

GUYANA'S COMPLIANCE WITH IACAC AND UNCAC

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PRESENTATION POINTS

- Introduction
- Key requirements of IACAC and UNCAC
- OAS 4th round review on Guyana
- Anti-laundering efforts
- Audit Office
- Government hiring and compensation
- Public Procurement
- Accounting and internal controls
- Revenue collection and control
- Declaration of income, assets & liabilities
- Other matters
- Conclusion

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.

Kofi Annan

INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Main objectives are:

- To promote and strengthen mechanisms to prevent, detect, punish and eradicate corruption; and
- To promote, facilitate and regulate cooperation among the Member States to ensure the effectiveness of measures and actions in place to fight corruption

KEY IACAC MEASURES

- Internal controls and maintenance of books of account
- Government hiring and compensation
- Procurement of goods/services and execution of works
- Revenue collection and control
- Codes of conduct, conflicts of interest and other considerations
- Declaration of income, assets and liabilities
- Participation of civil society
- Reporting acts of corruption and whistleblower protection
- Oversight arrangements

KEY IACAC MEASURES...

- Combating 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

UN CONVENTION AGAINST CORRUPTION

- Corruption threatens sustainable development of people, stability and security of societies
- Undermines institutions and values of democracy, ethical values and justice; and the rule of law
- Links with other forms of crime, including money laundering. May involve substantial portion of State resources
- Transnational phenomenon that affects all societies and economies, hence the need for international cooperation

KEY UNCAC PROVISIONS

- Develop, implement and maintain effective, coordinated anti-corruption policies to 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
- Establish body or bodies to promote effective practices aimed at preventing corruption, with necessary independence and resources to carry out their functions effectively, free of undue influence

KEY UNCAC PROVISIONS ...

- Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and non-elected officials based on efficiency, transparency and objective criteria e.g. merit, equity and aptitude
- Ensure appropriate systems for public procurement, based on transparency, competition and objective criteria in decision-making that are effective in preventing corruption

KEY UNCAC PROVISIONS...

- Establish 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
- Maintain and strengthen systems that promote transparency and prevent conflicts of interest
- Facilitate simplified access by members of the public to information on government programmes and activities

KEY UNCAC PROVISIONS...

- Strengthen integrity of judiciary and prosecution services to prevent opportunities for corruption
- Enhance accounting and auditing standards for the private sector, and ensure cooperation between law enforcement agencies
- Ensure participation of individuals and groups outside the public sector to raise public awareness about corruption

KEY UNCAC PROVISIONS ...

- Ensure comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions to prevent money laundering, including the establishment of a financial intelligence unit
- Criminalise laundering of proceeds of, acts of bribery, embezzlement, abuse of functions and other related acts as well as concealment and obstruction of justice
- Freeze, seize and confiscate of proceeds of crime as well as property derived from such proceeds

OAS 4TH ROUND REVIEW OF GUYANA

- OAS 4th review limited to the role of oversight bodies - Audit Office, DPP, Service Commissions and NPTAB
- Recommended: (a) these bodies be provided with adequate financial and human resources; and (b) the Government considers establishing an anti-corruption agency with specialized units within the Police Force and DPP
- Guyana consistently scored poorly on the CPI. In 2013, it ranked 136 out 177 countries surveyed with a score of 27 out of 100

OAS 4TH ROUND REVIEW ON GUYANA...

- Allegations of corrupt behavior being highlighted in the print media routinely
- Heavy workload of the Police and DPP coupled with lack experience and expertise in dealing with white collar crimes
- Anti-corruption legislation needed, including anti-corruption agency with powers of prosecution and special anti-corruption court

ANTI-MONEY LAUNDERING EFFORTS

- Guyana a transit country for cocaine destined for North America, Europe and West Africa
- Money laundering linked to trafficking in drugs, firearms and persons as well as corruption and fraud, and appears to prop up the economy
- Guyana's record of dealing with drug trafficking and money laundering very cosmetic. No significant cases of arrest and prosecution

ANTI-MONEY LAUNDERING EFFORTS...

- Anti-money laundering legislation not in keeping with international standards. Repeated threats of sanctions from CFATF
- Proposed amendments subject to intense disagreement in the Legislature. Opposition wants comprehensive overhaul
- Government wants minimal amendments to address deficiencies identified by CFATF.
- Stalemate currently exists

AUDIT OFFICE

- Prolonged acting arrangements involving key holders of constitutional positions (Auditor General, Chancellor, Chief Justice) undermine their independence from the Executive
- Conflict of interest involving high ranking officials responsible for preparing and certifying the country's accounts and those overseeing the audit of such accounts
- Need for more qualified accountants for the Audit Office. Auditor General himself not qualified
- Tenure of office needs to be limited to enhance independence

AUDIT OFFICE...

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.

Stabroek News editorial 30 December 2013

GOVERNMENT HIRING AND COMPENSATION

- Public Service Appellate Tribunal non-functional since 1995. Needs to be reactivated
- 20% of public servants employed on contractual basis at emoluments and conditions of service superior to those in the traditional public service
- Recruited without the involvement of PSC. Most of them are handpicked individuals some of whom are retained beyond their retirement age
- Unified public service needed with uniform pay, grades and other conditions of service and full involvement of PSC

PUBLIC PROCUREMENT

- Minister of Finance appoints members of the NPTAB with the reporting relationship him. However, he is a key member of Cabinet that offers “no objection” to large contracts recommended by the NPTAB.
- Many stakeholders hold the view that the system in place does not provide them with confidence as to the fairness and transparency in the award of contracts.
- Since 2001, the Public Procurement Commission has not been established 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.

PUBLIC PROCUREMENT...

- Government is insisting on Cabinet involvement although the constitutional amendment removes that involvement and vests it with the Commission
- Stalemate between the Government and the political opposition remains unresolved
- If the Commission is established, the responsibility for appointing members of the various tender boards, including the NPTAB, will be vested in the Commission.

ACCOUNTING AND INTERNAL CONTROLS

- Government yet to promulgate accounting standards. Related law passed in 2003 requiring Minister of Finance to do so
- The current system cash-based, outmoded and not reflective of international best practice.
- Need to implement International Public Sector Accounting Standards.
- No organised system of internal auditing

REVENUE COLLECTION AND CONTROL

- Since 2002, Government 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.
- “Intercepted” revenues used to meet expenditure without parliamentary approval and there is a lack of transparency

REVENUE COLLECTION AND CONTROL ...

- National Assembly passed resolution almost two years ago, calling on the Minister to:
 - account for the properties that the company has been entrusted with;
 - explain basis upon which such properties were disposed of;
and
 - hand over the monies and excess funds to the Treasury
- Minister, who is also Chairman of the company, yet to comply.

DECLARATION OF INCOME, ASSETS & LIABILITIES

- Work of the Integrity Commission stymied for some years now because of the non-appointment of the Commissioners
- Main Opposition MPs decline to submit their annual returns
- Significant gap in the fight against corruption remains undefended
- Some public officials are flouting unexplained wealth with impunity

OTHER MATTERS

- No legislation in place to protect whistleblowers
- Transparency Institute of Guyana only civil society organisation devoted to fighting corruption. Government yet to embrace its work
- No legislation to regulate campaign financing for political parties
- Access to Information Act but no requests for information since the appointment of a Commissioner of Information some nine months ago.

CONCLUSION

- More needs to be done to secure satisfactory compliance with IACAC and UNCAC and to win public confidence about a serious commitment to tackling corruption
- Government needs to cease being in a state of denial; stop “circling the wagons”; accept the results of the CPI in good faith; and do something to improve the country’s rating
- Key areas that have fallen short of expectation have been highlighted in this presentation
- Government should embrace the work of TIGI in a genuine partnership to fight corruption