

# NIA

## National Integrity Action

**“GOVERNANCE: THE VALUE OF CHECKS AND BALANCES”**  
SINT MAARTEN’S GOVERNANCE SYMPOSIUM 2015

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May I first of all express appreciation for the kind invitation to address this symposium and specially congratulate Governor Eugene Holiday on taking the initiative to organize this annual event. I am not aware of any other Caribbean country in which the head of government has inaugurated an occasion of this nature, bringing together distinguished leaders from all sectors, every year on an annual basis to discuss matters of countrywide significance. It is a practice that other leaders in the region may do well to emulate as too often each sector remains within its particular silo, too rarely are there multi-sectoral gatherings to look at national issues. This multi-sectoral approach is especially important in the examination of matters relating to governance, matters that need urgent attention of all of us in this region, and I dare say across the global community.

The fact is that amongst the peoples of most countries there is a low level of trust and confidence in critical institutions of governance. The **Global Corruption Barometer in 2013** which compiled the results of interviews of one hundred and fourteen thousand (114) people in one hundred and seven (107) countries found that political parties and

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the police, obviously key components of governance, were regarded as the most corrupt of 12 institutions surveyed. In respect of the former, that is, political parties, they scored the highest on perceived levels of corruption among the set of major institutions among the citizens of mature democracies like the United States, United Kingdom, Canada as well as among the people in developing states like Mexico, Nigeria and Jamaica. In our hemisphere the **Latin American Public Opinion Project 2014 (LAPOP)** launched just last week on June 10 found a declining trust in institutions among the 28 countries surveyed, despite continuing support for democratic governance. To complete the picture the **Global Competitiveness Report 2014/2015** found that public trust in politicians in our Caribbean region was so low as only one of seven countries I have examined fell in the top quarter of one hundred and forty four countries ranked on this criteria. **Hence there can be absolutely no doubt that there is a considerable need for discussion of the challenges associated with these disturbing trends; and that that discussion would best take place in symposiums of the sort that we are engaged in today.** So once again congratulations on this initiative.

You, Governor, have asked me to address you on **Governance: the Value of Checks and Balances, with particular reference to the public sector. Not so much looking at Sint Marteen about which I am here more to learn than to lecture. Rather looking at the broader picture, drawing on general trends, challenges and where possible, examples of best practise from our region.**

In that regard, I am happy to observe that the programme embraces the corporate sector and civil society and does not confine itself to the public sector because too often there is a

misconception that governance refers only to government that is to public bodies. Happily, the approach of this Symposium is to acknowledge that governance refers to government, but as well, to authority in all types of institutions. In fact the World Bank offers succinct working definition “**governance consists of the traditions and institutions by which authority in a country is exercised**”. That is, authority in state institutions; authority in private businesses; authority a sports associations; authority in non-governmental organisations. And when we look at governance, we must of course look at formal rules, how those in top positions are selected, how they are monitored and replaced; we must look at the capacity of governance institutions to formulate and implement sound policies. But we must also look at informal practice, at what actually happens, at the available resources (human and financial), at the traditions, values, and attitudes which go into both how authority is exercised and, very importantly, how citizens relate to and exercise oversight over authority. That is governance; I repeat it includes but extends beyond government to embrace other centres of power and perhaps, as we shall see, one of the major challenges of contemporary governance is that very often centres of power, other than government, are really who, often behind the scenes determine what gets done and who gets what and when.

In fact there can now be little doubt that it was more a breakdown in corporate governance than governance in the public sector that constituted the main cause of the 2008 global financial and economic crisis, the after effects of which we in the Caribbean, like the majority of peoples everywhere, continue to suffer. And only a few months ago six of the main international banks guilty of governance breaches were fined over 4 billion dollars by the regulators for their unacceptable conduct

What about checks and balances? The late American comedian, Steve Allen, once said, referring to his own country the United States, the classical home, one could even say, the birth-place of checks and balances: “**ours is a government of checks and balances...crooked businessmen make out checks, and the politicians and other compromised officials improve their bank balances**”. Allen was of course making a joke but on reflection a joke about a serious aspect of modern governance!

- Each year the World Bank estimates that over US\$ 1 Trillion is paid in bribes worldwide.
- Investment in a relatively corrupt country compared to an uncorrupted one can be as much as twenty percent (20%) more costly because of irregular payments.
- Global tax evasion runs at US \$3 trillion dollars per year, depriving governments of needed revenue to provide health and education services urgently needed by the poor.

The checks and balances about which we are speaking, however, is different.

In fact our checks and balances are designed, in principle; to prevent Steve Allen’s ‘crooked businessmen’ from making out those checks and to prevent ‘compromised officials’ from improving their ‘bank balances’. **Checks and balances refers to the principle of government and of governance under which separate branches are empowered to prevent (or check) actions by other branches and are induced to share power not only amongst the different branches, but with the people**

**themselves, whether as shareholders in a corporation, as members of a sports association or as electors in a democratic country.**

The assumption underlying this principle is of course reflected in the famous words of the British Historian Lord Acton “power tends to corrupt and absolute power tends to corrupt absolutely”. Nelson Mandela put the same idea somewhat differently. In a democracy “the government, whomever that government may be, will be bound by a higher set of rules, embodied in a constitution, **and will not be able to govern the country as it pleases**”. This is the principle which separates and at the same time empowers the legislature, the executive, the judiciary and public bodies, (like the Office of the Auditor General, the Ombudsman or the Integrity Commission) which underlies the constitution of Sint Maarten, all Caribbean states and indeed the majority of countries in the modern world which are classified as free or partly free.

**The value of checks and balances is therefore self – evident: it is to reduce the likelihood of misconduct and of corruption, that is, the use or abuse of any position for illicit private gain, financial, political, social etc. contrary to the public interest, whether that public be private shareholders in a business, members of a sporting body or electors in a democratic state.** To put it crudely, in democratic governance, a Minister is “checked” from getting kickbacks from a contract awarded to cronies by police investigators or public servants in the procurement agency or by officers in the auditing department. Money from unlawful sources, from money laundering or the proceeds of crime, is “checked” from buying political parties or candidates by virtue of laws governing campaign disclosure and the enforcement of such legislation. Civil servants are “checked”

from becoming instruments of political favouritism and from carrying out illicit instructions by rules and codes of conduct guaranteeing their independence and impartiality, as well as limiting political interference in civil service appointments or in the discharge of administrative duties.

There can hardly be any dispute concerning the value of checks and balances; in fact this value lies at the heart of democratic governance. Two critical questions then arise: does the system actually work to deliver its value? And secondly, if it does not how do we get it to actually work?

In regard to the first issue, do checks and balances actually work to make government serve the public interest, to give substance to the principles of good governance; the simple answer is that most people in most countries say that **the system of checks and balances is not working**.

Let me be specific. In the **Global Corruption Barometer 2013** (to which we have earlier referred) the following question was asked of a representative sample of citizens in one hundred and seven countries “**to what extent is this country’s government run by a few big interests looking out for themselves?**” In Norway, the best of the OECD Countries, 5% of citizens said that they think the government is run by a few big interests. At the other extreme and interestingly, in the light of the current crisis, 83% of Greek responders (before the election which led to the turn to a left wing government) believed that the government was run to benefit a few. In the US it was 64%, in the UK 60%, in the Americas as a whole 54% and in Jamaica 53%.

Yet these are all governance systems in which checks and balances are supposed to operate!

Latin America and the Caribbean are not very different. By and large these are democratic countries. However, the people perceive high levels of corruption even though they themselves are not significantly engaged in paying bribes. For example on a scale of zero (0), where zero is the lowest perception of corruption and one hundred (100) the highest, the people of Jamaica and Guyana scored their respective countries at seventy eight (78) and Belize at seventy five (75) in the just recently released **LAPOP 2014** report. In relation to the rule of law, one of the main expected outcomes from the operation of checks and balances, the World Bank Institute's **Worldwide Governance Indicators** (2013) gave Jamaica, Trinidad and Tobago, the Dominican Republic, Suriname, Guyana, Haiti all negative scores.

Overall it is quite obvious that the governance arrangements are not working adequately to deliver critical "public goods". For example: **security and safety**. The Caribbean ranks as that region of the world which by far has the most homicides, thirty per hundred thousand compared to a global average of five per hundred thousand. In terms of **human development**, an index summing up health, education and income levels for the majority, measured by the United Nations Development Programme, Cuba is the only Caribbean state in the top third of one hundred and eighty seven countries of global human development. In that context we might add that income inequality is now at its highest

globally and within most countries and constitutes what the World Economic Forum describes as one of the most likely risks to peace, security and national governance.

What therefore is going wrong? What is it that needs to be corrected? Of many defects, undermining the operation of checks and balances, I would like to mention two: **lack of transparency in government policy making and favouritism in decisions of government of officials**. The man in the street in almost every Caribbean state and further afield can testify that too often he doesn't know what the government is doing and secondly, that only some people, the favourites, benefit from government policy. The **Global Competitiveness Report 2014/2015** corroborates the perception and experience of the man in the street. In respect of **transparency of government policy making** of one hundred and forty four countries ranked globally, Caribbean states re among the least transparent – Haiti ranks one hundred and forty one (141), Suriname one hundred and twenty two (122), Jamaica one hundred and nine (109). In respect of **favouritism in decisions of government officials** of one hundred and forty four (144) countries, Trinidad ranks one hundred and thirty seven (137), the Dominican Republic one hundred and thirty two (132), Suriname one hundred and twenty nine (129), Haiti one hundred and thirteen (113). Clearly lack of transparency disguises how far checks and balances are working or not working, favouritism is facilitated and lack of accountability encouraged. Put bluntly, officials are perceived to get away with wrongs, resulting in a steady loss of confidence across the hemisphere, including in my own country Jamaica, in governance and in the practical value of checks and balances.



What is to be done? I suggest five critical areas of urgent remedial action to meet these challenges.

**One: awareness building amongst the public and within institutions of governance.**

Awareness building, first and foremost in relation to the cost of corruption, of how the malfunctioning of the system of checks and balances is not just discrediting governance but hurting the man in the street. This requires careful research and the development of creative products to engage and uplift the consciousness of the citizen. In Jamaica, I dare say, NIA has achieved some success with its two full length documentaries and many television as well as radio ads which may be viewed on our website. (Two weeks ago we completed a new ad aimed at building public understanding and disapproval of vote-buying and vote-selling in preparation for forthcoming elections). This awareness building in large measure has contributed to 77% of our people expressing the wish to join an anti-corruption organisation where the global average is 53% and to a majority belief that 'corruption' is the main cause of the continuing economic hardship being experienced by the majority.

But the awareness building needs to be also targeted at the public servants, the police officers, the magistrates, the prosecutors, the legislators, the members of the executive who need to develop a deeper understanding of their respective roles within the system of governance. This latter requires, in our experience, regular sensitisation and training sessions contributing to capacity building and to a strong sense of professionalism. Awareness building also demands that the media play a critical role, utilising the relative freedom of the press which we enjoy in the Caribbean to engage in investigative

journalism, in exposure of wrongs and in the promotion of appropriate conduct. Access to Information law needs to reinforce constitutional guarantees of 'open government' and our main institutions\_ Parliament, the cabinet, the judiciary, the police, the ombudsman etc. must have websites with up-to-date information to keep our citizens abreast of what is going on

**Two: institutional reform.** Whilst in general the formal rules and statutes provide for separation of powers as well as checks and balances, there nevertheless remain significant gaps. One such in our region is the inadequacy of regulations governing political parties as public entities, still too often regarded as private bodies, and most of all, the inadequacy of law to regulate party funding and campaign financing. In most Caribbean states law does not require any disclosure of who gives what or how much to a political party and therefore, who is in a position to exercise undue influence on the party and the party functionaries when they form the government. By and large as well there are no limits on how much money may be donated nor how much money may be spent in an election, thereby facilitating parties, candidates and voters being bought by either criminal or commercial interests. This institutional gap deprives the society and the electorate in particular of an important mechanism for checking and balancing the power of money with the power of an informed electorate.

**Third: More rational resource allocation.** No system of checks and balances however well designed and however well written can function effectively if the necessary resources are not allocated in a timely fashion, particularly to the justice and law enforcement sectors as well as to the electoral and auditing institutions. In Jamaica, the Ministry of

Justice receives 1% of the national budget! Clearly this Ministry has got to be given higher resource allocation priority if the system is to provide an effective check and if the people are to get the justice they deserve and demand.

**Fourthly: More effective law enforcement and equitable administration of justice.**

These are two key institutions in a regional and global context in which the powerful and the well-connected in political directorates, in the business community and in the criminal underworld enjoy too much impunity and are in effect very often above the law. Throughout the Caribbean region, media are replete with instances where the petty thief is promptly investigated, arrested, brought before the courts and sentenced expeditiously whilst those in high places either are never brought before the courts, have their cases indefinitely postponed are acquitted or if convicted, receive relatively light sentences. In the most egregious and notorious cases the untouchables have to be extradited in order to face the justice system. No wonder a majority of our Caribbean citizens, according to a recent UNDP study (2012) feel that in our countries the politically- connected and powerful criminals go free!!

**Fifthly: the development and enforcement of codes of conduct.** Good governance and the operation of checks and balances demands that there be codes of conducts for legislators, for ministers, for civil servants, for judges, for police officers as well as for the corporate sector and civil society organisations. Where these codes do not exist the individuals concerned have no guidelines. Where they do exist and are not enforced they are of little significance and bring the institution into disrepute. These need to be reinforced by effective Whistle-blower legislation and protection

This menu of measures selective, as they have been, nevertheless constitutes a formidable agenda for implementation. Such an agenda has to be initially driven from above, by informed, principled and courageous leadership which recognises the urgency and value of checks and balances in upholding the integrity of governance. Ultimately, however, the system has to be policed by the citizenry aware, motivated and active in upholding democratic governance. Formidable as these responsibilities are, important gains can be made. In this regard I wish to close with three examples of small but important steps demonstrating the possibility of change in our region.

- The case of St. Vincent: In 2014, the global corruption perception index identified three countries of 175 which recorded positive improvement in their score by +5, namely, Egypt, the Ivory Coast and St Vincent. In the case of St Vincent 2 practical steps were responsible- the effective application of the rule of law to a high-ranking official, the Registrar of the High Court, who was prosecuted, found guilty and punished by the courts. Secondly, an enhancement in transparency whereby, all contracts awarded above a certain sum begun to be published in the newspapers—who got the contract, for what sum, to carry out what projects and with what completion date. Transparency at work!
- The case of Turks and Caicos Islands: In December 2010, just a couple months after Sint Martin achieved its new constitutional status, I completed the National Integrity System study for TCI commissioned by Transparency International. TCI had their self-government constitution suspended because of extensive, documented cases of corruption, in which among other things, Ministers abused their power and the relevant public institutions failed to function to check this

abuse. Out of this adversity however came opportunity. One of the strong recommendations in my report was for political parties to be brought under statutory regulation, to be registered and political funding strictly controlled.

Today, TCI has a state of the art system, arguably the best in the Caribbean, to check and balance the power of money by the power of law. Under Ordinance 22 of 2012, parties now have to be registered, strict accounting standards have to be met, donations have to be disclosed, a limit is set on maximum donations from any one source, donations from anonymous or criminally suspect sources are prohibited, maximum limits are set on campaign spending and there is public inspection of campaign expenditure returns. Most of all there is provision for significant penalties for violation of the law.

- Third. The case of Jamaica. Today, as we speak, after more than 5 years of debate, of hesitation by Parliamentarians and of advocacy by civil society organisations, including NIA, a Bill is now before the legislature to establish a single Integrity Commission which would have the responsibility to check the asset/liability reports of Parliamentarians and public servants, monitor the award of public contracts and possess the authority to investigate as well as prosecute cases of corruption. When this Bill becomes law, I believe it will mark an important step in building Jamaica's anti-corruption architecture and establish a model which may be emulated in other Caribbean countries.

May I conclude with this observation? Tomorrow, June 20, 2015, marks the 50<sup>th</sup> anniversary of the visit of that famous Nobel Prize Laureate and freedom fighter, Martin Luther King to Jamaica. During that visit, MLK said that 'here in Jamaica' and I add, by extension, the Caribbean, 'I feel most like a human being than anywhere else',

because, King observed, here in the Caribbean a civilisation had emerged and was being created, where, despite shortcomings, more than anywhere else, people of different races, ethnicities, colours and creeds live side by side in relative harmony, more than anywhere else. In a similar vein and on a different plain, I believe it is within our power here in the Caribbean to so transform our systems of governance, to so enhance the operation of checks and balances within our system, to make their value so real that the Caribbean can become that region, more than anywhere else, in which democracy has its most outstanding manifestation. May I charge us all to take up this critical challenge!!