ACCOUNTABILITY AT THE CROSSROAD: THE GUYANA EXPERIENCE

Abstract

Guyana's history of public accountability since it attained its Independence has been a sad one. A culture of "non-accountability" had developed at almost all levels of government, so much so that by 1981 accountability was brought to a standstill. Although accountability was restored from 1992, the ten-year gap remains a significant blemish for the country.

Since late 1990s, there has been a deterioration in our system of accountability. Successive Auditor General's reports have identified significant discrepancies in the awarding of public contracts, overpayments to contractors, and outdated and cumbersome systems and procedures. In addition, quite a number of scandals were uncovered. The Government has also not accounted for the expenditure on: the Great Floods of 2005; 2007 World Cup Cricket; and (c) CARIFESTA X. Other disturbing features include:

- Creation of, in effect, of a parallel Treasury through the diversion of certain State revenues to meet expenditure without Parliamentary, and there is a lack of transparency in their use;

- Entering of a number of contractual arrangements over the last five years, particularly in the run-up to the November 2011, that also lacked transparency and competitiveness;

- Guyana's continued low assessment on the Corruption Perceptions Index. In 2013, it ranked of 137 out of 177 countries with a score of 27 out of 100;

- Continued failure to ensure an effective and fully functioning the Integrity Commission and the constitutionally mandated Public Procurement Commission;

- Appointment of some 20 per cent of public servants on a contractual basis at emoluments and conditions of service superior to those of the regular public servants, without the

involvement of the Public Service Commission. There is also no Public Service Appellate Tribunal to address grievances of State workers.

- Prolonged acting appointments of holders of senior positions. In particular, the Chancellor of the Judiciary and the Chief Justice have been acting in their positions since 2005;

- Prevalence of conflicts of interest, especially as regards the Ministry of Finance and the Audit Office involving the preparation and certification of the country's accounts, and the auditing of these accounts;

- Failure to hold local government elections since 1994 and the alarming state of financial accountability of the related bodies;

- Granting of radio and TV licences to close associates of the ruling party just days before the 2011 General Elections;

- Chief Justice's ruling that it is unconstitutional for the National Assembly to amend the Estimates of Expenditure as presented, and that the Standing Orders of the Assembly do not have the force of law;

- Failure to have comprehensive legislation in place to deal with money laundering in view of Guyana being declared a transit country for cocaine destined for North America, Europe and West Africa; and

- Sever financial difficulties of major State-owned entities, especially the sugar industry, the Power Company and the National Insurance Scheme.

The paper examines the system of accountability from the late 1990s to present date, particularly in relation to the above issues. It concludes that Guyana's problems are grounded in ethnic considerations that result in the infrequent change of government, coupled with flawed constitutional arrangements that put the President above the law. The "winner take all" arrangement has also contributed significantly to the present state of affairs as outlined in this paper.

The two main political parties derive their support essentially from one or the other major ethnic group. This has resulted in Guyana experiencing 28 years of dominance by one political party albeit through the tampering of the electoral process in successive elections; and with the ushering of free and fair elections in 1992, the other major political party ascending to the reins of power uninterrupted so far for 22 years. In the circumstances, accountability to the people has become a secondary issue.

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Introduction

Guyana's history of public accountability since it attained its Independence, has been a sad one. A culture of "non-accountability" had developed at almost all levels of government, so much so that by 1981, accountability was brought to a standstill. Although it was restored from 1992 onwards, the ten-year gap remains a significant blemish for the country. Since the late 1990s, however, there has been a marked deterioration in public accountability. This paper attempts to examine this issue within the time allotted for the presentation.

Accountability in perspective

The UN General Assembly provides an elaborate definition of accountability. It is sufficient to state that accountability is enriched if it is seen as a moral act and a personal responsibility, voluntarily given rather than being imposed. Imposed accountability is likely to result in minimum compliance or in some cases non-compliance.

An effective system of public accountability requires financial management policies and practices that are in conformity with international best practice. This must be supported by: (a) an independent, competent and credible Legislative Audit serving the public interest; (b) an impartial and dedicated Parliamentary committee with responsibility for monitoring the public accountability processes; and (c) a responsive and enlightened government that is meaningfully committed and willing to act on agreed recommendations for improvement. These are indispensable to the maintenance of the highest standards of public accountability.

The Guyana Experience: 1966-1985

Guyana inherited a sound system of accountability from the British. Audited public accounts were laid in the Legislature within the prescribed deadlines. Systems and procedures were so sound that they remain in place to the present time, with little or no modifications over the years.

After 47 years, however, they have become outmoded and cumbersome and are not reflective of international best practice.

Democracy and accountability are the twin sides of the same coin. Democracy leads to accountability which in turn leads to development. A lack of democracy leads to a lack of accountability which in turn hinders development. Accountability starts with the casting of the ballot in a free and fair election. If that process is tampered with, then the highest form of accountability - accountability to the people - would be compromised, and all other forms of accountability are likely to collapse around it.

This is true of Guyana during the period 1968 to 1985 where successive elections were manipulated in favour of the then ruling party. Accountability at all levels of government began to deteriorate rapidly. By 1981, the country was unable to service its external debts and was declared technically bankrupt. When the then President died in 1985, he left an economy shattered and a country in virtual ruin. Financial accountability was seven years in arrears.

The Guyana Experience: 1985-1992

It took a herculean effort by the new President Hoyte to turn the country's fortunes. His Administration abandoned socialism, replaced it with a market economy, and entered into an economic recovery programme with the IMF. It was a painful period of austerity but a necessary one to correct the adverse effects of embracing socialist tenets and of authoritarian rule. Hoyte's Administration completed an additional five years of financial reporting and audit, after which accountability was brought to a standstill in 1981.

The Guyana Experience: 1992 to 2000

With the collapse of the Soviet Union, free and fair elections were restored in 1992 that saw a change in Administration. The new Administration continued with the Hoyte policies. Public accountability was restored. However, efforts to bridge the gap between 1981 and 1992 proved unsuccessful.

In 1992, 70 per cent of the country's revenues went to the repayment and servicing of the public debt. Through a vigorous campaign at debt relief, most of the debts were either rescheduled or cancelled. GDP growth during 1992 to 1997 averaged 7.1 per cent, one of the fastest growth rates in the region and among low income countries. However, it began to fall dramatically, reaching a negative 1.4 per cent in 2000.

The Guyana experience: 2001 to present date

The growth rate remained depressed during the period 2001 to 2005, averaging 0.5 per cent. During the period 2006 to 2012, improvements were recorded averaging 4.4 per cent. However, successive Auditor General's reports identified significant discrepancies in the awarding of public contracts, overpayments to contractors, and defective public works. In addition, a number of scandals were uncovered, for example, the illegal export of dolphins. The Government has also not accounted for the expenditure on: (a) the Great Floods of 2005; 2007 World Cup Cricket; and CARIFESTA X which took place in 2008. Other disturbing features are discussed below.

Creation of a parallel Treasury: NICIL is a state-owned company established to monitor Government's privatization programme and to ensure that all proceeds are paid over to the Treasury. Since 2002, in violation of the Constitution, NICIL assumed the role of a parallel Treasury through the diversion of certain state revenues into its coffers. These include dividends from public enterprises; proceeds from the sale of state properties and other assets to favoured individuals at concessional prices; and transfers from other state institutions.

NICIL also uses the proceeds to meet expenditure without parliamentary approval, another constitutional violation, and there is a lack of transparency. Examples include the construction of the Marriott brand hotel; the aborted Amaila Falls Hydro Project; and the Berbice River Bridge. 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 NICIL 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 NICIL, is yet to comply.

Lack of transparency in the award of contracts: The Government entered into several large contractual arrangements over the last five years or so that lacked adequate transparency and competitiveness, particularly in the run-up to the November 2011 elections. Examples include the construction of US$200 million Skeldon Estate Factory that is operating at significantly below its capacity and is currently undergoing major overhaul at significant costs; the Marriott brand hotel without any proper feasibility study; the Specialty Hospital where the selected contractor lacked the requisite experience; and the expansion of our international airport again without a proper feasibility study. The procurement of drugs and medical supplies, estimated at US$25 million annually, is also biased in favour of a local supplier with connection with the ruling party. That supplier provides about 80 per cent of the Government's requirements.

Perceptions of corruption: Guyana continued to score very poorly on the Corruption Perceptions Index (CPI). In 2013, it ranked of 136 out of 177 countries with a score of 27 out of 100. Since 2005 when Guyana was first assessed, similar ranking and scores were recorded without evidence of efforts being made to address the problem. The Government remains in a state of denial, continues to "circle the wagons", and displays hostility to those who speak out on this matter.

Non-functioning Integrity Commission: The continued failure over the last eight years to have a properly functioning Integrity Commission remains a source of concern. With Guyana's poor assessment on the CPI, a Commission provided with adequate resources; and staffed by independent, and technically and professionally competent persons can have a positive impact on the CPI. There are too many public officials in position of authority flaunting unexplained wealth in the eyes of citizens with impunity.

Non-establishment of the Public Procurement Commission: The Constitution was amended in 2001 to provide for the establishment of 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. This was in response to persistent criticisms from the Auditor General of the systems and procedures and of the several violations. Many stakeholders also held the view that the system in place did not provide them with confidence as to the fairness and transparency in the award of contracts.

After 13 years, the Commission is yet to be established mainly due to the insistence of the Government that Cabinet should continue to be involved in the procurement process. The constitutional amendment removes that involvement and vests it with the Commission.

Creation of a parallel Public Service through special contracts: Some 20 per cent of public servants are employed on a contractual basis at emoluments and conditions of service superior to those of the regular public servants. There is also a lack of transparency, as the Public Service Commission is not involved to ensure competiveness and fairness in the recruitment process. Most of the contracted employees are handpicked loyalists some of whom are retained beyond their retirement age. There is also no Public Service Appellate Tribunal since 1995 to address grievances of state workers. A fully functioning Tribunal is likely to reduce significantly the workload of the Ombudsman who was appointed recently after an eight-year gap.

Prolonged acting appointments: Several holders of important positions remain in acting positions for several years, in particular, the Chancellor of the Judiciary and the Chief Justice who have been acting for over eight years. The Auditor General, who is not qualified for the post, was recently confirmed after acting in that position since 2005. The Stabroek News editorial of 30 December 2013 had the following to say in this regard:

> *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.*

Prevalence of conflicts of interest: The Minister of Finance is responsible for the preparation and certification of the public accounts but his wife, being the only professionally qualified accountant among the senior management in the Audit Office, is the de facto head of that Office responsible for auditing these accounts. In addition, the Minister's wife oversees the audit of NICIL while the Minister is the Chairman of the board. NICIL is the entity that retains certain State revenues and uses them to meet expenditure without parliamentary approval.

Local government elections and accountability: Since 1994, no local government elections were held although the law requires such elections every three years. There are six municipalities and 65 Neighbourhood Democratic Councils (NDCs). When the Government is unhappy with the performance of the elected officials, the councils are disbanded and replaced with interim management committees comprising handpicked loyalists. Recently, the National Assembly passed a resolution calling for the holding of elections by 1 August 2014 but the Government has been resisting efforts to do so. Only recently, the ABC (USA, Britain and Canada) joined forces with local civil society organization, including the Transparency Institute, calling on the authorities to address urgently the issue of having such elections without further delay.

The municipalities have not produced audited accounts for on average 15 years while 80 per cent of the NDCs have not had their accounts audited and reported on for the past five years. In addition, 18 NDCs failed to produce audited accounts since they were established in 1994. This is despite the fact that both the municipalities and NDCs are in receipt of significant sums of money from the Treasury in the form of subsidies. The capital of Georgetown is in a state of disrepair, with deteriorating roads, clogged drains, piles of garbage left unattended with unbearable stench, sewers overflowing, and flooding after a few hours of moderate rainfall, all because of a fierce wrestle for political control.

Granting of radio and TV licences: Prior to 1992, the Government held the monopoly over the two radio stations. Coverage of events and programmes was heavily slanted in favour of the Administration to the exclusion of activities, commentaries and views that were critical or not supportive of the Government. When the present Government took office, public expectation was that it would free up the airwaves provide private radio stations with an opportunity to operate and to facilitate a more balanced coverage.

The Government, however, continued for 20 years in the same vein, perhaps in a more intense way. It uses the State radio, television and newspaper as well as other pro-government media outlets as the medium for personal attacks and vilification, including character assassinations, against independent-minded persons and those who are critical of the way the Government administers the affairs of the State. Because of this biased coverage, the National Assembly had cut the budgets of the state-owned National Communications Network and the Government Information Agency.

In 1997, former President Jagdeo and the then Opposition Leader agreed that no radio licences would be issued until a Broadcasting Authority is established. The former President also gave the assurance that no such licenses would be issued before the national elections of 28 November 2011. This was in response to a 2009 Court ruling that the Government consider all applications received at the time.

The Broadcasting Authority came into being in September 2011. However, just days before the elections and at a time when he was about to demit office, the former President approved of ten radio licenses to a close relative, a close friend and the ruling party's newspaper. They were each granted five frequencies. At the same time, applications from several established media houses were denied. The Government made no public announcement on what appeared to have been a closely guarded state secret. After 15 months, in response to a question from a Member of Parliament, the Prime Minister was forced to make the disclosure to a shocked nation. The nation also learned that in December 2010, two other persons who are close associates of the ruling party received licenses for television and internet services.

Budget cuts and the Chief Justice's ruling: The Opposition controlled National Assembly approved of a reduction the Estimates of Expenditure for 2012 by ten per cent. This prompted the Government to challenge the Assembly's decision on the grounds that: (a) the Assembly acted unconstitutionally; and (b) the Assembly could either approve the budget or reject it, but not reduce it. The acting Chief Justice upheld the Government's position on both grounds. He also ruled that the Standing Orders, which the National Assembly uses as a basis for amending the Estimates, do not have the force of law.

The Court granted no relief (except in one case) since the Government validated the Assembly's action by making the necessary amendments. It also declared that only an Appropriation Act could authorise withdrawals from the Consolidated Fund. The Minister of Finance, however, went ahead and restored the original budget through withdrawals from the Consolidated Fund. This action not only undermined the authority of Parliament to approve of public expenditure but it is also a serious constitutional violation. As it now stands, expenditure totalling G$1.797 billion incurred in 2012 and 2013 remain unauthorized. The 2014 Estimates are due at the end of the month, and it is uncertain what is likely to happen. If the Assembly rejects the Estimates, this could precipitate a constitutional crisis.

Anti-money laundering legislation: The Caribbean Financial Action Task Force (CATF) was very critical of the Guyana's anti-money laundering legislation since it does not conform to the standard recommendations used to evaluate countries' efforts to combat money laundering and terrorist financing. Almost ten months after the CFATF drew attention to the deficiencies in the legislation, and faced with the threat of sanctions, the Government tabled the related amendments. It wanted an urgent passage of the amendments as presented, contending that: (a) they addressed all the concerns that the CFATF had raised; and (b) if the amendments were 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 Guyana being 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.

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. 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 Financial Action Task Force had evaluated in terms of their anti-money laundering efforts.

As of now, there is still no agreement on the proposed amendments.

Financial difficulties of major State-owned entities: The sugar industry was the main source of export earnings. However, due to poor management and political interference, it is on the verge of collapse. Instead of being a contributor to the Treasury, it has become a burden. For almost a decade, the company's operations were subsidised annually by billions of Guyana dollars through the national budget.

The same applies the Guyana Power and Light where technical and commercial losses account for approximately one-third of its power generation, and power outages are a frequent occurrence. This is despite the billions from the Treasury to assist in upgrading its operations in addition to loans from the Inter American Development Bank.

Finally, the National Insurance Scheme has been making significant losses over the last few years, and according to the actuaries if remedial actions are not taken urgently, the Scheme's reserves are likely to be depleted in a few years' time. The Scheme had invested 20 per cent of its assets with the Colonial Life Insurance Company that collapsed, resulting in a loss of US$30 million.

Conclusion

Guyana's problems are grounded in ethnic considerations that result in the infrequent change of government, coupled with flawed constitutional arrangements that put the President above the law. The "winner take all" arrangement has also contributed significantly to the present state of affairs as outlined in this paper.

The two main political parties derive their support essentially from one or the other major ethnic group. This has resulted in Guyana experiencing: (a) 28 years of dominance by one political party through the tampering of the electoral process; and (b) with the ushering of free and fair elections in 1992, the other major political party ascending to the reins of power uninterrupted so far for 22 years. In the circumstances, accountability to the people has become a secondary issue.