

NATIONAL INTEGRITY SYSTEM COUNTRY REPORT: TURKS AND CAICOS ISLANDS

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I INTRODUCTORY INFORMATION

Authors

Lead Researcher

Trevor St. George Munroe, BSc (Economics), MSc (Government), D. Phil (Oxon)

Consultant, Centre for Leadership and Governance, University of the West Indies, Mona

Visiting Fellow, Sir Arthur Lewis Institute for Social and Economic Studies (SALISES), University of the West Indies, Mona

Research Associate

Avagay Simpson, BSc (Political Science), MSc (Government)

Centre for Leadership and Governance, University of the West Indies, Mona

Research Assistant

Lydia Osbourne, BSc (International Relations), MSc (Demography)

Sir Arthur Lewis Institute for Social and Economic Studies, University of the West Indies, Mona

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- Zoe Reiter, Senior Programme Coordinator, Americas Department, Transparency International Secretariat
- Max Heywood, Assistant Programme Coordinator, Americas Department, Transparency International Secretariat
- Finn Heinrich, Senior Programme Coordinator, Policy and Research Department, Transparency International Secretariat
- Suzanne Mulcahy, Assistant Programme Coordinator, Policy and Research Department, Transparency International Secretariat
- Miguel Goede, University of the Netherlands Antilles, external reviewer
- External reviewer (anonymous)

During the research phase of this study, in-depth interviews were carried out with over 25 key stakeholders in the Turks and Caicos Islands, representing a broad cross-section of society. A number of these stakeholders were interviewed on more than one occasion. The breakdown of interviewees according to background is as follows:

- Government officials (9)
- Government consultants (4)
- Representatives of political parties (6)
- Private sector representatives (3)
- Media personnel (3)
- Civil society representatives (4)

We would like to thank the stakeholders who made themselves available as interviewees as well as participants in the workshops for this study.

Acronyms

CARICOM	Caribbean Community
CSO	Civil Society Organisations
EMB	Electoral Management Body
FAC	Foreign Affairs Committee
FCO	Foreign and Commonwealth Office
FSC	Financial Services Commission
GDP	Gross Domestic Product
HMG	Her Majesty's Government
IMF	International Monetary Fund
NEC	National Executive Committee
NGO	Non-Governmental Organisation
NIS	National Integrity System
OECD	Organisation for Economic Cooperation and Development
PAC	Public Accounts Committee
PDM	People's Democratic Movement
PNP	Progressive National Party
PSC	Public Service Commission
PUSH	People United to Save our Homeland
TCI	Turks and Caicos Islands
UWI	University of the West Indies

II ABOUT THE NIS ASSESSMENT

The National Integrity System (NIS) assessment approach used in this report provides a framework to analyse the effectiveness of a country's institutions in preventing and fighting corruption. This analysis has a strong consultative component involving the key anti-corruption actors in government, civil society, the business community and other relevant sectors with a view to building momentum, political will and civic pressure for relevant reform initiatives.

The NIS concept has been developed and promoted by Transparency International (TI) as part of its holistic approach to countering corruption. A well-functioning NIS provides effective safeguards against corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all of its forms. However, when these institutions are characterised by a lack of appropriate regulations and unaccountable behaviour, corruption is likely to thrive – causing negative knock-on effects on the goals of equitable growth, sustainable development and social cohesion. Strengthening the NIS promotes better governance across all aspects of society and ultimately contributes to a more just society overall.

The concept of a National Integrity System is particularly relevant to the Turks and Caicos Islands, where following an official inquiry which found numerous allegations of pervasive corruption, in August of 2009 the Constitution was partially suspended and the British government resumed executive direction on an interim basis. The purpose of the Turks and Caicos Islands (TCI) NIS study is to provide an assessment of the principal institutions of governance responsible for enhancing integrity and combating corruption in the TCI before August 2009 with regard to (1) their overall capacity; (2) their internal governance systems and procedures; and (3) their role in the overall integrity system. The assessment examines both the formal framework of each institution as well as the actual institutional practice, highlighting discrepancies between the formal provisions and the reality on the ground. This in-depth investigation of the relevant governance institutions, which uses key informant interviews and desk research as its primary data sources, is embedded in a concise context analysis of the overall political, social, economic and cultural conditions in which these governance institutions operate. The collected information is used to score the NIS indicators, providing a concise quantitative summary of the performance of the respective pillar.

The resulting assessment provides a detailed evaluation of the strengths and weaknesses of the governance institutions at a given point in time, in the form of a comprehensive country report that includes a set of quantitative indicators for each institution. Its results are geared towards providing constructive recommendations for strengthening the overall integrity of the governance system. It can also be used as a benchmarking tool to measure progress over time, compare performance across institutions, and identify best as well as bad practices.

For Transparency International, NIS assessments are an important evidencebased advocacy tool. They complement TI's global indices and surveys – including the Corruption Perceptions Index, Bribe Payers Index and Global Corruption Barometer, as well as national surveys – by exploring the specific practices and constraints within countries and providing qualitative empirical results about the rules and practices that govern integrity systems. More than 70 such studies had been completed as of the end of 2010.

The TCI report presented special challenges to the NIS assessment approach. Amongst these were:

1. The country's status as a British Overseas Territory. In effect, this characteristic means that key institutional pillars such as the Executive incorporated an extra-territorial dimension, elements of which traditionally were largely non-transparent in their relations with an Overseas Territory.

2. A political situation characterised by significant tension and deep partisanship. The period under study preceded the partial suspension in August 2009 of the 2006 TCI Constitution by the UK government. The research, however, was actually conducted at a time when interim administration had passed the six-month marker. Understandably, in this situation, there appeared to be a sharpening of the divide amongst people with opinions for and against British intervention. This added to and complicated the traditional partisanship between supporters of the territory's two political parties, creating a charged political atmosphere.

3. Small population size and extensive kin-based relationships. Even by Caribbean standards or, more widely, by those of small island states, the TCI has a relatively small population (34,862) in which family ties and personal relations play an inordinately large role in public life.

4. Limited data and documentation. Key institutional pillars of the TCI are not covered by any of the major global, governance-related databases compiled by organisations such as Freedom House, TI and the World Bank Institute. Similarly, secondary studies and academic works on the TCI are rare. Whilst adopting an orthodox data collection methodology, the approach to the TCI study had to be particularly mindful of these special features of the research context. It included the following:

I. Desk research

a. Legislation: Ordinances related to the institutional pillars of the NIS internal structure, composition and role were reviewed.

b. Official documents: Rules, regulations, policy papers, reports and codes of conduct related to key bodies in the TCI governance arrangements had to be identified, retrieved and analysed. This proved a particularly challenging undertaking, as many documents were neither available online nor easily acquired from traditional sources.

II. Policy and academic literature

Policy literature and academic works on the TCI are extremely limited but were utilised where relevant.

III. Key interviews

As specified in the NIS methodology, these interviews constitute a crucial data source, particularly with regard to examining the actual practice of institutional norms and procedures within the governance system. In the context of the TCI, where secondary data is extremely scarce, these interviews carried even more weight. Therefore, a comprehensive and balanced list of interviews was prepared, which was updated over the course of the project based on input from various stakeholders. In all instances, due to the politically sensitive, small-island context of the TCI, extra care and attention was taken in conducting the interviews and using the data for the research. Additionally, more than the usual level of anonymity of sources had to form part of our methodology, because of the controversial nature of both past-event assessments and institution-strengthening recommendations. Overall, this report could not have adequately reflected the nature and character of the TCI's national integrity system without interviews conducted with key personnel in the governance system. Given the small scale, relatively limited documentation, interconnectedness by kinship, etc., and the atmosphere of reluctance to be publicly forthcoming, many significant observations were not for attribution. The credibility and representativeness of interviewees were determined in part on two bases: first, the extent of the 'fit' between information provided by interviewees and critical documentary sources such as the Auld¹ and Blom-Cooper² reports; secondly, the degree to which the interviewees' insight, on a balance of probability, had an authentic ring given the author's knowledge of the political culture of the Caribbean. Nonetheless, statements that appeared extremely controversial and unsubstantiated by documentary or other sources have been omitted. Overall, the key interviews shaped the report in terms of being corroborative, illustrative or indicative of a particular situation or a specific proposition.

IV. Data analysis

This involved summarising the qualitative material in the form of the NIS report as well as providing quantitative scores for the indicators.

Taking into account the particular circumstances of the TCI and the methodological adaptations required by these circumstances, the NIS country study examined the foundations of the National Integrity System, the corruption profile as well as an overview of the main anti-corruption activities by the government and other relevant actors. The main body of the work assesses 13 institutional pillars of the TCI's NIS, namely: the Legislature,

 ¹ Auld, Robin, Turks and Caicos Islands Commission of Inquiry 2008-2009 Report, 2009.
 ² Blom-Cooper, Louis, Turks and Caicos Islands Commission of Inquiry Report, 1986.

II ABOUT THE NIS ASSESSMENT

Executive, Judiciary, public sector, law enforcement agencies, electoral management body, ombudsman, supreme audit institution, anti-corruption agencies, political parties, media, civil society, and the business sector. In relation to each pillar, three dimensions are reviewed: capacity, internal governance arrangements and role in the system. Specific questions are posed and answered in so far as the data collected allows. A quantitative score – from 0 (minimum) to 100 (maximum)³ – is attached to each indicator as a summary of the available evidence, following the criteria developed as part of the NIS methodology.⁴ These scores are aggregated into scores for the three dimensions (capacity, internal governance and role) and into a final score for the pillar. In addition, at the end of each pillar section, recommendations are made as to how the respective pillar may be strengthened. The main conclusions are summed up at the end of the report.

³ Underlying is a five-point scale (0, 25, 50, 75, 100), which has been used for all indicators except the foundations, where more fine-grained distinctions were possible.
⁴ For further details, see: www.transparency.org/policy_research/nis/methodology

This NIS assessment examines the state of governance in the TCI in the period leading up to August 2009, when the 2006 Constitution was partially suspended and the British government resumed executive direction of the government due to numerous allegations of pervasive corruption found by an official inquiry. The findings of this assessment show that at that time, the National Integrity System of the Turks and Caicos Islands was weakening and in danger of collapse despite the first of our four main findings being that, in formal terms, the institutional pillars constituting the TCI's NIS were relatively standard and orthodox. The TCI's 2006 Constitution was substantially in accord with similar instruments accorded to Overseas Territories at the penultimate stage of the transition to independence. As such, constitutional provisions related to the fundamental rights and freedoms of the individual, and to the Office of the Governor, the Executive, Legislature, Judiciary and the public service were, in the main, appropriate and consistent with corresponding provisions in the colonies at an earlier stage of transition to independence throughout much of the Caribbean - for example, Jamaica's 1955 and 1959 Constitutions.

Similarly, those institutions of governance not provided for in the Constitution displayed conventional rules, regulations and codes which, by and large, and in comparable contexts, withstood serious corrosion and maintained adequate levels of integrity. In this regard, the law and framework governing the **electoral management body**, the **media**, **business** and **political parties** in the TCI were not particularly exceptional. The **General Orders of the TCI Public Service**, the **financial instructions** governing public procurement, the **Register of Interests** for legislators and the **Code of Conduct for Ministers** were, to one degree or another, acceptable.

This is not to suggest that there were no deficiencies in the law and in the TCI's legislative framework. Codes of conduct were not sufficiently enshrined in appropriate ordinances; there was no provision for the registration of political parties nor for the control of 'money in politics'; and the authority of watchdog agencies, such as the Complaints Commissioner, appeared too limited. These shortcomings, however, were not unique to the TCI. The overall weakness of the National Integrity System in the TCI, therefore, can largely be explained by the remaining main findings immediately below.

Box 1: National Integrity System temple – Turks and Caicos Islands

The NIS temple gives a snap-shot summary presentation of the quantitative NIS assessment findings. The temple has long been used by TI as a metaphor for a functioning integrity system and uses the quantitative information produced by the NIS assessment to summarise the main findings. Please see the previous section "About the NIS assessment" for more information on the methodology and approach.

As shown in the graph below, the NIS temple gives a concise overview of the specific strengths and weaknesses of a country's integrity system. A strong National Integrity System would have all pillars close to or at their maximum value – reaching towards the "roof" in the picture. Using this ideal situation as a benchmark, the overall weakness of the National Integrity System in the case of the Turks and Caicos Islands can be clearly observed. Of particular concern are the Law Enforcement Agencies pillar (5th from the left), and the Anti-Corruption Agencies pillar which during the period under review was absent.

The weak foundations on which the National Integrity System of the TCI rests can also be seen underneath the temple.



Our **second** finding relates to the considerable gap between law and practice in the operation of the main institutional pillars in the TCI. Important mechanisms providing for transparency in governance, such as the Legislature's Register of Interests, did not perform that function. Conflict of interest rules were largely unobserved. Accountability instruments such as the Public Accounts Committee did not seem to function effectively. Ministerial breaches of Public

Service Regulations and consequent encroachment on the independence of the public service appears to have occurred with frequency. The exercise of oversight responsibility on the part of the Governor's Office and ultimately Her Majesty's Government, in whom ultimate authority over the TCI resided, appeared inadequate to halt the slide towards deterioration in governance and reverse practices that significantly diverged from formal rules.

This leads to our **third** finding. The 'checks and balances' provided for in the TCI's National Integrity System, and which are essential correctives in systems of governance under stress from deviant practice, did not work to any acceptable degree. In this regard, robust, early intervention from the UK authorities was not forthcoming; the Opposition in the Legislature (2003-09) proved relatively ineffective; and the media less so but nevertheless it fell short in terms of capacity to mobilise public opinion against corruption. Civil society was relatively weak. The Electoral Management Authority and the Ombudsman were both circumscribed as effective checks by deficiencies in law. In the final analysis, law enforcement agencies appeared unable or unwilling to act in circumstances where intervention seemed warranted. Hence, overall, the system applied no significant brakes, as practice appeared increasingly to run away and depart from the law.

These findings pose the obvious but challenging question: What accounted for this considerable divergence between relatively orthodox institutional arrangements and comparatively unorthodox departures in practice from accepted democratic principles of accountability, transparency and integrity in governance?

The **fourth** finding of this study suggests that special features of the **foundation of the NIS** in the TCI largely facilitated this divergence. In the first place, the TCI had relatively limited experience in the operation of institutions of governance. The TCI's first separate Office of Governor was established in the 1970s, along with the first Constitution for the colony. Other small, Caribbean island states at similar stages of constitutional development had centuries of experience in these governance institutions. Consequently, there was comparatively limited apprenticeship in operationalising fundamental democratic procedures, such as those related to the separation of powers, the independence of the public service and non-discrimination on the grounds of political belief.

Underlying the limited apprenticeship of TCI citizens in operating embryonic governance institutions and gradually co-piloting the journey to responsible government was the special transient character of the population. Successive groups came from territories such as Bermuda, the American colonies and the Bahamas, and subsequently departed from the TCI. These inward and outward

population movements depended on vagaries of the TCI cotton, salt and fishing economies. Unlike the situation in many comparable small island states, there developed no settled, permanent population of owners, managers and labourers evolving common norms, shared experience and minimum social cohesion.

The TCI's political and social history therefore presented relatively shallow soil and weak foundations in which to plant the institutional pillars of the NIS in the last decades of the 20th century.

One additional factor complicated this situation and contributed to the TCI's special situation. Beginning in the 1990s and continuing into the first decade of the 20th century, TCI experienced levels of economic growth unprecedented in the territory, and in large measure unequalled elsewhere in the international community. Foreign investors seeking development opportunities presented the TCI with rosy prospects for healthy growth. But this very favourable situation also carried with it grave risk. The institutions of governance, already fragile and not deeply rooted, were presented with the new and immense challenge of developing and sustaining transparent, accountable and honest practice in the attraction, regulation and management of huge investment inflows and massive population immigration. This challenge, a significant test for robust systems anywhere, appears to have been far from adequately met in the special circumstances of the TCI.

This deficiency was neither short-lived nor superficial. In this regard, the Auld report suggested with credibility that 'little has changed over the last 20 or so years leading to this Inquiry, except as to the possible range and scale of venality in public life'.⁵ Although this period falls outside the scope of this study, our assessment suggests that the fragile and weak foundation of TCI institutions rendered them more than usually dependent on the quality of leadership in the system of governance.

One reason for this dependence lies in the leader-centred culture of many small island developing states, particularly in the Caribbean region. In the TCI this factor was particularly pronounced, as both the population and the territory's leadership (in the public and private sectors) had relatively limited experience and acculturation in critical areas of democratic governance. As such, neither behavioural traditions, civic education nor ethical precepts sufficiently immunised the public as a whole (nor critical segments of it) against political patronage, vote-selling and vote-buying, nepotism and cronyism, political interference in civil service and other divergences from the rules of the game⁶. On the contrary, evidence suggests that the TCI would be more than usually

⁵ Auld, p. 23. ⁶ See Auld, p. 62-67.

vulnerable to leadership prone to engage in practices such as these that ran counter to democratic norms. One obvious reason for this vulnerability has already been indicated – the relatively recent socialisation and the shallowness of a cultivation at all levels of the political community into the attitudes, values and behaviours characteristic of the Westminster Parliamentary System.

Postscript:

The stated objective of the current interim administration is for elections to be held on the Islands once a series of requirements has been met. At the time of writing (December 2010), no definite date for elections had been announced, and it seems likely they will not be held until 2012 at the earliest. The main processes put in motion by the TCI's interim administration as regards the reform of its governance institutions include: drafting a new Constitution; forming a Special Investigation and Prosecution Team; and forming a Civil Recovery team to recover assets misappropriated by private individuals. Advisors are also working to improve governance standards across several public sector departments.

Despite impatience at the slow progress perceived in some key areas, civil society in the Turks and Caicos Islands seems to have an active and increasing role in public life through participation in consultative forums and also via the media.

We hope this NIS report will be a useful tool for all stakeholders working towards building a corruption-free future for the Turks and Caicos Islands.

Priorities and Recommendations

These findings suggest a number of priority areas for action (listed below), while more pillar-specific recommendations are presented under each respective pillar.

First, **the political culture of the TCI**. Evidence suggests that significant sections of the population perceive there is little wrong in selling their votes and seeking favours from political leaders in return for political support. Conversely, discrimination against political opponents in the allocation of 'scarce benefits' and spoils may be regarded as a normal practice rather than a deviation from good governance. Popular attitudes and values appear not to sufficiently support transparency, accountability and integrity as necessary and desirable characteristics of leadership in government, the private sector, public service and other sectors of society.

This priority area therefore requires a comprehensive programme of communication and advocacy to demonstrate that corruption is fundamentally wrong in itself and highly damaging in its effects. This programme should embrace and utilise in its design and implementation the schools and educational institutions, media and civil society bodies, in particular the churches. Particular publics should be targeted as priorities, in particular youth and community opinion leaders.

Second, **the law enforcement agencies**. During the period under review, law enforcement authorities – despite credible allegations and many rumours of corruption – appeared unwilling or unable either to arrest or successfully prosecute persons in the leadership, national as well as transnational, of any of the TCI's institutional pillars. This deficiency runs the risk of reinforcing the belief that in the TCI there is no 'equality before the law', thereby undermining a fundamental principle of the rule of law as well as of the legitimacy of the entire criminal justice system.

Enhancing the quality of law enforcement requires more rigorous use of prosecutorial power by the Attorney General's Office, and ultimately the establishment of an Office of Director of Public Prosecutions to assume this responsibility.

In addition, significant improvement in the investigative capacity of the police is required. One method that is producing significant positive results in CARICOM is the secondment of carefully selected senior police officers from the British Police Service to boost and build local capability. Another essential requirement for more effective law enforcement in the TCI is the closest possible cooperation with international partners (particularly in the UK) who must

assume primary responsibility in policing foreign investors' adherence to international conventions against bribery of foreign overseas officials.

Third, the design of key institutions. Deficiencies in the design and operational principles that govern critical pillars of the NIS – such as the Executive, the Legislature and political parties – increase vulnerability to deviant behaviour in the circumstances of the TCI. Measures must be introduced to make these institutions more accountable and more transparent in their operation.

In this regard, reports from the Governor to the FCO and instructions from the FCO/HMG need to be subject to a degree of transparency within the Executive, where they do not relate to sensitive issues or might breach confidences. In addition, a more effective mechanism needs to be developed to facilitate meaningful, institutionalised and independent communication between significant bodies of TCI opinion and the FCO, HMG and FAC.

In regard to the Legislature, its size needs to be expanded and the public system of representation redesigned to maintain constituency-based representation, but also to mix first-past-the-post with an element of proportionality. This mix would have the tendency of reducing the gap between popular voter support on the one hand and legislative representation on the other, particularly for the minority party – a recurring feature of pure first-past-the-post systems. One positive likely consequence of this reform would be to strengthen the number of opposition representatives in the Assembly and hence the potential of improved oversight of the Executive.

Fourth, the legislative framework. It is apparent that despite being relatively orthodox, the TCI's legislative framework has significant deficiencies. One particularly serious gap lies in the absence of any ordinance providing for the registration and regulation of political parties. A related shortcoming is the absence of any rules regarding disclosure of party campaign financing and political funding. These contribute to the weak NIS and facilitate behaviour which seriously undermines the integrity of key pillars of the NIS. A further significant gap is the absence of a whistleblower protection ordinance.

These deficiencies require urgent discussion, in particular decisions regarding an ordinance to register and regulate political parties. Such legislation would require enhancing the resource-base of the Electoral Management Body, empowering it to enforce the existing penalties attached to offences under the Elections Ordinance, as well as extending new authority to the EMB to police new provisions to control the harmful effects of too much 'money in politics'.

IV COUNTRY PROFILE

The Turks and Caicos Islands, more commonly called the TCI, is a British Overseas Territory⁷ located in the northern Caribbean, 575 miles south of Florida, 30 miles south of the Bahamas and 90 miles north of the Dominican Republic.⁸ The Turks and Caicos Islands comprises an archipelago of 40 islands and cays, of which only eight are inhabited. The main islands are in two groups: the Turks group, which includes Grand Turk and Salt Cay, and the Caicos group, which includes West Caicos, Providenciales, North Caicos, Middle Caicos, East Caicos and South Caicos. The TCI's main natural assets are its 230 miles of white-sand beaches and the third-largest coral reef system in the world. The country's capital is Cockburn Town, on Grand Turk. The most populated islands are Providenciales, Grand Turk, North Caicos, South Caicos and East Caicos. The TCI has a population of 34,862 (2007)⁹ and a population density of 64/km².

The islands were discovered in 1512 by the Spanish explorer Ponce de Leon. At this time the islands' main inhabitants were the Lucayan Amerindians. During the 17th century several Bermudans migrated to the TCI and established its salt industry, which became the country's main industry for years. In 1766 the Turks and Caicos Islands came under British rule. A short time later, at the end of the American Revolutionary War (1775-81) loyalist planters from the US settled on the islands and brought with them Africandescended slaves. In 1779 both the Turks and Caicos island groups were annexed by Britain as part of the Bahamas. After the abolition of slavery in 1834, most planters left the islands but their former slaves remained. In 1848 the Turks and Caicos Islands was declared a separate colony under a colonial president. This lasted for more than 20 years and spanned four presidents until 1874, when the TCI was annexed by Jamaica. After Jamaica gained its independence in 1962, the Governor of the Bahamas was appointed the Governor of the TCI, in 1965. When the Bahamas gained its independence in 1973, the UK government appointed a separate Turks and Caicos Islands Governor for the first time. The Governor was responsible for defence, internal security, foreign affairs and TCI's own legal jurisdiction.

One striking feature of the TCI's development from the 17th to the mid-20th century is worth noting. Unlike other colonies in the region, there was a comparative lack of continuity of institutions of governance and stability of the population – either of settlers or labourers.

The Turks and Caicos Islands adopted a Constitution on 30 August 1976, the day now celebrated as Constitution Day, a national holiday. This Constitution includes a provision for a chief minister and approximately three ministers

⁷ These are the remaining territories of the British Empire that have not achieved independence or have voted to remain British.
⁸ CARICOM (2009)

[;]www.caricom.org/jsp/community/turks_caicos_islands.jsp?menu=comunity ⁹ Department of Economic Planning and Statistics, www.depstc.org

responsible for governing the country in accordance with decisions of the executive council. Independence was agreed upon in 1982, though the policy was reversed and the Constitution suspended from 1986 to 1988 following a Commission of Inquiry that found corruption and abuse of power in the elected leadership.¹⁰ More than 20 years later the TCI remains a British Overseas Territory. In the period under review (i.e. prior to the partial suspension of the Constitution in August 2009 - please see p. 9 above and p. 26 below), the Turks and Caicos Islands was an internally self-governing, overseas territory of the UK. Executive power was exercised by the government; legislative power was vested both in the government and the House of Assembly. The Judiciary is independent of the Executive and Legislature. Military defence is the responsibility of the UK.

In the TCI, politics takes place within parliamentary representative democratic governance arrangements. A new Constitution was adopted in 2006 which provided for a Governor who represents Her Majesty the Queen (the head of the state) in right of the government of the Turks and Caicos Islands, a Cabinet of three ex-officio members (Financial Secretary, Attorney General and Speaker), the Premier as the head of government, and five cabinet members appointed by the Governor. The unicameral House of Assembly consists of 21 members, 15 of whom are directly elected to four-year terms. From the membership of the House of Assembly the following ministers are sworn in: the Premier, Deputy Premier, Minister of Finance, National Insurance and Economic Planning, Minister of Housing, Agriculture, Works and Telecommunications, Minister of Health and Human Services, Ministry of Natural Resources. Fisheries and the Environment, Minister of Home Affairs and Public Safety, Minister of Education, Youth, Sports and Culture, and Minister of Tourism, Trade, Investment and District Administration.

The Turks and Caicos Islands enjoys a relatively stable political environment. It has a two-party system: the ruling Progressive National Party (PNP) and the opposition People's Democratic Movement (PDM). The last elections were held in 2007, in which the PNP received 60 per cent of the votes and was returned with 13 seats; the PDM took the remaining two.¹¹ Partisan political attachment runs deep in the Turks and Caicos Islands, as each side of the political divide is highly polarised. 'Almost everyone in the islands identifies him/herself with one of the two political parties'.¹²

Elections are held by secret ballot across the 15 established electoral districts, and are conducted and monitored by the Supervisor of Elections. The Judiciary is responsible for any formal electoral disputes. Adult suffrage is attained at age 18, and in order to be an electorate one must be a TCI resident

¹⁰ Blom-Cooper, 1986.

¹¹ 'Turks and Caicos Today' www.fco.gov.uk/en/newsroom/ltestnews/?view=news&id=20700728

¹² Auld, 2009.

for at least 12 months and have resident status.¹³ The Constitution also provides for independent candidates to compete in legislative elections.

The TCI civil and public service structure and principles are largely inherited from the British administration. The government ministries are directed by a minister (political) and a permanent secretary (administrative). The legal system of the TCI is based on English Common Law, with a small number of laws adopted from Jamaica and the Bahamas. The judicial branch of government consists of the Supreme Court; appeals are heard by the Court of Appeals, and final appeals by the Judicial Committee of the Privy Council, sitting as a court of the Turks and Caicos Islands. There is also a local Court of Appeal with a president and at least two Justices of Appeal. The Magistrate Court is the lowest of the courts and sits in each of the islands.

Because the Turks and Caicos Islands is not an independent state, it cannot confer citizenship. Since 2002 the British Overseas Territories Act restored full British citizenship status to all citizens of British Overseas Territories. In the Turks and Caicos Islands, citizens are referred to as Belongers. 'Persons having "Belonger" status include those who are born in TCI having a parent who is a Belonger, or born outside TCI having a parent and a grandparent who are Belongers, and those who receive such status by grant from the Governor or through marriage to a Belonger'.¹⁴ On the other hand, immigrants with a Permanent or Temporary Residency Certificate are referred to as Non-Belongers. The Turks and Caicos Islands is an associate member of CARICOM and participates in the Caribbean Development Bank.

Despite being a British territory, the main currency of the Turks and Caicos Islands is the US dollar. The country has a GDP of US \$721.9 million (2006), a per capita GDP of US \$23,768 (2007), and total exports of US \$16.3 million (2007p).¹⁵ Tourism, financial services and fishing are the main economic activities. The US is its main trading partner and its main export is seafood products (lobster and conch). Its main imports are food, beverages, tobacco, manufactured goods and construction materials.

A wide variety of financial services are available in the TCI, including company formation, offshore insurance, banking trusts, limited partnership and limited life companies. The Financial Services Commission regulates, develops and promotes the industry in major world markets. The TCI has no income, wealth or inheritance taxes; the major sources of government revenue include fees from offshore financial services and customs receipts on imported goods. Revenues are also derived from indirect taxes such as accommodation taxes on hotel rooms and work permit fees. The recent economic success of the TCI

¹³ The Turks and Caicos Islands Constitution Order, 2006, Section 27(1).

¹⁴ tci-gov.tc/Immigration/immigration_faq.htm

¹⁵ Department of Economic Planning and Statistics, www.depstc.org

is evidenced by the fact that it no longer receives direct grant aid from the UK. Economic growth was satisfactory in the years leading up to 2009. Surveys show that during the last decade the TCI has experienced tremendous growth, and in 2007 it had a GDP growth rate of 14.8 per cent. ¹⁶

The economic policy of the government stresses growth and diversification, allocating resources to promoting tourism and the offshore sector. The TCI's dependence on foreign capital is of major concern, as any economic instability in source countries will have a direct impact on the TCI economy. The Turks and Caicos Islands had an employment rate of 94.6 per cent (2007) and a labour force participation rate of 75.4 per cent (2007).¹⁷

The Turks and Caicos Islands has 13 years of free and mandatory education starting at age four and continuing to the end of secondary school. Primary education lasts for six years and secondary education lasts for five years. Net enrolment rates are 78 per cent for primary and 70 per cent for secondary (2005).¹⁸ At the tertiary level, there are seven institutions that provide educational opportunities for students who have successfully completed secondary school. The Turks and Caicos Community College on Grand Turk offers vocational professional education, and the Windsor University at Cockburn Town on Grand Turk provides medical training. Additionally there is the St. Clements University, Burkes University, Turks and Caicos Institute of Professional Studies and the Turks and Caicos Islands Business College. The TCI hosts three public libraries.

The media enjoys a relatively high level of freedom in the Turks and Caicos Islands; its work is governed by the Broadcasting Ordinance of the state. There are three major newspapers - the Turk and Caicos News, Free Press Turks and Caicos and the Turks Caicos Sun. There are seven radio stations, one of which is government owned and operated (Radio Turks and Caicos). The country has two television stations: WIV, which is available via cable, and DTTA, which is less than one year old.

The Turks and Caicos Islands has a large immigrant population which is approximately 64 per cent of the total population. Immigrants consist mainly of British, Irish, Commonwealth nationals, North Americans, French, Swiss, Dominicans and Haitians. There has been a recent increase in the number of Haitian immigrants, which has caused concerns among residents who fear an uncontrolled influx of Haitians. Many Belongers hold the view that the presence of Haitians in their communities would tend to lower their standard of living¹⁹ and raise the prospect of Belongers becoming a minority if enfranchisement is drastically extended.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ www.thecommonwealth.org

¹⁹ Turks and Caicos Islands Poverty Assessment Report, September 2000.

'Shades of skin colour have enormous significance in the [TCI] society, like in other parts of the Caribbean, historically; approximation to European standards of beauty lends superior social status.'²⁰ The 2000 Poverty Assessment also stated that 'access to credit from the banking system purportedly reflects the "collateral of colour"... Turks and Caicos Islanders are likely to remain at the lower and middle levels of the main industry of their country and absent as owners of hotels, restaurants and major businesses. The first results from its small population base, and the second from the structural barriers to their emergence'.²¹ Despite these experiences, the Bill of Rights laid out in the Constitution has provisions in place to combat discrimination. It has provisions that relate not only to discriminatory laws and discriminatory actions committed by persons acting under the authority of any law, by public officers or public authorities, but also to discrimination by private persons or bodies.²²

The country has a few non-governmental organisations (NGOs) whose work and campaigns are sectorally specific. Most civil society groups are church based. Trade unions are almost non-existent with the exception of an association among public servants.

Following on a Commission of Inquiry that found evidence of a high probability of extensive corruption amongst elected legislators (please see next section – Corruption Profile, p.33)²³, the 2006 Constitution was partially suspended in August 2009 and the British government resumed executive direction of the government. This study examines the institutional situation and performance of the TCI in the period up to August 2009.

 ²⁰ Ibid, p. 40.
 ²¹ Ibid.
 ²² The UN Human Rights Committee 77th Human Rights Session, CCPR/CO/73/UK/Add.2
 ²³ Auld, p.12

Foundations

Since the National Integrity System is deeply embedded in the country's overall social, political, economic and cultural context, a brief analysis of this context is presented here to better understand the opportunities and constraints for institutional reform and other potential interventions to improve the NIS. There are four different 'foundations' of the NIS: political-institutional, socio-political, socio-economic and socio-cultural.

Political-Institutional Foundations

To what extent are the political institutions in the country supportive to an effective National Integrity System?

Score: 40/100

In general the political-institutional foundations display democratic features. There are two political parties that attract popular support and loyalty during and after relatively free and fair elections. There is an independent Judiciary and a public service that is supposed to be independent and impartial in accordance with the Westminster Parliamentary democratic principles. The Constitution affirms fundamental rights, amongst which is the protection from discrimination on political grounds. Yet, political favouritism and victimisation have become pronounced features of politics in the TCI. This is but one manifestation of divergence between principles of democratic governance and the performance of democratic institutions. One reason for this is the relatively weak foundations and shallow roots of democratic traditions in the TCI.

In this regard, more than 20 years ago, based on available evidence, the Blom-Cooper Commission of Enquiry found:

⁽Persistent unconstitutional behaviour (through the application of political patronage) and contraventions of the fundamental freedom of the individual from discrimination on the grounds of political opinions, maladministration by both ministers and civil servants at entry level of government (mostly at middle management level), and intolerable (not to say seditious) conduct by leading opposition members of the Legislative Council are constant blights upon a constitutionally ordered society which is already displaying signs of political instability^{1,24}

The potential cause of this high level of patronage and discriminatory practice on political grounds is a weak governance structure in which a lack of independent oversight and respect for systems of integrity have become the norm within the governance framework. Contributing factors have been the failure, during an unsettled history, to entrench these institutions, and in more

²⁴ Blom-Cooper,1986, p. 97.

recent years less than adequate oversight by the Foreign Commonwealth Office.

Political institutional arrangements need to be redesigned and reshaped to strengthen transparency and accountability in governance and to enforce the law against persons credibly accused of breaches, whatever their positions in the government.

Socio-Political Foundations

To what extent are the relationships among social groups, and between social groups and the political system in the country supportive to an effective National Integrity System?

Score: 25/100

There is a very strong social division in the Turks and Caicos. There is antiforeigner sentiment, as the Belongers believe they have been marginalised and squeezed between a predominantly white, wealthy and influential elite and a large immigrant population.

There is mild discrimination witnessed against Haitians, as they are not welcome into communities and are forced to live an impoverished lifestyle with limited access to basic amenities such as water and electricity. There are also provisions within the TCI health sector providing for a two-tier charging system: Belongers pay a smaller health fee than Non-Belongers for the same health services. For example, a Belonger pays US \$10 for antenatal care while a Non-Belonger pays US \$250.²⁵ The Social Development Direct 2002 report states that other groups that experience marginalisation include the mentally ill, women, some children and people living with HIV/AIDS.

Civil society and NGOs are very few but active in the TCI. They are strongest on Grand Turk. These NGOs include the Red Cross, Kiwanis, Provo Association for the Handicapped and Elderly, Rotary Club and Optimists Club. These groups try to provide social services such as day care, school nutrition programmes, sanitation and disaster preparedness. There are no civil society groups that seek to be an advocate on behalf of the people before the government on issues affecting the society.

A score of 25 was given because there are deep social divisions, particularly between Belongers and Non-Belongers, and between different racial groups, as well as a relatively weak civil society.

²⁵ Alberman, Daniel, Williams, Dessima, et al, Field Visit to the Turks and Caicos Islands November 19 - December 2, 2001, Social Development Direct, 2002.

The cause for the polarised society is embedded in history. Divisions emerged from cultural differences arising from the different immigrant populations during the 1600s to the Caicos and Turks Islands. Since the economic boom there has been demand for labour, which has brought an influx of immigrants. This has created a level of xenophobia amongst the Belongers for fear of being outnumbered by immigrants. The Belongers also believe they are being marginalised by immigrants in important areas such as the economy.

Socio-Economic Foundations

To what extent is the socio-economic situation of the country supportive to an effective National Integrity System?

Score: 65/100

The Turks and Caicos Islands is one of the more prosperous countries in the Caribbean, enjoying economic growth in recent years of more than 9 per cent annually.

Wealth is coupled with poverty in both Belonger and Non-Belonger communities. There are many TCI islanders living in wooden shacks, mostly without water and sanitation and sometimes without electricity and telephone. The wealth is seen mostly on the island of Providenciales (the main tourist area), where the majority of the elites reside.

The TCI was largely underdeveloped until governments in recent years started to focus on attracting investments into the country. With an increase in investments came job opportunities that benefited all members of society. This also meant an influx of immigrants, which created a further divide within the society. Most developments came with a new land policy that required all developers to have a local partner, creating opportunities for access to investments for locals who had otherwise lacked such access. After this policy and growth in investment/development, the gap of inequality was somewhat narrowed and poverty reduced.

The Haitian population has been stigmatised in the TCI; many live in shantytowns with no access to water or electricity.²⁶ Reports in 2002 also highlighted cases of discrimination against Haitian migrants. For example, a Social Development Direct report that year stated that 'numerous Haitians with valid work permits were arrested and summarily deported'.²⁷ In a BBC article from 19 December 2002, it was reported that 'dozens of children of Haitian descent tried to register for schools at the beginning of term, they were turned away'. This was done based on the allegation that the children did not have the

²⁶ Bolderson, Claire, 'Turks and Caicos: Has Britain Broken its Promises?', BBC online, 19 December 2002.

²⁷ Social Development Direct, 2002.

appropriate documentation.²⁸ Although efforts have been made to remedy marginalization of the community such as the provision in the 2006 Constitution that guarantees access to primary education to all children, Haitians have had difficulty establishing themselves in the TCI despite having legal work permits and making national insurance contributions. The TCI population has been ambivalent about immigrants. On the one hand, they are clearly needed; on the other, they are resented.

In terms of living conditions, 26 per cent of TCI residents are poor, comprising 18.3 per cent of the total number of households. Approximately 38.9 per cent of the people own their own homes, while 53.8 per cent rent housing provided by the private sector. Pit latrines are used by 34.1 per cent of the population, which are associated with low socio-economic status in the TCI. Twenty-eight per cent of the population shares toilet facilities with other households nationally. Squatting is also present in some communities. Private sources of water supply 63 per cent of households, while public wells/tanks supply 27.7 per cent.²⁹

Most investment and development is heavily based on the tourism industry, which is predominant on two of the eight inhabited islands and therefore reflects disparities between the islands as it relates to economic development. Most businesses are linked to tourism and are relatively strong and sustainable, but they face challenges if there is a decline in the tourism sector or a global economic downturn. This effect was witnessed with the onset of the economic crisis in 2008, when the Caribbean tourism industry felt shock waves as travellers cancelled trips. Hotels and resorts laid off workers and new projects were delayed or scaled back. The Bahamas, the TCI and Jamaica lost visitors.³⁰

The TCI also generates income from offshore banking and fees charged to foreign companies registered in its territory. For example, an estimated 4000 producer-owned reinsurance companies were registered in the TCI as of 2009³¹. During the period under review, the TCI provided a high degree of financial opacity, including bank secrecy, company redomiciliation and no requirement for beneficial ownership of companies to be on public record. An international assessment report of "secrecy jurisdictions" based on data available as of December 2008 gave the TCI a financial transparency score of 0/100. ³² It should be noted however that TCI has worked with the OECD in respect of tax information exchange since 2002. According to an OECD

²⁸ Ibid.

²⁹ Turks and Caicos Islands Poverty Assessment Report, September 2000. ³⁰ *Miami Herald*, 'Economic Crisis Hits Tourism-Caribbean Braces for Worst Tourism Since 9/11', 9 December 2008. [accessed on http://www.businessbvi.com/articles/economic-crisis-

hits-tourism/ January 14, 2011] ³¹ Turks and Caicos Islands Financial Services Commission Annual Report 2009, p. 10 ³² Tara Latia Natural Julia Julia Paratt The Tarks and Ociae Julia de 2000

³² Tax Justice Network, Jurisdiction Report, The Turks and Caicos Islands 2009; www.secrecyjurisdictions.com/PDF/TurksCaicosIslands.pdf

Progress Report, TCI is classified as a jurisdiction which has 'committed to the internationally-agreed tax standard but ha[s] not yet substantially implemented [them].³³

An overall score for socio-economic foundations of the TCI of 65 was given as despite high rates of economic growth in the decade leading up to 2008/9, significant poverty and social and economic inequalities seem to persist.

Strengthening the socio-economic foundations of TCI's National Integrity System would appear to require the development of programmes (safety nets) for minority groups, e.g. for senior citizens and the mentally ill. There is also a need for housing and infrastructure programmes in lesser-developed communities. Investments need to be more diversified across the islands, thus fostering growth and development of all communities. Strategies for diversifying the economy that recommend themselves as being solely dependent on tourism and the financial service sector make the economy very susceptible to external shocks. A development plan encompassing much of the above is on the agenda for all the islands.

Socio-Cultural Foundations

To what extent are the prevailing ethics, norms and values in society supportive to an effective National Integrity System?

Score: 25/100

It appears there has been increasing social acceptance of patronage. Interviews suggest that a significant segment of the people is vulnerable to the acceptance of bribes and expected politicians to provide handouts during elections. Support for a political party is linked to economic payoffs such as provisions of jobs in government³⁴. People believe that in expressing their political allegiance publicly, they will be treated more favourably by the government. It is believed that the more vocal the allegiance, the greater the expectation of favouritism and invariably the more lucrative the payoff. Party allegiance is very strong and is sometimes placed above natural relations such as family and friendship.

There seems to be a high level of distrust among the population. A majority of the people appear to have accepted a society based on political patronage, and concerns regarding the systems of governance and the integrity of its leaders appear not be sustained over a prolonged period of time.

³³ http://www.oecd.org/dataoecd/38/14/42497950.pdf. Since the period of review, TCI has met the OECD standard for transparency and exchange of information for tax purposes, has become subject to the Global Forum's peer review process and has decided to progress from the transitional withholding tax arrangement to an automatic exchange of information regime under the European Savings Directive. ³⁴ Auld, p. 55

A score of 25 was given because there has been a weakening of the ethical practices that deter corruption. There is a low level of trust and nearly an acceptance of different forms of corruption as long as they are not too extreme.

The relatively weak basis of norms and values supportive of an effective National Integrity System is derived in part from the tradition of patronage, handouts from politicians and a very limited understanding of how corruption holds back development. Some people do not understand what corruption is and therefore are unable to identify it.

Advocacy approaches that are carefully configured to be effective in the circumstances of the TCI need to be adopted to educate the people on different types of corruption. Emphasis should be placed on the various negative impacts of corruption and its effects on development.

V CORRUPTION PROFILE Empirically based research on corruption in the TCI is very limited. Surveys and ratings by Transparency International, the World Bank Institute and other research and anti-corruption bodies have not been conducted in regard to the Turks and Caicos Islands. Hence, information on corruption and corruptionrelated issues is to be found primarily in Commission of Inquiry reports, department reports and the media. Whilst such information is more than speculative, it does not attain the status of confirmed fact. Our profile of corruption shall be based primarily on an analysis of:

Informant interviews (2010) The Auld report (2009) The House of Commons Foreign Affairs Committee Overseas Territory Report (2008) The Blom-Cooper report (1986)

Since the 1980s the TCI has seen cases of unconstitutional behaviour, ministerial malpractice and alleged corruption. As of 2000 there has been a growing concern by the TCI people regarding perceived government corruption related to the misuse of public funds, serious mismanagement of public finances and an escalating public deficit. This grave concern amongst the public was revealed in letters to the British Foreign Affairs Committee.³⁵

While there have been no tribunals on corruption in the TCI and no one has been charged with corruption-related crimes as of December 2010, several allegations have been made regarding the mismanagement of funds, granting of 'Belongership' status to individuals and the sale of Crown Land. Several inquiries have been launched into these allegations of corruption. The earliest of these was the Blom-Cooper inquiry, in which alleged arson of a building on Grand Turk and alleged corruption in the Public Works Department in 1985 were investigated. At the end of the inquiry, Sir Louis Blom-Cooper found that three ministers including the Chief Minister were guilty of unconstitutional behaviour and ministerial malpractices, rendering them unfit to exercise ministerial responsibilities, and two leading members of the opposition (PDM) in the legislative council and a Public Works Department employee were viewed unfit to hold public office.³⁶ The report also disclosed that during the period 'August 1983 to December 1984 Mr. Ursil Morris in performing each and every of his contract with the Public Works Department, was forced to pay a portion of the contract monies to Mr. Ernest Clarke the Works Co-ordinator of the Department, as a means of ensuring a steady flow of government contracts. These monies totalled approximately \$12,800.00'.37

 ³⁵ Foreign Affairs Committee, Overseas Territories, Seventh Report on Session 2007-2008, 2008, p. 55.
 ³⁶ Blom-Cooper, 1986, p. 97.
 ³⁷ Ibid, p. 103.

The report also highlighted that matters of alleged corruption and improper practice that called for action include the following areas: planning and development, immigration, land registry, land deals and the renting of property by the government. Findings revealed that maladministration, improper practices or conflict of interest were occurring in these areas.

The 2005-06 Chief Auditor Report identified many recurring issues of serious concern that included a growing budget deficit, despite the Turks and Caicos Islands' continued economic growth. The Chief Auditor Report found that there was a serious mismatch between the actual and budgeted figures for receipts of crown lands³⁸. The report also found that the budget process was ineffective and lacked fiscal openness. It was also revealed that the Tourism Board has not been able to compile accurate statistics on tourist arrivals by air, and the board was described as being in a poor financial state with a pattern of ad hoc spending and a large deficit. The report also brought to the fore the lack of willingness among stakeholders to enhance the systems in place; of the 13 issues identified in the Chief Auditor's Report, six were raised with the board the previous year.³⁹

In a 1999 White Paper, the UK government made it clear that Overseas Territories are to observe the highest standards of governance. It was proposed that Overseas Territories adopt the Principles of Good Governance (2006). In July 2007 an inquiry into British Overseas Territories was undertaken by the Foreign Affairs Committee (FAC). The inquiry looked at the Foreign and Commonwealth Office (FCO), how it exercised its responsibilities in relation to Overseas Territories, and its achievements in relation to its priorities of security and good governance. During the inquiry the FAC received evidence that several issues of governance previously addressed during a 2003 review conducted by the FAC still needed review. During this review the FAC received several allegations of corruption in the Turks and Caicos Islands in letters from more than 50 individuals from the TCI.⁴⁰ Allegations were made regarding the sale of Crown Land, distribution of contracts and the granting of Belongership.

It was alleged that Crown Land was being sold for the personal benefit of TCI government members and their relatives and supporters: 'crown land seemed to be treated as a spoil for political victory'.⁴¹ It is important to note that a subsequent TCI government report found that 'in recent years a large percentage of crown land has been transferred to private hands'.⁴² Land registry information from 2010 shows that just 23 per cent of usable land

³⁸ Auld,2009:69

³⁹ Auld,2009:133

⁴⁰ Foreign Affairs Committee, Overseas Territories, Seventh Report of Session 2007-2008, 2008, p. 55.

⁴¹ Ibid, p. 56

⁴² Ministry of Environment and District Administration, TCI, Draft New Crown Land Policy, version 1.9, August 2010; www.tcfreepress.com/downloads/crownlandpolicy8-4-10.pdf

remains Crown Land, with the rest being private.43 Regarding contracts; the Leader of the Opposition alleged that the Premier's nephew was a principal in a company given Crown Land at a discount to construct homes in the affordable housing programme implemented by the government.⁴⁴ Regarding management of public finances, the National Audit Office's report on managing risk in Overseas Territories highlighted improper management of public finances as a risk in the TCI because expenditures incurred were consistently in excess of the annual budget across most government departments and made out prior to statutory authorisation (US \$123 million in expenditures in 2004-05 compared to an estimate of US \$108 million).⁴⁵

During the FAC inquiry, witnesses reiterated concerns that were made by the Leader of the Opposition, who stated that there had been 'complete disregard for the tendering process' and that contracts had been awarded for millions above their value, including a road construction contract awarded for almost twice the lowest bid. The TCI budget for 2007/08 showed a deficit of US \$38 million and an overdraft by the government on its bank accounts by US \$6 million.46

The government was given an opportunity to respond to the allegations made against it. The Premier denied there was any corruption at the government level and noted that much of what was alleged cannot be substantiated.⁴⁷ The Minister of Finance and Deputy Premier informed the inquiry that 'TCI is a small island economy therefore it was "impossible" for the government not to do business with companies owned by family members; but that ministers did declare interests'.48

After the 2007 inquiry, the FAC in its 2008 report expressed grave concern over serious allegations of high levels of corruption and called for a commission of inquiry to conduct a detailed investigation into the allegations of corruption it received. The report stated:

'We are very concerned by the serious allegations of corruption we have received from Turks and Caicos Islands (TCI).. They are already damaging TCI's reputation, and there are signs that they may soon begin to affect the Islands' tourism industry. There is also a great risk that they will damage the UK's own reputation for promoting good governance. Unlike the Cayman Islands, where the Governor has taken initiative in investigations, the onus has been placed on local people to substantiate allegations in TCI. This approach is entirely inappropriate given the palpable climate of fear on TCI. In such an

43 Ibid

⁴⁴Foreign Affairs Committee, Overseas Territories Seventh Report of Session 2007-208, 2008, p. 57.

⁴⁵ National Audit Office, Foreign and Commonwealth Office, 'Managing risk in the Overseas Territories', Report by the Comptroller and Auditor General, HC 4 Session 2007-8, 2007.

⁴⁶ Foreign Affairs Committee, Overseas Territories Seventh Report on Session 2007-2008, 2008, p. 60.

lbid, p. 63.

⁴⁸ Ibid, p. 64.
environment, people will be afraid to publicly come forward with evidence. We conclude that the UK Government must find a way to assure people that a formal process with safeguards is underway and therefore recommend that it announces a Commission of Inquiry, with full protection for witnesses.⁴⁹

Following this request made by the FAC, the UK government in 2008 established a Commission of Inquiry headed by Sir Robin Auld to determine whether there was information on corruption or other dishonest behaviour by present or past elected members of the TCI House of Assembly. The inquiry revealed that there was an abundance of information pointing to a high probability of systematic corruption and/or dishonesty. (Much of the following sections draws on evidence in the Auld report which was not easily accessible to the researcher but available to a Commission with statute-based powers of investigation. The data presented is merely a summary of some of the cases of alleged corruption, as not all the cases are presented.). It is important to emphasize – as Auld himself does⁵⁰ – that the Auld inquiry concerns *possible* instances of corruption and limits itself to recommending areas for further investigation.

Misfeasance in public office

Regarding the development of Salt Cay, former Premier Michael Misick was found to have potentially made abuse of his public office by accepting lavish and disproportionate hospitality from Mario Hoffman, from a company called DEVCO. This included the use of private aircraft, provision of international flights and other hospitality in the course of developing business relationships. Misick was also found to have potentially abused his public office by seeking and accepting a loan of US \$6 million from J&T Banka while the bank was separately in negotiations with the government regarding funding and participation in developing Salt Cay.⁵¹

The inquiry found that Hon. Misick allegedly behaved in a dishonest manner regarding misuse of government funds for personal purposes in his use of aircraft chartered or leased by the government for official purposes. This represents an expenditure of US \$4-6 million.⁵² Hon. Misick was also found to have behaved in a possibly corrupt manner or misfeasance of his public duty by securing advertising contracts for his wife with the TCI Tourist Board and with Kerwin Communication purportedly acting on behalf of the TCI Tourist Board, potentially abusing his ministerial responsibility for tourism and allegedly enriching his wife and himself.

 ⁴⁹ Foreign Affairs Committee, Seventh Report of the Foreign Affairs Committee Session 2007-08 Overseas Territories Response of the Secretary of State for Foreign and Commonwealth Affairs, 2008.
 ⁵⁰ Auld, 2009, para. 1.52.
 ⁵¹ Auld, 2009.
 ⁵² Ibid. Also revealed was that Hon. McAllister Hanchell, while serving as Minister of Natural Resources, entered into possibly corrupt or dishonest transactions in misfeasance of public office by offering on behalf of the government grants of crown land to himself and/or companies that he substantially owned or controlled.

Political Party Financing

Political donations and bribes, according to Sir Robin Auld, became a cancer in the economic and social life of the TCI. Several forms of political donations/bribes were identified, including payments made by established developers and/or business people to party funds or individual ministers as donations and political donations, or other payments characterised as loans with no terms of interest or repayment, a method widely used to make secret payments to politicians.

The Auld report also revealed that Hon. Floyd Hall, in his capacity as Treasurer of the PNP, failed to administer and keep proper accounts of the funds of the PNP so as to allow party monies to be disbursed for his personal use, and misled the party as a whole as to the true state of its financial affairs and the purposes for which its monies were used by keeping secret from members of the party the existence of party bank accounts. Hall also received US \$150,000 on 8 February 2007 (the day before the elections) from a developer of the Seven Stars Resorts in the TCI purportedly as a campaign donation, but Hall paid it to the business account of his company.

The inquiry also found that Hon Hanchell, in accepting payments of more than US \$300,000 to the PNP South Caicos account purportedly as campaign funding for the February 2007 elections, was purportedly corrupt due to allocation of funds disproportionate to the size of the constituency. The payments were made by an established public works contractor.

Declaration of Interests

The Auld report revealed that Hon. Hall failed to declare to the Registrar of Interest funds amounting to US \$375,000, which was payment received from Richard Padget in February 2006. This was purportedly a finder's fee rendered years before, but it was made shortly after Hall's planning appeal decision regarding a proposed construction project. In addition to failing to declare such assets, it was seen as a dishonest or corrupt act because of the length of time that elapsed between services and payment, and the apparent disproportion in value between the payments and services rendered.

Findings also showed that former Premier Misick failed to disclose funds to the Cabinet, including payment of US \$500,000 by Dr. Cem Kinay through his company Turks Ltd. This was paid to Hon. Misick through a third-party account, namely the account of the client's brother and attorney Chal Misick;

the receipt of US \$250,000 by Hon. Misick supposedly by way of a loan from Inazio & Gateen Caltagirone via a client account of Chall Misick; and the receiving of US \$275,000 from the law firm Saunders & Company, of which Hon. Misick was an associate.

Findings also revealed that Hon. Lillian Boyce failed to declare her receipt of candidate stipend payments totaling US \$72,000.

Conflict of Interest

Several suspected cases of conflict of interest were also revealed by the Auld report. Hon Lillian Boyce is alleged to have abused her ministerial position by permitting or assisting her fellow minister to interfere in overriding the TCI scholarships policy by bypassing the control of the Scholarship Committee and granting a scholarship to her daughter without referring her to the Scholarship Committee.

McAllister Hanchell, in his office of Minister of Natural Resources, is suspected of entering into corrupt, dishonest transactions by offering on behalf of the government grants of crown land to himself and a company he substantially owned, thus creating and ignoring obvious conflicts of interests.

Additional alleged forms of corruption and malpractice unearthed include the possibility of corrupt and fraudulent and other illegal practices within the customs sector. There have been reported cases of government intervention without proper policy and criteria and the abuse of powers, lack of enforcement and apparent abuse of powers in this sector.53 There was also the abuse of ministerial influence in which several hundred scholarships were awarded without being properly assessed. There were also allegations surrounding grants of Belongership or permanent residence issued in breach of legal requirements, allegedly in return for bribes to minister officials.

Despite a manifold of alleged cases of corruption, no one has been charged with corruption in the TCI. Although no one has yet faced charges of corruption, several advances have been made regarding investigations since the Auld report of 2009. To this end, Special Prosecution and Investigation Team leader Helen Garlick on 28 April 2010 informed the TCI Press that '6-10 people will be charged by next summer in connection with corruption alleged in the commission of inquiry report last year'.⁵⁴

Apart from the Blom-Cooper and Auld reports, there is limited evidence and empirical data on corruption in the TCI. There are no established statutes to

⁵³ Ministry of Finance, Report on the reasons for the drop in TCI customs duties during the first eight months of 2009 compared to previous years, August 2009. ⁵⁴ *TCI Press*, 'Trials Expected Next Summer', 30 April 2010;

www.tcfreepress.com/index.php?option=com_content&view=article&catid=18%3Alocal&id=1 440%3Atrials-expected-next-summer&Itemid=26

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combat corruption except for the Register of Interest Ordinance, the Code of Ethics and Conduct for Public Servants, and the Code of Conduct for Ministers (2007) which has been revised, a draft prepared and is yet to be approved. There is no political disincentive for politicians or persons found to have breached government procedures in the TCI, and allegations of corruption do not seem to have had much effect on a candidate's reelection.

VI ANTI-CORRUPTION ACTIVITIES

The Turks and Caicos Islands has few safeguards against corruption, and in cases where anti-corruption measures are in place they are not effective. This is largely due to a lack of political will to fight corruption.

Since the 1980s there have been inquiries to detect and address allegations of corruption. Since establishing its first Constitution in 1976, the TCI has implemented regulations, ordinances and rules to ensure accountability and transparency. However, it was not until the late 1990s that institutions were seriously contemplated or established to facilitate transparency and accountability. These include the Complaints Commission and the Integrity Commission.

The TCI government has also signed arrangements with the UK and Northern Ireland regarding the exchange of information related to taxes. Upon entering such arrangements, the TCI government entered into a formal commitment to the OECD's principles of transparency and exchange of information. Countries that committed to this agreement have agreed to work together in a global forum on taxation to develop international standards for transparency and effective exchange of information on taxation matters. The government has also participated in OECD's Global Forum on Taxation since 2002.

Listed below are the various statutes/ordinances and laws related to corruption, integrity and ethical standards in the TCI, and the year they were implemented.

Tubic	Table 1. Statutes/ordinances and laws related to corruption			
Year	Development			
1979	Banking Ordinance			
1981	Company Ordinance			
1989	Insurance Ordinance			
	Financial Instructions - rules. regulations and ordinances governing			
1989	public procurement			
1990	Insurance Regulations			
1990	Trust Ordinance			
1998	Proceeds of Crime Ordinance			
1998	Public Service Commission Regulations			
1998	General Orders of the Turks and Caicos Islands Public Service (revised)			
2000	Proceeds of Crime (Money Laundering) Regulations			
2001	Investment Dealer Licensing Ordinance			
	Integrity Commission Ordinance (amended in 2009) –			
2008	(non-operational until 2010)			

Table 1: Statutes/ordinances and laws related to corruption

The Turks and Caicos Islands' main anti-corruption laws are found in the Electoral Ordinance, Financial Services Commission Ordinance, Commission of Inquiry Ordinance, Legislative Council Registration of Interest Ordinance,

Integrity Commission Ordinance, General Staff Orders, Code of Conduct for Ministers, and the Public Service Code of Ethics and Conduct.

The Electoral Ordinance (1998) lists bribery as an offence. It describes bribery as: Any person who directly or indirectly by himself or by other person on his behalf (a) gives, lends, or agrees to give or lend or offers promises ... endeavour to procure any money or valuable consideration to or for any voter ... to induce any voter to vote or refrain from voting, (b) endeavour to procure any office, place or employment, (c) makes such gift, loan, offer, promises to procure or endeavour to procure the return of any person as an elected member of the Legislative Council or the vote of any voter....

(f) every voter who before or during any election directly or indirectly receives, agrees or contracts for any money, gift, loan or

(g) every person after elections directly or indirectly

The Electoral Ordinance also states that any individual who threatens to make use of any force or any other use of undue influence in order to induce or compel such person to vote or refrain from vote shall be guilty of undue influence.

The Legislative Council (Registration of Interests) Ordinance (1998) requires each member of the Council to furnish declarations of their assets, company directorships, etc. They are required to submit declarations within three months after 31 December of each year. The register is open to inspection by the public.

The Financial Services Commission Ordinance (2007) provides for the establishment of the Financial Services Commission, which serves as the regulatory agency that governs and oversees the affairs of the financial institutions in the TCI. In maintaining a transparent and accountable financial sector, the ordinance gives the Commission the power to inspect premises and businesses whether in or outside the islands; inspect assets; and seek information and explanation from officers, employees or agents. The Commission also issues guidelines and codes containing procedures to be followed by these institutions. The Commission may also take disciplinary action against a licensee.

The financial sector is governed by several other statutes, namely: Proceeds of Crime Ordinance, Business Licence Ordinance, Registration ID, Banking Ordinance, Insurance Ordinance, and the Proceeds of Crime (Money Laundering) Regulations. These provide the checks and balances for financial institutions. Under these statutes and the monitoring of the Financial Services Commission, entities are obligated to have their records edited by a credible agency, their minutes audited, and these along with other required documents filed according to the Financial Services Commission's guidelines. The Proceeds of Crime (Money Laundering) Regulations have been under review from 2008 with the aim of tightening regulations and improving accountability within the financial sector.

The Commissions of Inquiry Ordinance (revised 1998) provides regulations regarding the appointment of commissions by the Governor to inquire into the conduct and management of any public body, the conduct of public officer or any matter whatsoever which in the Governor's opinion is of public importance.

The Code of Conduct for Ministers (2007) states that it is the duty of a minister to comply with laws and treaties, uphold the administration of justice and protect the integrity of the public life. The code also explicitly states that ministers must ensure there is no conflict of interest and that they should avoid the dangers of an actual perceived conflict of interest between their ministerial position and their private financial interests.

The Public Service Code of Ethics and Conduct (draft) was tabled in Parliament in July 2009. Listed among the core principles of the code of ethics and conduct are: professionalism, accountability, transparency and ethical [conduct].⁵⁵ The code explicitly states that a public officer 'should always act with personal integrity and their actions should be able to bear the closest scrutiny. He or she should display a high level of professionalism, exhibit high levels of accountability and demonstrate transparency at all times'. The code also calls for public officers to exercise ethical judgement and thinking stating that; 'all public officers shall not use their official position for personal gain. This includes soliciting and or accepting gifts, rewards and benefits which might compromise, or be seen to be compromising their integrity and the integrity of the public service.' In respect of breaches, the code states: 'Failure to comply with the Code will be considered as grounds for disciplinary action to be taken in accordance with procedures laid down in the General Orders and the Public Service Commission Regulations'.⁵⁶

The General Orders, Public Service Commission Ordinance and Financial Ordinance are three key instruments designed to govern the way public servants relate to politicians and political directorate. They all speak to the separation between political directorate and public servants.

Since 2008, training sessions have been held for public servants related to the code of conduct, and administered on each island. Also, each office is required to have a mission and a code of conduct that must be displayed for staff and visitors to see at all times.

⁵⁵ Government of TCI Public Service Code of Ethics and Conduct (Draft), 2008 ⁵⁶ Ibid, p. 11.

VI ANTI-CORRUPTION ACTIVITIES

In the TCI the public was not closely focused on the fight against corruption until 2008 during the Auld inquiry. Since this inquiry, the media has become more involved in highlighting and discussing issues related to good governance and corruption. This advocacy in the fight against corruption has been most evident on talk-show programmes and a few social commentaries. The media has also sought to highlight matters related to corruption and its impact on the TCI. However, it should be noted that some attempts had been made by the media prior to the Auld inquiry in 2008 to engage the public on issues of corruption. The *TCI Journal* created a section within its pages that specifically highlights issues related to corruption and discussion of laws, such as the UN Convention against Corruption and the Lay Persons Guide to the US Foreign Corrupt Practices Act.

VII NATIONAL INTEGRITY SYSTEM

1. LEGISLATURE

Summary

The Legislature of the TCI, in formal terms, during the period under review consisted 'of Her Majesty and a House of Assembly', with characteristics typical of a British Overseas Territory at a relatively advanced stage of 'internal self-government.' As such, the Constitution balanced the power to make laws between a mostly elected House of Assembly, the Governor and the Secretary of State.⁵⁷ This balance preserved in the Governor the authority to refuse to assent to bills approved by the House, and to the Secretary of State the right to disallow laws which may have been passed by the House and assented by the Governor. In law, the House enjoyed limited independence in terms of budget determination, tenure and executive oversight, whilst laying down requirements for adequate levels of transparency, accountability and integrity in its governance arrangements. In practice, however, in significant measure, because of an insufficiently entrenched 'Westminster' Parliamentary culture, essential aspects of these requirements were ignored and the Legislature was largely ineffective as an important pillar in the TCI's system of governance.

The table below presents the indicator scores that summarise the characteristics of the TCI House of Assembly in terms of capacity, governance and role.

Legislature					
Overall Pillar Score: 28/100					
Dimension	Indicator	Law	Practice		
Capacity	Resources	25	25		
25/100	Independence	25	25		
Governance	Transparency	25	50		
33/100	Accountability	25	25		
	Integrity	75	0		
Role	Executive Oversight	0			
25/100	Legal Reforms	50			

Table 2: Indicator scores	summarising	characteristics of the	TCI Legislature

Structure and Organisation

The Legislature consisted of Her Majesty and a House of Assembly. The House consisted of 15 members elected on the basis of adult suffrage representing 15 single-member constituencies, four appointed members and the Attorney General.⁵⁸ From the elected members, the Governor appointed a Leader of the Opposition.⁵⁹ From the elected and appointed members, the House elects a Speaker and Deputy Speaker to preside over proceedings of the House.⁶⁰

⁶⁰ Ibid, Section 42.

⁵⁷ The Turks and Caicos Islands Constitution Order 2006, Section 59. ⁵⁸ Ibid, Section 41(1).

⁵⁹ Ibid, Section 50.

The House of Assembly has a 'normal' life of four years but it may at any time during the four years be dissolved by the Governor 'after consultation with the Premier' or prorogued by the Governor in accordance with the Premier's advice.⁶¹

The Constitution requires that 'at least one session' of the House be held every year. When the House is in session, the Speaker may call meetings on his own volition or when requested by the Governor or 'by seven or more members of the House'.⁶² The Constitution stipulates that the House shall set up at least two Standing Committees to monitor the business of government.

Assessment

Resources (law) - 25

To what extent are there provisions in place that provide the Legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

There are no special provisions in place to provide the Legislature with adequate financial, human and infrastructure resources. The process of resource provision for the Legislature takes place as part of the budget-making mechanism for the public sector.

Resources (practice) - 25

To what extent does the Legislature have adequate resources to carry out its duties in practice?

The Legislature was provided with limited resources. For much of the recent period, there was a deputy clerk and two clerks. There was no provision for a research library or research service.

Independence (law) - 25

To what extent is the Legislature free from subordination to external actors by law?

The power of the Legislature to enact laws was to a significant degree restricted by external actors. In the 2006 Constitution, any bill passed by the Legislature may be refused assent by the Governor on instructions by the UK Secretary of State.⁶³ The UK Secretary of State may also disallow any law assented to by the Governor⁶⁴.

 ⁶¹ Ibid, Section 55.
 ⁶² Ibid, Section 54.
 ⁶³ Ibid, Section 69).
 ⁶⁴ Ibid, Section 71 (1)

The House may also be dissolved by the Governor acting on the advice of the Premier prior to the expiry of its four-year tenure. During its tenure, however, the law requires that it meets quarterly. The Constitution also provides the Legislature with the capacity to recall itself in circumstances where 'seven or more members of the House' request a meeting.

Independence (practice) - 25

To what extent is the Legislature free from subordination to external actors?

The House of Assembly in practice was subordinate to the Executive and in particular the Cabinet and Premier. No bills were passed into law by the Legislature that did not originate in the Executive. The Legislature's Committees (e.g. Public Accounts Committee) charged with the responsibility of monitoring the government were ineffective (see section on Executive – Accountability, practice).

There have been no cases of external actors dissolving the Legislature prematurely or blocking bills passed by the House of Assembly. There has been at least one serious attempt by the Executive to interfere with the independence of the Speaker. This took the form of the Executive's attempt to reduce the Speaker's salary. A direct complaint and delegation to the FCO by the Speaker resulted in the defeat of this attempt.⁶⁵ In the five years from 2005-09, the Legislature met an average of eight times per year, with a low of two in 2006 and a high of 14 in 2005.

Transparency (law) - 25

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making provisions of the Legislature?

Neither the Constitution nor relevant ordinances require that proceedings of the Legislature and its Committees be open to the public or the media. On the contrary, attendance of 'strangers' and the media is, strictly speaking, at the behest of the Speaker. 'Strangers shall be admitted to debates of the Council... on the discretion of the Speaker',⁶⁶ and again, 'The Speaker may grant general permission to the representatives [of the media]... to attend the sittings of the Council in his discretion.⁶⁷ The Standing Orders obliges the Clerk to keep minutes of proceedings but obliges the Clerk to circulate the minutes and order paper to members only. However, there is a provision for the records of the Legislature to 'be open to inspection by members of the

⁶⁵ Interview, prominent former member House of Assembly, June 2010.

 ⁶⁶ Standing Orders of the Legislative Council of the Turks and Caicos Islands, Standing Order 73(1).
 ⁶⁷ Ibid, Standing Order 74.

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Council and other persons under such arrangements as may be sanctioned by the Speaker'.⁶⁸

Transparency (practice) - 50

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the Legislature in practice?

In practice, the sessions of the Legislature were open to the public, who regularly attended meetings of the House. Some sessions have been broadcast, and budget sessions were recorded and given to the TV station.⁶⁹ Media coverage of House proceedings was adequate. Verbatim records or minutes of the Legislature are not normally available or published.

Accountability (law) - 25

To what extent are there provisions in place to ensure that the Legislature has to report on and be answerable for its actions?

There are no provisions in place to ensure that the Legislature has to report on or be answerable for its actions to the TCI citizenry, except of course during elections. There is no requirement for public consultation nor any mechanism specifically charged with the responsibility of receiving complaints against members of the Legislature.

Members of the House enjoy privileges and immunities typical of legislatures patterned after the Westminster Model. For example:

'No civil or criminal proceedings may be instituted against any Member for words spoken before or written in a report to the Council or to a Committee or by reason of any matter or thing brought before the Council by him by any Bill, motion, petition or otherwise'.⁷⁰

Accountability (practice) - 25

To what extent do the Legislature and its members report on and answer for their actions in practice?

In practice, members of the Legislature visit their constituencies periodically but there exists no tradition of answering to constituents for their actions. From time to time House members would make themselves available to be questioned by the media.

Integrity mechanisms (law) - 75

To what extent are there provisions in place to ensure the integrity of members of the Legislature?

⁶⁸ Ibid, Standing Order 6, Section 5.

⁶⁹ Interview, former Chief Minister, June 2010.

⁷⁰ Legislative Council (Powers and Privileges) Ordinance (1998), Section 3.

There is no code of conduct for legislators or significant post-employment restrictions on members of the House. However, the Constitution makes provision for the registration of interests by 'all members of the House of Assembly (including ministers)'.⁷¹ 'The Register of Interests,' under the Constitution, 'shall be maintained by a Registrar who shall be appointed and may be removed from office by the Governor acting in his or her discretion'.⁷² The Constitution went further – it required that a law should give effect to this Constitutional provision, and that sanctions for non-compliance with the requirement to truthfully register interests 'may include the suspension of a member of the House of Assembly from sitting and voting in the House for such period as may be prescribed in such a law'.⁷³

In accordance with the Constitution, the Registration of Interests Ordinance established a Register of Interests maintained by a Registrar with significant power to require compliance. The Ordinance includes, as a schedule, the Form of Declaration requiring the legislator to declare directorships, remunerated employment, remunerated trade or profession, material benefits (valued at US \$10,000 or more) or gifts, overseas visits, land and property, shareholdings (value exceeding US \$10,000) and liabilities (exceeding US \$10,000). The Ordinance requires that the Register of Interests 'be open to inspection by members of the public attending as visitors at any sitting of the Council'.⁷⁴ It further stipulates that the Council may impose a fine or suspend a member from the Council for being in default or failing to comply with the requirements of the Register.

The Legislative Council (Powers and Privileges) Ordinance also prohibits members from accepting bribes in respect of their legislative activity and provides for a fine and/or imprisonment of any member guilty of this offence.⁷⁵

Integrity mechanisms (practice) -0To what extent is the integrity of legislators ensured in practice?

There has been a near complete absence of actions to enforce the Constitutional provisions and statutory requirements regarding the integrity of legislators. Substantial and credible evidence suggests that legislators consistently failed to make 'full or accurate declaration of interests.'⁷⁶ Yet, the Registrar submitted no reports to this effect to the Legislature. No member was fined or suspended for non-compliance.

⁷¹ The Turks and Caicos Islands Constitution Order 2006, Section 98. 7^{2} with 2×10^{-72} with 2×10^{-72} with 2×10^{-72}

⁷² Ibid, Section 98(1).

⁷³Ibid, Section 98(5).

 ⁷⁴ Legislative Council (Registration of Interests) Ordinance 1998, Section 6(2).
 ⁷⁵ Legislative Council (Powers and Privileges) Ordinance 1998, Section 18.
 ⁷⁶ Auld, 2009.

The Auld report summarises multiple delinquencies, particularly related to the requirement of disclosure of financial sponsorship, gifts, etc.:

'None of the Ministers or other elected Members of the House of Assembly ever properly completed that section of the declaration form'.⁷⁷ The territory's Chief Auditor repeatedly identified failure to comply with the law in the audit reports of 2005 and 2006. The National Audit Office stated in its 2007 report that Registers of Interest 'are not routinely used'.78

Executive oversight (law and practice) - 0

To what extent does the Legislature provide effective oversight of the Executive?

The Legislature was largely inactive and almost completely ineffective in providing oversight of the Executive⁷⁹. The Constitution provided for Standing Committees to monitor and provide oversight of the government.⁸⁰ The Standing Orders of the Legislature set out the composition and powers of Standing Committees to be established under the Constitution, including the Committee of Public Accounts.⁸¹ Yet, 'the PAC was ineffective'.⁸²

Legal reforms (law and practice) - 50

To what extent does the Legislature prioritise anti-corruption and governance as a concern of the country?

The Legislature paid negligible attention to the promotion of public accountability and the fight against corruption. One reason for this in the period under review (i.e. prior to August 2009) was the overwhelming majority (13) enjoyed by the governing party (PNP) and the correspondingly small number of members of the Opposition (two). As such, even when legislation in the field of anti-corruption was brought to the Legislature, debated and sometimes amended, Opposition objection to provisions that reduced the effectiveness of the measures was invariably brushed aside. One example of this was the passage of the Integrity of Members Ordinance, which was amended to reduce the penalties attached to offences despite Opposition objection. It is of some significance that few anti-corruption laws were passed in the period from 2007, the most notable exception apart from the abovementioned being the Proceeds of Crime Ordinance of 2007.83

⁷⁷ Auld, 2009, p. 59. ⁷⁸ Ibid, p. 58.

⁷⁹ Ibid, p. 41

⁸⁰ The Turks and Caicos Islands Constitution Order, 2006, Section 61. ⁸¹ Standing Orders of the Legislative Council of the Turks and Caicos Islands, Standing Order 57.

⁸² Interview, former Chief Minister, 23 June 2010.

⁸³ List of Ordinances enacted from 2005-2010, obtained from the Attorney General's Office, June 2010.

Recommendations

A number of challenges must be faced in order to make the Legislature more effective.

The challenge of disproportionality in representation: Put another way, this refers to the mismatch between the percentage of votes a party receives in a general election and the number of seats it wins in the House. In 2007 the Opposition received 40 per cent of the popular vote but 13 per cent of the legislative seats. The first-past-the-post electoral system tends to underrepresent the minority party in this way, thereby contributing to an ineffectual opposition and, hence, a weakened Legislature. An electoral system which mixes the first-past-the-post with proportional representation has been found to reduce voter disproportionality and enhance minority party representation without losing the correctness to voters which the first-past-the-post single-member constituency electoral system facilitates. We therefore recommend a mixture of proportional representation and first-past-the-post representation, as recently adopted by a number of countries, e.g. New Zealand.

The relatively small size of the electorate compared to the population (see *Table 3, below*): As the table illustrates, the TCI is the only territory in the region where registered voters as a percentage of the population falls well below 50 per cent. Indeed, the only comparable situation is that of the Cayman Islands, whose registered electorate at 30 per cent is still above that of the TCI's 22.6 per cent. The electorate needs to be expanded, but based on a formula and in a manner that fully takes into account the concerns of the Belonger population on the one hand and the requirements of more democratic representation on the other.

Country	Popula	Registered	Registered	Number of	Average
	tion	voters	voters as a	constituenci	number of
			% of	es	registered
			population		voters per
					constituen
					су
Anguilla ¹	13,008	7,558	58.1%	7	1,080
Antigua &				17	3,070
Barbuda ³	84,522	52,183	61.7%		
Bahamas ²	305,65			41	3,675
	5	150,654	49.3%		
Bermuda ²	66,536	42,337	63.6%	36	1,176
Cayman				6	2,186
Islands ¹	43,103	13,118	30.4%		

Table 3: Voting characteristics of selected Caribbean territories

Country	Popula tion	Registered voters	Registered voters as a % of population	Number of constituenci es	Average number of registered voters per constituen cy
Dominica ⁶	72,660	65,889	90.7%	21	3,138
Montserra				6	500
t ⁷	5,097	3,000	58.9%		
St. Kitts &				11	2,979
Nevis ⁴	40,131	32,766	81.7%		
Turks and					
Caicos					
Islands ⁵	33,202	7,500	22.6%	15	500

Source: Data compiled by author.Sources for population size and number of registered voters: 1 IDEA (2005 estimates); 2 IDEA (2007 estimates); 3 IDEA (2009 estimates); 4 CIA World Factbook; Inter-Parliamentary Union – St. Kitts and Nevis National Assembly (2010 estimates); 5 TCI Dept. of Economic Planning & Statistics (2006 estimates); 6 CIA World Factbook; IDEA (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive Website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive Website (2010 & 2005 estimates); 7 CIA World Factbook; MNI Alive Website (2010 & 2005 estimates); 7 CIA World Factbook; MI Alive Website (2010 & 2005 estimates); 7 CIA World Factbook; MI Alive Website (2010 & 2005 estimates); 7 CIA World Factbook; MI Alive Website (2010 & 2005 estimates); 7 CIA World Factbook; MI Alive Website (2010 & 2005 estimates); 7 CIA World Factbook; MI Alive Website (2010 & 2005 estimates); 7 CIA World Factbook; MI Alive Website (2010 & 2005 estimates); 7 CIA World Factbook; MI Alive Website (2010 & 2005 estimates); 7 CIA World Factbook; MI Alive Website (2010 & 2005 estimates); 7 CIA World Factbook; MI Alive Website

Sources for number of constituencies:

8 US Department of State Background Notes; Anguilla House of Assembly 2010 Elections; Antigua & Barbuda Elections 2009; The Cayman Islands Elections Office; Montserrat Election 2009 Results and Analysis; Caribbean Net News.

The challenge of small size: This factor makes it very difficult to populate the Legislative Committees that are required to exercise oversight over the Executive. We therefore suggest that the size of the House be increased from 15 to 19, with the four additional members to be nominated by selected civil society groups having regard to their commitment to public service, non-partisan track record and expertise. In some Caribbean states, such persons are nominated by the head of state and designated 'Independent Senators' where there is a non-elected component of the Legislature.

The challenge of Executive ministerial dominance over the Legislature: In a House of 15 members, the majority party has to command the support of at least eight members. By virtue of such appointment the governing party has no 'back bench', an important service of constructive criticism of the government in a parliamentary system. We recommend that a cap of one-third be put on the number of ministers who may be appointed from within the Legislature. At the minimum this would ensure that at least three members of the majority party would be outside the Executive and hence, theoretically, would not be muzzled from criticism of the government on the grounds of collective Cabinet responsibility.

The Integrity Commission should, by statute, take over from the Registrar responsibility for the Legislature's Register of Interests, for ensuring compliance with the requirements of disclosure under the law, and for

publishing in its annual report the names of legislators who are in noncompliance.

A series of special training and orientation sessions should be held for members of the Legislature. This could be under the tutelage of the Commonwealth Parliamentary Association and draw on experts from the Caribbean familiar with the particular strengths and weaknesses of Caribbean parliamentary culture and practice.



VII NATIONAL INTEGRITY SYSTEM 2. EXECUTIVE

Summary

During the period under review – i.e. prior to the partial suspension of the Constitution in August 2009 - the Executive of the TCI consisted of three elements:

1) Her Majesty, on whose behalf and in whose name the Secretary of State at the Foreign and Commonwealth Office acts.

2) The Governor, who, according to the FCO, represents the Territory's interests to 'both Her Majesty in the territory and represents the Territory's interests to HMG.⁸⁴ In operationalising this dual function, the Governor reported to and received instructions from the Foreign and Commonwealth Office.

3) The Cabinet, consisting of seven members elected to the House of Assembly (including the Premier and six ministers), as well as the Attorney General appointed by the Governor and the Governor himself who chairs the Cabinet.

Each of these elements shared Executive authority and exercised separate but related executive responsibilities. In the final analysis, however, the Secretary of State and the Foreign and Commonwealth Office acting on behalf of Her Majesty's Government retained ultimate authority over the other two elements of the Executive.

In the following, for the sake of brevity the term "the Executive" shall refer to all three components mentioned above, whereas the Governor and Cabinet located in the TCI shall be referred to as the "territorial Executive".

In terms of resources, the evidence suggests that the territorial Executive had resources adequate to carry out its duties despite the significant shortage of skills in the public service. Legally, the territorial Executive constituted a separate institution with defined powers. Nevertheless, its independence could be encroached upon by the other two branches – the Legislature and Judiciary, as well as the Secretary of State acting on behalf of Her Majesty's Government. In practice, it was only the last which occurred, explicitly so in the partial suspension of the Constitution in August 2009.

In respect of transparency, the law did not require and practice did not produce significant Executive openness to the public. Constitutionally, each member of the Executive had different lines of accountability – the Governor to the FCO and the Secretary of State, representing Her Majesty's Government, and the elected members of the Cabinet to the House of Assembly, representing the people of TCI. In practice, timely oversight of the territorial Executive from these two bodies – the FCO and the House – appeared to be inadequate to stop the deterioration of the Executive's governance standards.

⁸⁴ Working with Overseas Territories, Foreign and Commonwealth Office website; www.fco.gov.uk/en/about-us/what-we-do/overseas-territories

Integrity mechanisms for the territorial Executive were weak in law and largely ignored in practice. Finally, the territorial Executive, particularly the elected element, often behaved in a manner which undermined rather than strengthened public sector management.

Combating corruption received low priority in terms of legislative initiative and none at all in terms of exercising ministerial authority. This inappropriate behaviour was facilitated by the expanded discretionary powers granted by the 2006 Constitution to ministers.

The quantitative scores that follow in relation to the capacity, governance arrangements and role of the Executive reflect this evaluation.

Executive					
Overall Pillar Score:	31/100				
Dimension	Indicator	Law	Practice		
Capacity	Resources	-	50		
58/100	Independence	50	75		
Governance	Transparency	0	25		
21/100	Accountability	50	25		
	Integrity	50	0		
Role	Public Sector Management	25			
13/100	Legal System	0			

Table 4: Indicator scores summarising characteristics of the TCI Executive

Assessment

Resources (practice) - 50

To what extent does the Executive have adequate resources to effectively carry out its duties?

The territorial Executive has the public service at its disposal to advise on, administer and implement its policy directives. In size, the civil service appeared adequate. However, there were serious shortages of skills in technical, administrative and professional grades. This deficit apparently impacted on the Governor's office as well.

Salaries and compensation packages were less than competitive with the private sector and often failed to attract the best and most competent amongst the Islanders. (See p. 80 for an indication of the average income of government's employees compared to the private sector.) This contributed to a certain degree of ineffectiveness by the public service in carrying out its duties in accordance with legitimate policy directives from the Executive.

VII NATIONAL INTEGRITY SYSTEM 2. EXECUTIVE

As to the FCO, there is insufficient evidence to evaluate the adequacy of resources available for the TCI.

Independence (law) – 50 To what extent is the Executive independent in law?

The law, while giving some latitude, restricts the independence of the territorial Executive and allows encroachment on its authority. In relation to the Governor, the Constitution made clear his ultimate subordination to the Secretary of State. He 'shall hold office during Her Majesty's pleasure'. During his tenure, the Governor not only exercises functions conferred on him by the Constitution but 'such other functions as Her Majesty may from time to time be pleased to assign to him'.⁸⁵ In relation to the functions conferred on him by the Constitution, these shall be carried out 'according to such instructions, if any, as may be given him or her by Her Majesty'.⁸⁶ The Governor is obliged constitutionally to consult the Cabinet on the formulation of policy '...except when acting under instructions given to him or her by Her Majesty through a Secretary of State'.⁸⁷

Where the Constitution requires the Governor to consult the Cabinet, he must act in accordance with the advice given 'unless he or she is instructed by Her Majesty through a Secretary of State to do otherwise'.⁸⁸ The Constitution gave the Secretary of State power to instruct the Governor, even to the extent of overruling advice from the Cabinet. The Constitution also explicitly protected the Governor from scrutiny by the judicial branch in circumstances `where the Governor is by this Constitution or by any other law directed to exercise any function in accordance with the recommendation or advice of, or after consultation with, any person or authority, the question whether he or she has so exercised that function shall not be inquired into by any court.⁸⁹

In relation to the Premier and the elected ministers, their independence is circumscribed by the constitutional power of a majority of elected members of the House of Assembly 'to declare a lack of confidence in the government'. Such a declaration would require the Governor to revoke the appointment of the Premier, or alternatively, dissolve the House of Assembly.⁹⁰

It is also circumscribed by the authority of the Judiciary to review actions by the Executive and by the constitutional power of the Governor to encroach on the portfolio responsibilities of Cabinet members.⁹¹

⁸⁷ Ibid, Section 25 (1a).

⁸⁸ Ibid, Section 25(2).

⁸⁹Ibid, Section 25 (5)

⁸⁵ The Turks and Caicos Islands Constitution Order, 2006, Section 20(2).

⁸⁶ Ibid.

⁹⁰ Ibid, Section 29(1).

⁹¹ Ibid, Section 32(5).

VII NATIONAL INTEGRITY SYSTEM 2 EXECUTIVE

Independence (practice) - 75 To what extent is the Executive independent in practice?

During the period under review the territorial Executive remained largely independent in practice despite the legal power of other actors to encroach on its authority. In light of the serious governance problems which occurred at the time - including perceived malpractices being committed by the Premier and some ministers - a number of credible observers and authoritative bodies allege that the FCO adopted too much of a 'hands off' approach to the TCI, allowing an unwarranted degree of independence to the Governor. This issue was a source of disagreement between the Foreign Affairs Committee of the House of Commons and Her Majesty's Government. In its Seventh Report to the UK House Session in 2007/08, the FAC concluded:

'The Government has acted decisively in some Overseas Territories, for example in the investigations and prosecutions that took place in the Pitcairn Islands. However, in other cases which should also cause grave concern, in particular allegations of corruption on the Turks and Caicos Islands, its approach has been too hands off. The Government must take its oversight responsibility for the Overseas Territories more seriously - consulting across all Overseas Territories more on the one hand while demonstrating a greater willingness to step in and use reserve powers when necessary on the other'.⁹²

Elsewhere in its report, the FAC dealt specifically with allegations of corruption in the TCI:

'Unlike the Cayman Islands where the Governor has taken the initiative in investigations, the onus has been placed on local people to substantiate allegations in TCI. This approach is entirely inappropriate given the palpable climate of fear in TCI'.93

The response of the Secretary of State for Foreign and Commonwealth Affairs recounted the steps taken in July 2008 to appoint the Auld Commission of Inquiry, but bluntly disagreed with the FAC:

'The Government takes its oversight responsibility for the Overseas Territories very seriously and does not accept that it has been too hands off in its approach'.94

In relation to this divergence between the FAC and HMG, the overwhelming body of opinion in the TCI amongst those interviewed was in agreement with

⁹² Foreign Affairs Committee, Seventh Report of Session 2009-10, Turks and Caicos Islands, Response of Secretary of State, September 2008, Section 1, para. 4. ⁹³ Ibid, Section 1, para. 3.

⁹⁴ Foreign Affairs Committee, Seventh Report of Session 2009-10, Turks and Caicos Islands, Response of Secretary of State, September 2008, Para 134, p. 40.

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the assessment of the FAC. A leading member of the TCI business community put it this way:

⁴...the British Government took their eye off the ball. We are still a colony of the UK.... [T]hey [the UK government] were not interested in troubling the status quo'.⁹⁵ Another interviewee suggested: 'Everyone could see the tsunami (of corruption) coming' ⁹⁶. (See also reports of the Foreign Affairs Committee of House of Commons and interviews.) Similarly, the House of Assembly, particularly after the 2007 elections, did little or nothing to check the independence of the Cabinet, particularly as the Opposition's numbers dropped to two out of 15 elected members of the House. Law enforcement agencies were also ineffective in investigating ministers against whom credible allegations of illegal conduct were levelled.

Transparency (law) - 0

To what extent are there regulations in place to ensure public transparency in relevant activities of the Executive?

There were little or no regulations which allowed the public to obtain relevant information on the organisation and functioning of the Executive, on decisions that concern them, and on how these decisions were made. There was no freedom of information legislation. On the contrary, in respect of the Governor, the Constitution expressly ruled out transparency even in respect of judicial inquiry in the critical area of investigating his/her compliance with advice/recommendation from the Cabinet or Her Majesty's Government.⁹⁷ The activities of the Executive were not required to be recorded in a government information system, nor were Cabinet meetings required to be made public. There was no obligation for the assets of Executive branch officials to be disclosed, though by law ministers should have disclosed their interests on an annual basis in a publicly available Register of Interests.

Transparency (practice) - 25

To what extent is there public transparency in relevant activities of the Executive in practice?

In practice, there was little improvement on the negligible legal obligation to practice open government as regards the territorial Executive. The budget was regularly made public and ministers periodically made announcements regarding activity under their portfolio responsibilities. No Cabinet meetings were made public nor assets disclosed. Transparency was rather insignificant.

⁹⁵ Interview, prominent businessperson, 25 June 2010.

⁹⁶ Interview, prominent Public Service employee, February 2010.

⁹⁷ The Turks and Caicos Islands Constitution Order, 2006, Section 25(5)

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In terms of governance at the Whitehall/Westminster level, the FCO by convention and practice makes annual reports to the British Parliament. These reports invariably include a chapter on the Overseas Territories and from time to time have made mention of the TCI. The House of Commons Foreign Affairs Committee (FAC) scrutinises the annual reports in accordance with its formal remit 'to examine the expenditure, administration and policy of the Foreign and Commonwealth Office'.98 The FAC then makes a report to the House of Commons and publishes a hard copy detailing its findings. The FCO publishes a response to the conclusions and recommendations of the FAC. In addition, members of the FAC receive correspondence from persons in Overseas Territories, and from time to time delegations of the FAC visit these jurisdictions. During the period under study, such visits perhaps have been less frequent than the territorial situations sometimes demand, though in the case of the TCI it was one such visit and the subsequent FAC 2008 report that set in train the process culminating in the HMG-FCO partially suspending the TCI's 2006 Constitution.

Although the reports which the Governor made or the instructions he received from the FCO may have occasionally been made available to the public, our study did not find any such specific instances nor evidence that this is common practice. The instruction as it is received from the Secretary of State is, as a general rule, shown to the Cabinet against whose advice the Governor is being told to act.

Accountability (law) - 50

To what extent are there provisions in place to ensure that members of the Executive have to report on and be answerable for their actions?

There are provisions that require the Governor to report to the Foreign and Commonwealth Office. The frequency and content of these reports are not required by law to be disclosed. The Standing Orders of the Legislature also provide for questions to be asked and for ministers to reply. There are, however, no obligations for the Executive to consult either the public or special interest groups. There are also no requirements that reasons be given for decisions taken. The Complaints Commissioner is precluded by law from investigating the Executive, though the courts can hold members of the Executive accountable for wrongdoing.

The FCO, in turn, is obliged to report annually to the House Foreign Affairs Committee. The FAC, as with all House of Commons Select Committees, has the authority to subpoena persons including ministers, papers and records to assist them in their work, to receive written memoranda and to hear oral evidence.

⁹⁸ British Foreign and Commonwealth office (FCO); www.fco.gov.uk/en/

Accountability (practice) - 25 To what extent is there effective oversight of executive authorities in practice?

In relation to the Premier and ministers, oversight mechanisms in addition to being limited were ineffective. The Registrar of Interests routinely failed to review and report to the Legislature dereliction by ministers in properly completing the Register of Interests⁹⁹ as required by ordinance and the Constitution (Section 98). The Public Accounts Committee of the House also routinely failed to provide effective scrutiny over the expenditure budget¹⁰⁰. In the Westminster system, this Committee should perform the role of ensuring that money spent under each line item accords with the legislative decision. The criticisms and recommendations of the Chief Auditor regarding budgetary malpractice had little or no impact on correcting ministerial impropriety.

The available evidence suggests that for the period under review, the nonterritorial oversight mechanisms in place for the TCI were not sufficiently effective. The FCO's response to the worsening governance situation was not timely. By the time HMG intervened, it was required to take rather severe measures such as partial suspension of the Constitution and interim administration in TCI.

The annual department reports of the FCO include a chapter related to the Overseas Territories. However, in the years running up to the partial suspension of the Constitution in the TCI this chapter formed a relatively minor part of the report, and there is little mention of any challenges being faced by the Territories or any substantial intervention by the FCO. Given the number of countries that the FCO reports cover, the reporting system which is wide-ranging in scope and only annual in periodicity, would appear to be an inadequate oversight mechanism for capturing serious risks to the integrity of small overseas territories.

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Please see table below for the references to TCI in FCO annual reports in the years prior to the partial suspension of the Constitution.

reports, 2005/06 - 2008/09					
FCO Annual	Chapter on	Specific Comments on the Turks and			
Report	Dependent	Caicos Islands			
	Overseas Territories				
2008/09	(No devoted	In the Turks and Caicos Islands, our staff			
2000/09	chapter)	also helped lead recovery efforts after			
	chapter)	Hurricane Ike.			
		In large countries, such as India or China,			
		FCO staff work alongside partners from			
		many other UK government departments			
		to deliver together for Britain. Some small			
		posts, such as Asmara (Eritrea) or the			
		Turks and Caicos Islands, are staffed			
2007/08	Overseas	entirely from the FCO. The FCO has also helped build capacity in			
2007/08	Territories (OTs)	the public service through its OT			
	(pages 30-31;	Programme Fund, for example, by			
	2 of 178 pages)	working with the National School of			
		Government in the Turks and Caicos			
		Islands. By focusing on regional projects			
		we will help spread best practice, for			
		example on criminal justice issues.			
2006/07	SP 10 Ensuring the	'Good governance is vital to the success			
	Security and Good	of the Overseas Territories. That is why			
	Governance of Overseas	the UK has committed itself to consider			
	Territories (pages	carefully all proposals for constitutional improvements in the OTs. There has been			
	103-107;	important progress in the last 12 months,			
	5 of 115 pages)	including Turks and Caicos Islands			
		adopting a new Constitution on 9 August			
		2006. Under the Constitution, the majority			
		of activities of are devolved to the Turks			
		and Caicos Islands government. The UK			
		has only retained those powers that are,			
		and will remain, necessary to:			
		 meet international obligations 			
		 protect against contingent liabilities (liabilities from particular events) 			
		 ensure good governance.' 			
		 ensure good governance. 			

Table 19: Overview of content related to the TCI in FCO annual departmental reports. 2005/06 - 2008/09

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FCO Annual Report	Chapter on Dependent Overseas Territories	Specific Comments on the Turks and Caicos Islands
2005/06	07 The Overseas Territories/SR 02 Objective 07 (pages 62-65; 4 of 158 pages)	'Transport safety is also vital for the territories. Through funding from the Department for Transport, Air Safety Support International is working with the OTs to make sure that they are able to meet international safety regulation standards. A recent success in this area is the US Federal Aviation Administration granting Category I status to the Turks and Caicos Islands, enabling direct scheduled services from the territory to the US. We made good progress in discussions with the Turks and Caicos Islands and Montserrat, St. Helena not to choose a ministerial form of government. The Falklands has recently launched its new Islands Plan, and the Turks and Caicos Islands are working with consultants to create a new ten-year developmental plan. Helped by our EU/Overseas Countries and Territories (OCT) coordinator, Anguilla, the Falkland Islands, Montserrat, Pitcairn, St Helena and the Turks and Caicos Islands are close to drawing down their bilateral aid allocations'.

Reports published by the FAC on its sessions related to the debate of content in the FCO annual reports did not demonstrate sufficient probing into activities taking place within the Overseas Territories and the TCI in particular. The FAC 2008-09 inquiry into the FCO 2007-08 annual department reported the need for oversight responsibility for the Overseas Territories to be taken more seriously.¹⁰¹ In fact, the outgoing FAC made this recommendation in its 2009 report: 'We recommend that our successor committee in the next Parliament should consider making the close scrutiny of the FCO's handling of its responsibilities for Overseas Territories a part of its ongoing work.'

Given the complexities in the relationship between HMG and the Overseas Territories, even in the best of circumstances, the exercise of oversight by HMG requires a delicate balancing of countervailing pressures, personalities and policies between local autonomy and oversight responsibility. Achieving this delicate balance has been complicated by what one informed commentator describes correctly as 'long-standing ambiguities and informalities' that 'continue to undermine progress to achieve better standards of governance in the territories'.¹⁰² Evidence suggests that the accountability

¹⁰¹ House of Commons, Foreign Affairs Committee, Second Report of the Session 2008-09, p. 24.

¹⁰² Clegg, Peter, 'Governing the UK Caribbean Overseas Territories: A Two-Way Perspective', Department of Politics and International Relations. University of West England, Bristol, 2009.

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mechanisms and practices in the context of TCI do not adequately reflect these complexities.

Integrity (law) - 50

To what extent are there mechanisms in place to ensure the integrity of members of the Executive?

A 'Code of Conduct for Ministers' was issued in July 2007 by the Cabinet Office. This Code was comprehensive in scope. It called on ministers 'to protect the integrity of public life', 'to ensure that no conflict arises or appears to arise, between their public duties and their private life', and to 'uphold the political impartiality of the Civil Service'.¹⁰³ The Code also proscribed acceptance of 'any gift or hospitality which might reasonably appear to compromise their judgement or place them under an improper obligation'.¹⁰⁴ The Code, however, had no legal force. There was also no provision for whistleblower protection.

The General Orders and Financial Instructions governing the public service, for which the Governor and, through the Governor, the FCO had ultimate constitutional responsibility, can be seen as fairly adequate.

Integrity (practice) -0

To what extent is the integrity of members of the Executive ensured in practice?

At the territorial level, there was no evidence that the Code of Conduct for Ministers was applied and much to suggest that the Code was ignored¹⁰⁵. Hence there was a near-complete absence of actions which would aim to ensure the integrity of members of the Executive. As the Auld Commission documented, there appeared to be many examples of ministerial misbehaviour, particularly related to conflict of interest, in complete disregard of the relevant rules in the Code of Conduct.¹⁰⁶

Despite the fairly adequate General Orders and Financial Instructions, transgressions of these rules attracted no meaningful sanctions. Consequently, neither the Governor nor any official in the FCO appeared in practice to be held accountable for departure from good governance standards. Amongst these were interference by TCI ministers in the independence of the civil service, breaches of conflict of interest rules as well as procurement guidelines, improprieties in the disposition of Crown Lands and the absence of effective legislative oversight of budgetary expenditure by

¹⁰³ Code of Conduct for Ministers of the TCI Government, July 2007, Sections 1.2, 1.2f, 1.2j.
¹⁰⁴ Ibid, Section 1.2g.
¹⁰⁵ Auld, p. 52-54
¹⁰⁶ Ibid

Ibid.

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the Executive. Chapter 4 of this report (Public Sector) contains additional detail.

Public sector management (law and practice) - 25

To what extent is the Executive committed to and engaged in developing a well-governed public sector?

For most of the period under review, the territorial Executive displayed little commitment to developing a well-governed public sector. On the contrary, there is abundant evidence of ministerial interference in the public service's discharge of its responsibilities as indicated in the Auld report. No meaningful incentives were provided for the public sector to conduct its activities in a transparent, accountable and inclusive way.

Legal System (law and practice) - 0

To what extent does the Executive prioritise public accountability and the fight against corruption as a concern for the country?

The territorial Executive did not pay meaningful attention either to the promotion of public accountability or to the fight against corruption. Reforms undertaken were ineffective. For example, the Code of Conduct for Ministers had neither legal nor moral impact. The Integrity Ordinance was amended in such a way as to have the consequence of rendering the legislation non-operational. On the other hand, the actions of members of the territorial Executive gave rise to allegations of corruption at the highest levels of government.

Recommendations

A central challenge facing the Executive in the TCI, and in any Overseas Territory in the penultimate stage of evolution to independence, is achieving a balance between the competing claims for institutional autonomy (on the part of the Executive as a whole and each of its constituent elements) on the one hand, and transparency, accountability and integrity on the other. Evidently, during the period under review the institutional arrangements did not adequately achieve this balance in the TCI.

Summaries of the Governor reports to the FCO and the instructions from the FCO to the Governor should be made available to the TCI public, where they do not relate to sensitive issues or might breach confidences.

There should be an access to information law which should apply to the Cabinet except in respect of sensitive matters impacting security, defence, or confidentiality issues.

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The Code of Conduct for Ministers should apply to all members of the Executive (not only to ministers), and the power to investigate allegations of breaches reposed in an office independent of the Executive – the Complaints Commissioner/Ombudsman in the case of ministers, and the UK Parliamentary Commissioner for standards in the case of the Governor. This investigative capability should relate to all aspects of the Code, but in particular those related to conflict of interest, receipt of gifts and hospitality, etc. Public briefings on matters discussed and decisions made should promptly follow on each meeting of the Cabinet.

The Constitution ought to make a distinction between a vote of no confidence in the government and a vote of no confidence in the Premier. In the latter case, the Constitution should remove the option of the Premier to recommend dissolution of the House and thereby cause a general election.

The asset declarations lodged with the Integrity Commission by ministers and other public officials should fall explicitly within the purview of the access to information legislation. Ministers' entries in the Registry of Interests should be published in the Gazette and the public media.

The offence of 'illicit enrichment' should be applicable to all public officials, including members of the Executive.

The accountability and oversight mechanism exercised by the UK House of Commons over the FCO should be strengthened. The FAC should, as a matter of course, incorporate in its annual report to the UK House of Commons a section on Overseas Territories, particularly those troubled with governancerelated issues.

A mechanism and procedure should be developed to render the Governor, in his/her capacity as chair of the territorial Executive, more accountable, alongside the elected members of the Executive, to the TCI population.

3. JUDICIARY

Summary

This assessment finds the Judiciary to be independent in law and adequately resourced in practice, but in need of greater security of tenure and control over budgetary matters. The Constitution guarantees transparency in judicial matters to the extent that criminal and civil court proceedings must be held in public, except in special circumstances. Judges are accountable to the degree that they may be summoned for misbehaviour and their decisions are subject to review by higher courts. There are no special provisions to ensure the integrity of the Judiciary; Executive oversight exists in law but is rarely exercised in practice. As regards the determination of the Judiciary's anti-corruption commitment, there is little basis for an assessment given the absence of anti-corruption prosecutions coming before the courts for adjudication and imposition of sentence.

The quantitative indicators reflecting the assessment of the capacity, governance and role of the Judiciary follow.

	ores summarising enalusiensites of		a.e.a. j			
Judiciary						
Overall Pillar Score: 38/100						
Dimension	Indicator Law Practice					
Capacity	Resources	50	50			
63/100	Independence	75	75			
Governance	Transparency	25	25			
25/100	Accountability	25	25			
	Integrity	25	NE*			
Role	Executive Oversight	NE*				
25/100	Corruption Prosecution	25				

Table 5: Indicator scores summarising characteristics of the TCI Judiciary

* No Evidence

Structure and Organisation

The Judicature in the TCI is structured into four different levels:

1) The Magistrate Court, presided over by a single magistrate who is a trained lawyer or one of two deputy magistrates appointed from the local bar.

2) The Supreme Court, constituted by the Chief Justice and a maximum of two other judges.

3) The Court of Appeal, constituted by a president and not fewer than two other Justices of Appeal.

4) The UK Privy Council, which is the final appellate court.

A Judicial Services Commission consists of a chairman and two other members appointed by the Governor, which provides advice to the Governor in relation to judicial appointments and discipline. The Constitution stipulates that the UK Secretary of State may instruct the Governor 'to do otherwise' than follow the advice of the Judicial Services Commission.

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Assessment

Resources (law) - 50

To what extent are there laws seeking to ensure appropriate tenure, policies, salaries and working conditions of the Judiciary?

The Constitution provides adequate protection of tenure for judges of the Supreme and Appeal Courts. They may be removed from office only for an inability to discharge their functions or for misbehaviour, as determined by a special process.¹⁰⁷ Moreover, 'the office of a judge shall not, without the consent of that judge, be abolished during his or her continuance in office'.¹⁰⁸ These provisions, however, do not apply to magistrates. Moreover, there is no explicit constitutional or regulatory protection against income reduction of judges. There exists no special process for the determination of the budget for the Judicature, nor is there a requirement for an appointment of a minimum percentage of the budget to the judicial branch.

Resources (practice) - 50

To what extent does the Judiciary have adequate levels of judicial resources, staffing and infrastructure to operate effectively in practice?

The Judiciary appears to have adequate levels of resources, but in the absence of a satisfactory fixed resource determination and allocation process this can vary from time to time. Toward the end of the 1990s, for example, a complaint to Amnesty International by a local attorney pointed to an urgent need at the time for:

'At least two Supreme Court judges, one who is a specialist in criminal law and one in civil and commercial law; two to three magistrates; a Court reporter and stenographer... a proper law library... and a salary for a Chief Justice adequate to attract a substantial person of merit'.¹⁰⁹

Some of these resource deficits have been rectified. For example, there were three Supreme Court judges and three magistrates – two for Providenciales and one for Grand Turk. Sustainability of resources, however, is subject to budgetary consideration and Executive determination. Stability in resource provision, therefore, is not adequate. Moreover, all judges were on contract, a situation not only undesirable but possibly in breach of the tenure provisions of the Constitution.¹¹⁰

¹⁰⁷ The Turks and Caicos Islands Constitution Order, 2006, Sections 74 and 78. ¹⁰⁸ Ibid, Section 73(2).

¹⁰⁹ Laurie S., 'Gadflys in the Turks and Caicos Islands – Lawyers Harassed', *Human Rights Tribune*, Volume 5, Nos. 1-2, April 1998, p. 21.

¹¹⁰ Interview/reply to questions by UK Chief Justice.
VII NATIONAL INTEGRITY SYSTEM 3 JUDICIARY

Independence (law) - 75 To what extent is the Judiciary independent by law?

The Judiciary is, to a large extent, independent by law. The higher courts (Supreme Court and Court of Appeal) are anchored in the Constitution. The process of appointing judges by the Governor 'in accordance with the advice' of the Judicial Services Commission¹¹¹ ensures that, in formal terms, the appointments are made by professionals and not by politicians, in so far as a majority of the Commission's members are required to be either retired or serving high court judges.

Appointments to the Supreme and Appeal Courts have to be based on professional qualifications and require significant experience as an attorney or barrister.¹¹² Judges are not appointed for life but until the age of 65, with provision for extension to age 70. The process for removal of a High Court judge is guite complex. He or she may only be removed on grounds of 'inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour'.¹¹³ The determination of this issue is through a procedure whereby the Governor puts the question of investigation of removal before a tribunal or serving or retired judges. This tribunal then inquires into the matter, reports on the facts and advises the Governor 'whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committees'.¹¹⁴ The removal of a judge can only be effected in circumstances where the Judicial Committee so advises for Her Majesty.

None of these provisions for independence in law apply to the magistrates, however. Moreover, these requirements are subject to oversight by the UK government, in so far as Constitutional provisions related to the Judicature may be suspended by London, and in so far as the Governor need not act in accordance with the advice of the Judicial Services Commission if the Secretary of State directs.

Independence (practice) - 75

To what extent does the Judiciary operate without interference from the government or other actors?

To a large extent the legal/constitutional provisions related to the independence of the Judiciary are observed in practice. Judges, in fact, are appointed on professional criteria and there has been no case of removal of any judge on the basis of political pressure. Similarly, there has been no evidence of judges taking part in political activities, or of political interference in

¹¹¹ The Turks and Caicos Islands Constitution Order, 2006, Section 82.

Ibid, Sections 73 and 77.

¹¹³ Ibid, Section 74(2).

¹¹⁴ Ibid, Sections 74(4) and 78(6).

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judicial proceedings or in the function of the Judicial Services Commission. It must be noted, however, that adverse adjustments in the terms and conditions of judges, such as a cut in compensation package, can have the unintended consequence of impacting negatively on judicial performance. This is also seen in the practice of employing some judges on contract, subject to removal, which appears to run counter to judicial security of tenure, a vital component of judicial independence.

Transparency (law) - 25

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Judiciary?

The Constitution of the TCI provides that:

'All proceedings instituted in any Court for the determination of the existence or extent of any civil right or obligation or to try any criminal charge, including the announcement of the Court, shall be held in public'.¹¹⁵

In specific circumstances, 'including where publicity would prejudice the interests of justice' or 'in the interest of defence, public safety, public order or public morality',¹¹⁶ persons other than the parties and their legal representatives may be excluded from court. The Judicial Services Commission is not required to provide information on its activities and decisions to the public within any time frame. Judges were not required to disclose their assets either to the JSC or to any other body nor to compile and make available judicial statistics

Transparency (practice) - 25

To what extent does the public have access to judicial information and activities in practice?

Cases are generally heard in public in accordance with the law. However, in the absence of freedom of information legislation, the public is not entitled to information on the number of cases disposed annually, the number of judgments handed down, etc. The Statistical Office of the Department of Economic Planning and Statistics, however, periodically publishes data related to persons charged for various crimes and brought before the courts. There is no website for the Judiciary. Neither the Judiciary nor the Judicial Services Commission publishes regular reports on activities, spending or governance.

Accountability (law) - 25

To what extent are there provisions in place to ensure that the Judiciary has to report and be answerable for its actions?

¹¹⁵ Ibid, Section 6(9).

¹¹⁶ Ibid, Sections 10(a) and 10(b).

Judges are required to give reasons for their decisions, and the Constitution requires, among 'provisions to secure protection of law', that 'when a person is tried for any criminal offence' he or she on request should be given a copy 'of any record of the proceedings made by or on behalf of the Court'.¹¹⁷

There is no independent body with the specific power to investigate complaints against judges. The Complaints Commissioner (Ombudsman) Ordinance explicitly excludes from investigation by the Complaints Commissioner complaints against 'the Chief Justice and any Judge of the Supreme Court and Judge of the Court of Appeal as well as any Magistrate'.¹¹⁸ A judge of the Supreme Court or Court of Appeal may only be suspended by the Governor in circumstances where the question of his or her removal is being investigated by a special tribunal appointed for that purpose.¹¹⁹

Accountability (practice) - 25

To what extent do members of the Judiciary have to report and be answerable for their actions in practice?

Judges, by and large, do provide reasons for their decisions. It is not clear, however, whether sanctions of any sort are applied if they fail to provide reasons for their decisions. There have been instances in which apparent unsatisfactory oversight of judicial misconduct by superior courts have led to charges of judicial corruption.¹²⁰

Integrity (law) - 25

To what extent are there mechanisms in place to ensure the integrity of members of the Judiciary?

There are no special mechanisms in place to ensure the integrity of members of the Judiciary beyond the constitutional provision for removal in cases of misbehaviour. Judges are not required to disclose their assets and no code of conduct exists for judges. The general public service regulations would apply to judges in respect of receiving private gifts, reimbursements or honoraria. Citizens, however, can challenge in a higher court the impartiality of a judge or raise conflict of interest charges if a judge fails to step down from a case. There were no legal or constitutional restrictions on judges entering the private or public sector after leaving the Judiciary.

Integrity mechanisms (practice) – NE (no evidence)

To what extent is the integrity of members of the Judiciary ensured in practice?

¹¹⁷ Ibid, Section 6(3).

¹¹⁸ The Complaints Commissioner (Ombudsman) Ordinance, 1988, Schedule 1, Section 4. ¹¹⁹ The Turks and Caicos Islands Constitution Order, 2006, Sections 74(6) and 78(6). ¹²⁰ Wiseberg.

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In so far as there are no special legal mechanisms to ensure the integrity of members of the Judiciary, this has been largely left to the values, conduct and behaviour of individual judges. In this regard, available evidence suggests there were transgressions in the 1990s, but that by and large experience has been benign.

Executive oversight - NE

To what extent does the Judiciary provide effective oversight of the Executive?

Courts do have the jurisdiction to review the actions of the Executive. However, this has been neither routine nor extensive. The exercise of oversight in specific areas of jurisdiction has on occasion been effective in providing dramatic results. One such occasion occurred in 2003 when judicial determination of election petitions led to two by-elections and a subsequent change of government.

Corruption prosecution - 25

To what extent is the Judiciary committed to fighting corruption through prosecution and other activities?

The Judiciary, of course, has no legal or constitutional authority to prosecute. Law enforcement authorities have brought no significant charges for corruption before the courts for trial. Hence, there is no sentencing data to assist in determining the level of commitment of judges to deal severely with cases of corruption. The Judiciary does not keep separate statistics on corruption and has not been engaged in proposing anti-corruption reforms.

Recommendations

There should be a Code of Conduct specifically developed for and applicable to the Judiciary.

A specific percentage of the budget should be designated for the Judiciary and the allocated budgetary resources should be administered by the Judicature.

There should be an explicit prohibition against employment by judges 'on contract' and against absolute or relative reduction of income during the tenure of any judge.

Judges should be required to declare their assets to the Integrity Commission.

The Chief Justice should make an annual report to the Legislature on the activity of his/her department.

Sentencing guidelines for the Judiciary should be developed by the Legislature providing for a range of stiff penalties for persons convicted of corruption. These guidelines should not derogate from the discretion of the judge to impose sentences in taking into account the merits of the specific case.



Summary

In formal terms, the public sector of the Turks and Caicos Islands has fulfilled to an acceptable degree important criteria of good governance. For example, the Constitution sought to establish a Public Service Commission (PSC), for which the Governor had the final say in the appointment of the majority whilst providing the Premier and Leader of the Opposition the power to determine the minority. The ordinances, orders and regulations governing the public sector provided some legal safeguards against external interference. Less evident were formal requirements and mechanisms providing for transparency, integrity and accountability in the public sector.

In practice, the 2006 Constitution, in changing the appointment of the PSC from entirely Governor-nominated, introduced a level of politicisation of appointments. Formal rules were often honoured in the breach rather than in the observance. Long-standing and powerful traditions as well as practices of political patronage undermined not only the independence of the public sector, but also ran counter to the protection from discrimination on political grounds provided for in the Constitution. External interference combined with inadequate resources weakened the public sector as a whole, and hence compromised the integrity of the entire system of governance. Procurement rules were largely ignored. This weakness was particularly evident in areas of special importance to the development of the TCI. In this regard, for example, neither the Land Management Bodies nor the Immigration Department adequately met either the formal standards or practical operations of good governance. On the contrary, credible allegations of corruption have been levelled in these areas as well as other sectors of public sector management.

The table below represents the indicator scores which summarise the public sector in terms of capacity, governance and role.

Public Sector				
Overall Pillar Score: 37/100				
Dimension	Indicator	Law	Practice	
Capacity	Resources	-	50	
50/100	Independence	75	25	
Governance	Transparency	25	25	
33/100	Accountability	25	25	
	Integrity	75	25	
Role	Public Education	0		
29/100				
	Cooperate with public			
	institutions, CSOs and private	25		
	agencies in preventing/			
	addressing corruption			

Table 6: Indicator scores summarising characteristics of the TCI Public Sector

Public Sector			
Overall Pillar Score: 37/100			
Dimension	Indicator	Law	Practice
	Reduce corruption risks by	50	
	safeguarding integrity in public		
	procurement		
	Land Management Bodies:	25	
	Reduce corruption risks by		
	safeguarding integrity in land		
	distribution		
	Immigration Department:	25	
	Reduce corruption risks by		
	safeguarding integrity in		
	immigration affairs		
	Financial Services Commission:	50	
	Reduce corruption risks by		
	safeguarding integrity in the F		
	financial services sector		

Structure and Organisation

For the fiscal year 2007/08, the public service was distributed among various government departments and ministries, as follows:

Office of the Governor

Public Service Management (Chief Secretary Office)

Police

Attorney General's Chambers

Judiciary

Audit

Office of the Premier and Ministry of Planning, Tourism, Development and District Administration

Ministry of Finance, Health and National Insurance

Ministry of Natural Resources

Ministry of Communications, Works, Utilities, Housing and Agriculture Ministry of Education, Youth, Sports, Culture and Social Development

Ministry of Home Affairs

The majority of the service was divided into 10 salary grades. The average income of government employees, including civil servants, lagged behind employees in the private sector, particularly in finance and business.

	Census 2001		
	Total	Female	Male
Fishing, Farming & Agriculture	29,538	27,177	29,801
Mining & Quarrying	40,003	28,181	40,742
Manufacturing	20,274	15,543	21,855
Utilities	25,415	26,593	25,390
Construction	24,319	23,716	24,339
Hotel/Restaurant/Tourist-Related	19,010	16,996	20,863
Wholesale & Retail	19,661	16,445	23,007
Transportation, Storage &			
Communications	25,223	22,956	26,397
Finance & Business	147,300	109,465	180,661
Government	19,327	17,297	21,158
Education/Health/Sanitation			
Services	19,624	18,319	23,149
Community & Social Services/			
Cultural Activities	28,662	20,235	32,165
Domestic/Personal Services	8,665	6,747	13,298
Not stated	15,377	13,295	17,198

Table 7: Average income of employed population by sector and sex in US\$

Source: Turks and Caicos Islands Quick Facts & Figures 2005. Statistics Office, Department of Economic Planning & Statistics.

Approximately 11 per cent of the employed population was in the government sector.

Table 6. Employed population by status of employment			
Status of employment	Number employed		
Government Sector	2,427		
Monthly Employees	1,714		
Weekly Employees	713		
Private Sector	18,751		
Self-Employed	1,935		
Total Employed	23,113		

Table 8: Employed population by status of employment

The salaries and wages for this sector constituted 25 per cent of the government's recurrent expenditure. Half of the civil service was employed in Grand Turk, which had only 20 per cent of the TCI population.

Assessment

Resources (practice) - 50

To what extent does the public sector have adequate resources to effectively carry out its duties?

The public sector is adequately resourced in terms of budgetary provision given the size of the TCI economy. Compensation of employees accounted for the greatest portion of recurrent expenditure, varying between 25 and 40 per cent, and constituted about 15 per cent of the TCI's GDP.

However, in terms of human resources the situation is more complex, and in many important areas serious staff shortages are apparent. One such critical area relates to regulation of the financial sector. A 2004 International Monetary Fund report concluded that the 'implementation of the regime for financial supervision is handicapped by inadequate staffing... [S]taff resources do not permit an effective programme of on-site and off-site insurance supervision'.¹²¹ Salaries in the public sector are not competitive and lag well behind those in the private sector. Hence, it is difficult to retain qualified Belongers in the public sector. In any event, there is a shortage of professionals with the requisite skills among locals. Hence, there tends to be an overreliance on expatriates to fill critical public sector positions. Growth in public sector employment was invariably filled by a majority of expatriates.

Overall, the human resource base has not been adequate to meet the exceptional rate of growth of the TCI economy and the consequent extraordinary demand for all types of labour in the public sector.

Independence (law) - 75

To what extent is the independence of the public sector safeguarded by law?

The Public Service Ordinance, the General Orders and the Financial Institutions Ordinance in significant measure provide for the independence of the public sector. Section 83 of the Constitution establishes a Public Service Commission and stipulates that:

'In the exercise of its functions the Public Service Commission shall not be subject to the direction or control of any other person or authority'.¹²² These functions include the 'power to make appointments to public offices, and to remove or exercise disciplinary control over persons holding or acting in such offices...vested in the Governor, acting in accordance with the advice of the Public Service Commission'.¹²³

It should be noted, however, that the Governor need not act in accordance with the advice of the PSC 'if instructed by Her Majesty through a Secretary of State to do otherwise'.

¹²¹ International Monetary Fund, Turks and Caicos Islands: Assessment of the Supervision and Regulation of the Financial Sector – Review of Financial Sector Regulation and Supervision, January 2005, p. 8.

¹²² The Turks and Caicos Islands Constitution Order, 2006, Section 83(11). ¹²³ Ibid, Section 84(1).

The PSC itself consisted of five members all appointed by the Governor with a minority of 'political' appointees. Of the five, two are appointed by the Governor acting in accordance with the advice of the Premier and Leader of the Opposition. The majority are selected by the Governor, either according to his discretion or after taking advice from the leaders of the political directorate. The Constitution also provides that no person shall be qualified to be appointed as a member of the PSC 'if he or she is or has been within the preceding three years... the holder of any office in any political party'.¹²⁴

In relation to public sector employees, the Grievance Procedure of the General Orders lays down a procedure which protects employees from arbitrary dismissal. At the same time, the regulations require public servants to discharge their responsibilities in an impartial and professional manner.

Sensitive and important areas in the public sector do not consistently enjoy sufficient independence in law. For example, a 2004 IMF review of the TCI's financial sector regulation and supervision concluded: 'The statutory structure adopted by the Financial Services Commission does not provide the effective operational independence required by international standards'.¹²⁵ The concern was that too many private practitioners in the financial sector were at the same time on the Board and Licensing Committee of the FSC.

Independence (practice) - 25

To what extent is the public sector free from external interference in its activities?

The regulations governing recruitment, promotion and public sector employees' fulfilment of their duties have been ineffective in preventing external interference in the activities of the sector.

This practice of external influence apparently enjoys a long tradition in the Turks and Caicos Islands. The Blom-Cooper Commission Inquiry found in 1986:

'Political patronage... permeates every facet of public life in the Turks and Caicos Islands. But the most pronounced influence of political patronage in the evidence to the Commission of Inquiry was in the area of staffing of the Civil Service...direct ministerial interference and intervention – and not just inquisitiveness on the part of the Ministries – in the appointment and dismissal of civil servants was a dominant theme'.¹²⁶

¹²⁴ Ibid, Section 83(4b). ¹²⁵ IMF, 2005, p. 6. ¹²⁶ Blom-Cooper, 1986, p. 89.

Twenty-odd years later, overwhelming evidence 'suggest[s] that little has changed ... except as to the possible range and scale of venality in public life'.127

An interviewee, himself a public servant of long standing, spoke of a 'generalised breakdown', in so far as public servants subordinated themselves to politicians in ways inconsistent with Public Service Regulations.¹²⁸ There can be no doubt that 'the politicians meddled heavily in the affairs of the public service', ¹²⁹ including up to the level of the Permanent Secretary.

Sensitive areas in the public sector including the Land Management Bodies, Immigration Department and Financial Services Commission to one degree or another have had their independence compromised by external interference. Public procurement has not been immune. The National Audit Office pointed to widespread departures from the competitive tendering and open award of contracts with private sector contractors and developers'.¹³⁰

Transparency (law) - 25

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

There is no requirement that public servants and officials of public sector agencies declare personal assets, income or financial interests. However, conflict of interest rules are included in the General Orders. The relevant regulations indicate that:

'an Officer may not at any time engage in private activity which might bring the Officer or the Government into disrepute; conflict with his or her official duties or responsibilities; place him or her or give the appearance of placing him or her in a position to use his or her personal position for his or her personal advantage, or make him or her unavailable for reasonable out of hours duties or official commitments'.131

The Financial Instructions made explicit provisions for tendering:

'Contracts exceeding \$25,000 in value shall be the subject of public tender unless an application for a waiver or limited tendering is submitted to Executive Council for approval through the Chairman of the Tenders Board. Applications for limited tendering shall include the number of contractors or suppliers to be invited to tender'.¹³²

¹²⁷ Auld, 2009, p. 23.

 ¹²⁸ Interview, prominent member of local political party and former civil servant.
 ¹²⁹ Interview, Chair of the Public Services Commission, 26 June 2010.

 ¹³⁰ National Audit Office, Managing Risks in Overseas Territories, November 2007, p. 58
 ¹³¹ General Orders of the TCI Public Service, 1998, Section 3.3.5.

¹³² Government of the TCI Financial Instructions, 1989, Financial Instruction 1702.

This process shall be under the direction of a Tenders Board composed of high-ranking public officials. The Financial Instructions required a certain level of transparency:

'The ordinary medium of publicity for local tender notices is the Government Gazette and by advertising in the local press and the local radio. In the case of overseas tender notices these are more likely to be targeted at a particular journal or trade publication. A copy of all notices calling for tenders, whether local and/or overseas, must be sent in advance to the Chairman of the Tenders Board with details of the proposed publication'.¹³³

There is no freedom of information legislation guaranteeing the public the right to access documents, records or information pertaining to the public sector.

The Constitution, however, does protect 'freedom of expression', which includes 'freedom to receive ... information without interference', but this has no statutory expression. Late in the day or within limits provisions were put in place requiring transparency in relation to Land Management Bodies, the Immigration Department and Financial Services Commission.

Transparency (practice) - 25

To what extent are there provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

There are limited provisions for transparency and hence very few obligations to observe in practice. The public is able to obtain information on an *ad hoc* basis on public sector activities and on various initiatives to modernise the sector. Access to the websites of the ministries and departments does provide useful data, information and documentation.

Accountability (law) - 25

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable?

There are no meaningful provisions in law to ensure that public sector employees have to report and be answerable. Neither is there an official policy on whistleblowing nor statutory protection for whistleblowers. There is, however, the Office of the Complaints Commissioner, which receives, processes and responds to reports from any member of the public sector, as well as from any citizen. This office is provided for in the Constitution, which stipulates that in exercise of his functions, 'the Complaints Commissioner shall not be subject to the direction or control of any other person or authority'.¹³⁴ In

¹³³ Ibid, Financial Instruction 1802.

¹³⁴ The Turks and Caicos Islands Constitution Order, 2006, Section 93(2).

general, public sector agencies are not required by law to report to the Legislature.

Accountability (practice) - 25

To what extent do public sector employees have to report and be answerable for their actions in practice?

In practice, accountability mechanisms, already limited in formal terms, are largely ineffective. Complaints from public sector employees regarding breaches of public procurement rules have had little or no impact. Public sector employees themselves from time to time have been brought before the PSC for disciplinary action.

In the period 2005-09, there were more than 40 such cases. Approximately half of these cases resulted in termination or interdiction. The disciplinary process in its application of the principles of natural justice suffered from being unduly cumbersome. Existing mechanisms for citizen complaints were infrequently used. There is neither a requirement nor a practice for departments dealing with immigration, land management or financial services to report to the Legislature.

Integrity mechanisms (law) - 75

To what extent are these provisions in place to ensure the integrity of public sector employees?

The Public Service General Orders included rules regarding conflict of interest, regulations governing gifts and hospitality, unauthorised use of official property/facilities, work outside the public sector, use of official information and employment of family members. These rules applied to all members of the civil service.

However, 'regarding conflict of interest rules in the Ordinance, there is no mechanism to direct or enforce' these regulations.¹³⁵ In some instances, the rules themselves have not adequately safeguarded against conflict of interest.¹³⁶

Integrity mechanisms (practice) -25To what extent is the integrity of civil servants ensured in practice?

The evidence suggests that codes and rules providing for the integrity of civil servants are inadequately observed and enforced in practice. 'Although there were instruments in place regarding checks and balances, practically they

¹³⁵ Interview, former high-level civil servant, June 2010.

¹³⁶See: IMF Review of Financial Institution Regulations, p. 21.

were not enforced'.¹³⁷ The National Audit Office identified 'widespread departures from competitive tendering'.¹³⁸

Public education (practice) - 0

To what extent does the public sector inform and educate the public on its role in fighting corruption?

The public sector had no programme to inform and educate the public on its role in fighting corruption. Concern grew amongst citizens regarding corrupt practices. However, the evidence suggests that fear of victimisation restrained citizens from making public complaints about corrupt practices¹³⁹.

Cooperate with public sector institutions, CSOs and private agencies in preventing/addressing corruption – 25

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

There are no significant examples of public sector watchdog agencies engaging business and civil society on anti-corruption initiatives.

Reduce corruption risks by safeguarding integrity in public procurement – 50 To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

The Financial Instructions governing procurement are relatively orthodox and adequate (see section above). In practice, however, their main provisions were largely honoured in the breach and no effective sanctions were applied to either suppliers or public officials responsible for non-compliance with the regulations.

Land Management Bodies: Reduce corruption risks by safeguarding integrity in land distribution – 25

To what extent is there an effective framework in place to safeguard integrity in public land distribution processes, including meaningful sanctions for improper conduct by public officials, and review and complaint mechanisms?

The public land distribution process is governed neither by satellite nor by independent authority, but by a Crown Land Policy. The implementation of this policy is largely subject to ministerial discretion with neither effective safeguards against abuse nor meaningful sanctions for improper conduct by

¹³⁷ Ibid.

¹³⁸ National Audit Office, Managing Risks in Overseas Territories, November 2007, p. 58.

¹³⁹ Foreign Affairs Committee, Overseas Territories, Seventh Report on Session 2007-2008, 2008, p. 7

public officials. Proposals have been made and accepted to remedy this deficiency but were not implemented.¹⁴⁰

Immigration Department: Reduce corruption risks by safeguarding integrity in immigration affairs – 25

To what extent is there an effective framework in place to safeguard integrity in immigration and citizenship affairs, including meaningful sanctions for improper conduct by public officials and review and complaint mechanisms?

The Immigration Ordinance and related subsidiary legislation is adequate but the practice in relation to critical immigration matters is prone to abuse and corruption. This proclivity was presented to the Don Hue Gardiner Commission (2004).¹⁴¹ However, little has been done to implement recommendations aimed at reducing corruption risks and enhancing integrity levels.

Financial Services Commission: Reduce corruption risks by safeguarding integrity in the financial services sector – 25

To what extent is there an effective framework in place to safeguard integrity in the financial services sector, including meaningful sanctions for improper conduct by public officials, and review and complaint mechanisms?

The framework for the safeguard of the financial services sector is in some measure adequate to safeguard its integrity. However, there are weaknesses in respect to the application of conflict of interest rules, as well as shortfalls in the staff necessary to properly supervise the sector.¹⁴²

Recommendations

Each ministry, department and unit in the public sector should establish and maintain an up-to-date website.

Departments dealing with allocation of Crown Land, immigration, public procurement and award of contracts should make annual reports to the Legislature and publish on their respective websites details of individuals/entities benefiting from their decisions.

A 'whistleblower ordinance' should be passed that provides protection for persons, particularly within the public sector, who report wrongdoing.

Both the Public Service General Orders and Financial Instructions should be reviewed with a view to modernise them and make them more effective. Training and reorientation of staff in the public sector around the revised General Orders, Financial Instructions and Code of Ethics ought to be carried out as a matter of urgency. Full use should be made of regional public sector training facilities, particularly the University of the West Indies.

¹⁴⁰ See TCI - 2008 Terra Institute Report ¹⁴¹Terra Institute, Crown Land Policy Management for the Turks and Caicos Islands, 2005. ¹⁴²See: IMF Report and FSC Annual Report

In regard to the provision of asset declaration by specified levels of the public service, interface by the Integrity Commission with relevant databases, for example in the Customs Department, should be facilitated.

A Permanent Secretaries Board should be established and/or empowered to meet regularly, to discuss among other matters complaints of ministerial interference and to report these to the Governor and/or the Chairman of the Public Service Commission through the Cabinet Secretary.

A comprehensive and continuing programme of public education of the citizenry regarding the harmful effects of corruption and the role of the public sector and the citizen in combating it should be undertaken.

5. LAW ENFORCEMENT AGENCIES

Summary

The main law enforcement agencies – the Attorney General's Chambers and the Royal Turks and Caicos Police Force – were in general adequately resourced. The police were in formal terms under the direction of the Governor, who was constitutionally charged with the responsibility for internal security. The Attorney General, in law, exercised prosecutorial power and was 'not ... subject to the direction or control of any other authority'.¹⁴³ In practice, several factors conditioned this formal independence. These agencies had no special requirements related to transparency, accountability or integrity. Overall, the law enforcement authorities proved ineffective in the investigation and prosecution of corruption.

The following indicator scores reflect the evaluation of the capacity, governance and role of law enforcement agencies.

agencies			
Law Enforcement Agencies			
Overall Pillar Score: 15/100			
Dimension	Indicator	Law	Practice
Capacity	Resources	-	50
42/100	Independence	75	0
Governance	Transparency	0	0
4/100	Accountability	0	0
	Integrity	0	25
Role	Corruption Prosecution	0	
0/100			

Table 9: Indicator scores summarising characteristics of TCI law enforcement agencies

Structure and Organisation

The Attorney General's Chambers was headed by the Attorney General and included a number of attorneys and support staff. The Police Force was organised into a number of sections including a Marine Branch and an Anti-Drugs Unit. The force was headed by the Commissioner of Police. Below him were the senior officer ranks, and at the base non-commissioned officers constituting the majority of organisation the Police Department also included technical, administrative and clerical support staff.

Assessment

Resources (law) - 50

To what extent do law enforcement agencies have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?

¹⁴³ The Turks and Caicos Islands Constitution Order, 2006, Section 39(5).

The Attorney General's Chambers and the police commanded reasonable resources, though there remained some question as to the adequacy. With 14 per cent of the government's established staff, the police were allocated 8 per cent of recurrent expenditure in the 2006-09 budget. The ratio of police manpower to population was approximately 1-to-130, in Caribbean terms about the same as Grenada, less than St. Kitts Nevis but far greater than Barbados or St. Lucia (see table below).

countries			
Territory	Population	Police	Pop: Police
Antigua	68,000	700	97:1
Barbados	277,000	1,300	213:1
Dominica	70,000	400	175:1
Grenada	105,000	800	131:1
St. Kitts	39,000	400	97:1
St. Lucia	162,000	700	231:1
Jamaica	2,700,000	10,000	270:1
TCI	35,000	270	130:1

Table 10: Ratio of police manpower to population in selected Caribbean countries

Source: Table constructed by the author from data relating to 2006-07.

In relation to the Attorney General's Office, professional staff appeared adequate on the criminal law side but less so in the civil law area. During the period of review there were no noteworthy complaints about budget cuts. No unit existed in the police force dedicated to investigating corruption-related offences. In general, significant concern has been expressed about the quality of investigative expertise in the police force.

Independence (law) - 75

To what extent are law enforcement agencies independent by law?

The Constitution is explicit regarding the Attorney General:

'The Attorney General shall have power, in any case in which he or she considers it desirable to do so: a) to institute and undertake criminal proceedings against any person in any Court in respect of any offence against any law in force in the Islands'.¹⁴⁴

In the exercise of this power the Attorney General 'shall not be subject to the direction or control of any other person or authority'.¹⁴⁵ In regard to the other major law enforcement agencies:

'The Governor, acting in his or her discretion, shall be responsible for the conduct, subject to the Constitution, of any business of the Government with respect to ... internal security, including the Police Force'.¹⁴⁶

¹⁴⁴₄₄Ibid, Section 39 (1).

¹⁴⁵ Ibid, Section 39(5).

There were, however, no rules specific to law enforcement agencies indicating that appointments should be made on the basis of clear professional criteria. Similarly, above and beyond the requirements applicable to the public service as a whole regarding the relationship between ministers/politicians and public servants, there existed no laws preventing political interference in law enforcement agencies. In respect of prosecutions, only the Attorney General had power under the Constitution to instruct that there should be no prosecution in any specific case.

Independence (practice) – 0

To what extent are law enforcement agencies independent in practice?

In the view of the Attorney General, independence of law enforcement agencies was compromised by a number of factors.¹⁴⁷ Amongst these were inadequate investigation of cases by the police, reluctance of witnesses to come forward in the context of a highly politicised environment, close ties of family and friendship, and decisions by the Attorney General not to initiate prosecution in these circumstances.

Consequently, law enforcement agencies failed to assert their independence in pursuing and securing successful corruption-related prosecutions during the period under review.

Transparency (law) - 0

To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement activities?

There were no provisions to ensure public access to relevant information on law enforcement agency activities. The law did not require assets of law enforcement officials to be reported much less disclosed publicly. There was no requirement for police investigators nor for the Attorney General's Chambers to report to the public on progress or lack thereof in pursuing any particular case. No special provision existed for victims of crimes to access their case files.

Transparency (practice) - 0

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

The public was not able to obtain any relevant or important information on the organisation and functioning of law enforcement agencies on decisions that concern them and how these decisions were made. Neither the police nor the

¹⁴⁶ Ibid, Section 33(1).

¹⁴⁷ Interview, Attorney General June 2010.

Attorney General's Chambers maintained a website from which the public might access general information.

Accountability (law) - 0

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

No meaningful provisions are in place to ensure that law enforcement agencies have to report and be answerable for their actions. Neither prosecutors nor the police are required to give reasons to the public or relevant stakeholders regarding their decision to prosecute or not. The Governor, as the person ultimately responsible for the conduct of the police, is answerable to Her Majesty (through the Secretary of State). The Constitution explicitly makes the Governor immune from judicial investigation in this respect:

'The question whether or not the Governor has in any matter complied with any such instructions (from the Secretary of State) shall not be inquired into by any Court'.¹⁴⁸

The law also prohibits the Ombudsman from investigating any complaint against the police, Governor or Attorney General.¹⁴⁹

Accountability (practice) - 0

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

There are no provisions for law enforcement agencies to report, and in practice no systematic reports take place. For example, the Commissioner of Police does not make an annual report to the Legislature. Whilst in law police officers are not immune from criminal proceedings, there was no significant action in this regard.

Integrity mechanism (law) - 0To what extent is the integrity of law enforcement agencies ensured by law?

There is no code of conduct specific to the police or the prosecutors, nor are there rules on gifts and hospitality. There was no requirement for asset declaration by law enforcement officials.

Integrity (practice) - 25

¹⁴⁸ The Turks and Caicos Islands Constitution Order, 2006, Section 20(2).
¹⁴⁹ Ordinance Schedule 1 and 2.

To what extent is the integrity of law enforcement agencies ensured in practice?

While there were no special integrity mechanisms for law enforcement officials to observe, there has been no verifiable evidence or credible allegation that law enforcement officials breached the conflict of interest and other relevant rules applicable to the public service as a whole.

Corruption prosecution (law and practice) - 0

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

In general, law enforcement agencies failed to detect, investigate or prosecute corruption cases. Both police and prosecutors possessed adequate legal powers but did not apply adequate investigative techniques nor secure appropriate evidence to prosecute corruption cases. As such no cases of prosecution of significant corruption-related charges were undertaken during the period under review.

Recommendations

An Office of Director of Public Prosecutions should be established and assume the prosecutorial power now exercised by the Attorney General. This office should be anchored in the Constitution. The Attorney General should retain the responsibility of advising the Cabinet on legal and constitutional issues.

An intensive training programme should be instituted to upgrade and sustain the investigative capability of the Police Force. This training should pay special attention to the investigation of corruption-related cases.

The hierarchy of the Police Force should be required to deposit annual declarations of assets with the Integrity Commission.

A Police Service Commission modeled on the lines of the other service commissions should be established to take over responsibility for the appointments, disclosure and overall control of the Police Force.

A special code of conduct should be developed for police officers and form part of the Force Orders. Particular care should be taken to design rules dealing with conflict of interest, and acceptance of gifts and hospitality which should take into account the special nature of the policing function.

Both the Police Force and Attorney General's Chambers should compile and regularly publish on their websites data related to the activity of each department.

6. ELECTORAL MANAGEMENT BODY

Summary

The assessment of the TCI electoral management body (EMB) – the Supervisor of Elections – finds the direction, supervision and administration of elections technically sound. In law and practice, the Supervisor is relatively independent of partisan politics, though the office is neither anchored in the Constitution nor receives any special protection. The Elections Ordinance makes general special provision for transparency, accountability or integrity in the Election Supervisor's discharge of responsibilities. In practice, however, no serious abuses in these dimensions have been reported. On the contrary, the determination of electoral districts, registration of voters, arrangements for the conduct of elections and actual voting have been in accordance with the law. The main and serious flaw lies in the complete absence of any regulatory regime governing party funding and campaign finance. Moreover, there appeared to have been a lack of consistent enforcement of the law concerning election offences, in particular related to bribery, treating and undue influence.

The table below reflects the indicator scores that summarise the assessment of the electoral management body in terms of capacity, governance and role.

management body			
Electoral Management Body			
Overall Pillar Score: 53/100			
Dimension	Indicator	Law	Practice
Capacity	Resources	-	100
75/100	Independence	50	75
Governance	Transparency	50	50
45/100	Accountability	50	75
	Integrity	0	NE
Role	Campaign Regulation	0	
38/100	Election Administration	75	

Table 11: Indicator scores summarising characteristics of the TCI electoral management body

Structure and Organisation

The Supervisor of Elections' staff prepares the register of elections, carries out the registration of electors, publishes the list of electors annually, corrects the electors lists, prepares the electoral registration cards and manages all arranges for elections. This process generates an electors list of approximately 7,000 voters divided into 15 electoral districts.

Assessment

Resources (practice) - 100

To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?

The electoral management body had adequate resources to carry out its responsibilities. The Supervisor of Elections received his budget in a timely manner and possessed the necessary human resources and operational structures to manage the electoral process.

Independence (law) - 50

To what extent is the electoral management body independent by law?

The office/position of Supervisor of Elections is not grounded in the Constitution. Rather, it is a creature of an ordinance which accords to the Governor authority to appoint the Elections Supervisor, the Returning Officer for each Electoral Division, as well as the authority to determine the remuneration allowances for both.

The Constitution does, however, make provision for an Electoral District Boundary Commission which 'shall not be subject to the direction and control of any other person or authority' in the exercise of its Constitutional powers.¹⁵⁰ These functions relate to determining 'any changes in the number and boundaries of the electoral districts'.¹⁵¹ The Commission itself was to be constituted by a serving or retired high court judge appointed by the Governor, acting in his discretion, and two other members, one each appointed by the Governor in accordance with the advice of the Premier and the Leader of the Opposition.

In law, therefore, the electoral management authorities are in significant measure independent of the political parties and to a large extent dependent on the Governor.

Independence (practice) - 75

To what extent does the electoral management body function independently in practice?

The electoral management authorities in practice function independently to a satisfactory degree. They enjoy the confidence of government and citizens and appear to be perceived as impartial and efficient. There are no serious, substantiated cases of partisan political interference or influence on the electoral authorities in the discharge of their responsibilities.

Transparency (law) - 50

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

¹⁵⁰ The Turks and Caicos Islands Constitution Order, 2006, Section 57.
¹⁵¹ Ibid, Section 58.1.

There are no provisions in law to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB. There are legal requirements, however, that the outcomes of these processes are to be made public in a timely fashion. The Constitution obliges the Electoral District Boundary Commission when recommending boundary changes to lay 'before the House of Assembly at the same time a statement of the reasons for the modifications'.¹⁵² Similarly, copies of the electors list for each electoral division shall be published under the law 'not later than the 31st of January each year'¹⁵³ ...'claims and objections in relation to the list shall also be made available for inspection ... until the completion of the hearing of claims and objections'.¹⁵⁴ Election results are required by law to be published promptly. However, there is no legal requirement for any aspect of party funding to be reported to much less made public by the Supervisor of Elections.

Transparency (practice) - 50

To what extent are reports and decisions of the electoral management body made public in practice?

The Supervisor of Elections fulfils the requirements of the law regarding transparency, but these requirements ignore the fundamental dimensions of candidate and party funding as well as campaign financing and candidate expenditure.

Accountability (law) - 50

To what extent are there provisions in place to ensure that the electoral management body has to report and be answerable for its actions?

The Constitution is explicit on the relationship between the Governor, the House of Assembly and the Electoral District Boundary Commission. A Commissioner may be removed by the Governor but only on grounds of inability to discharge the functions of the office or for misbehaviour. The Commission is also obliged to submit a report to the Governor and House of Assembly 'not later than four years' after the previous Commission submitted its report.

The Electoral Ordinance, however, provides no specific definition of the relationship of the Supervisor of Elections with external stakeholders such as political parties, nor is there any specification of tenure or conditions governing termination particular to the Elections Supervisor as distinct from any other public servant. The law, however, does make provision for appeal from decisions of the Supervisor of Elections related to any claim for registration or objection to a person's registration on the list of electors.

 ¹⁵² The Turks and Caicos Islands Constitution Order, 2006, Section 58.4.
 ¹⁵³ Elections Ordinance, 1998, Section 13.
 ¹⁵⁴ Ibid, Section 15(4).

The Supervisor of Elections is also required 'immediately after each general election [to] cause to be printed a report giving, by polling divisions, the number of votes polled for each candidate, the number of rejected ballot papers, the number of names on the official list of voters'.¹⁵⁵

The law provides for election petitions to be presented by candidates to the Supreme Court to overturn an election result.

Accountability (practice) - 75

To what extent does the electoral management body have to report and be answerable for its actions in practice?

The EMB files the required reports and these are published in a timely fashion. Candidates have filed petitions which have resulted in the overturn of election results as declared by the Supervisor of Elections. In 2003 the filing of petitions successfully challenging the results of elections in two constituencies led to by-elections which produced a change of government (from PDM to PNP).

Integrity (law) – 0

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

Integrity mechanisms specific to the EMB are largely non-existent. There is no code of conduct specifically applicable to the Supervisor of Elections or the Supervisor's staff. Equally, there are no special conflict of interest rules or rules governing gifts and hospitality beyond those which apply to the public service in general. There is no legal obligation to observe impartiality or apply the principle of political non-partisanship.

Integrity (practice) - NE

To what extent is the integrity of the electoral management body ensured in practice?

In practice, integrity has largely been evident. However, no significant or comprehensive measures have been in place to ensure this. Hence, neither the Supervisor nor his/her staff appears to sign, for example, any declaration nor swear an oath to uphold any guiding principles of integrity in conducting their duties. (Insufficient evidence does not allow us to score this indicator.)

¹⁵⁵ Ibid, Section 55(4).

Campaign regulation (law and practice) - 0

Does the electoral management body effectively regulate candidate and political party finance?

No provision in law regulates candidate or party finance. As such, candidates and parties can spend funds without any legal limit in constituencies averaging fewer than 500 electors on the register. This has facilitated a practice which in effect amounts to undue influence on voters in the absence of either campaign expenditure or donation limits. However, the elections ordinance (Sections 68 and 69) makes it an offence to bribe or "treat" voters.

The Election Ordinance provides comprehensive definitions of 'bribery', 'treating' and 'undue influence', and lays out significant penalties for persons found guilty of these offences. These include disqualification from being registered as a voter or voting at any election, as well as disgualification from being elected a member of the Legislative for a period of seven years.¹⁵⁶ However, evidence indicates that the provisions outlined in the ordinance were routinely disregarded, as noted during the Auld Commission of Inquiry: 'There appears to be a longstanding tradition of wide and open disregard of those provisions, most blatantly in the February 2007 election when vast amounts of money were spent by or on behalf of PNP candidates, in cash, procurement of ghost jobs on the government payroll and entertainment'.157

The Auld Commission further noted that the main challenge to adherence to the provisions outlined in the Electoral Ordinance is the absence of an 'official system or resources to monitor or police corrupt conduct on such a scale'.¹⁵⁸

Election administration (law and practice) - 75

Does the electoral management body effectively oversee and administer free and fair elections and ensure the integrity of the electoral process?

Successive CARICOM Observer Missions have reported on the competent administration of elections by the Supervisor of Elections and his/her staff. In 2003 the CARICOM Electoral Observer Mission to the by-elections concluded that 'the polling officials managed the process fairly and competently. The vote count was carried out accurately and efficiently'.¹⁵⁹ In 2007 a similar mission observed that 'the preparations for the conduct of Elections were adequate, despite concerns raised about the voters' list in relation to the registration of voters', and that 'the polling stations were managed competently and the electoral officials carried out their duties in a professional and impartial

¹⁵⁶ Ibid, Sections 68-73.

Auld, 2009, p. 81. ¹⁵⁸ Ibid, p. 80.

¹⁵⁹ CARICOM Observer Mission: Preliminary Statement.

manner... [T]ransparency of the voting process was ensured... [S]tipulated procedures were consistently and uniformly followed'.¹⁶⁰

Complaints have been made from time to time regarding various aspects of election administration. For example, the CARICOM Observation Mission in 2007 'felt that greater effort could have been made in the area of voter education, particularly given the number of rejected ballots recorded'. Another area of concern, as highlighted in the Auld Commission, is the integrity of the election administration. The Auld report notes that 'there are also strong indicators of rigging of individual electoral district roles, not just in the February 2007 elections, but also more generally'.¹⁶¹ Nevertheless, in general the authorities have been relatively successful in the technical aspects of electoral administration. Eligible voters are registered, know where to vote, and those who so wish do vote. Election results are tabulated and aggregated accurately and in a timely fashion. Observers and accredited party representatives are allowed access to observe all stages, from polling and counting to result totals and announcement.

The fundamental deficit in both law and practice is the absence of measures to better ensure that electors and elections will not be bought.

Recommendations

A comprehensive ordinance on political party registration, political party funding and campaign financing needs to be established. The process of establishing such an ordinance should be participatory. The ordinance should draw on relevant international experience and make full use of access to current discussion of model legislation now taking place in the Caribbean. The draft framework for this ordinance should be published, subjected to widespread discussion as well as input before debate and passage in the Legislature. The law should set out conditions for: the registration and decertification of political parties, the establishment of limits on both campaign donations and expenditure, the disclosure of donations to parties (or to a party finance fund set up and administered by the EMB), providing direct or indirect public subsidy for parties, the keeping, audit and public disclosure of party accounts, the disclosure by candidates of identities of campaign donors, the establishment of limits on candidate election expenditure, and severe penalties for offences under the law.

The Office of the Supervisor of Elections should be significantly upgraded and equipped with the necessary infrastructure to monitor and enforce the new law.

¹⁶⁰ CARICOM Preliminary Statement, 13 February 2007. ¹⁶¹ Auld, 2009, p. 80.

7. OMBUDSMAN

VII NATIONAL INTEGRITY SYSTEM 7. OMBUDSMAN

Summary

The Office of the Complaints Commissioner enjoys a moderate degree of independence in both law and practice. However, improved fulfilment of the office's functions would be assisted by additional resources. Transparency in regard to aggrieved persons, but not to the public, is required by law and observed in practice. In relation to accountability, the Complaints Commissioner is required to make an annual report to the Legislature, a stipulation which is fulfilled in practice. To the extent that the Governor may remove the Commissioner from office, this constitutes a line of accountability. There are limited special provisions to ensure the integrity of the Ombudsman, though in practice there have been no significant integrity-related complaints on the incumbent's discharge of its responsibilities.

Investigations by the Ombudsman have had some success, but this has been circumscribed by the legislative exclusions from the Commissioner's investigative authority as well as by circumstances – not least of all fear – that inhibit potential complainants from bringing matters to the attention of the office. Nevertheless, the Commissioner has been moderately active in seeking to raise awareness within the public service and the wider community on the role of the office and the need for ethical conduct.

The table below presents the indicator scores which summarise the assessment of the Office of the Complaints Commissioner in terms of its capacity, governance and role in the integrity system of the Turks and Caicos Islands. The qualitative assessment for each indicator is presented in the remainder of this section.

Table 12. Indicator scores summarising characteristics of the TCF Officiality			
Ombudsman			
Overall Pillar Score: 49/100			
Dimension	Indicator	Law	Practice
Capacity	Resources	-	50
58/100	Independence	50	75
Governance	Transparency	25	50
38/100	Accountability	25	50
	Integrity	25	50
Role	Investigation	50	
50/100	Promoting good practice	50	

Table 12: Indicator scores summarising characteristics of the TCI Ombudsman

VII NATIONAL INTEGRITY SYSTEM 7. OMBUDSMAN

Assessment

Resources (practice) - 50

To what extent does an Ombudsman or its equivalent have adequate resources to achieve its goals in practice?

Assessment of resource provision for the Ombudsman's Office needs to be related to the economic circumstances of the government and the demands placed on the office. In regard to the former, the public finances of the TCI were significantly challenged during period under review. As far as public demand is concerned, the relatively low usage of the office has reduced the necessity for a large staff. In fact, the Complaints Commissioner who served from 1996 to 2006, Albert Williams OBE, 'decided to work from his home-based office' because 'the public did not make opportunity of the courtesy of the office'.¹⁶² Nevertheless, there appears to be a definite need for an Investigations Officer to enhance the office's efficiency, even in the context of strained public finances and limited public demand on its services.¹⁶³

Independence (law) - 50

To what extent is the Ombudsman independent by law?

Part VIII of the Turks and Caicos Constitution Order 2006 makes the provision for a Complaints Commissioner.¹⁶⁴ The Constitution states: 'In the exercise of his or her functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority'.¹⁶⁵ The Commissioner, under the Constitution, is appointed by the Governor 'acting after consultation with the Premier and the Leader of the Opposition'.¹⁶⁶ Constitutionally, the requirement of consultation does not oblige the Governor to act in accordance with the advice offered.

The office is also grounded in the Complaints Commissioner (Ombudsman) Ordinance, which came into effect in 1988. The ordinance placed no obligation on the Governor to consult any person in making an appointment of Complaints Commissioner. Moreover, the ordinance left the Governor unfettered in the power 'to remove the Commissioner from office'.¹⁶⁷

The 2006 Constitution preserves the discretion of the Governor to dismiss the Commissioner but places the use of this power in the context of the Commissioner's 'inability to discharge the functions of his or her office

¹⁶² Complaints Commissioner (Ombudsman) Office Turks and Caicos Islands, 2006-2007 Annual Report, p. 2.

¹⁶³ Complaints Commissioner (Ombudsman) Office Turks and Caicos Islands, Annual

Reports. Passim. ¹⁶⁴ Turks and Caicos Islands Constitution Order, 2006, Section 92.

¹⁶⁵ Ibid, Section 93(2).

¹⁶⁶ Ibid, Section 92(2).

¹⁶⁷ Complaints Commissioner (Ombudsman) Ordinance, 1988, Section 3(1).

VII NATIONAL INTEGRITY SYSTEM 7 OMBUDSMAN

(whether arising from infirmity of body or mind or any other cause) or for misbehaviour' (Section 92 (4d)). Neither the Constitution nor the ordinance specifies criteria for qualification for appointment to the Commissioner's Office.

Significantly, the Ombudsman is excluded by law from conducting investigation into complaints against the following offices/bodies: '1. The Governor 2. Executive Council 3. Legislative Council 4. Chief Justice and any Judge of the Supreme Court and any Judge of the Court of Appeal 5. Magistrate 6. Police 7. Chief Auditor and staff'.¹⁶⁸

Moreover, matters not subject to the Ombudsman's investigations include actions taken in respect of 'appointments or removals, pay discipline'¹⁶⁹ in relation to the government service. In a context where credible allegations have been made in regard to political interferences in civil service appointments and personnel matters, this is a significant exclusion. Moreover, as Schedule 2 (see box below) indicates, 'matters not subject to investigation' by the Ombudsman include significant areas of public life.

We conclude that, in law, the Complaints Commissioner enjoys moderate but circumscribed independence.

SCHEDULE 2

Section 5

MATTERS NOT SUBJECT TO INVESTIGATION

Action taken in matters certified by the Governor to affect relations or dealings between the Government of the Turks and Caicos Islands and any other Government or any international organisation of States or Governments.

Action taken by the Attorney General under the Extradition Act 1870 or the Fugitive Offenders Act 1967.

Action taken by or with the authority of the Attorney General, the Commissioner of Police, the Director of Immigration or the Director of Customs for the purposes of investigating crime or of protecting the security of the Turks and Caicos Islands, including action so taken with respect to passports.

The commencement or conduct of civil or criminal proceedings before any court of law in the Turks and Caicos Islands, or of proceedings before any international court or tribunal.

Action taken in respect of appointments or removals, pay, discipline, or other personal matters other than superannuation, in relation to -

service in any office of employment under the Government; or

service in any office of employment, or under any contract for services, in respect of which power to take action, or to determine or approve action to be taken, in such matters is vested in the Government.

¹⁶⁸ Complaints Commissioner (Ombudsman) Ordinance, 1988, Schedule 1.
¹⁶⁹ Ibid, Schedule 2.

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Source: Complaints Commissioner (Ombudsman) Office Turks and Caicos Islands, 2007-2008 Annual Report, p. 15.

Independence (practice) - 75 To what extent is the Ombudsman independent in practice?

In practice, the Complaints Commissioner operates with a significant degree of independence. There are no noteworthy examples of partisan political influence in the appointment of the Ombudsman or removal from office. The current Commissioner indicates there has been no interference with her in the discharge of her responsibilities, and that she is aware of no instance of interference with her two predecessors in the fulfilment of functions of the office. Nevertheless, it does appear that the independent functioning of the office is limited by relatively low demand for its services due in part to 'the climate of fear in the Islands'.¹⁷⁰

Transparency (law) - 25

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Ombudsman?

To Ombudsman law stipulates that: 'the Commissioner shall annually lay before the Legislative Council a general report on the performance of his functions under this Ordinance'.¹⁷¹

In addition to this requirement of an annual report, the law obliges the Commissioner to send to any person requesting an investigation 'a report of the investigation or, as the case may be, a statement of his reasons for not conducting an investigation'.¹⁷² Similarly, the Commissioner is required to send a report 'to the principal officer of the department, authority or body of persons concerned' with the action subject to the complaint.¹⁷³

Except for the purpose of fulfilling these requirements, the Ombudsman is obliged by law to maintain confidentiality: 'Information obtained by the Commissioner or his officers in the course of or for the purposes of an Investigation shall not be disclosed'.¹⁷⁴

In addition the Governor, 'acting in his discretion', may direct the Commissioner to withhold disclosure of any information, document or

- ¹⁷³ Ibid, Section 10(2).
- ¹⁷⁴ Ibid, Section 11(2a).

¹⁷⁰ Complaints Commissioner (Ombudsman) Office Turks and Caicos Islands, 2008 – 2009

Annual Report, p. 15.

¹⁷¹ Complaints Commissioner (Ombudsman) Ordinance, 1988, Section 10(4). ¹⁷² Ibid, Section 10(1).

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documents which 'would be prejudicial to the safety of the state or otherwise contrary to the public interest'. $^{\rm 175}$

In terms of the Ombudsman himself or herself, there are no requirements to publicly (or privately) declare assets nor are there any obligations to involve the public in the activities of the office.

Transparency (practice) - 50

To what extent is there transparency in the activities and decision-making processes of the Ombudsman in practice?

The Office of the Complaints Commissioner complies with the requirements of the law regarding submission of an annual report to the Legislature. The report is a good indication of the performance of the office. Typically, it provides summaries of complaints and of actions taken by the Commissioner in response to complaints. It also indicates to the reader how to go about making a complaint to the Office of the Complaints Commissioner. The annual report for 2008-09, for example, indicates very limited but moderately increasing usage by the public of the office.

For the three years from 2006-07 to 2008-09, a total of 72 written and verbal complaints were received – an average of two per month. Nevertheless, the average increased from 1.5 per month in 2006-07 to just fewer than three per month in 2008-09. Twenty-six complaints, or 76 per cent of the total, were found justified in the latter year, compared to six, or 33 per cent, in 2006-07.

Despite the adequacy of the annual report to the Legislature, it should be noted that the Office of the Complaints Commissioner is not among the 30-odd governmental and quasi-governmental bodies listed on the TCI government website and accessible through the Internet. Moreover, the Ombudsman does not involve the public in any systematic way in the activities of the office.

Accountability (law) - 25

To what extent are there provisions in place to ensure that the Ombudsman has to report and be answerable for its actions?

The Ombudsman is obliged to report to the Legislature but it is to the Governor that the office is ultimately answerable, as stated in the law and Constitution. It is the Governor who appoints and can remove the Commissioner, and it is also the Governor who may expand or diminish the jurisdiction of the Ombudsman by adding to or removing government departments and statutory authorities excluded from the Ombudsman's jurisdiction.

¹⁷⁵ Ibid, Section 11(3).

VII NATIONAL INTEGRITY SYSTEM 7. OMBUDSMAN

In relation to the Ombudsman's annual report to the Legislature, there is no legal obligation imposed on this body to discuss or debate the report. Nor is there any requirement that the report be made publicly available, save and except through the Legislature.

Accountability (practice) - 50

To what extent does the Ombudsman have to report and be answerable for its actions in practice?

In practice, the office's accountability is diminished by the simple fact that relatively little notice is paid to its activity by the public, the Legislature or the Executive. The reasons advanced for this unsatisfactory state of affairs are identified in the annual report of 2006-2007. First of all, the statute places too many constraints on the jurisdiction of the office. The report observed: 'The majority of aggrieved persons wanting to make complaints against various bodies were unhappy when they learned that no complaints could be entertained against those named persons and bodies as they are not subject to investigations as scheduled in the Ordinance'.¹⁷⁶ Secondly, potential complainants expressed 'fear of being victimized' if they resorted to the Ombudsman.¹⁷⁷ Thirdly, 'due to the minute size of the islands and the close "family ties" they preferred not to make complaints which would hurt, harm and cause pain'.¹⁷⁸

Integrity mechanisms (law) - 25

To what extent are there provisions in place to ensure the integrity of the Ombudsman?

There are minimal special provisions in place to ensure the integrity of the Ombudsman. As such, there is no code of conduct or conflict of interest rules specific to the office and the Commissioner. There are no rules on gifts, or any requirement for asset declaration. The Constitution, however, does make some attempt to ensure that a Commissioner is insulated from active party politics. Section 92(3) provides:

'No person shall be qualified to be appointed as Complaints Commissioner if he or she has been within the preceding three years –

a) An elected or appointed member of the House of Assembly;

or,

b) The holder of any office in any political party'.

Correspondingly, the office would become vacant if a Commissioner should assume any of the positions which would disqualify a person from

¹⁷⁶ Complaints Commissioner (Ombudsman) Office Turks and Caicos Islands, 2006-2007 Annual Report, p. 15.
¹⁷⁷ Ibid.

¹⁷⁸ Complaints Commissioner (Ombudsman) Office Turks and Caicos Islands, 2006-2007 Annual Report.
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appointment. It should also be noted that the law obliges the Commissioner to observe confidentiality in respect of information related to complaints except in so far as its utilisation is required for investigation.

Integrity mechanisms (practice) – 50 To what extent is the integrity of the Ombudsman ensured in practice?

The extremely limited legal requirements to ensure integrity have been observed in practice. The evidence indicates that all those persons who have held the post of Complaints Commissioner since the establishment of the office in 1994 have not fallen within the exclusions stipulated in the Constitution. Moreover, no credible allegations concerning lack of integrity in the conduct of the affairs of the office have been made.

Investigation - 50

To what extent is the Ombudsman active and effective in dealing with complaints from the public?

The Ombudsman is active in dealing with complaints from the public. Annual reports record an increased percentage of justification in relation to complaints made by the public and some degree of satisfaction with the extent of corrective action by the authorities concerned. Moreover, the procedure for lodging complaints is simple. However, the number of statutory complaints remains small because of limitations on the office's jurisdiction, fear of victimisation and considerations having to do with the small size of the community.

Promoting good practice - 50

To what extent is the Ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?

The Ombudsman has been relatively active in seeking to raise awareness within the government and the public on issues related to the important role of the office and the necessity to observe ethical standards in the public service. In March 2008, for example, a two-day conference was conducted for permanent secretaries and under-secretaries to sensitise them to the operation of the office. Members from civic organisations were also invited to the workshop, which was facilitated by the Ombudsman from Bermuda. Nevertheless, attendance was poor.

This commendable effort and disappointing results have been typical. In this context, more sustained public campaigns would be appropriate, but this has not been possible given the resource constraints that limit the employment of necessary staff. For this reason, the office has been limited in its publication of findings, recommendations and materials on principles of good administration.

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Recommendations

Steps must be taken to promptly fill the position of Investigation Officer requested by the Complaints Commissioner.

Resources should be provided to establish and maintain an active website related to the activity and performance of the Ombudsman's Office.

Consideration should be given to expand the number of departments and statutory authorities over which the Ombudsman may exercise jurisdiction.

A code of conduct should be developed, with appropriate sanctions attached to breaches for the Ombudsman's Office.

8. SUPREME AUDIT

Summary

The Audit Office is legally granted the power and resources needed to monitor the management of public finances. Under the Finance and Audit Ordinance, the office has the authority to conduct annual evaluations and audits of the islands' statutory bodies. The office goes further in some cases and conducts assessments of the effectiveness of these bodies in its systems audits. The last Audit Office report tabled in 2007 suggests it has been successful in completing audits as required under the Finance and Audit Ordinance. The office has also produced a number of special reports geared at bringing 'matters of significance to the attention of the Legislature in a timely manner'.¹⁷⁹ The powers of the Chief Auditor are not subject to the direction of any person or authority, and the findings and issues raised by the Chief Auditor allude to independence of the office in carrying out its functions. The issue of partiality, however, cannot be addressed. Several recommendations have been made by the Audit Office in relation to issues identified in its audits. The office, however, is restricted in its capability to enforce these recommendations. This limits the effectiveness of the Audit Office. Another challenge faced by the Audit Office is a backlog in the number of audit reports to be reviewed and discussed by the Public Accounts Committee, the body that makes recommendations to the Legislature in relation to the reports put forward by the Audit Committee.

Supreme Audit Institution					
Overall Pillar Score: 41/100					
Dimension	Indicator	Law	Practice		
Capacity	Resources	-	NE		
NE	Independence	75	NE		
Governance	Transparency	50	25		
40/100	Accountability	75	25		
	Integrity	25	NE		
Role	Effective financial audits	50			
42/100	Detecting and sanctioning	25			
	misbehaviour				
	Improving financial management	50			

Table 13: Indicator scores summarising characteristics of the TCI Audit Office

Assessment

Resources (practice) - NE

To what extent does the audit institution have adequate resources to achieve its goals in practice?

¹⁷⁹ Audit Office, Audit Report on the Financial Statements of the Government of the Turks and Caicos Islands, Annual Report to the House of Assembly, November 2007, p. 17.

The law makes provision for the Audit Office to have resources for carrying out its duties. Section 64 of the Finance and Audit Ordinance gives the Audit Office the authority to charge audit fees as determined by the Chief Auditor. Section 62 of the ordinance also allows for the Chief Auditor to authorise professional accountants or any other public officer to carry out audits and to present their reports to the Chief Auditor. However, as it relates to charging of audit fees, the ordinance also grants the Permanent Secretary the right to request a reduction or waiver of the fee to be charged if it appears to be in the public interest.¹⁸⁰ There is insufficient evidence to determine the extent to which these clauses are applied in practice, as the resources employed by the Audit Office in conducting its audits are not detailed in its reporting.

Independence (law) - 75

To what extent is there formal operational independence of the audit institution?

The duties and powers of the Chief Auditor are governed by the Finance and Audit Ordinance (1998). The ordinance facilitates relative independence of the Chief Auditor in carrying out his functions, as it stipulates: 'In the exercise of his powers of audit and reporting on accounts the Chief Auditor shall not be subject to the direction or control of any person or authority'.¹⁸¹

The Office of the Chief Auditor (the Audit Office) is considered to be a part of the islands' public service, and is therefore subject to the laws and regulations that govern the public service, ¹⁸² except in the case of the removal of the Chief Auditor from office,¹⁸³ or in the event of the appointment of a public officer to act as Chief Officer.184

In keeping with the Constitution, the power to make appointments to the office of the Chief Auditor and the power to 'remove or exercise disciplinary control' over the Chief Auditor is vested in the Governor acting in his/her discretion.¹⁸⁵ The staff required to assist the Chief Auditor in performing his/her duties is also determined by the Governor after consultation with the Chief Auditor. The Legislative Council, however, is the body that possesses the authority to increase the salary of the Chief Auditor.¹⁸⁶ Additionally, any dismissal of the Chief Auditor is first subject to prior approval by the Secretary of State, and in such cases it is required that 'a full statement of the circumstances' be made

¹⁸⁰ Finance and Audit Ordinance, 1998, Section 64.

¹⁸² Ibid, Section47(2). ¹⁸³ Ibid, Section 47(1).

¹⁸⁴ Ibid, Section 49.

¹⁸⁵ Constitution Order of the Turks and Caicos Islands, 2006, Section 59(1).

¹⁸⁶ Finance and Audit Ordinance (1998), Section 46(2).

to the Legislative Council.¹⁸⁷ There is no stated limit on the Chief Auditor's tenure in office, and 'he shall hold office during good behaviour'.¹⁸⁸

Restrictions placed on the Chief Auditor and the functions of his office seek to ensure his objectivity. As such, the Chief Auditor is not capable of 'holding any other office of profit under the State'.¹⁸⁹ As it relates to performance of his duties, the Chief Auditor is not required to conduct pre-audits of accounts which require his acceptance once the transaction has taken place, nor is he permitted to undertake any duties other than those pertaining to his office in the event that he perceives such duties as being incompatible with the responsibilities and duties of his office.¹⁹⁰

Independence (practice) - NE

To what extent is the audit institution free from external interference in the performance of its work in practice?

The Audit Office, while having the authority to audit various government departments and agencies in keeping with the Finance and Audit Ordinance (1998), 'has no authority to step in to a statutory body and rein them in if they are going out of control'.¹⁹¹ Therefore, while the office's operations related to the auditing process may be relatively independent, its reliance on other entities for the implementation of sanctions or measures to eradicate breaches highlighted in its audit reports restricts its effectiveness. An example of this was observed in relation to overages (over-expenditure) by the Governor's office during the period 2005-07. The Finance and Audit Ordinance stipulates that all expenditure should be approved by the House of Assembly. The Governor's office was therefore 'required to submit a supplemental appropriation bill to cover the overages in the years 2005-2007 as it relates to the residence that the Governor maintains'. However, this bill was never tabled in the House nor was it debated. Despite these observations, there is insufficient evidence to determine the actual independence of the audit institution from interference by external actors.

Transparency (law) - 50

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the Supreme Audit Institution?

The Permanent Secretary is required to submit accounts as outlined in Section 57(1) of the Finance and Audit Ordinance to the Chief Auditor within six

¹⁸⁸ Ibid.

¹⁸⁹₁₀₀ Ibid, Section 45(1).

¹⁸⁷ Ibid, Section 47(1).

¹⁹⁰ Ibid, Section 55(1).

¹⁹¹ Auld, 2009.

months of the close of the financial year.¹⁹² The Chief Auditor is then required to submit to the minister a report on these accounts within six months of receipt of the accounts.¹⁹³ Therefore, the Chief Auditor is required to submit a report on its activities related to the examination and audit of public accounts within one year of the close of the financial year. The Chief Auditor is also required to submit an observation of any irregularities in the accounts examined in writing to the Permanent Secretary.¹⁹⁴

Within two months of the receipt of any report from the Chief Auditor that relates to the Audit Office's examination or audit of statutory bodies, the minister is required to obtain the observations of the statutory body concerned 'on any matter to which attention has been called by the Chief Auditor' in his report.¹⁹⁵ The report submitted by the statutory body is to be presented to the Legislative Council by the minister along with the account and report of the Auditor. If the minister fails to submit these documents within a reasonable time then the Chief Auditor is required to 'transmit a copy of the account and report to the Speaker' for presentation to the Legislative Council.¹⁹⁶

The Chief Auditor may also prepare a special report 'on any matter incidental to his powers and duties' under the ordinance as he sees fit.¹⁹⁷ Such reports are submitted to the minister and are dealt with in the manner prescribed for processing of the usual reports submitted by the Chief Auditor.

Transparency (practice) - 25

To what extent is there transparency in the activities and decisions of the audit institution in practice?

Reports laid before the Legislative Council are accessible to the public once they are tabled in the House.¹⁹⁸ These reports include audits of the various statutory bodies which are in receipt of public funds or able to impose or create a liability on public funds. Also included is an annual report outlining the activities of the Audit Office, including a summary of recommendations as well as a summary of issues arising as it relates to each audit that was conducted. The annual report submitted by the Audit Office also highlights issues from previous years that have not been resolved.

Once a report from the Audit Office is submitted to the minister, it is required to be laid before the Legislative Council at its next meeting by the minister. However, this is not done within a reasonable period of time, as evidenced by

- ⁵ Ibid, Section 63(1).
- ¹⁹⁶ Ibid, Section 63(2).

 $^{^{192}}$ Finance and Audit Ordinance (1998), Section 57(2). $^{193}_{193}$ Ibid, Section 58(1).

¹⁹⁴ Finance and Audit Ordinance (1998), Section 61.

¹⁹⁷ Ibid, Section 58(2).

¹⁹⁸ Audit Office, 2007, p. 18.

the fact that the report from the Audit Office for the 2006-07 fiscal year has yet to be laid before the Council.

As it relates to the Audit Office itself, information related to its structure and its resources are not readily accessible, nor is there mention of the methods used in conducting the relevant audits. The Audit Office does not have a website that facilitates sharing of information related to the office and its activities with the public.

Accountability (law) - 75

To what extent are there provisions in place to ensure that the Supreme Audit Institution has to report and be answerable for its actions?

Pursuant to Section 57(1) of the Finance and Audit Ordinance, which requires the Accountant General to transmit to the Chief Auditor accounts showing the financial position of the islands at the end of the year, Section 58 of the ordinance requires that the Chief Auditor should complete relevant examinations and audits of the prescribed accounts, and within six months after the receipt of these accounts 'shall prepare, sign and transmit to the minister a report on the examination and audit of all such accounts, together with copies of the accounts prescribed by Section 57'.¹⁹⁹

'Substantial irregularities' observed by the Chief Auditor are to be brought to the attention of the Permanent Secretary in writing.²⁰⁰ If the Chief Auditor deems it necessary, he/she may also at any time submit to the minister a special report on any matter related to his/her powers and duties under the ordinance.201

Reports submitted to the minister by the Chief Auditor are to be laid before the Legislative Council at the meeting of the Council following the date on which the documents were received.²⁰² If the minister fails to lay a report before the Legislative Council as outlined, then the Chief Auditor is required to submit a copy to the Speaker for presentation to the Legislative Council.²⁰³

A report on the documents laid before the Legislative Council is prepared by the Public Accounts Committee. The minister is required to lay before the Legislative Council his observations on any matter that the Public Accounts Committee has drawn attention to in its report within two months of receipt of the report.²⁰⁴ The Permanent Secretary, Finance is required under the ordinance to submit 'his observations upon any matter that the Chief Auditor

¹⁹⁹ Finance and Audit Ordinance (1998), Section 58(1).

²⁰¹ Ibid, Section 58(2).

²⁰² Ibid, Section 59(1). ²⁰³ Ibid, Section 59(2).

²⁰⁴ Ibid, Section 60(2).

has drawn attention to in the report' within two months of receiving any report from the Chief Auditor.205

Accountability (practice) - 25

To what extent does the Supreme Audit Institution have to report and be answerable for its actions in practice?

In its last report tabled before the Legislative Council in November 2007, the Audit Office noted:

'The Public Accounts Committee ('PAC') forms a vital part of the financial accountability mechanism as it examines the financial performance of the government and makes appropriate recommendations to the legislature'.²⁰⁶ The office further noted that the accountability process could only be maintained if the PAC submitted the required report outlining its recommendations to the Legislature, followed by a reply to the recommendations that are provided by the government at a Legislative sitting. However, it was duly noted in the same report that no reports from the PAC had been submitted to the Legislature for a number of years. There was also 'a huge backlog of audit reports yet to be reviewed and discussed by the PAC'.207

Integrity mechanisms (law) - 25

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

The Office of the Chief Auditor is 'deemed to be an office in the public service of the Islands', and therefore 'the provisions of the law and regulations relating to the public service shall apply to him'.²⁰⁸ The Chief Auditor would therefore subject to the rules outlined in the Code of Conduct for Public Sector Workers of the Turks and Caicos Islands. There is no separate code or rules exclusive to the Office of the Chief Auditor.

Integrity Mechanisms (practice) - NE To what extent is the integrity of the audit institution ensured in practice?

There is insufficient evidence to comment on the integrity of the Audit Office in practice.

Effective financial audits - 50

To what extent does the audit institution provide effective audits of public expenditure?

 ²⁰⁵ Finance and Audit Ordinance (1998), Section 58(3).
 ²⁰⁶ Audit Office, 2007, p. 15.
 ²⁰⁷ Ibid

lbid.

²⁰⁸ Finance and Audit Ordinance (1998), Section 47(2).

The Audit Department carries out systems audits on various government departments and ministries with a view to determine 'whether public funds have been expended economically and efficiently, and whether projects, programmes or activities have effectively achieved their objectives'.²⁰⁹ The audits are therefore not restricted to expenditure but also seek to determine the effectiveness of the relevant agencies and departments. However, the last tabled report noted this cause for concern: 'Currently, there are no mechanisms in place to measure departments/ministries' performance against their respective objectives'.²¹⁰ As highlighted in the report, without performance measurements it is difficult to ascertain whether the required services are being delivered 'efficiently and effectively', and that the TCI government is actually receiving the best value for its money. Reports on audit findings appear to be comprehensive. Since January 2006, 'an audit opinion is given to each systems audit report'.²¹¹ This is determined 'based on the number of high, medium and low risk issues raised' and the overall judgment of the Audit Office on the control environment of the particular department/ministry being audited. Four standard audit opinions are used: (i) Satisfactory; (ii) Satisfactory with exceptions; (iii) Needs improvement; and (iv) Unsatisfactory. A summary of issues identified in the systems audits is presented in the Audit Office's annual report, which provides information related to expenditure by relevant government agencies. However, in cases where the findings may warrant separate consideration, these are presented as a special report to be laid before the Legislative Assembly. While the reports on audit findings are completed and submitted as required, delays in tabling of the report by the Legislative Council helps to limit the effectiveness of the audit reports.

Detecting and sanctioning misbehaviour - 25

Does the audit institution detect and investigate misbehaviour of public officeholders?

Section 57(1) of the Finance and Audit Ordinance states that the Accountant General is to transmit to the Chief Auditor 'accounts showing fully the financial position of the Islands at the end of the year' within a period of six months after the end of each fiscal year. Additionally, Section 51 of the ordinance makes provision for the Chief Order, in the exercise of his/her duties, to 'call upon any officer for any explanations and information which the Chief Auditor may require in order to enable him to discharge his duties'.²¹² In addition: 'In the exercise of his duties, the Chief Auditor or any person duly authorised by him in writing shall have access to all records, books, vouchers, documents and to

²¹⁰ Audit Office, 2007, p. 6. ²¹¹ Ibid, p. 15.

²⁰⁹ Audit Office, 2007, p. 17.

²¹² Finance and Audit Ordinance (1998), Section 51(1).

all cash, stamps, securities, stores or other Government property of any kind whatsoever in possession of any public officer'.²¹³

However, despite having access to all records related to financial management and the power to request necessary information, the Audit Office is limited in respect of appropriate guidelines which clearly define 'misbehaviour' of public office holders. Whistleblower legislation that would assist in bringing to light violations of such rules is also non-existent. In addition, the Audit Office does not have the authority to impose appropriate sanctions for violations of the existing rules.

It was noted in the annual reports of the Audit Office that 'the Chief Auditor identified many serious issues and made many recommendations requiring urgent attention'.²¹⁴ Among these was the issue of 'excess expenditure without legislative approval'. A report by the National Audit Office in November 2007 (around the same time as the Audit Office's report of that year) also identified this among a number of challenges in the TCI in relation to the management of public finances. It was noted that 'expenditure consistently and repeatedly incurred in excess of annual budgets, across most government departments and without prior statutory authorisation'.²¹⁵ However, the Auld Commission of Inquiry reports that most of the recommendations made by the Chief Auditor were largely ignored by the Misick administration. Appendix C of the Audit Office's annual report to the House of Assembly in 2007 adds credence to this finding, as it lists a number of issues from the prior year that had not yet been resolved.216

Improving financial management - 50

The annual report of the Audit Office highlights issues and recommendations in relation to the audits conducted by the office during the period to which the report applies. It also highlights outstanding recommendations that have not been implemented. However, there is no evidence to suggest that the relevant authorities have given serious consideration to the recommendations made by the Audit Office. In fact, Minister Floyd Hall noted during an interview under the Auld Commission of Inquiry that financial supervision of statutory bodies was an area that was in desperate need of attention: 'Under the Finance and Audit Ordinance, as it relates in the TCI today, the Ministry of Finance has no authority to step in to a statutory body and rein them in if they are going out of control'.217

²¹³ Ibid, Section 51(2).

²¹⁴ Auld, 2009, para. 1.38.

²¹⁵ National Audit Office, Managing Risks in Overseas Territories, November 2007, p. 58.
²¹⁶ Audit Office, 2007: 38.

²¹⁷ Interview, former member of Cabinet TCI, 21 January 2009.

At the time the audit report for the fiscal year ending March 2006 was tabled, an Audit Committee comprised of PS Finance (who serves as its Chair), HE Deputy Governor, PS Premier's Office and Establishment Secretary was in place, among other things, to review the recommendations of the audit reports. However, while it was the hope of the Audit Office that this committee would 'assist government and its senior managers in the discharge of their financial responsibilities',²¹⁸ the effectiveness of the committee to date cannot be ascertained.

Recommendations

Implementation of whistleblower legislation and/or other guidelines regarding disclosure of information pertaining to wrongdoing in public offices would assist in enhancing the effectiveness of the Audit Office's capabilities as it relates to detecting and sanctioning misbehaviour. The Audit Office's 2007 report points out that most 'cases of theft, wrongdoing, fraud, misappropriation, bribery and corruption are identified through employees blowing the whistle'. Such legislation would therefore be likely to influence greater compliance with the existing rules.

In order to strengthen the integrity of the supreme audit institution, transparency regarding the functions of the Audit Office can be improved by developing a code to govern its employees. This code should place special emphasis on guidelines that govern conflict of interests or the perception of conflict of interests amongst staff. Further, legislation/guidelines governing these areas should be developed for other government institutions, particularly those that employ special advisors who may be affiliated with companies that transact business with the government.

²¹⁸ Audit Office, 2007, p. 15.

9. ANTI-CORRUPTION AGENCIES

VII NATIONAL INTEGRITY SYSTEM 9. ANTI-CORRUPTION AGENCIES

For the period under review, there existed no anti-corruption agency in the TCI. In 2008 an Integrity Commission Ordinance was proposed by the Executive and passed, with significant amendments by the Legislature. One amendment modified the provision requiring the Chairman of the Integrity Commission to be a retired high court judge from the Commonwealth to a requirement that he or she be a retired judge from the TCI. 'Then with only two sitting judges and no retired judges on the island, it effectively meant that the legislation could not be implemented'.²¹⁹ In 2009, on the eve of the partial suspension of the Constitution, the Integrity Commission Ordinance was amended to remove this impediment.

In August 2010 the Integrity Commission took the first steps to the fulfilment of its functions to:

Receive and keep declarations of persons in public life

Examine and investigate declarations

Receive and investigate complaints regarding acts of corruption

Conduct any investigation into acts of corruption on its own initiative if satisfied that there are reasonable grounds for investigation

Examine the practice and procedures of public bodies in order to facilitate the delivery of corrupt practice

Instruct, advise and assist the management of public bodies²²⁰

 ²¹⁹ Interview, Attorney General June 2010.
 ²²⁰ Governor's Statement, 16 April 2010.

10. POLITICAL PARTIES

Summary

This assessment finds that the legal framework of the Turks and Caicos Islands placed no barriers in the way of the formation, operation and regulation of political parties. Moreover, the established parties were able to garner resources to compete effectively in elections. The extent of resource provision from private sources, however, opened the parties to potential external influence in a context where there existed minimal legal protection against unwarranted outside interference. In relation to their governance arrangements, there existed no law requiring the parties to be transparent, accountable nor internally democratic. In practice, particularly in respect of financial matters, there was little or no transparency, accountability or oversight. Party leaders and officers, however, were elected and removed in accordance with party constitutions. The parties, to some extent, did aggregate social interests in the political sphere, though practically minimal attention was paid to public accountability and the fight against corruption.

The table below presents the indicator scores which summarise the assessment of the political parties in terms of their capacity, governance and role in the integrity system of the Turks and Caicos Islands. The qualitative assessment for each indicator is presented in the remainder of this section.

Political Parties				
Overall Pillar Score: 32/100				
Dimension	Indicator	Law	Practice	
Capacity	Resources	75	50	
57/100	Independence	50	50	
Governance	Transparency	0	0	
13/100	Accountability	0	0	
	Integrity	50	25	
Role	Interest aggregation and	50		
25/100	representation			
	Anti-corruption commitment	0		

Table 14: Indicator scores summarising characteristics of the TCI's political parties

Structure and Organisation

Two political parties – People's Democratic Movement (founded in 1975) and Progressive National Party (established in 1976) – have dominated modern politics in the Turks and Caicos Islands. Since the granting of a Constitution to the territory in 1976, these two parties have competed for dominance in the Legislature. Of the nine elections held since then, the PDM has won four (1976, 1988, 1995, 1999) and the PNP five (1980, 1984, 1991, 2003 after a by-election on 7 August, and 2007), thereby giving rise to a competitive two-party system. No other party or independent candidate has won a seat in the

Legislature. Each has a constitution providing for internal democracy, and each supports greater autonomy for the TCI.

Assessment

Resources (law) - 75

To what extent does the legal framework provide a conducive framework for the formation and operations of political parties?

The 2006 Constitution of the Turks and Caicos Islands makes explicit provision for the protection of freedom of assembly and association. Section 13 states that 'except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of peaceful assembly and association and in particular to form or to belong to political parties'.

This provision in the Fundamental Rights and Freedoms section of the 2006 Constitution gave constitutional expression to the *de facto* situation that prevailed in the TCI since the Constitution of 1976.

There is, however, no ordinance related to political parties. As such, political parties are not required to be registered, their constitutions to be democratic, nor their income and expenditure to be disclosed.

This gap in the legislative framework is not unique to the TCI. None of the independent states of the Commonwealth Caribbean or any of the dependent and overseas territories associated with the CARICOM have legislation providing for the registration of political parties or regulation of political party funding and election campaign financing. This constitutes a major deficiency in the legislative framework of the TCI and of the wider Caribbean.

Resources (practice) - 50

To what extent do the financial resources available to political parties allow for effective political competition?

The financial resources available to political parties in the TCI come entirely from private sources. There is no provision in law or actual practice whereby resources are garnered from public sources. As such, political parties maintain themselves and contest elections on the basis of utilising personal funds of candidates or party officials, as well as on the basis of lavish donations from private individuals.

Neither candidates nor parties are required to file expenditure returns following elections nor to disclose source of political/campaign funding. Nevertheless, the regular alternation between the PDM and PNP in securing electoral

majorities would suggest that each has commanded resources sufficient to make political competition effective and not one-sided nor formal.

Available evidence suggests extraordinary levels of election-related expenditure and resource-allocation given the relatively small size of constituencies in the TCI. The Auld Commission report, for example, states: 'The funds for the February 2007 election in South Caicos were lavish given that the total number registered to vote on the island at that time was 54. The campaign chest was therefore more than US \$1,223 for every voter'.²²¹

Election outcomes would suggest that each of the two competing parties was able to command comparable resources.

Independence (law) - 50

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the political parties?

There are no legal safeguards to prevent unwarranted external interference in the activities of the political parties. This situation derives from the fact that there is no ordinance providing for state monitoring, investigation or dissolution of political party operations. Despite this legal lacuna, the 'protection of freedom of ... association' in the Fundamental Rights section of the Constitution is not absolute. The right 'to form or belong to political parties' is conditional. The Constitution allows the state to enact legislation to qualify political party formulation and activity 'to the extent that the law in question makes provision –

a) that is reasonably required -

- (i) in the interests of defence, public safety, public order, public mortality or public health;
- (ii) for the purpose of protecting the rights and freedoms of other persons'²²²

This provision allows for laws that could in the specified two circumstances proscribe, ban or suspend a political party and restrict membership in or association with it. No such law exists, however, and state authorities essentially have no more legal powers to exercise surveillance over political parties than over the ordinary citizen.

Equally, there is no statutory provision to safeguard external interference warranted or unwarranted from non-state actors in the activities of the political parties. Hence, private developers, commercial special interests and persons associated with organised crime could, with legal impunity, exercise undue influence over political parties in the TCI.

²²¹ Auld, 2009, Section 4.156.

²²² Turks and Caicos Islands Constitution Order, 2006, Section 13(2).

Independence (practice) - 50

To what extent are political parties free from unwarranted external interference in their activities in practice?

No political party in the TCI has ever been banned, dissolved, restricted or prohibited from carrying out its activity by the state. Moreover there are no noteworthy examples of harassment or physical attacks on opposition parties, their officers, members or supporters by state authorities or by political opponents. There are allegations of bias on the part of Governors from time to time, but there is no hard evidence to confirm suggestions of unequal treatment.

Strong indicators exist to suggest undue influence by non-state actors – private donors and developers – on the conduct of party leaders, if not on political parties *per se*. Significant donations or the promise thereof to political parties, election campaigns and/or party officials raised the issue of excessive influence by moneyed interests on decision-making by party officials in their capacity as government functionaries. To this extent, this constitutes 'unwarranted interference'. It must be stressed, however, that in so far as political parties have no legal personality in the TCI, neither this nor any kind of interference would, as far as the party and the law is concerned, constitute an illegal activity.

Transparency (law) - 0

To what extent are regulations in place that require parties to make their financial information publicly available?

There are no regulations in place that require parties to make their financial information publicly available. Moreover, there are no regulations governing the financial accounting of parties, even if this accounting information were to be made available privately or to party members only. Equally, there is no legal requirement for records to be kept, much less campaign money or political donations to be disclosed to any entity, whether private or public.

Transparency (practice) - 0

To what extent do political parties make their financial information publicly available?

Political parties do not make their financial information publicly available. Beyond this, it is next to impossible for the public to obtain relevant financial information from political parties. It appears that even senior members of the political parties are unaware of financial data related to their own party. This is so, despite evidence that party constitutions have imposed an obligation on

party treasurers 'to prepare an annual report of the Party's finances for the National Executive Council'.²²³

Inadequate or absent reporting, even to party notables, is likely related to the condition of secrecy required by major party donors. In this regard, the Auld Commission of Inquiry report accurately observed:

'Wealthy developers and other businessmen usually made their donations on terms of strict anonymity'.²²⁴

Accountability (law) - 0

To what extent are there provisions governing financial oversight of political parties?

There are no legal provisions governing financial oversight of political parties. Both electoral and non-electoral accounting are therefore entirely voluntary and completely discretionary, with no reporting requirements to any state or regulatory authority. As such, finances need not be accounted for, and there exists no standard format for financial reporting.

From the standpoint of law, political parties may or may not maintain records of their finances and have no obligation whatsoever to report on them publicly.

Accountability (practice) - 0

To what extent is there effective financial oversight of political parties in practice?

There is no effective financial oversight of political parties in practice. This arises from the absence of any legal requirement for accountability. This is reinforced by a political culture that places no premium on holding parties to account on financial matters, and by a business culture in which significant players benefit from the absence of financial oversight of political leaders. Hence, not only is there no authority to which party financial reports are to be submitted, but there has also been no practice of nor public demand for such submission.

Integrity (law) - 50

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

The political parties have organisational regulations that provide for internal democratic governance in some but not all areas. For example, the Constitution of the Progressive National Party (2001 Edition) makes provision

²²³ Constitution of the Progressive National Party, Article 9(6c)).
²²⁴ Auld, 2009, Section 2.34.

for the election of various levels of party leadership, but omits requiring democratic accountability in the fundamental area of party finance.

The 'basic unit' of the Progressive National Party is the Constituency Council, in relation to which there is a requirement that there be an Executive Committee elected and removable by members of the Council. The Council is also required to report to the National General Council and empowered to elect delegates to the National Congress. The next level in the party structure is the National General Council, which is constituted of different categories of elected persons and in effect is the parliament of the party with the general responsibility of carrying out 'the directions put forth by the National Congress'.²²⁵ The 'supreme authority of the Party' is the National Congress, which is required constitutionally to meet once every four years. It is constituted of 'delegates elected from Constituency Councils' and by the members of the party's National General Council. The National Congress elects the party leader²²⁶ and other officers of the party. The Constitution provides that the party leader 'shall be the Chief Executive Officer of the Party and ipso facto the Premier or Leader of the Opposition of the TCI as the case may be.227

In regard to financial matters, there is a shared responsibility. The Secretary General is appointed by the National Executive Committee and is 'the professional person of the party ... directly responsible for ... day to day administration ... [and] shall receive all monies paid to the Party'. ²²⁸ The Secretary General is obliged to hand over all such payments to the party to the Treasurer. The Treasurer under the Constitution is required to deposit these funds to the party's bank account and to 'keep proper account of receipts and disbursements of the Party; [and] prepare an annual report of the Party's finances for the National Executive Committee'.229

The Constitution provides for a National Executive Committee (NEC) mainly constituted of elected and appointed party officials which it designates the Chief Executive Authority of the party and which it requires to meet 'once in every month'.²³⁰ The NEC appoints a number of standing committees including that responsible for the party's election platform. The party's candidates for election have to be recommended by the NEC and approved by the National General Congress.

These rules of the PNP provide for internal democratic governance in most important areas. In the critical area of party finance, however, there is no

²²⁵ Constitution of the Progressive National Party, Article 5(7).

²²⁶ Ibid, Article 6(4e).

²²⁷ Ibid, Article 9(1.1). ²²⁸ Ibid, Article 9.5.

²²⁹ Constitution of the Progressive National Party, Article 9(6). ²³⁰ Ibid, Articles 10(1), 10(3), 10(4).

explicit requirement that the party Secretary General or Treasurer, who are the responsible nominated officers, report to either of the two key elected organs of the party, namely the National General Council and National Congress. This constitutes a major deficiency in the provisions for internal democratic governance.

In the case of the People's Democratic Movement, the basic unit of the party is the branch, which is granted the autonomy to hold elections at any time to fill a vacancy in the membership of its Executive Committee and to elect delegate(s) to attend the party's National Convention. The Executive Committee of the Branch is comprised of 'Officers of the Branch, the Parliamentary Member/s for the relevant Constituency and three (3) other Members elected for that purpose'.²³¹ There is a branch for each island 'subject to the approval of the Party's National General Council'.232 The National General Council consists of officers of the party, members who are elected or appointed to the Legislature, a Chairman for each branch and party Councillors. The National General Council carries out the directives that are laid down by the Convention. Officers are elected each year after the National Convention and at other times as determined by the party's National General Council. The National Convention in session is the 'supreme authority of the Party' and is constituted of members of the National General Council as well as delegates elected from branches and affiliated members. In addition to the election of officers, the National Convention is responsible for: (a) reviewing the work of the party; (b) modifying or establishing new policies, programmes or standing orders; (c) making amendments by resolution to the party's platform and Constitution; and (d) receiving and adopting reports of the National General Council and branches of the party.²³³

There is also provision for a National Executive Committee, which is the 'Chief Executive Authority of the Party' that is 'responsible for the general direction and control of the Party'.²³⁴ Meetings of the National Executive Committee are called at the discretion of the leader or as requested by six members of the Committee. The Committee gives directions to the Secretary General (approved by the National General Council) and submits a quarterly report of its activities to the National General Council through the Secretary General. The Constitution of the party also denotes the party leader as the party's Chief Executive Officer and the Chairman as the Chief Administrative Officer. The party leader is responsible for presiding over the National Executive Committee and the Political Committee and implementing the party's policies

²³¹ Constitution of the People's Democratic Movement, Chapter I, Sec. 6.

 ²³² Ibid, Chapter I, Section 5, Clause 1(c).
 ²³³ Ibid, Chapter II, Section 5.

²³⁴ Ibid, Chapter II, Section 10(1).

and programmes.²³⁵ The Chairman is responsible for the appointment of the party's standing Committees following the National Convention²³⁶.

The Constitution of the PDM, like that of the PNP, provides for internal democratic governance in most important areas. The fact that the PNP was able to change its leader (early 2009), albeit in the context of a severe governance crisis, does confirm an element of internal democracy in practice. The Constitution of the PDM, however, permits greater oversight as it relates to party finance. The treasurer of the party is required to 'keep proper accounts of receipts and disbursements of the Party', and also to 'prepare a quarterly report of the Party's finances for the Party's national General Council and an Annual Financial Report for the National Convention'.²³⁷

Integrity (practice) - 25

To what extent is there effective internal democratic governance of political parties in practice?

In general, the political parties do follow democratic procedures in electing and removing leaders. The leader-centred nature of the political culture, however, means in practice that the leader enjoys a decisive say in critical areas such as finance, policy-making and candidate selection.

Interest aggregation and representation - 50

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

The political parties are relatively effective in aggregating and representing many of the social interests in the country. One indicator of the extent of interest aggregation and articulation is in the comparatively high level of voter turnout. In 2007, for example, voter turnout constituted 79.4 per cent of the registered electorate.²³⁸ While fulfilling this function, the parties are also significantly based on patron-client relations. Moreover, the parties appear to give substantially greater weight to the interests of the Belonger as distinct from the Non-Belonger population.

Anti-corruption commitment - 0

To what extent do political parties give attention to public accountability and the fight against corruption?

In general the parties pay minimal attention to the promotion of public accountability and the fight against corruption.

 ²³⁵ Constitution of the People's Democratic Movement, Chapter 3, Sec. 1(b).
 ²³⁶ Ibid, Chapter 3, Section 16(c).

²³⁷ Constitution of the People's Democratic Movement, Chapter 3, Section 19.

²³⁸Author calculation, based on the number of voters as a proportion of the number of registered voters in the TCI.

Recommendations

The passage of legislation regarding political party registration, funding and campaign financing. (See recommendation regarding the electoral management body.)

11. MEDIA

Summary

The legal framework of the TCI provides an environment conducive to a diverse independent media. There are no prohibitive legal requirements and to a noteworthy extent, there exists a diverse and independent media. Libel and defamation laws, based on those of the UK, more than facilitate investigative journalism. There is, however, no freedom of information (access to information) legislation.

In relation to transparency, accountability and integrity in the media, there are little or no legal requirements. In practice, however, interviews suggest that the small size of the community facilitates knowledge of ownership, orientation and other matters related to the media. The media, particularly following the visit of the FAC of the House of Commons in 2008, and the appointment and hearings of the Auld Committee, has played during the hearings a significant role in exposing issues related to corruption and matters of governance.

The table below presents the indicator scores which summarise the assessment of the media in terms of its capacity, governance and role in the integrity system of the Turks and Caicos Islands. The qualitative assessment for each indicator is presented in the remainder of this section.

Media				
Overall Pillar Score: 46/100				
Dimension	Indicator	Law	Practice	
Capacity	Resources	75	75	
63/100	Independence	50	50	
Governance	Transparency	0	25	
17/100	Accountability	0	50	
	Integrity	0	25	
Role	Investigate and expose cases of	50		
58/100	corruption			
	Inform public on corruption and	75		
	its impact			
	Inform public on governance	50		
	issues			

Table 15: Indicator scores summarising characteristics of the TCI media

VII NATIONAL INTEGRITY SYSTEM 11. MEDIA

Structure and Organisation

There are three newspapers –*Turks and Caicos Free Press, Turks and Caicos Sun* and *Turks and Caicos Weekly News*. Each is privately owned and available online. The *TCI Journal* and *Caribbean Net News* are Internet-based publications.

In terms of electronic media, there are two television stations – WIV4, which is privately owned, and TCI New Media Network, which is government owned. Radio Turks and Caicos is government owned.

Assessment

Resources (law) - 75

To what extent does the legal framework provide an environment conducive to a diverse, independent media?

The TCI's 2006 Constitution provides for 'protection of freedom of expression'.²³⁹ It states: 'No person shall be hindered in the enjoyment of his or her freedom of expression ... freedom to receive and impart (to the public generally or to any person or class of persons) ideas and information without interference'.²⁴⁰

Free media therefore enjoys constitutional protection, albeit with the proviso that curtailment can be justified 'in the interests of defence, public safety, public order, public morality or public health'.

There are no restrictions related to the establishment of new media – whether print or electronic. Entry to the journalistic profession is not restricted by law, though there is no competition regulation/legislation promoting competition.

Resources (practice) - 75

To what extent is there a diverse independent media providing a variety of perspectives?

The media is by and large diverse. Orientations sympathetic to each competing political party, as well as independent perspectives, are expressed in the media. As such, no party enjoys a media monopoly. By and large, the *Turks and Caicos Sun* is regarded as pro-PNP, the *Turks and Caicos Weekly News* pro-PDM, and the *TCI Journal* generally independent. These orientations are not exclusionary in respect of divergent opinion.

 ²³⁹ Turks and Caicos Islands Constitution Order, 2006, Section 1(12).
 ²⁴⁰ Ibid.

VII NATIONAL INTEGRITY SYSTEM 11. MEDIA

In terms of resources, there is evidence that the media faces at least two challenges: inadequate financial support and an insufficient number of trained journalists despite the presence of some who are qualified.

Independence (law) - 50

To what extent are there legal safeguards to prevent unwarranted external interference in activities of the media?

The freedom of expression provided for in the Constitution is not complemented by statute. Hence, there is no additional law protecting freedom of expression or safeguarding editorial independence. There is no access to information legislation. There are no licensing requirements regulating the content of programmes and no rules that allow the government to control information disseminated by the media.

Independence (practice) - 50

To what extent is the media free from unwarranted interference in its work in practice?

There are neither government regulators nor professional oversight boards. In practice, there is no government censorship. Nevertheless, journalists experience difficulty in obtaining information, especially in the context of the lack of access to information legislation. There is no evidence to confirm attempts by the state to control the media through allocation of advertising or subsidies. Similarly, government does not set editorial policy nor control editorial stances. Nonetheless, some perceive that during the period under review the government vis-à-vis the opposition received disproportionately more coverage by, access to and support from the media.²⁴¹ The practice of media favouring the government did shift significantly as revelations of possible corruption by ministers emerged in the course of 2008/09.

Transparency (law) - 0

To what extent are there provisions to ensure transparency in activities of the media?

There are no legal provisions to ensure transparency in the activities of the media. Print media and broadcast companies have no special requirement to disclose ownership. Furthermore, there are no legislative obligations to reveal information related to staff, reporting and editorial policies.

Transparency (practice) - 25

To what extent is there transparency in the media in practice?

²⁴¹ Interview, prominent TCI journalist, June 2010.

Given the small scale of the TCI community, ownership of media is generally known even when there is no special effort at disclosure. The *Turks and Caicos Sun* publishes the name of its owner on its website and lays out its mission and policy. This, however, does not appear to be typical nor necessary in the TCI.

Accountability (law) - 0

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

There are no legal provisions to ensure that media outlets are answerable for their activities in the TCI. There are no government regulators nor a professional oversight body. Some media have forums and blogs, and utilise other means of interacting with the public, but these are entirely discretionary. Similarly, there is no legal obligation to observe the 'right of reply'. Hence, an individual or agency subject to media criticism may be allowed a response but this is not a legal requirement. Nor does any law compel the correction of erroneous information outside of the framework of libel law.

Accountability (practice) – 50 To what extent can media outlets be held accountable in practice?

By and large, the media does grant a right of reply even in the absence of professional oversight or legal compulsion. Interactive forums are used, though not widely. Erroneous information is often though not universally corrected in a timely manner.

Integrity mechanisms (law) - 0To what extent are there provisions in place to ensure the integrity of media employees?

Legal or professional provisions to ensure the integrity of media employees are by and large non-existent. There is no sector-wide code of ethics and no requirement for media outlets to have ethics committees.

Integrity mechanisms (practice) – 25 To what extent is the integrity of the media employees ensured in practice?

Some media outlets apply codes of conduct but these are invariably neither formal nor general to all outlets. There is no practice whereby journalists receive independent instruction in ethics, and there is no professional association of journalists that either defends journalists or upholds ethical standards. Despite this, the evidence suggests that journalists do seek to rely on multiple sources where possible and report both sides of a story. Investigate and expose cases of corruption - 50

To what extent is the media active and successful in investigating and exposing cases of corruption?

By and large, investigative journalism has not been a key part of the media's work in the TCI. The limited professional training received by journalists and the absence of access to information legislation contributes to this deficiency. Also, in the months leading up to the FAC report and Auld inquiry, there was an alleged general 'climate of fear' found on the islands.²⁴² Investigative journalistic exposés have been rare, and there are no specific media outlets that focus exclusively on investigative journalism.

Inform public on corruption and its impact - 75

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

The media in the TCI have not had a tradition of activism in reporting on corruption. This changed, however, during and following the visit of the UK House of Commons Foreign Affairs Committee. Examples of this were seen in stories carried by various media outlets related to allegations or investigations of corruption. This was illustrated by the publication of the text from the House of Commons' Foreign Affairs Committee Report, highlighting allegations of corruption in the Turks and Caicos Islands, by the *TCI SUN*,²⁴³ and the publication of an article announcing the Governor's admission of the call for a Commission of Inquiry by the *TCI Weekly News*.²⁴⁴

More so, the media focused on the issues arising out of the hearings of the Auld Commission and was active in informing the public on evidence being introduced on corruption matters before the Commission. This issue was given prominence, with regular reports on the hearing by the media. The *TCI Weekly News*, for example, readily highlighted the Commission's discovery that the Premier was found to be in debt, under the headline 'Commission Reveals Premier Owes \$20 Million'.²⁴⁵ Coverage of these issues did not stop with the Inquiry, as illustrated by the publication of an article entitled 'Final Report: Where Do We Go from Here' by the *Free Press Turks & Caicos* that analysed the findings from the Commission of Inquiry and the possible implications.²⁴⁶

 ²⁴²Foreign Affairs Committee, Overseas Territories, Seventh Report on Session 2007-2008, 2008, p. 7
 2008, p. 7

²⁴³ www.suntci.com/fac.asp

²⁴⁴ TCI Weekly News, 'Governor Admits Call for Commission of Enquiry', 27 June 2008; toweeklynews.com

²⁴⁵ *TCI Weekly News*, 'Commission Reveals Premier Owes \$20 Million', 14 January 2009; tcweeklynews.com

²⁴⁶ Free Press Turks & Caicos, 'Final Report: Where Do We Go From Here'; www.tcfreepress.com

VII NATIONAL INTEGRITY SYSTEM 11. MEDIA

However, despite the increase in coverage of issues related to corruption and its impact, there have been few programmes run by the media to educate the public on what constitutes corruption and how to curb it.

Inform public on governance issues (practice) - 50

To what extent is the media active and successful in informing the public on activities of the government and other government actors?

The media has been moderately successful in this regard. Reporting on government and governmental matters has been consistent though not intensive. The media has been reliable in providing information on matters related to issues such as the territory's tax structure, education, health care and Crown Land policy. Other activities of the government, such as its investigation into the conditions of camps occupied by migrant workers,²⁴⁷ were also brought to the attention of the public by the media.

Recommendations

Passage of access to information legislation.

The formation of a media or press association to represent media interests and uphold professional journalistic standards.

The provision of scholarships or financial assistance to facilitate selected journalists attending appropriate journalistic training institutions, preferably in the Caribbean.

²⁴⁷ TCI Weekly News, 'Government Investigation into Workers' Camps', 12 November 2007; tcweeklynews.com

12. CIVIL SOCIETY

Summary

This assessment finds that civil society in the TCI has been weak and underdeveloped despite a facilitative legal framework. The Constitution provides 'protection of freedom of assembly and association',²⁴⁸ and there are no barriers to the exercise of this right in the ordinances. Nevertheless, there were no trade unions, and civil society organisations were primarily faith-based or service-oriented. The latter were modestly resourced, relatively transparent and accountable to their respective constituencies with varying levels of integrity. There were no legal safeguards to prevent unwarranted external interference in these bodies, while in practice they were vulnerable to potential undue political influence. Civil society experienced limited influence in holding government accountable and rarely engaged in policy reform initiatives.

The table below reflects the indicator scores which summarise our assessment of civil society in terms of capacity, governance and role.

Civil Society					
Overall Pillar Score: 46/100					
Dimension	Indicator	Law	Practice		
Capacity	Resources	100	50		
69/100	Independence	75	50		
Governance	Transparency	-	50		
44/100	Accountability	-	50		
	Integrity	25	50		
Role	Hold government accountable	25			
25/100	Policy reform	25			

Table 16: Indicator scores summarising characteristics of the TCI civil society

Structure and Organisation

Faith-based organisations constitute the most significant component of civil society in the TCI. The Christian religion enjoys a near monopoly amongst the population, with allegiance to the Baptist and Methodist denominations, constituting almost 60 per cent, being predominant. Interestingly, there were twice as many churches on Providenciales as Grand Turk, and most were headquartered overseas.

Alongside the churches, service clubs – including Kiwanis, Rotary and Optimists – constituted an important element of civil society. Other non-profit organisations included the Red Cross, Salvation Army and the Turks and Caicos AIDS Awareness Foundation, amongst other groups.

²⁴⁸ Turks and Caicos Islands Constitution Order, 2006, Section 13.

Assessment

Resources (law) - 100

To what extent does the legal framework provide an environment conducive to civil society?

The legal framework pertaining to the existence and operations of civil society organisations is very conducive. The Constitution protects the right to associate. The registration procedures for such organisations are simple, quick and inexpensive. There were no formal prohibitions against non-registered organisations, and the tax system allows tax exemptions for non-profit organisations.

Resources (practice) - 50

To what extent do civil society organisations have adequate financial and human resources to function and operate effectively?

Information on the extent of civil society organisations' resources in practice is hard to come by. In general, it appears that most organisations are moderately resourced. 'The denominational churches that have connections abroad ... have support from their organisation'.²⁴⁹ This support helped to construct buildings, buy furniture, pay pastors and so on. TCI congregations also provide some funding. The volunteer membership base of civil society organisations does not appear strong, whilst resources would not generally extend to being able to contract skilled professionals as staff. Civil society organisations were therefore able to sustain but not significantly upgrade their activity.

Independence (law) - 75

To what extent are there legal safeguards to prevent unwarranted and external influence in the activities of civil society organisations?

Constitutional safeguards exist to the extent that freedom of association is protected. Permissible grounds of state interference are limited to issues of 'defence, public safety, public order, public morality or public health',²⁵⁰ or the protection of the rights of others.

It should be noted, however, that this protection of freedom of association is explicitly qualified in the Constitution in respect of 'public officers'. In relation to this group, restrictions imposed by law on their right to associate did not constitute a violation of the Constitution to the extent that they 'are reasonably required for the purpose of ensuring the proper performance of their functions'.²⁵¹

²⁴⁹ Interview, prominent pastor of the TCI June 2010.

 ²⁵⁰ Turks and Caicos Islands Constitution Order, 2006, Section 13(2a).
 ²⁵¹ Ibid, Section 13(2b).

There are no regulations stipulating state membership of government boards or requiring mandatory attendance at state meetings. Civil society organisations enjoy the right to privacy as do other persons and government oversight is reasonably designed and limited to protect legitimate public interests. For example, the Trade Union Ordinance requires registration of trade unions, basic information to be provided on registration to a government registrar of trade unions, and statement of accounts and audit certificate to be transferred to the registrar annually.

Independence (practice) - 50

To what extent can civil society exist and function without undue external influence?

One particular dimension attracts attention and is worthy of comment. There were no significant trade unions nor workers/employee associations in the TCI. This appears to be in significant part the consequence of the influence of powerful private sector interests in discouraging the formation of trade unions, normally an important component of civil society.

Transparency (practice) - 50

To what extent is there transparency in civil society organisations?

Civil society organisations appear, to varying degrees, to disclose relevant information on their activities to their members. For example, at one extreme some churches hold quarterly business meetings, where the pastor is required to table financial statements, monthly reports on finances and programmes are provided to overseas superintendents, and an annual audit by certified auditors is mandatory under the church's constitution. At the other end of the spectrum, some churches are established by individuals with very little accountability to church members. In neither case, however, are annual reports or financial statements made available to the public. The composition of boards is also not normally publicly available.

Accountability (practice) - 50

To what extent are civil society organisations answerable to their constituencies?

In general, the practice of accountability mirrors the diversity in relation to matters of transparency.

Integrity (law) - 25

To what extent are there mechanisms in place to ensure integrity of civil society organisations?

Beyond the very limited requirements of registration, as non-profit organisations, there are no legal mechanisms to ensure the integrity of civil society organisations. Moreover, because of the limited existence of the sector, there were no sector-wide efforts to self-regulate.

Integrity (practice) - 50

To what extent is the integrity of civil society organisations ensured in practice?

In general, experience varies. On the one hand, there appear to be civil society organisations that are relatively inactive in ensuring the integrity of staff and board. On the other, there are civil society organisations that seek to enforce existing rules, inquire into alleged misbehaviour and institute sanctions where necessary.

Hold government accountable - 25

To what extent is civil society active and successful in holding government accountable for their actions?

For most of the period under review, civil society was not particularly active or successful in holding government accountable for its actions. In practice, civil society organisations exercised no public watchdog role. Hence, there were no high-profile or successful exposures of government misconduct. Advocacy campaigns, public engagements and public education on integrity and corruption-related issues were non-existent. Hence, there was no basis for government to respond to public demand and public pressure from this quarter. In more recent times, however, the church became vocal and 'was very instrumental in voicing the opinion that we [TCI] needed to have a Commission of Inquiry'.²⁵²

Policy reform - 25

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

Civil society, more specifically the church, has undertaken some initiatives in relation to policy reform on corruption-related issues. For example, one of the more significant occasions at policy intervention concerned the TCI government's proposal to institute a national lottery. The church lodged an objection both on the grounds of morality and the susceptibility of the proposal to corruption. The government proceeded despite the church's objection.

More recently, the formation of ministerial fellowships has brought together pastors on both Providenciales and Grand Turk on an inter-denominational basis to engage government policy and suggest policy-reform initiatives.

²⁵² Interview, prominent pastor of the TCI June 2010.
Recommendations

There should be a public campaign to encourage establishing and strengthening civil society organisations. Such civil society organisations should make special efforts to incorporate the views of diverse social groups, including, for example, youth and immigrants.

International donor partners should provide support to the establishment and sustainability of civil society bodies performing a public watchdog function.

The convention should be developed whereby civil society organisations are consulted by the Executive and Legislative branches in relation to important issues of public policy.

13. BUSINESS SECTOR

Summary

The legal framework provides a highly conducive environment for the formation and operation of private businesses, and individual businesses are able to form and operate effectively. There were, however, no effective legal safeguards against unwarranted external interference in the activities of businesses, and evidence suggests significant political intrusion. There are legal provisions to ensure transparency, and in practice some transparency is observed in the business sector. In addition, there are rules and regulatory bodies governing oversight of the business sector, though in practice regulatory weaknesses are apparent. There are also no special mechanisms to ensure the integrity of all those acting in the business sector, and corrupt conduct was evident in the sector. The business sector was not active in combating corruption either in association with the government or with civil society.

This assessment is reflected in the following quantitative scores regarding the capacity, governance and role of the business sector.

Business			
Overall Pillar Score: 29/100			
Dimension	Indicator	Law	Practice
Capacity	Resources	75	75
56/100	Independence	50	25
Governance	Transparency	75	NE
31/100	Accountability	50	NE
	Integrity	0	0
Role	Anti-corruption engagement	0	
0/100	Support for/engagement with	0	
	civil society		

Table 17: Indicator scores summarising characteristics of business in the TCI

Structure and Organisation

Business enterprises are concentrated in the following main sectors: hotels and restaurants, construction, wholesale and retail trade, real estate and finance (offshore banking, insurance). The private sector accounts for 80 per cent of the employed labour force, and most businesses and private employment is concentrated on the island of Providenciales. A range of ordinances in banking law, company and commercial law as well as labour law regulate the sector. The chambers of commerce on Grand Turk, Providenciales and North Caicos represent the interests of business.

Assessment

Resources (law) - 75

To what extent does the legal framework offer an enabling environment for the formation and operation of individual businesses?

The legal framework is highly conducive to the formation and operation of private businesses. In the first place, the Constitution of the TCI provides 'protection from deprivation of property'.²⁵³ The laws pertaining to starting, operating and closing down individual businesses are clear, straightforward and easy to apply. For example, the Companies Registry (an element of the Financial Services Commission) offers same-day clearance of names, same-day registration and very competitive registration rates.

The process of gaining a business licence – a requirement of companies operating in the TCI – may take from two weeks to a month. Certain business activities are reserved to nationals of TCI. However, there are no impediments and many incentives for foreigners to establish businesses or open branches, subsidiaries or representative offices in the TCI. 'There is no direct taxation on foreign investors or any other entities in the TCI, i.e. no corporate tax, no property tax, and no sales tax'. Moreover, the government granted, at its discretion, relief from a variety of duties and fees primarily on the import of materials where the establishment or expansion of an enterprise was regarded as particularly beneficial. The Employment Ordinance prohibited discrimination against employees who associate with a trade union, but there are no trade unions in the TCI.

Resources (practice) - 75

To what extent are individual businesses able in practice to form and operate effectively?

The rapid expansion of business activity over a relatively short period reflects the ease of doing business in the TCI. The comparative ease and in-expense in registering a business, in operating and in winding up business has attracted much enterprise. Access by legitimate or illegitimate means to 'Crown Land' for development also constituted a powerful incentive to establish and to operate a business. In the two years from 2007 to 2009, the Financial Services Commission registered more than 3,700 new companies and corporations.²⁵⁴

Independence (law) - 50

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private business?

²⁵³ Turks and Caicos Islands Constitution Order, 2006, Section 16.

²⁵⁴ Turks and Caicos Islands Financial Services Commission Annual Report 2009, p. 23.

The legal system provides a role for public officials in terms of the start-up and operation of private business, particular from the Companies Registry and, in the case of financial institutions, from the Turks and Caicos Financial Services Commission. In the event of undue external interference, a business may seek redress by way of action through the courts or a complaint to the Ombudsman. Either course would be available in the event, for example, of a public official seeking to extract a payment in return for expediting a development approval or a grant of Belonger status.

Independence (practice) - 25

To what extent is the business sector free form unwarranted external interference in its work in practice?

The state, primarily in the persons of politicians and ministers, has regularly and significantly interfered in the operation of business. One prominent and successful businessman put it this way in an interview:

'Political influence rules and dictates what happens within the society...You are free to do as you wish with your company in law but political interference of the day enters and dictates'.²⁵⁵

There were cases of complaints against unwarranted interference but no effective redress appeared to follow as a consequence. In one instance, a serious allegation was made in respect of a senior party officer/minister extorting payments in return for a work permit extension. The recommendation that a Commission of Inquiry should be established to investigate this allegation was not accepted by the Executive.²⁵⁶

Transparency (law) - 75

To what extent are there provisions to ensure transparency in the activities of the business sector?

A number of laws exist to ensure transparency in the business sector. For example, there were five types of companies that could be incorporated under the Companies Ordinance – namely the Ordinary Company, Exempt Company (also known as the International Business Company), Foreign Company, Limited Life Company and Hybrid Company. Each of these types of companies, except the Turks and Caicos Exempt Company, was required to file information with the Registrar of Companies, regarding shareholders beneficial owners, etc.²⁵⁷ Nevertheless, laws did not cover all important aspects of transparency, and some provisions apparently contained loopholes.

 ²⁵⁵ Interview, prominent member of the TCI business community, June 2010.
 ²⁵⁶ Confidential Memo, Attorney General's Chambers, October 2005.
 ²⁵⁷ LOWTAX.NET

Transparency (practice) - NE To what extent is there transparency in the business sector in practice?

In general, data on registered companies (names of directors, contact details, etc.) is available to the public. Information on the ownership of business, however, is not readily available. (There was insufficient evidence to allow scoring of this indicator.)

Accountability (law) - 50

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

There are provisions to govern oversight of the business sector. For example, the Turks and Caicos Financial Services Commission had the responsibility to supervise and monitor financial services businesses. This Commission in the past has been criticised for significant inadequacy. For example, an IMF team found in 2004:

'the statutory structure adopted for the FSC does not provide the effective operational independence required by international standards'.²⁵⁸

The team was also critical of 'the fact that the FSC has not formally been given responsibility for checking compliance with anti-money laundering regulations across the entire financial sector'. The Caribbean Financial Action Task Force review also found a number of areas in which the TCI and FSC were non-compliant, including inadequate implementation of legislation.²⁵⁹ Evidently, there were laws in important aspects of the legal institutional framework related to regulatory oversight.

Accountability (practice) [NE]

To what extent is there effective corporate governance in companies in practice?

There is no evidence to suggest that investors and boards have been exceptional either in providing oversight or failing to function.

Integrity mechanisms (law) - 0

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

No specific mechanisms existed to ensure the integrity of all those acting in the business sector. There existed no sector-wide codes of conduct. Hence, there were no particular provisions for the business sector sifting out rules governing conflict of interest or guidelines to guard against bribery and

²⁵⁸ IMF, 2005, p. 6.

²⁵⁹ Turks and Caicos Islands Financial Services Commission Annual Report 2009, p. 10.

corruption. Moreover, neither codes of conduct nor compliance officers appear typical for large corporations.

Integrity mechanisms (practice) - 0

To what extent is the integrity of those working in the business sector ensured in practice?

Credible evidence suggested that the integrity of those working in the business sector was severely compromised in practice, not least of all because of the frequency with which favours from the government were bought. A prominent member of the business community expressed the view that in the TCI 'it became the norm to expect to bribe public officials in order to get anything done. The higher the level of what you want to do the bigger the bribe. So we were heading down a very slippery slope of becoming another Russia or Czech Republic'.²⁶⁰ One reason, in the opinion of this businessman, was that 'the British government took their eye off the ball'.²⁶¹

Anti-corruption policy engagement (law and practice) -0To what extent is the business sector active in engaging the domestic on anticorruption?

In general the issue of anti-corruption was absent from the business sector's agenda of engagement with the government.

Support/engagement with civil society - 0

To what extent does the business sector engage with and/or provide support to civil society on its task of combating corruption?

In general the business sector neither encouraged civil society – primarily the churches – nor provided support to undertake anti-corruption activities.

Recommendations

Amending relevant and operational procedures to ensure full compliance with proposals regarding regulation by the IMF, Caribbean Financial Action Task Force, etc.

Developing and operationalising a sector-wide code of corporate governance and corporate social responsibility.

Enhanced attention of UK authorities in partnership with TCI law enforcement agencies to enforce transnational instruments against bribery of foreign public officials (e.g.

²⁶⁰ Interview, prominent member of the TCI business community, June 2010.
²⁶¹ Ibid.

VIII CONCLUSION

NIS temple - Turks and Caicos Islands



National Integrity System

Overall, despite adequate rules, during the period under review the National Integrity System of the TCI was clearly not working to any satisfactory degree and required significant overhaul as well as targeted restructuring. This is not to say that there were no strengths in some pillars relative to others and in the context of a generally weak system. The **electoral management body** performed comparatively well, as did the **Ombudsman** and the **media**. Each of these, however, was limited by weaknesses in the legislative framework. For example, the Complaints Commissioner (i.e. the Ombudsman) was excluded by ordinance from investigating complaints related to areas such as political interference in the appointments or promotions of civil servants. The absence of access to information legislation would have also handicapped the investigative potential of the media. Similarly, the demonstrated competence in the administration of elections by the Supervisor of Elections could not have been effectively applied in areas such as vote-buying in the absence of specific legislative authority and adequate resource endowment.

As important as deficiencies such as these were to the performance of specific institutions, there were far more significant factors impacting a number of pillars and compromising the system as a whole. First amongst these were special features of the foundation on which the TCI's NIS rested. One element

in this foundation was the transient and unsettled nature of the population stretching over many centuries; added to this, substantial inflows in the last 15 years of non-Turks and Caicos Islanders undermined cohesion amongst the population. A second element was the comparatively recent creation of critical institutions specific to the TCI, such as the Legislature, Executive and political parties. This truncated local experience in the operation of these institutions limited the period of apprenticeship in democratic practice and weakened acculturation in the value of living by 'the rules of the game'. These characteristics of the social and political foundations of the TCI did not and could not by themselves determine underperformance. These contextual factors, however, rendered many pillars of the system and the system as a whole particularly vulnerable to distortion – even to potential breakdown, especially when subjected to stress.

One such stress, to which every democratic system is subject to one extent or another, is the impact of 'money in politics'. This became a huge factor with significant negative impact on the TCI's NIS, quite paradoxically arising from the very positive impact of unprecedented foreign investment and economic growth in the first decade of the 21st century. This development carried with it not only the prospect of significant improvement in the living standards of TCI inhabitants, it also carried with it a strong incentive for influence buying and underhand deals with foreign investors, influence-selling and bribe-taking by officials and, not least of all, the subordination of ethical conduct to the getrich-quick mentality amongst the population.

Such threats associated with rapid economic development and inflows of large amounts of money over a short period sometimes puts even the most robust and mature democratic governance to serious test. In the context of the special vulnerabilities of the TCI, this factor subjected a number of critical pillars of the NIS to severe stress in at least two areas: first, to ensure the development of new rules and codes, and secondly, equally importantly, to secure the observation of existing constitutional and legal requirements. Our assessment suggests that **practice** in some pillars – in particular the Legislature, Executive, Public Sector and political parties – in large measure fell well short of living up to the **formal rules** governing their operation. The weak foundations of the system, which we earlier discussed, and which largely accounted for insufficiently internalised behavioural norms, would have been a significant contributing factor.

In circumstances such as these, the 'checks and balances' in the National Integrity System are called on to play a special role in detecting declines in particular pillars, as well as in arresting deterioration in the system as a whole. These oversight mechanisms failed to perform adequately in the TCI. Starting from the top, the chairman of the Executive pillar, the Governor and HMG (through the FCO), to whom he was constitutionally obligated to report and from whom he was constitutionally bound to receive and implement instructions to ensure good governance appeared to be ineffective in providing sufficient oversight. Equally, other watchdogs either failed to bark, failed to bite or both. Amongst these institutions the most notable were the **Opposition in the House of Assembly**, the **Public Accounts Committee** of the Legislature, the **Public Service Commission** and **civil society**.

Amongst the 'checks and balances' which appeared to work far from adequately, the law enforcement pillar calls for special notice. Credible allegations of serious breaches of the law by persons holding high office appeared to attract inept investigation and/or no prosecution from the police and Attorney General's Office, the two critical components of law enforcement in the TCI. No effective remedial action appeared to follow from either the Governor's office nor the Secretary of State to whom he reported. The evidence suggests that factors of small size, kinship relations and political loyalties amongst potential witnesses, and fear of reprisals and victimisation of potential whistleblowers would have impacted negatively on the effectiveness of law enforcement. Whatever the combination of reasons, the ineffectiveness of law enforcement agencies appeared to contribute significantly to the overall weakening of the National Integrity System, not least of all by undermining a culture of accountability and integrity. This inadequacy in turn generated a multiplier effect throughout the NIS, reinforcing the position that rules need not be observed and that rule-breaking could take place with impunity.

This assessment calls for effective action on a number of levels:

Law Enforcement

As a matter of urgency, law enforcement agencies need to catch up on the backlog of ineffective investigation and inadequate prosecution, particularly in relation to high officials. In the circumstances of the TCI, special attention needs to be given to enforcing transnational conventions related to 'bribery of foreign public officials' and more generally to corruption. Such would constitute an indispensable signal to the system as a whole that the critical and widespread deviation of practice from rule would no longer be acceptable. In the absence of such law enforcement, the deterrent against future dereliction would be severely weakened and the reinforcement of the rule of law compromised.

Legislative Enactment

Deficiencies in the legislative framework need to be remedied to facilitate greater effectiveness in the operation of a number of pillars. The main recommendations:

A political party registration, funding and campaign financing ordinance A whistleblower ordinance Modification in the Electoral Ordinance to allow for a mixture of first-past-thepost constituency representation with proportional representation Access to information ordinance

Empowerment of the Integrity Commission to oversee and enforce the House

of Assembly Register of Interests

A land management ordinance

Revision of the Complaints Commissioner Ordinance to expand authority

Administrative Restructuring

Operational protocols to enhance transparency and accountability in the Executive pillar, in particular in the relations between the FCO, Governor and ministers. The Code of Conduct should apply to all members of the Executive, including the Governor.

The development of Codes of Conduct applicable to the Judiciary and police The transformation of the public service to ensure greater efficiency in service provision. This is likely to entail reduction in size and more competitive compensation in critical agencies.

Enforcement of the General Orders for the Public Service and Financial Instructions, particularly in the area of procurement

Integrity Enhancement

A sustained public education campaign aimed at cultural change management to demonstrate the negatives of corruption (particularly as it affects the disadvantaged) and to promote the positives of integrity.

In relation to the public service, reciprocal secondment of TCI public servants to other jurisdictions and vice versa from those jurisdictions (in the UK and selected Commonwealth Caribbean states). Introduction of annual programmes of training and retraining for TCI public servants in appropriate institutions.

Provision of specially designed courses for TCI legislators and other legislators from Overseas Territories. These should be held under the auspices of the Commonwealth Parliamentary Association.

These measures need to be complemented by comprehensive, sustained and targeted efforts at fostering civil society watchdogs and leadership to play an important role over time in the system of governance. This shall clearly require regional and international support for capacity-building, in particular in relation to training, funding and relationship-building. A major element in this process would be strengthening the media in terms of training journalists in investigative journalism, the utilisation of access to information legislation, in advocacy and monitoring of measures to combat corruption and to enhance integrity.

Postscript

This report focuses on the period leading up to the British government ordering a partial suspension of the TCI Constitution and taking interim executive direction of the TCI government in July 2009. The stated objective of the interim administration is for elections to be held on the Islands once a series of requirements have been met. These good governance milestones should help to prevent corrupt practices reappearing once self-government is reinstalled.

At the time of writing (December 2010), no definite date for elections had been announced, and it seems unlikely they will be held before 2012 at the earliest. The main processes put in motion by the interim administration in the TCI as regards the reform of the TCI's governance institutions since July 2009 are the following:

- A constitutional advisor is drafting a new Constitution for the TCI, with a particular view to strengthening its good governance components.

A Special Investigation and Prosecution Team is looking into the alleged cases of corruption, with the first charges expected to be brought in mid-2011.
In 2010, a civil recovery team began to issue writs to recover assets (in particular Crown Land) that had been misappropriated by private individuals.

Additional advisors are working with the public service, police force, land registry, tax and customs authorities, and the Integrity Commission – among other institutions – to help improve governance standards.

Despite impatience at the slow progress perceived in some key areas, it is encouraging to note that civil society in the Turks and Caicos Islands seems to have an active and increasing role in public life through participation in consultative forums and also via the media.

In this context, we hope this NIS report will be a useful tool for all stakeholders working towards building a corruption-free future for the Turks and Caicos Islands.

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Transparency International International Secretariat Alt-Moabit 96 10559 Berlin Germany

Phone: +49 - 30 - 34 38 200 Fax: +49 - 30 - 34 70 39 12

ti@transparency.org www.transparency.org