

**SUBMISSION**  
**to the**  
**Commission of Enquiry into the**  
**Construction Sector**  
**on**  
**THE INDEPENDENCE OF**  
**THE TRINIDAD AND TOBAGO**  
**TRANSPARENCY INSTITUTE**  
**Rebuttal No. 2**

**Written Statement**  
**of**  
**Victor Archibald Hart**  
**Chairman**  
**Trinidad and Tobago Transparency**  
**Institute**

**27 November 2009**

1. My name is *Victor Archibald Hart* of La Riviera Apartment 1C, Columbus Circle, Westmoorings, Trinidad and Tobago.
2. I am serving my third term as Chairman of the Trinidad and Tobago Transparency Institute (TTTI) and make this submission on its behalf having been duly authorised by its Board of Directors to do so.

TTTI is the National Chapter of *Transparency International (TI)*, the leader of a coalition of anti-corruption movements that was formed in 1993 and headquartered in Berlin, Germany.

TTTI was formed in 1998 and is one of nearly 100 National Chapters worldwide.

3. I hold a professional qualification as a Chartered Quantity Surveyor (1965) and a Master of Science Degree in Project Management (1979 - University of Reading, UK).
4. I served as one of five Commissioners who were appointed in 2002 by then President of the Republic of Trinidad and Tobago Arthur N. R. Robinson to investigate allegations of corruption on the Piarco Airport Development Project.
5. By way of introducing this submission, I repeat that TTTI, in participating in this Enquiry, has accused no one of corruption or of any suspicion of corruption or mismanagement. Rather we have come forward to assist the Commissioners with measures that could be considered and possibly introduced in their report to satisfy three items in the Enquiry's Terms of Reference:

To enquire into: ... the procurement practices in the public construction sector.

To make recommendations ... to ensure that: ...

There is free and fair competition, full participation and access for all citizens in the public procurement process.

Integrity and transparency in the public procurement practice are assured.

[Terms of Reference of the Enquiry 1 (i), 2 (iii) and 2 (iv) refer]

6. The objective and scope of this submission is to respond to some inaccurate and possibly misleading statements, related to TTTI's independence and to my credibility, made to Commissioners by Minister Colm Imbert by way of a written submission on behalf of the Government of Trinidad and Tobago dated July 31, 2009, and entitled

*'Response of Colm Imbert, Minister of Works and Transport to Allegations of Bias'.*

7. It is to be noted that this is the second such written statement submitted by me for the same purpose of refuting unfounded allegations made by Minister Imbert, the first being dated 24 April 2009. I leave it to you, the Commissioners, to draw your own conclusions as to why Minister Imbert is making a second attempt to discredit TTTI and me by misleading you on these matters, some of which I had addressed and refuted in my aforementioned submission dated 24 April 2009. You may find it instructive to re-read that submission to see how farfetched Minister Imbert's allegations have been. In this submission, I shall treat with his statements in the order in which they appear in his submission to you dated July 31, 2009.

8. Minister Imbert states:

‘...many of the submissions made by protagonists, **where they are not otherwise substantiated**, should be critically devalued for reasons of bias’ (Para. 17).

‘... The submissions made by the local Chapter of Transparency International (TTTI) to the Commission should be rejected out of hand since Mr. Victor Hart, Chairman of TTTI, did not come to the Commission with clean hands. In particular, he did not disclose the close linkages and associations that exist between key members of his organisation and Mr. Elias and/or NHIC, and using Mr. Fitzpatrick's theory of bias, there is clear and definite reason for bias on the part of TTTI in favour of NHIC/Elias.’ (Para. 18)

9. Mr. Imbert then lists the following ‘close linkages’ that allegedly were not disclosed by me to you:

- a) Ms Margaret Rose, Dr. Rowley's attorney of record in the Enquiry, is one of six (6) members of the Board of Directors of TTTI elected in 2008 (Para. 18)
- b) Ms Diana Clyne, a director of TTTI, was a consultant to Mr. Elias and works out of his office and travelled with him to and from Grenada. (Para. 19)
- c) Mr. Brian Lewis, a director of TTTI, is a close associate of Mr. Elias and supported NHIC in a Court matter with UDeCOTT. (Para. 20)
- d) I ‘jumped to Mr. Elias’ defence’ on the matter of removal of materials from

the Scarborough Hospital Project site. (Para. 20)

Minister Imbert concludes (Para. 20) that ‘Using Mr. Fitzpatrick’s theory of bias, therefore, it is fair to say that there is good reason to believe that Mr. Victor Hart and TTTI are biased in favour of Mr. Elias and NHIC’.

10. TTTI unequivocally repudiates Minister Imbert’s allegations of bias. As an organisation operating in a small country, we are very conscious of the possibility of conflicts of interest among directors arising from time to time and are careful to avoid them.

As Commissioners know, our approach to the Enquiry has been to assist you in satisfying particular Terms of Reference (Para. 5 herein refers). We have not acted as advocates for any individual or company. Any benefits that might result from our recommendations would be for the construction sector as a whole, not for any particular stakeholder. It is difficult to see how the question of bias could arise in these circumstances.

We have therefore not seen ourselves as being open to any charges of bias or other similar challenges from any of the parties to the Enquiry and this view has informed our decision not to retain an attorney to ‘protect’ our interests. That mindset also accounted for the fact that we saw no need to bring to the attention of Commissioners facts about our directors that were well known to the public.

I shall now address the four ‘linkages’ listed by Minister Imbert.

11. Ms. Margaret Rose was elected a director of TTTI in April 2007 and that fact was publicized in the local media. Her name was added to the TTTI letterhead and on its website. Prior to her becoming a TTTI director, Ms. Rose had represented Dr. Rowley in certain high profile legal matters. Therefore, it was no surprise when in September 2008 she accepted Dr. Rowley’s Brief to represent him in the Enquiry and that fact became public knowledge. After the Enquiry was announced, the TTTI directors discussed whether we should participate in the Enquiry and, if so, with what objective and questioned if there was need for us to retain an attorney. Ms. Rose indicated to the TTTI directors that she would be faced with a conflict of interest and confirmed her position in an e-mail message to directors dated 22 September 2008, which read (in part) as follows:

‘I wish to declare that I have been retained to represent Dr. Rowley at the COE. While I would have happily given my services pro bono to TTTI at the COE - I believe that it would not be appropriate to have the same counsel representing Rowley, representing TTTI.’

Ms. Rose took no part in the preparation of our submissions to the Enquiry and we saw no need to mention in our submissions her relationship with TTTI and Dr. Rowley.

12. Ms. Diana Clyne and Mr. Emile Elias were founding members of TTTI in 1997/1998. Ms. Clyne served as a TTTI Director under my chairmanship until June 2009.

Ms Clyne has been a close associate of Mr. Elias for many years. To my knowledge, she has not worked ‘out of his office’ since 2006.

When in September 2008, I invited TTTI directors to discuss our participation in the Enquiry, Ms Clyne immediately recused herself from the decision by e-mail to me dated 21 September 2008 which read (in part) as follows:

‘I disclose to the Board that I have just been retained to lead the JCC Commission of Enquiry Secretariat and therefore recuse myself from voting on this issue.’

She took no part in the preparation of our submissions to the Enquiry and we saw no need to mention in our submissions her relationship with TTTI and Mr. Elias.

13. Mr. Brian Lewis, a director of TTTI, is a senior Chartered Architect in private practice and was and is associated with Mr. Elias through his work in the Construction Sector. It is my understanding that he gave evidence as an expert witness in a Court matter between NHIC and UDeCOTT. We saw no need to mention in our submissions his relationship with TTTI and Mr. Elias.

14. Minister Imbert’s allegation that I defended Mr. Elias in a matter concerning the Scarborough Hospital Project is a misreading of a letter of mine published in the local press and I reject the allegation completely. That letter was written in October 2004 before I became a member of TTTI. I dealt in detail with this matter in my submission dated 24 April 2009 (Paras 21 to 24), therefore, I do not consider there is any need to repeat my statements in this submission.

15. Please be advised that on 26 August 2009, Mr. Elias made a donation of \$108,000 to

TTTI to assist the Institute in its work. The donation was widely reported in the local media. In accepting this donation TTTI followed the guidelines laid down by TI in the document: *Donation Policy, Procedure and Guidelines* (TI Annual Membership Meeting, 10 October 2004)<sup>1</sup>.

16. I trust that you would agree that the explanations given by me refute Minister Imbert's conclusion (Para. 20) that there is good reason to believe that TTTI and I are biased in favour of Mr. Elias and NHIC.

You will agree, I'm sure, that, even if we were biased as Mr. Imbert suggests, this could have no bearing on the validity of our submissions to you.

I am confident, therefore, that nothing that Minister Imbert has said has reduced in your eyes TTTI's or my credibility. I am confident, too, that you will judge our submissions to you purely on their own merits and in the spirit in which they have been offered.

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<sup>1</sup> See [http://www.transparency.org/support\\_us/donate\\_now/donation\\_policy\\_procedure\\_and\\_guidelines](http://www.transparency.org/support_us/donate_now/donation_policy_procedure_and_guidelines)