

Paper by Mr. Justice Melville Baird on the Applicability of the Jakarta Principles to Trinidad and Tobago

Article 6 (1) of the United Nations Convention Against Corruption (UNCAC) requires each State Party acting in accordance with the fundamental principles of its legal system to ensure the existence of a body or bodies that would prevent corruption by e.g. implementing the policies referred to in Article 5 and increasing and disseminating knowledge about the prevention of corruption.

Article 6 (2) provides for each State Party to grant the body or bodies referred to in 6 (1) the necessary independence in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from undue influence. Additionally, the necessary material resources, staff and training for such staff should also be provided.

Further, Article 36 requires each State Party, acting in accordance with the fundamental principles of its legal system, to ensure the existence of a body or bodies of persons specialized in combatting corruption through law enforcement.

In November 2012, The United Nations Development Programme (UNDP) and United Nation Office on Drugs and Crime (UNODC) collaborated with the Corruption Eradication Commission (KPK) of Indonesia and hosted a meeting in Jakarta of current and former heads of anti-corruption agencies (ACAs), anti-corruption practitioners and experts to develop a set of standards that would guide the establishment and operations of anti-corruption bodies.

At the conclusion of the 2012 meeting participants endorsed the The Jarkata Statement on Principles for Anti-Corruption Agencies; this set out the 16 Jakarta Principles which provided more detailed guidance on the UNCAC concept of “necessary independence”. At the seventh Conference of State Parties (COSP) in 2017 UNCAC Resolution 7/6 mandated the United Nations Office on Drugs and Crime (UNODC) to develop, amongst other things, guidance notes and technical tools on the implementation of Article 6 of the Convention.

In May 2018, the Mauritius Communiqué, agreed to, at the “Regional Conference on Effectiveness of Anti-Corruption Agencies and Financial Intelligence Units in Fighting Corruption and Money Laundering in Africa” called for the development of indicators to assess and measure effectiveness that would guide ACAs and Financial Intelligence Units.

In response to these requests, UNODC and UNDP convened an Expert Group Meeting (EGM) in July 2018 in Colombo and brought together some thirty international experts from around the world to develop a “Commentary on the Jakarta Statement on Principles for Anti-Corruption Agencies”. The Commentary was drafted to provide,

inter alia, guidance on the sixteen principles enshrined in the Jakarta Statement and is intended to assist State Parties to better implement Articles 6 and 36 of UNCAC. Each of the sixteen principles is vitally important for the effectiveness of the ACAs.

Trinidad and Tobago signed UNCAC on 11th December, 2003 and ratified it on 31st May, 2006.

The thrust of this paper today is to demonstrate the manner in which Trinidad and Tobago, primarily through its Integrity Commission, is performing in the glare of the Jakarta Principles. The answers to the questions under “Self-assessment” appear under the heading “Comment” and are not necessarily in the order in which the questions were posited. Time is the enemy this morning and its hostility would preclude treatment of the other ACAs in Trinidad and Tobago.

Principle 1 - Mandate

“ACAs shall have clear mandates to tackle corruption through prevention, education, awareness raising, investigation and prosecution, either through one agency or multiple co-ordinated agencies”.

Comment

UNCAC Article 6 requires each State Party to establish a body to prevent corruption by such means as:

- (a) implementing the policies referred to in Article 5; and
- (b) increasing and disseminating knowledge about the prevention of corruption.

In Trinidad and Tobago there are bodies established to prevent corruption; these bodies specialise in combatting corruption through law enforcement (Article 36).

In Trinidad and Tobago the requirements of UNCAC are holistically met through a multiple agency approach. And although the single agency approach is seemingly the most well-known version of an ACA, our Constitution would have to be radically and extensively altered for us to achieve that result.

The bodies that are mandated to target corruption are all given their mandates by law.

These bodies are the:

- i. Integrity Commission mandated by the Integrity in Public Life Act (“the Act”) and the Prevention of Corruption Act.
- ii. Office of Procurement Regulation mandated by the Public Procurement and Disposal of Public Property Act.
- iii. Police Complaints Authority mandated by the Police Complaint Authority Act.
- iv. Financial Intelligence Unit of Trinidad and Tobago mandated by the Financial Intelligence Unit of Trinidad and Tobago Act.
- v. Director of Public Prosecutions (DPP) mandated by the Proceeds of Crime Act.
- vi. Civil Asset Recovery and Management Agency mandated by the Civil Asset Recovery and Management and Unexplained Wealth Act, 2019

These bodies are all endowed with the “necessary independence” to discharge their mandates.

Principle 2 - Collaboration

“ACAs shall not operate in isolation. They shall foster good working relations with State Agencies, civil society, the private sector and other stakeholders, including international cooperation”.

Comment

At the present time there is no provision in the Act that would allow collaboration with other state agencies to tackle corruption. The Commission has suggested amendments to the Act that constitute a general overhaul of the Act. In the amendments we have included a provision for information sharing with other ACAs. The Acts of Parliament creating the ACAs with which information is to be shared however must be amended by Parliament to enable the receipt of information from the Integrity Commission.

There is no provision in the Act requiring the Integrity Commission to collaborate with civil society, the private sector or international bodies, to tackle corruption. But this the Commission is advocating of its own motion.

Principle 3 - Permanence

“ACAs shall, in accordance with the basic legal principles of their countries, be established by proper and stable legal framework, such as the Constitution or a special law to ensure continuity of the ACA”.

Comment

Several ACAs, the Integrity Commission included, have been established by the Constitution; others are creatures of other statutes.

Principle 4 - Appointment

“ACA heads shall be appointed through a process that ensures his or her apolitical stance, impartiality, neutrality, integrity and competence”.

Articles 6 and 36 both call for the necessary independence of ACAs, and this independence must be seen to begin from the top.

The Act requires that the Chairman, Deputy Chairman and the three other Members of the Commission be persons of integrity and high standing. The Act also provides that the Chairman and other Members of the Commission shall be appointed by the President, after consultation with the Prime Minister and Leader of the Opposition. They are not publicly vetted.

The law does not speak of minimum education or experience qualifications for the Chairman of the Integrity Commission; neither does it speak specifically of the Chairman being apolitical. By convention however the Chairman is usually a retired professional, e.g. a judge or manager and not an active member of any political party.

We have suggested that a provision be included in the Act that would require the Chairman and Members of the Commission to be totally apolitical, that is to say, that they should not be or recently have been, a member of a political party, nor should they have been donors or patrons of any political party.

Principle 5 - Continuity

“In the event of suspension, dismissal, retirement or end of tenure, all powers of the ACA head shall be delegated by law to an appropriate official in the ACA within a reasonable period of time until appointment of the new ACA head”.

Comment

In the event of any of the aforementioned contingencies, the Deputy Chairman will automatically begin to exercise all powers of the absent Chairman until the appointment of a new Chairman; this would include presiding over the statutory meetings. Section 4 (6) of the Act provides that three Members of the Commission, of whom one shall be the Chairman or Deputy Chairman, shall constitute a quorum. There is no provision for a time limit for the post of Chairman to be left vacant.

Principle 6 - Removal

“ACA heads shall have security of tenure and shall be removed only through a legally established procedure equivalent to the procedure for the removal of a key independent authority specially protected by law (such as the Chief Justice)”.

Comment

Section 8 (2) of the Act provides for the President to terminate the appointment of a member of the Commission if one or more of certain specific conditions have been satisfied, viz where that member is found to be of unsound mind; becomes bankrupt or compounds with creditors; is convicted of any offence which brings his office into disrepute; is guilty of misconduct in relation to his duties; misbehaves in office; fails to carry out any of his statutory duties or functions or is incapable, for whatever reason, of performing his duties and functions under the Act.

The minimum fixed term of appointment for the Chairman under the Act is three years, and the process for his removal from office is not similar to that for the removal of the Chief Justice. The rules of natural justice however, would require that the Chairman be permitted to defend himself on an allegation for his removal. It would be a public hearing.

Principle 7 - Ethical Conduct

“ACAs shall adopt codes of conduct requiring the highest standards of ethical conduct from their staff and a strong compliance regime”.

Comment

When developing a Code of Conduct it is important to integrate some form of compliance regime, whether tied into an existing public service disciplinary system or a separate ACA specific internal disciplinary system.

I am of opinion however that the Code of Conduct, though requiring a strong compliance regime, must not be criminalized. The Expert Group Meeting (EGM) convened by UNODC and UNDP in Colombo in 2018 spoke approvingly of the Bhutan Ethical Code of Conduct. The Bhutan Code provided penalties for breaches of the Code, where the breach was considered: i) minor; ii) minor but committed for the second time; iii) repeated breaches irrespective of their nature.

In the three instances, disciplinary action is prescribed. The only reference made to criminal law was where it was stated that if any breach of the Code was punishable by a heavier penalty under another law, then that law should apply.

Part IV of the Act, sections 23 to 31 deal with Code of Conduct in respect of persons in public life and persons exercising public function. The Office of Procurement Regulation is in the process of drafting a Code of Conduct that would include and be applicable to, the staff of the Commission.

The members of the Commission are not covered by a Code of Conduct. *stricto sensu*, but section 8 (2) of the Act provides for sanctions where a member of the Commission is found liable for unethical conduct.

I reiterate my stand against the notion that the Code of Conduct must be criminalized.

Principle 8 - Immunity

“ACA heads and employees shall have immunity from civil and criminal proceedings for acts committed within the performance of their mandate. ACA heads and employees shall be protected from malicious civil and criminal proceedings”.

Comment

Section 39 of the Act exempts the members of the Commission from personal liability in the discharge of the functions of the Commission under the Act unless it is shown that they acted recklessly or in bad faith. This cloak of immunity is also being sought for persons legitimately performing any function under the Act provided it is not done recklessly or in bad faith.

The Act does not provide specific protection to members of the Commission and employees of the Commission from malicious civil and criminal proceedings; protection however is in-built in the civil and criminal law of Trinidad and Tobago.

Principle 9 - Remuneration

“ACA employees shall be remunerated at a level that would allow for the employment of sufficient number of qualified staff”.

Comment

Section 9 (1) and (4) of the Act respectively provide for the salaries and allowances of the Chairman and other Members of the Commission to be determined by the Salaries Review Commission and that their salaries and allowances should be a direct charge on the Consolidated Fund.

Section 9 (3) of the Act provides for the staff of the Commission to be public officers appointed in accordance with section 121 of the Constitution (this section of the Constitution deals with the appointment of Public Officers).

Apart from the staff of the Commission being public officers, the staff could also include contract officers. And the salaries of both the public and the contract officers are determined by the Chief Personnel Officer.

Section 9 (5) of the Act authorises the Commission to appoint and employ, on such terms and conditions as it thinks fit, any other officers and employees as it thinks necessary for the proper carrying out of its functions under the Act. They are regarded as employees for service and should be distinguished from employees on a contract of employment. The salaries of the latter is determined by the Chief Personnel Officer.

Principle 10 - Authority over Human Resources

“ACAs shall have the power to recruit and dismiss their own staff according to internal, clear and transparent procedures”.

Comment

The provisions under section 9 (3) (4) and (5) of the Act referred to under Principle 9 are reiterated here.

The termination of service of public officers comes under the purview of the Public Service Commission governed by the Public Service Regulations.

The termination of officers on contract is the responsibility of the Chief Personnel Officer and is governed by the terms and conditions of their contracts.

The termination of employees for service is addressed by the organisation that employs them applying the terms and conditions of their contract for service.

Principle 11 - Adequate and Reliable Resources

“ACAs shall have sufficient financial resources to carry out their tasks, taking into account the country’s budgetary resources, population, size and land area. ACAs shall be entitled to timely, planned, reliable and adequate resources for the gradual capacity development and improvement of the ACAs operation and fulfilment of their mandate”.

Comment

Principles 9, 10 and 12 are relevant.

The Integrity Commission receives its funding predictably when the budget cycle is completed but there is no guaranteed minimum budget. Head 37 is the budget line for the Integrity Commission and the current budget needs augmenting to ensure that the Commission can effectively discharge its mandate. Over the past three years the budget of the Commission has been stable.

Principle 12 - Financial Autonomy

“ACAs shall receive a budgetary allocation over which ACAs have full management and control without prejudice to the appropriate accounting standards and auditing requirements”.

Comment

Viewed from the stand point of the financial infrastructure the Integrity Commission does not enjoy financial autonomy. Principles 9, 10 and 11 are relevant.

Principle 13 - Internal Accountability

Principle 7 (Ethical Conduct) is relevant.

“ACAs shall develop and establish clear rules and standard operating procedures including monitoring and disciplinary mechanisms to minimize any misconduct and abuse of power by ACAs”.

Comment

The Act does not require the members of the Commission or staff to complete asset declarations and conflict of interest forms. However, a Code of Conduct that will be applicable to all government departments is at the present time being drafted by the Office of Procurement Regulation; that code would require members of the staff of the Commission to complete conflict of interest forms.

The Act provides for the President to terminate the appointment of a member of the Commission, on the grounds inter alia, that the member has become bankrupt or compounds with his creditors; is convicted of any offence which brings his office into disrepute; is guilty of misconduct in relation to his duties; misbehaves in office and fails to carry out any of the duties or functions conferred on him under the Act.

Members of staff who are public officers fall under the Public Service Commission; the Head of the Public Service Commission's Secretariat is the Director of Personnel Administration and he initiates disciplinary action against public officers.

Contract officers fall under the Chief Personnel Officer and disciplinary action would be taken by the Department in which the contract officer is working.

These disciplinary processes allow for public and contract officers to have a right to reply and a right of appeal.

The Act identifies and delineates the powers of the Commission; it also sets out parameters for the Investigators of the Commission. One of the requirements for the appointment of Investigators is that they must have served as police officers in the police service up to, at least, the level of Inspector, they must have investigative skills and are to be guided in their investigations by the Judges Rules.

The Commission has no prosecutorial powers.

Principle 14 - External Accountability

"ACAs shall strictly adhere to the rule of law and be accountable to mechanisms established to prevent any abuse of power".

Comment

The Integrity Commission is not subject to oversight by a cross-party Parliamentary Committee, neither is it subject to any other form of external oversight. The Integrity Commission is an independent body and takes direction from no one and no body.

Principle 7 (Ethical Conduct); Principle 9 (Authority over Human Resources); Principle 12 (Financial Autonomy); and Principle 13 (Internal Accountability) are relevant.

Principle 15 – Public Reporting

“ACAs shall formally report at least annually on their activities to the public”.

Comment

Section 10 of the Act provides for the Commission, not later than 31st March, to make a report to Parliament of its activities in the preceding year.

Principle 16 – Public Communication and Engagement

“ACAs shall communicate and engage with the public regularly in order to ensure public confidence in its independence, fairness and effectiveness”.

Comment

The Commission engages with the public by means of various projects launched during the year. The public speeches of the Chairman on anti-corruption are given to the media as a matter of course.

The Commission also has a website and it is updated with reports and news.

Conclusion

Notwithstanding the fact that the Integrity Commission figured to a remarkable degree in the consideration of the Jakarta Principles, I can asseverate that the comments made in respect of each principle could, generally speaking, apply *mutatis mutandis* to the other ACAs of Trinidad and Tobago.

It is therefore with sentiments of unbounded pride and profound satisfaction that I can say that Trinidad and Tobago in its legislation against corruption is acting according to the spirit and philosophy of the UNCAC.

Be it admitted that in a few instances Parliamentary intervention would be necessary, and that might take some time, but in the main, Trinidad and Tobago can walk in lockstep with the other members of UNCAC as we deal corruption its final quietus, vanquishing a common enemy and achieving a common good.

