Report of the Foreign Affairs Committee, the Governor established a Commission of Enquiry on 10 July 2008. Sir Robin Auld was appointed to conduct the Enquiry.

Sir Robin was required to inquire into “whether there is information that corruption or other serious dishonesty in relation to past and present elected members of the TCI House of Assembly may have taken place in recent years.” He was also mandated to make findings concerning, *inter alia*, the instigation of criminal investigations by the police or otherwise.

Without dilating upon the several findings of Sir Robin, I am content merely to say that his Report was a stinging indictment of the Premier and several Ministers. Lord Justice Auld, at p.116 of his Report, described the conduct of the Premier in this way:

“The principle that politicians should scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests was NOT one that he observed, or encouraged his Cabinet to observe.”

There was information of possible corruption which was recommended for criminal investigation by the Police and prosecution if warranted. A Special Investigation and Prosecution Team (SIPT) was brought together to investigate the myriad of matters to which Sir Robin Auld had drawn attention. In the result, the Premier, Mr. Michael Misick, four Ministers and a number of other persons, including lawyers and private sector investors, have subsequently been charged before the courts criminally.

With respect to the governance of the TCI, the Auld Commission recommended, *inter alia*, cessation of Ministerial Government, dissolution of the House of Assembly and direct rule by the Governor assisted by an Advisory Council. The Auld Report was submitted to the Governor on 31 May 2009 and those recommendations were swiftly implemented. The British Government took back the governance of the Islands from the local Islanders....”

Original Core Functions of the Commission

5. In summary, these functions, similar to Trinidad and Tobago model, were:
 - 5.1 To receive and keep declarations of income, assets and liabilities filed by persons in public life;
 - 5.2 To examine the declarations filed, make enquiries and carry out such investigations as are necessary and generally to verify the accuracy of the declaration so filed;
 - 5.3 To receive and investigate complaints regarding any alleged act of corruption or other breach of the law for which the Commission has a statutory mandate. The Commission may also carry out investigations on its own initiative where it is of the opinion that there are reasonable grounds for doing so.
 - 5.4 To examine the procedure and practices of public bodies in order to facilitate the discovery of corrupt practices or reduce the occurrence of corrupt practices.

Expanded Mandate of the Commission

6. In the aftermath of the Commission of Enquiry and pursuant to its report, the mandate of the Commission was significantly expanded, firstly by the Constitution which came into force in October 2012 and secondly, by a new law, the Political Activities Ordinance which came into force in August 2012 shortly before the TCI General Elections of November 2012.

Moreover, amendments to its principle Ordinance, (the Integrity Commission Ordinance), enhanced the ways and means by which the expanded mandate would be efficiently and effectively discharged.

Unique Functions and Unique Features

7. Besides the primary responsibility of promoting integrity, honesty and good faith in public life, the Commission was charged with the following unique functions which, to the best of my knowledge, are the first of their kind in the region:

7.1 To recommend and publish appropriate levels of remuneration and allowances for the Speaker and other Members of the House of Assembly.³

7.2 To monitor and enforce compliance by registered Political Parties and candidates with the Political Activities Ordinance. The overriding objective is to establish and maintain transparency and integrity in the financing of political parties, including donations to and expenditure by political parties especially during election periods.

³ *It is important to note that the House of Assembly shall not proceed with any Bill dealing with members' remuneration and allowances unless the Commission's report containing such recommendation and allowances has been laid before the House and published; neither shall any law provide for levels of remunerations that exceed the levels the Commission has recommended in the report. The first report was laid before the House and published in November 2012.*

8. To ensure efficient and effective discharge of its expanded mandate and unique functions, the Commission now has the following unique features:
 - 8.1 Although established under the Integrity Commission Ordinance, it enjoys constitutional protection as one of the institutions that protect good governance in TCI;
 - 8.2 Its funding is constitutionally protected and it enjoys financial and operational independence;
 - 8.3 Appointment and tenure of Commissioners are secured; Officers of the Commission are appointed on such terms and conditions as the Commissioners may determine. The terms and conditions of appointment of both the Commissioners and its officers shall not be made less favourable during their tenure in office.
 - 8.4 It possesses the powers of a Supreme (High) Court Judge to summon and examine witnesses and to call for production of document, books and plans, etc.
 - 8.5 Unlike any other anti-corruption agency in the Caribbean, the Commission possesses executive powers to investigate arrest and charge persons with offences of corruption. Recent high profile and complex investigations by the Commission, some of which have led to criminal prosecutions in court, would not have been possible, if the Commission were to solely depend on another agency to executive these powers.

Discharging the Unique Functions—the Political Activities Ordinance (PAO)

9. The PAO came into force on August 2012 and is the key political party accountability law enacted in preparation for the general elections in TCI after 3 years of direct British rule. It is a modified version of the UK Political Parties, Elections and Referendum Act of 2000(PPERA), there being no regional model.
10. The first of its kind in the Caribbean, the PAO aims, among other things, at ensuring transparency and integrity in the financing of political parties and candidates, as well as creating level-playing field among the political parties in the political and democratic process of the TCI.

It provides for:

- Statutory limits to donations (not more than US\$30,000 from individual or corporate Donor) which a registered party or candidate can receive and limits to what it can spend especially during election period. For example, not more than US\$30,000 should be spent on campaign on any electoral district. Party leaders were allowed a maximum of US\$100,000. On the whole, no political party was to spend more than US\$600,000 on election campaign.
- publication of all donations received and from whom;
- publication of all campaign expenditure;
- permissible and impermissible donors, donations and expenditure;
- strict financial reporting requirements especially during and immediately after general election periods. This includes submission of annual accounts, to be audited if income or expenditure during the relevant financial year is up to US\$500,000. Donations and campaign expenditure during election period will also require audit for a lower threshold of US\$250,000.
- criminal and civil sanctions in cases of breach.

Implementation of PAO

11. In the implementation of the PAO, the Commission faced the challenge, among others, of lack of best practice precedents. However with some assistance from the UK Electoral Commission and initial intervention from a UK-based NGO, Westminster Foundation for Democracy, the Commission was able to successfully implement the time - sensitive and politically delicate requirements of the Ordinance.

12. The implementation strategies included:

12.1 *Establishing Trust:* Establishing trust and cooperation between the Political Parties and the Commission was critical from the outset. With this in mind, the Commission committed to working closely with the political parties to ensure clear lines of communication was established and maintained and also any breaches of the Ordinance were avoided where possible.

12.2 *Robust public education programme.* This involved interfacing with the political parties and independent candidates who were very cooperative. It also entailed drafting and circulating to the Parties and candidates, **Guidance Notes** on practically every reporting requirement, including

- the Registration Process;
- Donations;
- Corporate Donations and Dormant Companies;
- Loans – how reported and what constitutes a loan on commercial terms
- Campaign Expenditure

12.3 *Engaging relevant Stakeholders.* The office of the Supervisor of Elections, the Attorney generals Chambers and the Governor’s office come readily to mind. The media were our veritable partners in publicizing the message of the PAO.

12.4 *Publication of Donations and Campaign Expenditure Reports:* This was a very important requirement of the Ordinance and indeed its hallmark as it ensured transparency and integrity in the financial activities of the Parties. These reports are available in the public domain.

Successful Outcome:

13. The resulting TCI General and By-elections were considered historical and remarkably free and fair with a record turnout of voters. The Donation and Campaign expenditure reports subsequently published by the Commission showed an unprecedented reduction in the total donations to and campaign expenditure of the political parties and independent candidates.
14. Worthy of note is the fact that, some private sector qualified Donors, for the first time, informed the Commission in writing how much they were donating to their political party of choice.

Conclusions:

15. Although, the report of the Commission of Enquiry truly painted a picture of a country reproached by corruption, the Commission is very optimistic that this ugly chapter of the TCI’s history is gradually but steadily giving way to a glorious dawn. This is not wishful thinking; the signs are evident and a few will suffice:

- The work of the Commission has continued to enjoy the support and commitment of majority of persons in public life, including the political directorate. In this regard, the Commission has recorded more than 95 % compliance rate for persons in public life who are required to file declarations of their assets, income and liability, and 100% in relation to filing of statement of registrable interests by Members of the House of Assembly. The Commission’s 2013-14 budget was increased by 100% despite serious financial constraints facing the TCI government.
- In terms of regulating and monitoring the financing of Political Parties, the TCI Political Activities Ordinance represents the only one of its kind in the Caribbean. The last TCI Elections were successfully held under the robust implementation of this Ordinance and with the exemplary cooperation and commitment of all the political parties and candidates.
- There is a record high of persons willingly coming forward to lodge complaints and reports of alleged corrupt act in public office;
- Two Hon. Members of the House of Assembly, including the Deputy Speaker recently took a highly commendable stand on a conflict of interest matter in the House. On realizing that her private interest may present a conflict with a relevant Bill before the House, the Deputy Speaker not only abstained from any debate and voting on the Bill, but also abstained from chairing the relevant Committee of whole House on the Bill. Although she criticized the Code of Conduct for lack of sufficient clarity on conflict of interest, she nonetheless took a stand which, going by the Commission of Enquiry report, would have been unprecedented.

16. In his concluding words, Sir David Simmons, at page 15 of his paper rightly observed:

“I will end this address by telling you that, following the publication of the Auld Report, the TCI’s economy went into a severe slump. Investor confidence diminished and tourism declined. However, since the implementation of the new legislation, the holding of General Elections, the return of Ministerial Government and, most importantly, settlement of some cases of suspected corruption, the economy has started to grow again. Without being immodest, I believe that the work of the Integrity Commission has also contributed to a feeling that best practices in governance are being pursued vigorously in the TCI and valiant efforts are being made to securing the international reputation of the TCI as a clean jurisdiction.”

17. TCI is a Christian country and it will be remiss of me to end this presentation without echoing the immutable WORD and PROMISE of the God they serve as inscribed in the Bible:

“(TCI) you will be a crown of Splendor in the Lord’s hand, a royal diadem in the hand of your God. No longer will they call you ‘Deserted’, or name your land ‘Desolate’.... (You) will be called the ‘Holy People’, ‘the Redeemed of the Lord’; and you will be called ‘Sought After, the City No longer Deserted’”⁴

18. Giving time for the on-going difficult but steady mind set adjustment, and despite the attendant growing pains, I strongly sense a TCI rising out of the reputational ruins of recent past to become a regional flag bearer of integrity, honesty and good faith in public life.
In this, the region can take solace and perhaps learn some lessons.

I THANK YOU ALL FOR LISTENING

⁴ *Isaiah 62:2-4;12*