

JAMAICA'S PROGRESS REPORT: PRINCIPAL DEVELOPMENTS (JUNE 2008 – DECEMBER 2010)

- March 2010 – Enactment of the Financial Investigations Division Act: The Act establishes the Financial Investigations Division with responsibility for investigating financial crimes which include any offence involving money, fraud, dishonesty or other benefit.
- December 2010- Passage by the Senate of the Protected Disclosures (Whistleblower) Bill. The Act, when it comes into force, will facilitate the disclosure of information regarding corrupt practices and affords protection to those making such disclosures.
- The Corruption Prevention (Special Prosecutor) Bill is expected to be debated during the 2010/2011 legislative year by Parliament. A joint select committee of Parliament has just completed within the past week its report on an examination of the Bill. That report is ready to be submitted to Parliament for debates to take place early in the calendar year. The Bill when passed will establish the Office of the Special Prosecutor for Corruption which will act independently and be charged with investigating and prosecuting corrupt conduct.
- The resources for the Commission for the Prevention of Corruption were increased following a review of the organizational structure. There is currently a new staff structure, inclusive of investigators.
- In December 2008, the Public Sector Procurement Regulations came into force. Under these regulations, penal sanctions are applied to breaches of Government of Jamaica procurement guidelines.
- The Office of the Contractor General has significantly increased its oversight of the award of government contracts and has increased its use of electronic communications to enhance transparency in the award of such contracts. This includes the publication of Quarterly Contract Awards (QCA) Reports on its website.
- As of February 2010, the rigidly enforced Zero Tolerance Policy of the Office of the Contractor General (OCG), which was first introduced in October 2006 to sanction Public Bodies which refuse to comply with the lawful requisition of the OCG to file a report on the award of government contracts, has succeeded in producing an unprecedented and record 100% compliance rate for the fourth consecutive quarter running and for the entire 2009 year. This compares to the low compliance rate of 13% which was first recorded when the new reporting regime was introduced in May 2006.
- Pursuant to Ministry of Finance and the Public Service circular #36 of 22 September 2008, government contracts over a specified

value must now be independently reviewed and endorsed by the National Contracts Commission before being awarded.

- The Judicial Services Commission has recently outlined procedures for the extensive advertisement of posts to fill vacancies for Resident Magistrates, Masters in Chambers, Puisne Judges and Judges of Appeal in order to ensure transparency in appointments.
- The Commission for the Prevention of Corruption which is charged with reducing corruption in public life by receiving and analyzing statutory declarations of the assets, liabilities and income of public servants, obtained funding over the period under review to improve its staff complement by hiring additional investigative staff, including financial analysts to strengthen its work. The Commission has held several hearings with declarants, as required under the Corruption Prevention Act, in cases where the Commission was of the opinion that further information or an investigation was necessary in respect of statutory declarations. From those hearings, several matters were referred to the Director of Public Prosecutions and several have been heard by the Courts.
- The Access to Information Unit has implemented extensive Public Education Programmes targeting various groups islandwide. Major Media Promotions of Access to Information have been conducted during the period 2008-2010. Seven thousand eight-hundred and thirty-two (**7832**) members of the public were sensitized on Access to Information rights through direct face-face sensitization sessions during the period June 2008-September 2009 alone.

**INSTRUCTIONS FOR PRESENTATION OF INFORMATION ON PROGRESS
IN IMPLEMENTING RECOMMENDATIONS MADE AT THE FIRST AND
SECOND ROUNDS OF REVIEW**

- A. Under each measure suggested by the Committee briefly describe the concrete steps that have been taken to implement said measure. If an alternative measure was taken please give details. As appropriate, please indicate the Internet web site where information in greater detail may be obtained on the measures adopted and steps taken to implement the respective recommendation, precisely identifying the information in reference on that site:

- B. Briefly mention any difficulties observed in the process of implementing the respective recommendation. If you consider it appropriate, please also mention the Internet web site where information in greater detail may be obtained in that regard, precisely identifying the information in reference on that site:

- C. If appropriate, please mention which domestic agencies have participated in implementing the recommendations and identify concrete technical assistance and other needs that you may have in connection with the implementation of the recommendation. Furthermore, as appropriate, also mention the Internet web site that describes in greater detail the aspects mentioned herein, precisely identifying the information in reference on that site:

**RECOMMENDATIONS TO JAMAICA BY THE COMMITTEE OF EXPERTS
DURING THE FIRST ROUND OF REVIEW**

**1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE
COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE
CONVENTION)**

**1.1. Standards of conduct intended to prevent conflicts of interest and enforcement
mechanisms**

Recommendation 1.1:

Strengthen the implementation of laws and regulatory systems related to conflicts of interest, ensuring that they are applicable to all public officials and employees, so as to permit practical and effective application of a public ethics system.

Measures suggested by the Committee:

a. Establish or adapt and then implement standards of conduct for those offices that currently do not fall under the purview of any controls, including adequate sanctions for violations of those standards.

While no express provision has yet been made in the Judicial Service regulations, the following administrative procedures have been implemented by the Judicial Service Commission:

In order to fill vacancies for Resident Magistrates, Masters in Chambers, Puisne judges and Judges of Appeal all posts have been advertised and application forms developed. Advertisements have been posted in leading newspapers, in the electronic media, at Jamaica's overseas diplomatic missions and on the internet. Short listed applicants are duly interviewed by the Judicial Service Commission.

b. Establish written guidelines within the public service that require hiring on the basis of merit.

The Public Service Commission is currently in the process of completely revising the Public Service Regulations. The changes proposed include:

- **express provisions that recruitment and appointment in the public service shall be based on merit.**
- **provisions requiring that where a vacancy exists, the Public service Commission is required to consider the eligibility of all officers for filling such vacancy and take such other steps including advertisement for the filling of the vacancy.**
- **that unsuccessful applicants should have the right of appeal and that an appeal should be considered in light of the requirements outlined in the Public Service Regulations, including merit.**

c. Develop, where appropriate, provisions that limit participation by former public servants in situations that could involve taking undue advantage of one's status as a former public servant for an appropriate period of time.

d. Encourage the implementation of a code of ethics for Senators and Members of the House of Representatives, including sanction mechanisms for violations.

e. Ensure that there are mechanisms in place that provide transparency and eliminate risks of conflict of interest in the cases where the Prime Minister allows a Minister to keep any relevant interest the latter is unable or unwilling to dispose.

1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms

Recommendation 1.2.1:

Strengthen control systems within the public administration by improving written standards applicable to all public officials and employees establishing a duty to conserve and properly use of the resources entrusted or assigned to them.

Recommendation 1.2.2:

Adopt measures to ensure the timely delivery by government agencies of appropriation accounts to the Auditor General and encourage greater accountability in instances where some agencies exceed expenditures approved by Parliament.

1.3. Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

Recommendation 1.3:

Develop, where appropriate, and strengthen mechanisms requiring public officials to report to appropriate authorities, acts of corruption in the performance of public functions of which they are aware.

Measures suggested by the Committee:

a. Establish reporting obligations for those public officials and employees who are currently not required to report to appropriate authorities, acts of corruption in the performance of public functions of which they are aware.

A Protected Disclosure Bill (whistleblower legislation) has been drafted and is currently being debated by a Joint Select Committee of Parliament. The Act, when passed, will facilitate and encourage the making of disclosures of improper conduct, in the public interest. The Act is also expected to provide that any provision of an agreement will be void and of no effect if the provision precludes an employee from making a protected disclosure.

b. Adopt and implement measures of protection for public officials who report acts of corruption in good faith in order to protect them from the threats or reprisals that they may be subject as a result of carrying out this obligation.

A Protected Disclosure Bill (whistleblower legislation) has been drafted and is currently being debated by a Joint Select Committee of Parliament. The object of the Bill is to encourage and facilitate the making by employees of specified disclosures of improper conduct, in the public interest; to regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct; to protect employees who make specified disclosures from being subject to occupational detriment; and for related matters.

c. Provide appropriate training to officials and employees concerning the requirement and the processes to report acts of corruption and the protection mechanisms in favor of those who report.

The Office of the Contractor General (OCG) on its website, (www.ocg.gov.jm), has a “Report Impropriety” link, which allows the public to report to the OCG any acts of

impropriety or irregularity in the procurement, award or termination of a Government contract, permit or licence.

Through this link the OCG has received several complaints and allegations of impropriety in public contracting. The link has assisted the OCG to conduct effective enquiries into the matters which have been reported.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)

Recommendation:

Strengthen the systems for registration of income, assets, and liabilities.

Measures suggested by the Committee:

a. Maximize the use of the systems for analyzing the contents of the declarations, and adopt the appropriate measures so that they can also be used to help detect and prevent conflicts of interest and detect cases of illicit enrichment, using modern technologies, when possible, to expedite the filing of declarations and also as a means of improving systems, analysis and case investigations.

The Commission for the Prevention of Corruption updates on an annual basis the database of Public Servants required to submit a Statutory Declaration of Assets, Liabilities and Income. This database is used as a tool in tracking and making enquiries of delinquent Public Servants. The Second Schedule to the Corruption (Prevention) Act prescribes the Form on which Public Servants are required to make their Declarations. The Law specifies that the Declaration must be accompanied by bank statement(s) or letter(s) from banks confirming the balance(s) reported. The Commission has advised all Government Agencies and Departments that it is prepared to accept photo-copies of bank pass books, Automated Transaction Machine Slips and Electronic Banking (e-banking) statements with a view to expediting the filing of declarations.

The Commission for the Prevention of Corruption has proposed certain amendments to the Corruption Prevention Act which have been forwarded to a Joint Select Committee of the Houses of Parliament. These include the recommendation that the Act prohibit Public Sector Officers and employees from situations that create conflicts of interest in Public Duties. The Commission has further recommended that an appropriate code of conduct be developed to guide Public Sector Officers and employees.

b. Regulate the conditions, procedures, and other aspects relating to the public disclosure, as appropriate, of declarations of income, assets and liabilities, subject to the Constitution and fundamental principles of Law.

The Corruption Prevention Act treats with this issue with a view to securing maximum compliance in accordance with the Constitution and fundamental principles of Law.

c. Intensify awareness campaigns and provide training for public officials on their legal and ethical duty to furnish their declarations of income, assets and liabilities, as well as for officials in charge of enforcing the obligation to file declarations.

Section 5 (f) of the Financial Investigations Division Act 2010 includes among the functions of the Financial Investigations Division promoting public awareness and understanding of financial crimes (defined as any offence involving money or other benefits and includes any offence involving fraud, dishonesty, money laundering or the financing of terrorist activities) and the importance of their elimination from the society.

d. Strengthen the bodies responsible for overseeing the compliance of public officials to furnish their declarations of income, assets and liabilities, as well as consider strengthening the Office of the Director of Public Prosecutions, as necessary, to ensure that these bodies have the material and human resources needed to enforce the law and prosecute those who fail to submit their declarations, those who provide a statement with false information, or those who commit the offence of illicit enrichment.

Sections 4 and 5 of the Financial Investigations Division Act 2010 create the Financial Investigations Division with responsibility for, *inter alia*, investigating financial crimes at the request of the Director of Public Prosecutions, the Commissioner of Police or any other public body, or on the initiative of the Chief Technical Director of the FID. Where the Chief Technical Director of the FID considers it necessary it may disseminate information and reports on financial crimes and related matters to, *inter alia*, the Attorney-General, the Commissioner of Police, any of the Revenue Commissioners under the Revenue Administration Act, the Commission for the Prevention of Corruption (Prevention) Act or the Director of Public Prosecutions.

The resources of the Commission for the Prevention of Corruption were supplemented following a review of the Organisational Structure which provides for a new Staff Structure inclusive of investigators.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)

Recommendation 3.1:

Establish bodies, or provide additional authority to an existing body, in charge of overseeing those offices that currently do not fall under the purview of any controls.

Recommendation 3.2:

Strengthen oversight bodies in their functions related to the enforcement of Article III, Paragraphs 1, 2, 4 and 11 of the Convention, in order to ensure that such control is effective; give them greater support and the resources necessary to carry out their functions; and establish mechanisms that allow for the institutional coordination of their activities, as appropriate, and their continuous evaluation and monitoring.

Recommendation 3.3:

Have the oversight bodies keep and systematize information for the purpose of performing an objective evaluation of the results of the legal framework and other measures.

4. MECHANISMS TO PROMOTE THE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)

4.1 General participation mechanisms

No recommendations were made to Jamaica in this section.

4.2 Mechanisms for access to information

Recommendation 4.2:

Strengthen the mechanisms for ensuring public access to information.

Measures suggested by the Committee:

a. Review and if necessary modify the provisions under the Access to Information Act which allows the Minister of Information to exclude any statutory body or authority from the application of the Act.

All provisions of the Access to Information Act (2002) are currently being reviewed by a Joint Select Committee of Parliament.

b. Continue developing training and dissemination programs dealing with the mechanisms for public access to information, in order to help civil servants and citizens understand them and to optimize the use of available technology to that end.

The Access to Information Unit implements public education programmes targeted at various stakeholder groups and interests, ranging from senior citizens to young people in rural and urban communities. The Unit also develops and implements

training programmes for public servants. These programmes are reviewed and updated on an ongoing basis. These activities include:

a) **The Schools Access to Information Education Programme (S.A.T.I.E.P) in Urban and Rural Communities;**

b) **Right to Know Week activities (annually)**

c) **The continuous utilization of the Access to Information Unit's website and online social networking sites such as Facebook, Youtube and Twitter to promote access to information. Continuous improvements are being made in the dissemination of information to all target groups online;**

d) **The use of Public Authority websites to promote mechanisms for public access to information and proactive disclosure of information.**

e) **Television advertisements on the Public Broadcasting Channel (PBCJTV)**

f) **Ongoing targeted training sessions are held in collaboration with the Central Government, Local Authorities, Government companies and other statutory bodies annually. For example, the Access to Information Unit and the Ministry of Education recently targeted new principals from public schools across the island. These training sessions involved principals from all six school regions – with over one hundred and fifty principals and school representatives in attendance. This allowed the Unit to address issues specific to the operation of public schools and their administration of the Access to Information Act (2002) including records and information management practices.**

g) **Ongoing guidance provided to individual access officers with regard to best practices and responding to requests in the timeframe requested;**

h) **Implementation of a support programme designed to assist new Access Officers in carrying out their duties under the Act;**

i) **The continuous review and update of core training programmes for public authority personnel. The Unit is currently developing new core modules for access officers on processing requests, the duty to assist and the public interest for implementation in September.**

c. Continue the preparation of quarterly reports on the access to information requests presented to public authorities, including more detailed information on the status of such requests (e.g., average time taken for completion).

Steps are being taken to enhance the current reporting system (including Quarterly Reports). A comprehensive review of reporting standards is being completed and

new standards are being developed. Training and implementation will begin within the current fiscal year 2010/2011

d. Take the appropriate measures to ensure that requests to access to information are responded to within the time-frame established by the Access to Information Act.

Ongoing training in this area will continue and the Access to Information Unit has increased monitoring of response and processing times for access to information requests including those from the media based on complaints received;

Grant funding for real-time electronic tracking systems to monitor how requests are being treated is necessary.

The Joint Select Committee reviewing the Act is also examining this issue.

4.3 Mechanisms for consultation

Recommendation 4.3:

Strengthen the existing mechanisms of consultation.

Measure suggested by the Committee:

Continue implementing consultation mechanisms with interested sectors of civil society and nongovernmental organizations regarding the design of public policies and the legislative process in efforts to prevent corruption.

4.4 Mechanisms to encourage participation in public administration

Recommendation 4.4:

Strengthen and continue implementing mechanisms to encourage civil society and nongovernmental organizations to participate in public administration.

Measures suggested by the Committee:

a. Establish additional mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption.

b. Promote public awareness of available corruption prevention mechanisms.

4.5 Mechanisms for participation in the follow-up of public administration

Recommendation 4.5:

Strengthen and continue implementing mechanisms to encourage civil society and nongovernmental organizations to participate in the follow up of public administration

and generate opinions and proposals to be taken into account in preventing, detecting, investigating and punishing corruption.

Measures suggested by the Committee:

a. Promote additional methods, where appropriate, to allow, facilitate, and assist civil society and nongovernmental organizations in developing activities in the follow up of public administration and the prevention of corruption.

b. Design and implement specific programs to publicize the mechanisms for encouraging participation in the follow up of public administration.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendation 5.1:

Review comprehensively the specific areas in which Jamaica might need or could usefully receive mutual technical cooperation to prevent, detect, investigate, and punish acts of corruption; and based on this review, design and implement a comprehensive strategy that would permit Jamaica to approach other States Parties and non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs.

Recommendation 5.2:

Continue the efforts of technical cooperation exchange with other State Parties on the effective ways and methods to prevent, detect, investigate and punish acts of corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation:

Jamaica has complied with Article XVIII of the Convention, by designating the Minister responsible for Justice and the Director of Public Prosecutions as the central authority for the purposes of international assistance and cooperation under the Convention, as indicated in Chapter II, Section 6, of this report.

In light of the comments made in this section, the Committee suggests that Jamaica ensure that the aforementioned central authority has the necessary human and technical resources to ensure adequate performance of its functions.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

Design and implement, as appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.

Recommendation 7.2:

Select and develop procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into account the list of more general indicators applicable within the inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.

Recommendation 7.3:

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, and the recommendations contained in it.

RECOMMENDATIONS TO JAMAICA BY THE COMMITTEE OF EXPERTS DURING THE SECOND ROUND OF REVIEW

1.1. Systems of Government Hiring

Recommendation:

Establish, maintain and strengthen the systems of government hiring of public servants, when applicable, that assure the openness, equity and efficiency of such systems.

Measures suggested by the Committee:

- a) *Adopt, through the appropriate legislative and/or administrative procedures provisions that explicitly provide that government hiring into the Public Service is to be based on the principle of merit.*

The Public Service Commission is currently in the process of completely revising the Public Service Regulations. The changes proposed include:

- **express provisions that recruitment and appointment in the public service shall be based on merit.**
- **provisions requiring that where a vacancy exists, the Public service Commission is required to consider the eligibility of all officers for filling such vacancy and take such other steps including advertisement for the filling of the vacancy.**
- **that unsuccessful applicants should have the right of appeal and that an appeal should be considered in light of the requirements outlined in the Public Service Regulations, including merit.**

b) Adopt, through the appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for the advertisement of hiring opportunities, and to ensure that when a Civil Public Service position is open to the public, the Public Service Commission is required to advertise it.

The Public Service Commission is currently in the process of completely revising the Public Service Regulations. The changes proposed include requiring the advertisement of posts in the filling of vacancies.

c) Make the necessary changes so that probationary employment system, as part of the selection process, is applied with uniform criteria throughout the public administration, in order to promote the principles of equity and efficiency as set out in the Convention.

Among changes currently being proposed for amendment to the Public Service Regulations are provisions that probationary employment or temporary employment systems, as part of the selection process, is applied with uniform criteria throughout the public administration.

d) Strengthen the legal provisions regarding the Service Commissions to ensure that these authorities have the competence to revoke or take other corrective measures when it is found that an appointment process was, among other things, irregular, improper, or made through a fraudulent competition.

e) Adopt, through the appropriate legislative and/or administrative procedures, provisions concerning those positions in the Judicial Service that are not governed by the Constitution, that explicitly provides that government hiring into the Judicial Service is to be based on the principle of merit.

f) Take the necessary steps, including the amendments of its legislation that it deems relevant, in order to ensure that when a position is open to the general public in the Judicial Service it is advertised to the general public, and that use is made of mass media.

While no express provision has yet been made in the Judicial Service regulations, the following administrative procedures have been implemented by the Judicial Service Commission:

In order to fill vacancies for Resident Magistrates, Masters in Chambers, Puisne judges and Judges of Appeal all posts have been advertised and application forms developed. Advertisements have been posted in leading newspapers, in the electronic media, at Jamaica's overseas diplomatic missions and on the internet. Short listed applicants are duly interviewed by the Judicial Service Commission.

g) Adopt, through the appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for the advertisement of hiring opportunities for all vacancies within the Judicial Service.

The Judicial Service Commission has recently outlined a procedures mentioned in 1.1 (f) above for the advertisement of posts in the Judicial service.

1.2. Government Systems for the Procurement of Goods and Services

Recommendation:

Strengthen systems for the procurement of goods and services by the government.

Measures suggested by the Committee:

a) Set up appropriate deadlines, where possible, in which the steps of the procurement process will take place.

b) Adopt appropriate legislative and/or administrative procedures that establish clear criteria for determining when procurement is of a "sensitive" nature, when an

unsolicited proposal is meritorious, what circumstances justify an unusual and compelling urgency, and what the criteria will be when there is more than one source that could provide highly specialized services.

The Government of Jamaica Procurement Guidelines is currently being revised by the Ministry of Finance and the Public Service. These issues will be addressed in the revised guidelines.

c) Strengthen the legal provisions regarding the National Contracts Commission, so that contractors who have been denied registration, or have been disqualified, suspended or stricken from the NCC registers of approved contractors, have access to the dispute resolution mechanisms of Section 2.12 of the Handbook of Public Sector Procurement Services.

d) Strengthen and increase the scope of use of electronic communications, such as the internet for publicizing the tender and consulting opportunities, status of bids and awards and the progress in the execution of major projects, and consider the possibility of making it mandatory.

The Office of the Contractor General has made available to the Public Sector its website for advertising tenders. The Office of the Contractor General also currently publishes its Quarterly Contracts Awards (QCA) Report on its website. The QCA Report details the particulars of contracts which are awarded by Public Bodies annually since May 2006. The QCA details the particulars for contracts which are of a value of between J\$275,001 and J\$10,000,000 as at November 2008 and a value of between J\$250,000 to J\$4 Million prior to November 2008.

The OCG also publishes a list of contracts which are endorsed by the National Contracts Commission (NCC) on its website. Pursuant to the requirements of circular #36, which was issued by the Ministry of Finance and the Public Service on September 22, 2008, recommendations for the award of all Government contracts that are above J\$10 Million, must be independently reviewed, scrutinized and endorsed by the NCC before the contract can be awarded by the recommending Public Body or Government Agency.

e) Strengthen the electronic procurement system, to continue to facilitate the acquisition of goods and services through those means.

In 2007, the Ministry of Finance and the Public Service initiated a process for the launch of E-Procurement.

f) Publicize to bidders that they are able to request from the contracting agency an explanation in those cases where their bid is unsuccessful.

g) Implement provisions to strengthen citizen oversight mechanisms to monitor the execution of contracts where the nature, importance or magnitude so warrants, in particular public works contracts.

The OCG currently publishes a list of all contracts which are (a) approved by the NCC and (b) awarded by Public Bodies below the NCC contract value threshold. The publication of this information promotes transparency in the Government's procurement process and allows the public to scrutinize information with regard to the award of government contracts.

The Public Administration and Appropriations Committee (PAAC), of the Parliament of Jamaica, is mandated to monitor Government expenditures and to make recommendations to the Government for improvements in public administration, with a view to ensuring that there is transparency, accountability and efficiency in public administration. The members of the PAAC, who are elected representatives of the people, provide a critical role in citizen oversight of Government contracts.

h) Expand sanctions for breaches of the Contractor General Act, taking into account the recommendations of the Office of the Contractor General in its annual reports to the Parliament.

On December 12, 2008, the Public Sector Procurement Regulations came into effect pursuant to Section 31 of the Contractor General Act. Pursuant to the regulations, penal sanctions were applied to breaches of Government of Jamaica Procurement Guidelines.

Section 40 of the Public Sector Procurement Regulations provides that:

“A person who- (a) contravenes these regulations; or (b) Aids, abets or otherwise knowingly facilitates or is an accessory to the contravention of these Regulations, commits an offence and is liable, on summary conviction in a Resident Magistrate's Court, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.”

2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)

Recommendation:

Adopt a comprehensive legal and regulatory framework that provides protection for public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with its Constitution and the basic principles of its domestic legal system.

Measures suggested by the Committee:

a) Protection for public servants and private citizens who in good faith report acts of corruption, which may be subject to investigation in administrative or judicial proceedings.

The Protected Disclosures (whistleblower) Bill which is currently being debated in the Joint Select Committee of Parliament aims to provide that persons who make protected disclosures or investigate or otherwise deal with a protected disclosure shall not be liable in any civil or criminal proceedings or to any disciplinary proceeding by reason of having made, investigated or otherwise dealt with the disclosure.

Section 14 of the Financial Investigations Division Act 2010 which provides for the investigation of any ‘financial crime’ defined as “any offence involving money or other benefits and includes any offence involving fraud dishonesty, money laundering or the financing of terrorist activities” provides that no civil or criminal action, suit or other proceedings for breach of confidentiality (including confidentiality arising from legal professional privilege) may be brought, nor any professional sanction for such breach may be taken, against any person, who in good faith (under this Act or any other enactment) provides or transmit information requested by the Division or submits a report to the Division.

b) Measures to protect not only the physical integrity of whistleblowers and their families, but also to provide protection in the workplace, especially when the person is a public official and the acts of corruption involve his superior or co-workers.

When passed, it will also provide that employees, which includes public official, shall not be subjected to any occupational detriment on the basis that he seeks to make, has made, or intends to make a protected disclosure. Occupational detriment includes disciplinary action, dismissal, suspension, demotion, harassment, intimidation, refusal of promotion, denial of appointment and threat. Persons making disclosures who are subsequently dismissed can be treated under the Act, when passed, as being unjustifiably dismissed and provided appropriate remedies.

Section 11 (4) of the Financial Investigations Division Act 2010 prohibits the disclosure in reports of any information that would directly or indirectly identify any person who provided a report to the Division.

c) Mechanisms for reporting, such as anonymous reporting or protection of identity reporting, that guarantee the personal security and the confidentiality of the identity of public servants and private citizens who in good faith report acts of corruption.

When the Bill is passed it will provide for secrecy and confidentiality of, among other things, the identity of the employee making the disclosure. The Act will also

establish a long list of prescribed persons to whom a disclosure may be made thus allowing a person to choose the person who he deems would be best able to preserve confidentiality and his identity.

The Financial Investigations Division Act 2010 makes provision for the Financial Investigations Division (FID) to, *inter alia*, receive information relating to the commission of a financial crime. In accordance with section 10 of the said Act, any person to whom information is communicated shall regard and deal with such information as secret and confidential

d) Mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it.

When the Bill is passed, a person who having made a protected disclosure believes that he has suffered occupational detriment may apply to the Supreme Court for redress. Intimidating or threatening a person who makes a disclosure will be deemed a criminal offence and may be reported through the normal procedures for the report of criminal acts.

e) Stronger witness protection mechanisms that provide the same guarantees to both public servants and private citizens;

f) Stronger mechanisms that facilitate international cooperation on the foregoing matters, when appropriate, including the technical assistance and cooperation provided for by the Convention, as well as the exchanges of experiences, training, and mutual assistance.

Section 12 of the Financial Investigations Division Act 2010 contemplates cooperation through contracts, memorandum of understanding or other agreements or arrangements with agencies including a foreign financial intelligence department or association of such departments regarding the exchange of information relevant to the investigation or prosecution of a financial crime

g) A simple whistleblower protection application process.

The Bill will provide the Minister with the power to make regulations for the proper implementation of the purposes of the Act. Such application processes would normally be addressed in regulations to be adopted.

h) Provisions which sanction the failure to observe the rules and/or duties relating to protection, stating the appropriate authorities to process protection requests and the bodies responsible for providing it.

The Bill when passed will include sanctions for the failure to observe the rules and/or duties related to protection.

Section 10(4) of the Financial Investigations Division Act 2010 makes it an offence for any person having possession of or control over any information, book, record or other document to communicate or attempt to communicate any such information or anything contained in such book, record or document to any person other than pursuant to the provisions of the Act

i) The respective competence of judicial and administrative authorities with respect to whistleblower protection, clearly distinguishing one from the other.

The Bill makes a clear distinction between the competence of judicial and administrative authorities with respect to whistleblower protection.

3 ACTS OF CORRUPTION (ARTICLE VI (1) OF THE CONVENTION)

Recommendation:

Provide those bodies charged with preventing, detecting, punishing and eradicating corruption with the necessary resources in order to ensure that said bodies can carry out their work in the most effective and timely manner.

4. GENERAL RECOMMENDATIONS

4.1 Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.

4.2. Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein.