



A National Chapter of  
**Transparency International**  
the global coalition against corruption

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## **Transparency in the construction sector in the context of the Uff Commission of Enquiry (Part1).**

*by Victor Hart, Chairman, Trinidad and Tobago Transparency Institute.*

### **Introduction**

On behalf of the Trinidad and Tobago Transparency Institute (TTTI), I welcome this opportunity to share our views on the given topic with readers of the TTIA Newsletter.

For those of you who don't know TTTI, or our parent body Transparency International (TI), here is a brief introduction and note that our respective websites are: [www.transparency.org.tt](http://www.transparency.org.tt) and [www.transparency.org](http://www.transparency.org).

TI is a civil society organisation based in Germany that has led a global coalition in the fight against corruption since its formation in 1993. TTTI, formed in 1998, is one of nearly 100 TI National Chapters.

TI is an independent, non-political, non-profit, non-governmental organisation dedicated to increasing transparency and accountability and curbing both international and national corruption. It works in a non-confrontational way with governments, the private sector, development agencies, NGOs/CSOs and international organisations to seek ways and means to combat corruption, mainly through the promotion of good governance in both the public and private sectors.

TI's vision is of a world in which government, politics, business, civil society and the daily lives of people are free of corruption. Its mission is to work to create change towards a world free of corruption.

### **Transparency**

Transparency and accountability have become buzz words locally, especially among our politicians. The Terms of Reference of the Uff Commission of Enquiry into the Construction Sector refer to them expressly and impliedly by mandating the Commissioners to make recommendations to ensure:

*-There is free and fair competition and full participation and access for all citizens in the public procurement process: Term 2 (iii); and*

*-Integrity and transparency in the public procurement practice: Term 2 (iv).*

Success in fulfilling those mandates will ensure that there is a level playing field in the construction sector, an objective that should be welcomed by architects and other construction professionals and contractors.

*A non-profit company registered under the Companies Act, 1995*

**Directors: V. Hart (Chairman) B. Lewis B. Reid W. Kerry D. Clyne B. Ragoonath M. Rose**

There is no doubt that the ‘playing field’ has been far from level in recent years and that appears to have taken away much of the joy and satisfaction of working in the construction sector. It has also diverted the energy of participants from concentrating on delivering creative designs and projects that are completed within time and budget. Instead, valuable time is wasted in worrying about bias and nepotism in the award of contracts, in wondering about what deals are being struck behind closed doors, and in fighting to collect payments for services rendered when others appear to be receiving favoured treatment. In addition, government seems to be waging a battle against local consultants and contractors while it promotes foreign firms and claims to be ‘bringing the sector into the twenty-first century’ without meaningful consultation with all stakeholders.

All of this seems to have changed how persons feel about working in the construction sector and might even be inhibiting young people from entering it. One hears that working in construction has become a constant battle with the ever present need to protect one’s back. One hears too that practitioners have to seek legal advice on routine matters which in the ‘good old days’ would have been resolved by applying the principles of fair play and compromise that then existed.

There can be no denial that a major dose of transparency is sorely needed in the local construction sector and one is left to wonder if the findings of and recommendations from the Uff Commission of Enquiry are likely to make any difference.

### **Transparency issues**

TTTI made three submissions to the Commission of Enquiry. In the first appearance, we underscored the need for procurement reform to ensure that public money was spent with transparency and accountability and that value was obtained. We recommended the early implementation of the White Paper on the Reform of the Public Sector Procurement Regime. In the second appearance, we explained to the Commissioners the importance of transparency in procurement and how and where corruption occurs in the procurement process. We also made recommendations on anti-corruption strategies and tools that could be introduced into the local construction sector to promote transparency and accountability and thereby reduce corruption.

We told the Commissioners that secrecy and the failure to disclose information facilitate corrupt activity and its concealment. It also enables poor governance to be hidden and that allows inefficiency, wastage and corruption. We suggested that transparency itself is an important anti-corruption tool and greater transparency will not only help to reduce corruption but will also improve the image of the public and private organizations that practice it.

**Public's right to know:** TTTI has argued that the public has a right to know because public sector projects are wholly or partly publicly-owned, publicly financed or publicly guaranteed. Therefore, the public is entitled to information on how public funds are being spent and whether they are being properly spent. We also argued that transparency should be a matter of public policy in recognition of the people's right to information and should not be practiced as a matter of choice or as a favour from the public sector to citizens.

**Freedom of information:** Freedom of information legislation that entitles the public to demand information from ministries and other public agencies is a step towards greater transparency but may not be adequate. This is so because the process of disclosure occurs only if a request is made and often results in piecemeal disclosure to those persons who show persistence. It often results in slow disclosure and information being given too late, sometimes deliberately, to be of any use.

Trinidad and Tobago has a Freedom of Information Act but its operation leaves a lot to be desired. Government, through Ministerial Order, has created a growing list of agencies that are excluded from the act's ambit. Also, agencies that must comply often delay compliance and force applicants to resort to legal action that is costly and time consuming.

**Transparency in construction:** Transparency on construction projects should involve disclosure of project information to the public on a prompt and regular basis. More disclosure will help materially to reduce corruption with the following benefits:

- a) Project information will be made widely available and projects will be subject to greater independent scrutiny.
- b) It will discourage corrupt activity because the potential perpetrators will be aware that there is a greater chance of discovery and exposure.
- c) It will encourage better governance because project participants will be obliged to disclose existing practices that may be shown to be inadequate and in need of reform.
- d) It may show which project participants have refused to disclose information and force them to change.

In Part 2 of this article (in the next issue of the TTIA Newsletter), I will describe the information disclosure requirements from the Project Owner, Funder and Projects Participants, including architects. I will conclude by recommending anti-corruption tools and strategies for use by architects and other project participants that will promote transparency on construction projects so as to create a truly level playing field for all who work in construction.

TTTI has some of the answers to the problems described and is willing to work with those interested in promoting transparency and accountability in the construction sector. We will welcome receiving your comments and enquiries.

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## **Transparency in the construction sector in the context of the Uff Commission of Enquiry (Part 2).**

*by Victor Hart, Chairman, Trinidad and Tobago Transparency Institute.*

### **Introduction**

In Part 1 of this article, published in the previous issue of the TTIA Newsletter, I described some of what the Trinidad and Tobago Transparency Institute (TTTI) told the Uff Commission of Enquiry into the Construction Sector about transparency in the construction sector.

### **Transparency issues**

Among other things, we said that transparency itself was an important anti-corruption tool and greater transparency will not only create a level playing field and help to reduce corruption but it will also improve the image of the public and private organizations that practice it.

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- d) It may show which project participants have refused to disclose information and force them to change.

**Public's right to know:** TTTI argued that the public has a right to know because public sector projects are wholly or partly publicly-owned, publicly financed or publicly guaranteed. Therefore, the public is entitled to information on how public funds are being spent and whether they are being properly spent. We also argued that transparency should be a matter of public policy in recognition of the people's right to information and should not be practiced as a matter of choice or as a favour from the public sector to citizens.

Disclosure by project owner: The public sector project owner is responsible to the public for delivery of projects with transparency, accountability and value for money. Consequently, the project owner should be responsible for the disclosure of project information to the public. Much of the information will be in

the project owner's possession or readily available to them. Where this is not the case, the project owner may (for example, through appropriate terms of contract) require other project participants to provide the necessary information and to agree to its disclosure to the public.

**Requirements by funder:** The project funder (e.g. banks) should demand transparency on all projects they fund and be willing to practise transparency in respect of project financing details.

**Project participants:** Other project participants, such as architects, their consultants and contractors, should co-operate with the project owner in providing information for disclosure, encourage project transparency where the project owner is failing to provide transparency, and require their sub-contractors, agents, subsidiary and related companies to do likewise. This will help to reduce the risk of their own involvement in corruption, whether as perpetrators or victims. It will also help to ensure that the project is executed ethically and at a reasonable cost.

**Disclosure methods:** The method of disclosure will depend on the technology available and the degree to which the public has access to that technology. The preferred method should be disclosure on the project owner's website. However, if there is inadequate public access to the website, the information should be made available at the project owner's offices, or by such other means as will ensure public availability, and the public so informed.

**Information to be disclosed:**

- a) In relation to public sector projects: Ideally, there should be full disclosure to the public in relation to all public sector construction projects. This may result in disclosure for a very large number of projects. The process can be kept within manageable proportions by ensuring that the degree of information disclosed for each project is proportionate to its size, value and importance. Alternatively, where government is introducing the concept of transparency, disclosure could be provided initially in relation to larger projects, expanding to include other projects as the process becomes more familiar and routine.
- b) In relation to each phase of a project: Information should be disclosed in relation to each phase of a project, including: project identification, financing, planning, design, tendering, execution, completion, maintenance and operation.
- c) In relation to contracts and sub-contracts: Information should be disclosed in relation to each significant project main contract and sub-contract. The definition of the term "significant" will vary according to the project. If an individual project contains a large number of contracts and sub-contracts, it will not be practical or beneficial for details of

all these contracts to be disclosed. Therefore, value thresholds should be set to determine the contracts and sub-contracts whose details should be disclosed and these thresholds will vary from project to project. The range of contracts may include project financing and guarantee contracts, construction and consultancy contracts at main contract level and a range of sub-contracts and agency agreements.

d) **Type of information:** The information to be disclosed should include all information that might reveal significant potential or actual corruption. This would include details of the following:

- The project
- The project owner
- Each party to each relevant contract
- The award process for each relevant contract
- The terms of each relevant contract
- Variations to the terms of each relevant contract
- The outcome of each relevant contract
- The project evaluations and audits

**Disclosure refusal:** In some cases, an argument for non-disclosure may be advanced. In such circumstances, reasons given for confidentiality should be examined carefully because they may not always be valid. For example, claims of necessary commercial confidentiality may (consciously or unconsciously) be a guise for concealing corrupt dealings. There are few reasons that would justify a decision not to disclose project information on public projects to the public. Such reasons may include genuine concerns for national security, personal safety or commercial confidentiality and/or logistical difficulty in making all information available. Concerns about commercial confidentiality may be genuine but in most cases these should not override the public right to know. All possible steps should be taken to maximize disclosure and minimize exceptions.

#### **Transparency tools:**

The introduction of greater transparency in the construction sector requires the use of tested and proven tools and strategies by trained persons. Over the years, TI and others, such as the Global Infrastructure Anti-Corruption Centre, have researched the problem and developed tools and strategies that can be applied locally. TTTI recommended the adoption of three such tools/strategies, which hopefully will be included among the Commission's recommendations in its report to government:

- a) TI's Integrity Pact the details of which are on website: [www.transparency.org/tools/contracting](http://www.transparency.org/tools/contracting)
- b) The Global Infrastructure Anti-Corruption Centre's [Project Anti-Corruption System \(PACS\)](http://www.giacentre.org) the details of which are on website [www.giacentre.org](http://www.giacentre.org).
- c) The UK Anti-Corruption Forum (ACF) model the details of which are on website: [www.anticorruptionforum.org/acf/news/publications/](http://www.anticorruptionforum.org/acf/news/publications/). Of particular interest on that website is the paper recommending greater transparency on construction projects 'Transparency in Public Sector Construction Projects'. Also of interest is the paper entitled 'Preventing Corruption – Guidance for Professional Bodies'.

## **Conclusion**

Trained personnel are the best 'tools' to promote transparency and thereby reduce corruption in the construction sector. The training enables them to be alert to the dangers of corruption and to identify warning signs at an early stage. Therefore, project staff with responsibility for or involvement in project identification and design brief development, tendering, project management, claims evaluation, certification and/or payment should be trained to identify corruption and to be aware of the risks of corruption. Not only are these key persons a vital line of defence against corruption, they are themselves exposed and vulnerable to corruption and should become adept at recognizing the danger signals.

TTTTI has some of the answers to the problems described and is willing to work with those interested in promoting transparency and accountability in the construction sector. We will welcome receiving your comments and enquiries.

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