

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Twenty-Fourth Meeting of the Committee of Experts
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JAMAICA

FINAL REPORT

(Adopted at the September 12, 2014 plenary session)

SUMMARY

This Report contains the comprehensive review of the implementation in Jamaica of Article III, paragraph 9, of the Inter-American Convention against Corruption, covering “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts,” which was selected by the MESICIC Committee of Experts for the Fourth Round; and of the follow-up of the implementation of the recommendations formulated to Jamaica during the First Round.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee’s Rules of Procedure, and the methodologies it has adopted for conducting on-site visits and for the Fourth Round, including the criteria set out therein for guiding the review based on equal treatment for all the States Parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the States Parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out taking into account Jamaica’s response to the questionnaire and, as a new and important source of information, the on-site visit conducted between April 1 and 3, 2014, by the members of the review subgroup for Jamaica, comprising of El Salvador and Grenada, with the support of the Technical Secretariat. During that visit, the information furnished by Jamaica was clarified and expanded and the opinions of civil society organizations, the private sector, professional associations, academics, and researchers on issues of relevance to the review were heard. This provided the Committee with objective and complete information on those topics, assisting with the gathering of information on best practices.

The review of the oversight bodies was intended, in accordance with the terms of the methodology for the Fourth Round, to determine whether they have a legal framework, whether that framework is suitable for the purposes of the Convention, and whether there are any objective results; then, taking those observations into account, the relevant recommendations were issued to the country under review.

The following oversight bodies in Jamaica are reviewed in this report: the Office of the Contractor General, the Integrity Commission, the Commission for the Prevention of Corruption, and the Auditor General’s Department.

Some of the recommendations formulated to Jamaica for its consideration in connection with the aforementioned bodies are, among others, the following:

Regarding the oversight bodies, provide the proper resources needed for the proper performance of its functions. In addition, to strengthen the work of the Office of the Contractor General, the Integrity Commission and the Commission for the Prevention of Corruption, address the lack of prosecutions being carried out by the Office of the Director of Public Prosecutions for corruption and corruption related offences.

With regard to the Office of the Contractor General, consider carrying out institutional and legislative reforms necessary to separate the National Contracts Commission from the Office of the Contractor General; provide this oversight body with the power and authority to halt or regularize a contract or

licence award that exhibits signs of corruption, irregularity or impropriety; and update the sanctions in place for breaches of the Contractor General Act.

Regarding the Integrity Commission, consider establishing a website for this oversight body; establish and implement an awareness building program to inform individuals on the manner they may submit complaints respecting alleged acts of corruption carried out by Parliamentarians; and consider providing the oversight body with the ability to impose administrative sanctions for the late or non-filing of a declaration by a Parliamentarian.

Pertaining to the Commission for the Prevention of Corruption, consider adopting a timetable for the implementation of the Commission for the Prevention of Corruption as the designated authority under the Protected Disclosures Act, 2011; implement an electronic system for the submission of declarations by public servants; and implement a register of declared interests in order to help identify potential conflicts of interest between a public servant's private interests and his or her public duty.

With respect to the Auditor General's Department, consider concluding the approval process by the Ministry of Finance and Planning and the Cabinet regarding the proposed new organizational structure for this oversight body; consider amending the Financial Administration and Audit Act so as to eliminate the three year statute of limitation for the recovery of a surcharge; and allow the Auditor General to report to the Office of the Contractor General any procurement breaches it discovers when carrying out an audit.

Jamaica also provided information on a best practice for conducting an audit and thus ensuring that the information is comprehensive, accurate and relevant, as contained in the Audit Procedural Manual.

With regard to follow-up on the recommendations formulated to Jamaica in the First Round and with respect to which the Committee, in the Second and Third Round reports, found required additional attention, based on the methodology for the Fourth Round and bearing in mind the information provided by Jamaica in its response to the questionnaire and during the on-site visit, a determination was made as to which of those recommendations had been satisfactorily implemented, which required additional attention, and which required reformulation. A list of those still pending was also prepared, and has been included in Annex I of the Report.

Among the progress related to the implementation of those recommendations, the following are noted: the adoption of the Judicial Guidelines of 2012 as well as the enactment of the Financial Management Regulations, 2011.

Some of the recommendations formulated to Jamaica in the First Round that are still pending or have been reformulated address issues such as: encouraging the implementation of a code of ethics for Senators and Members of the House of Representatives, including mechanisms for violations; develop 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; 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; and make public on the Access to Information Unit website, its annual and quarterly reports.

**COMMITTEE OF EXPERTS OF THE MECHANISM FOR
FOLLOW-UP ON THE IMPLEMENTATION OF THE
INTER-AMERICAN CONVENTION AGAINST CORRUPTION**

**FINAL REPORT ON IMPLEMENTATION IN JAMAICA OF THE CONVENTION
PROVISION SELECTED FOR REVIEW IN THE FOURTH ROUND, AND ON FOLLOW-UP
TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN THE FIRST
ROUND¹**

INTRODUCTION

1. Content of the Report

[1] This Report presents, first, a comprehensive review of Jamaica's implementation of the provision of the Inter-American Convention against Corruption that was selected for review by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the Fourth Round. That provision appears in Article III (9) of the Convention, pertaining to "Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts."

[2] Second, the report will examine the best practices that Jamaica has voluntarily expressed its wish to share in regard to the oversight bodies under review in this Report.

[3] Third, as agreed by the Committee of Experts of the MESICIC at its Eighteenth Meeting, in compliance with recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC, this report will address the follow-up of implementation of the recommendations that the Committee of Experts of MESICIC formulated to Jamaica in the First Round and that it deemed to require additional attention in the reports it adopted for that country in the Second and Third Rounds, which may be consulted at the following web page: www.oas.org/juridico/english/jam.htm

2. Ratification of the Convention and adherence to the Mechanism

[4] According to the official records of the OAS General Secretariat, Jamaica ratified the Inter-American Convention against Corruption on March 16, 2001 and deposited the instrument of ratification on March 30, 2001.

[5] In addition, Jamaica signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2002.

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of Jamaica

[6] The Committee wishes to acknowledge the cooperation that it received, throughout the review process from Jamaica and in particular from the Attorney General's Chambers, which was evidenced, inter alia, in the Response to the Questionnaire and in the constant willingness to clarify or complete its

¹ This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 12, 2014, at its Twenty-Fourth meeting, held at OAS Headquarters, September 8 – 12, 2014.

contents, and in the support for the on-site visit to which the following paragraph of this report refers. Together with its response, Jamaica sent the provisions and documents it considered pertinent. The Response as well as the provisions and documents may be consulted at the following webpage: www.oas.org/juridico/english/mesicic4_jam.htm

[7] The Committee notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-Site Visits*.² As members of the preliminary review subgroup, the representatives of El Salvador and Grenada conducted the on-site visit from April 1 – 3, 2014, with the support of the MESICIC Technical Secretariat. The information obtained on that visit is included in the appropriate sections of this report, and its agenda of meetings is appended thereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[8] For its review, the Committee took into account the information provided by Jamaica up to April 3, 2014, as well as that furnished and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*; and the *Methodology for Conducting On-Site Visits*.

2. Information received from civil society organizations and/or, *inter alia*, private sector organizations; professional associations; academics and researchers

[9] The Committee did not receive any documents from civil society organizations within the time period established by the Committee in the schedule, in accordance with Article 34(b) of the Committee's *Rules of Procedure*.

[10] Nonetheless, during the on-site visit to Jamaica, information was gathered from civil society and private sector organizations, professional associations, academics and researchers, who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the *Methodology for Conducting On-Site Visits*. A list of invitees is included in the agenda of the on-site visit, which has been annexed to this report. This information is reflected in the appropriate sections of this report.

II. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS ON THE IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISION SELECTED FOR THE FOURTH ROUND:

OVERSIGHT BODIES, WITH A VIEW TO IMPLEMENTING MODERN MECHANISMS FOR PREVENTING, DETECTING, PUNISHING, AND ERADICATING CORRUPT ACTS (ARTICLE III (9) OF THE CONVENTION)

[11] Jamaica has a set of oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts, among which the following are highlighted: the Office of the Contractor General, the Integrity Commission, the Commission for the Prevention of Corruption; and the Auditor General's Department.

[12] The following is a brief description of the purposes and functions of the four bodies selected by Jamaica that are to be examined in this report:

² Document SG/MESICIC/doc.276/11 rev. 2, which may be consulted at the following webpage: http://www.oas.org/juridico/english/met_onsite.pdf

[13] The Office of the Contractor General, which is responsible for monitoring the award and implementation of government contracts; monitoring the grant, issue, suspension or revocation of prescribed government contracts; as well as conducting investigations, among other things.

[14] The Integrity Commission, which is responsible for receiving, keeping on record and examining statutory declarations furnished by Parliamentarians, as well as carrying out independent inquiries and investigations relating to these declaration, among other things.

[15] The Commission for the Prevention of Corruption, which is responsible for receiving, keeping on record and examining statutory declarations furnished by public servants, as well as carrying out independent inquiries and investigations relating to these declaration, among other things.

[16] The Auditor General's Department, which is responsible for providing reasonable assurances that the stewardship of Government accounts meets both the Government of Jamaica's and internationally accepted standards and practices. To this end, the Department aims, through its audits and reports, to facilitate transparency and accountability, thereby improving the public's trust and perception of transparency, in government.

1. OFFICE OF THE CONTRACTOR-GENERAL

1.1. Existence of a legal framework and/or other measures

[17] The Office of the Contractor General (OCG) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[18] With respect to its objectives and functions, the OCG is responsible for the monitoring of the award and the implementation of government contracts³ with a view to ensuring that such contracts are awarded impartially and on merit; that the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve impropriety or irregularity; the implementation of each such contract conforms to the terms thereof. It is also responsible for monitoring the grant, issue, suspension or revocation of any prescribed licence,⁴ with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof.⁵

[19] In the discharge of its functions, the Contractor General shall be entitled to be advised of the award and, where applicable, the variation of any government contract by the public body⁶ responsible for such contract. In this respect, the Contractor General is provided with extensive investigative and monitoring powers, such as having access to all books, records, documents, stores or other property belonging to government; access to any premises or location where work on a government contract has, is, or is to be carried out; enter any premises occupied by any person in order to make such enquiries or to inspect such

³ Article 2 of the Contractor General Act provides that 'government contracts' mean, any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services, [http://moj.gov.jm/sites/default/files/laws/The%20Contractor General%20Act.pdf](http://moj.gov.jm/sites/default/files/laws/The%20Contractor%20General%20Act.pdf)

⁴ 'Prescribed licence' under the Act is defined as meaning any license, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body or an officer.

⁵ Article 4(1) of the Contractor General Act, *supra* note 3.

⁶ 'Public body' under the Act is defined as meaning a) a Ministry, department or agency of government; b) a statutory body or authority; or c) any company registered under the Companies Act, being a company in which the Government or an agency of the Government, whether by holding of shares or by other financial input, is in a position to influence the policy of the company.

document, record or property; access to all books, records, documents and other property used in connection with the grant, issue, suspension or revocation of any prescribed licence, as well as access to any premises or locations that such books, records or other property with respect to prescribed licences, among other things.

[20] Regarding the autonomy to pursue its functions, section 5(1) of the Contractor General Act provides that in the exercise of his or her powers, the Contractor General shall not be subject to the direction or control of any other person or authority.

[21] With respect to the scope of its functions, the OCG, through its Technical Services Department, also acts as the National Contracts Commission (NCC) Secretariat in ensuring that all technical, administrative and human resource requirements of the NCC are fully satisfied to enable it to effectively and efficiently accomplish its objectives and mandates, which is principally to promote the efficiency in the process of award and implementation of government contracts and ensuring transparency and equity in the awarding of such contracts.⁷ The only exceptions to its functions are found under section 19(1) of the Contractor General Act which provides that the at the direction of Cabinet, the Secretary of the Cabinet certifies that the giving of information or the answering of any question or production of any document or thing would prejudice the national security or defence of Jamaica.

[22] Regarding the manner in which decisions are adopted, decisions taken by the OCG are guided solely by the Contractor General, which, in keeping with section 5 of the Act, he or she exercises with independence. In addition, with respect to investigations, section 17 of the Act provides that the Contractor General may adopt whatever procedure he or she considers appropriate to the circumstances of a particular case. Finally, section 25 further provides that under certain instances, the functions of the Contractor General may be performed by any member of the OCG staff authorized for that purpose. The decisions of the Contractor General are subject to judicial review.

[23] With respect to the manner in which the Contractor General is appointed, Section 3(2) of the Contractor General Act provides that this person is appointed by the Governor General, after consultation with the Prime Minister and the Leader of the Opposition. Section 6 further provides that the person appointed Contractor General shall hold office for a term of 7 years and may be reappointed for an additional 5 years. Senior officers of the OCG are appointed by the Contractor General pursuant to section 13 of the Act. This section provides that the Contractor General may appoint and employ, at such remuneration and on such terms and conditions as may be approved by a Commission,⁸ such officers and agents considered necessary to assist the Contractor General in the proper performance of the Act. The country under review, in its response to the Questionnaire, notes that senior officers are appointed via a three-year contract with an option for renewal.⁹ The Governor General may also approve the appointment to the staff of the OCG any officer in the service of the Government.¹⁰

[24] Regarding the identification of human resource needs and selection of personnel, staff at the OCG are appointed and removed subject to section 13 of the Act as well. All appointments are by fixed term contract and removal/dismissal of employees is governed by the terms and conditions of the contracts of

⁷ See Response of Jamaica to the Questionnaire of the Fourth Round of Review, pg. 3, http://www.oas.org/juridico/PDFs/mesicic4_jam_resp.pdf, and section 23C of the Contractor General Act, *supra* note 3.

⁸ Section 13(2) of the Act provides that this Commission is made up of the Speaker, as chairman; the President of the Senate; the person designated by the Prime Ministers as Leader of Government business in the House of Representatives; the person designated by the Leader of the Opposition as Leader of the Opposition business in the House of Representatives; and the Minister Responsible for the public service.

⁹ Response to the Questionnaire, pg. 4, *supra* note 7.

¹⁰ Section 13(4) of the Contractor General Act, *supra* note 3.

employment.¹¹ In terms of hiring, during the on-site visit, the representatives noted that though it is an independent government agency, it is guided by the rules of the public service commission in this respect.

[25] The country under review also notes, in its response to the Questionnaire that all staff appointments are merit based and require varying education and professional qualifications contingent upon post/job functions. Selection is carried out through a tiered interview process, which is preceded, by either a public and/or internal advertisement as well as security vetting.¹² During the on-site visit, the representatives of the OCG further stated that to ensure merit, sets of interviews and a psychometric test are carried out, as well as background security checks. The professional qualifications and competences of candidates are examined. This process of recruitment was described in the 2011 Twenty-Fifth Annual Report of the OCG as follows:¹³

[26] *“[T]o ensure that the OCG possessed the requisite professional and technical skill-sets to enable it to more effectively discharge its mandates under the law, we developed and implemented, in 2006, a comprehensive personnel recruitment policy to facilitate the OCG’s objective and transparent recruitment of the best available talent in the Jamaican job market...The policy requires, among other things, the public invitation of job applications for vacant OCG positions which cannot be filled internally. Additionally, every prospective OCG employee must successfully undergo an average of two (2) to three (3) documented OCG interview assessments, that are administered by different OCG multi-disciplinary panels, before being cleared to be interviewed by the Contractor General himself.”*

[27] The Contractor General may be removed from office for inability to discharge the functions of the office, whether arising from infirmity of body or mind or any other cause; misbehavior; or trading with the Government of Jamaica without receiving prior approval by resolution of each House of Parliament. If each House of Parliament decides by resolution that the question of removing a Contractor General ought to be investigated, the Governor General is to appoint a tribunal, which will enquire into the matter and report on the facts to the Governor-General with a recommendation on whether the Contractor General should be removed.¹⁴ Section 8 of the Act also provides that a person cannot be appointed as a Contractor General who is a member of the Senate or the House of Representatives; is an undischarged bankrupt; has been convicted of any offence involving dishonesty or moral turpitude; or is a party to any contract with the Government of Jamaica, including as a partner in a firm, or a director or manager of a company which to his knowledge is a party to any contract with the Government of Jamaica. Finally, section 9 of the Act provides that the Contractor General shall devote his or her full time to the appointment and shall not accept paid employment in any other capacity.

[28] Regarding the staff of the OCG, the country under review, in its Response to the Questionnaire, notes that they are subject to disciplinary mechanisms contained in the Act, such as being subject to the Oath of Secrecy and subject to sanctions criminal sanctions for violation of this Oath.¹⁵ Moreover, the OCG has in place a Disciplinary Code, which are in keeping with the Staff Orders for the Public Service and vetted by the Ministry of Labour and Social Security.¹⁶

¹¹ Response to the Questionnaire, pg. 4, *supra* note 7.

¹² *Ibid.*

¹³ 2011 Twenty-Fifth Annual Report of the OCG, pg. 5, http://www.ocg.gov.jm/ocg/sites/default/files/annual_report/annual_report_2011.pdf

¹⁴ Contractor General Act, section 7, *supra* note 3.

¹⁵ Response to the Questionnaire, pg. 4, *supra* note 7.

¹⁶ *Ibid.*

[29] With respect to the existence of manuals or documents describing the function of personnel, in the response to the Questionnaire, the country under review notes that the OCG has developed and utilizes documented Operations Manuals and Job Descriptions and Functions, which have been approved by the Cabinet Office, to guide the functions of its personnel.¹⁷

[30] Training opportunities are provided, both externally and internally to members of staff. Each operating division within the OCG is allotted a training budget and further assistance is sought from local and international agencies.¹⁸ During the on-site visit, the representatives of the OCG stated that there are dedicated resources for training. Moreover, the Human Resources department checks on a daily basis to ascertain training opportunities. In this respect, the 2012 Twenty-Sixth Annual Report of the OCG notes that in 2012, 21 staff members benefited from one or more of the thirteen external training programs which were identified by the Human Resource Management Department.¹⁹ Moreover, a senior member of the investigation team participated in the Commonwealth Third Country Training Programme, “Better Governance – Managing Corruption”, which targeted Heads of Investigation and 2 staff members completed the Commonwealth Executive Programme in Public Management. Moreover, the annual reports of the OCG list the training provided by its personnel in a given year. For example, Appendix IX of the 2012 Annual Report of the OCG provides additional details on the training programs, which the OCG staff members participated in 2012.²⁰

[31] Regarding the manner in which the public is provided with information about objectives and functions, the country under review, in its response to the Questionnaire, notes that the OCG utilizes its website, publishes annual reports, reports of investigation, media releases and social and electronic media to disseminate information to the general public. It also highlights that the OCG website is updated at regular intervals with relevant information and/or activities affecting all stakeholders, inclusive of contact information, guides to functions and services offered, among other things.²¹

[32] With respect to mechanisms for internal control dealing with claims, complaints or allegations related to pursuit of objectives and to performance of their personnel, the country under review, in its response to the Questionnaire, notes that internal controls include an Impropriety Hotline and a web based impropriety form which allows stakeholders to discreetly and/or anonymously submit claims, complaints or allegations related to the pursuit of the OCG’s objectives and the performance of personnel.²² In that respect, the OCG website has a page to report an impropriety at <http://www.ocg.gov.jm/ocg/webform/report-impropriety>. During the on-site visit, the representatives of the OCG further stated that in addition to making a complaint online or using the impropriety hotline, complaints can be received through email, anonymously, or intelligence is shared to the OCG from other sources.

[33] The country under review also notes that the OCG has an internal Disciplinary Committee, and Ethics Officer and the Disciplinary Code to treat employee conduct and issues related to job performance.²³ Moreover, it has in place an Enquiry Management Process, which provides an in-depth

¹⁷ *Ibid.*

¹⁸ *Ibid.*, pg. 5.

¹⁹ 2012 Twenty-Sixth Annual Report of the OCG, pg. 199, http://www.ocg.gov.jm/ocg/sites/default/files/annual_report/Office%20of%20the%20Contractor%20General%20Annual%20Report%202012.pdf

²⁰ Appendices for the Twenty-Sixth Annual Report of the OCG, pg. 597, http://www.ocg.gov.jm/ocg/sites/default/files/annual_report/OCG%20Annual%20Report%202012%20Appendices.pdf

²¹ Response to the Questionnaire, pg. 5, *supra* note 7.

²² *Ibid.*

²³ *Ibid.*

analysis of complaints received by the Office and ensures that all complaints received by the OCG are addressed.

[34] With respect to the manner in which the budgetary needs are ensured, the country under review notes, in its response to the Questionnaire, that the OCG receives budgetary resources from the Ministry of Finance and Planning, through funds which are made available from the Consolidated Fund, in a manner similar to all other public bodies, which are not self financing.²⁴ Moreover, section 26 of the Contractor General Act provides that the funds of the OCG shall consist of the such sums as may from time to time be appropriated by Parliament for the purposes of the OCG; and all other moneys which may in any manner become payable to or vested in a Contractor General in respect to any matter incidental to his or her functions.

[35] For the appropriation received by the OCG for its budget, the following information is provided:²⁵

Year	Total Approved Estimates (in Jamaican dollars)	Actual Expenditure (in Jamaican dollars)
April 2011 – March 2012	199,002,000	198,938,962.99
April 2010 – March 2011	180,519,000	176,106,347.60
April 2009 – March 2010	170,727,000	168,540,488.73
April 2008 – March 2009	189,042,000	177,060,955.42
April 2007 – March 2008	154,398,000	146,663,647.29

[36] Regarding the coordination mechanism for harmonizing its functions with those of other oversight agencies, section 21 of the Contractor General Act provides that if in the course of an investigation or in the conclusion thereof, there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, the matter shall be referred to the person or persons competent to take such disciplinary or other proceeding as may be appropriate, and lay a special report before Parliament. Moreover, section 29 of the Act provides that every person who willfully makes a false statement or misleads or attempts to mislead a Contractor General or his or her staff; obstructs or hinders or resists a Contractor General or his or her staff; or fails to comply with any lawful requirement of a Contractor General or his or her staff; is guilty of an offence. In these cases, they are referred to the Director of Public Prosecutions. These referrals, as well as those based on section 21 of the Act, are documented in the annual reports of the OCG. For example, the referrals in these reports set out the person involved, the reason for the referral and the government body to which the matter was referred,

²⁴ *Ibid.*

²⁵ 2012 Twenty-Sixth Annual Report of the OCG, pg. 205, *supra* note 19. As of June 2014, 1 US Dollar is equivalent to 110 Jamaican Dollar.

such as the aforementioned Director of Public Prosecutions, the Auditor General, the Public Accounts Committee, among others.²⁶ They also note if any actions have been taken to date by these government bodies.

[37] With respect to accountability mechanisms applicable to the performance of duties, section 28 of the Contractor General Act provides that Contractor General is to submit an annual report to Parliament relating generally to the execution of his or her functions. This report, which is made available on the website of the OCG, provides information regarding the work carried out in the monitoring of construction contracts; non-construction contracts, licences, permits and concessions, as well as provides information on the work carried out by various divisions within the OCG, such as the Technical Services Division, the Corporate Services Division, Information Services Division and the Special Investigations Division. Reference is also made to the annual audit, which is executed by the Auditor General, in accordance with section 27(1) of the Act.

1.2. Adequacy of the legal framework and/or other measures.

[38] The Office of the Contractor General has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 1.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures.

[39] First, in addition to the OCG, Jamaica has established a National Contracts Commission (NCC); its principal objective is to promote the efficiency in the process of award and implementation of government contracts and ensuring transparency and equity in the awarding of such contracts.²⁷ It reviews and endorses recommendations for the award of Government contracts above J\$15 million in value, registering and classifying contractors who are desirous of tendering on Government contracts, and making recommendations to Cabinet for improving the efficiency of the procedures for the granting and implementation of Government contracts.²⁸ The Committee notes that the objective of the NCC is very similar to the objectives for the OCG, as set out under section 1.1 of this Report, that is, for the monitoring of the award and the implementation of government contracts with a view to ensuring that such contracts are awarded impartially and on merit.

[40] In addition, section 23J of the Contractor General Act provides that the funds and resources of the NCC are to be provided from the funds vested in the OCG. As a result, the OCG provides administrative and technical support to the NCC and in doing so, functions as the Secretariat to the NCC. This close relationship makes it difficult for persons to differentiate between the two entities, although the OCG does state that though it provides administrative and technical support, it is no way involved in the NCC's decision making.²⁹ However, the Committee notes that as part of its function to monitor the award and implementation of government contracts, among other things, the OCG is mandated to monitor the activities of the NCC, while providing it financial and human resource support. As well, as stated under the description of the NCC on the website of the OCG, while observing that both entities are

²⁶ 2012 Twenty-Sixth Annual Report of the OCG, pg. 216, *ibid*.

²⁷ Section 23C of the Contractor General Act, *supra* note 3.

²⁸ Section 23D, *ibid*. See also the National Contracts Commission, <http://www.ncc.gov.jm/ncc/>

²⁹ 2012 Twenty-Sixth Annual Report of the OCG, pg. 8, *supra* note 19.

separate and distinct under law, because of its subsidiary role as a resource provider to the NCC, the OCG is privy to the activities and deliberations of the NCC.³⁰

[41] Efforts have been made to separate the two entities, in order to address the apparent overlap in the functions and personnel between them. In November 2010, a decision by Cabinet to legally ‘separate’ the two entities was reportedly approved, however as noted by in the 2010 Twenty-Fourth Annual Report of the OCG:³¹

[42] *“[A]s far as the OCG is aware, the requisite institutional arrangements and legislation to facilitate the lawful ‘separation’ of the NCC, from the OCG, in the manner that was contemplated by the assurances that were given by the Prime Minister, have not yet been realized.”*

[43] The 2011 Annual Report notes that the operations of these two entities remain undisturbed, while the 2012 Annual Report refers to progress made, without providing specifics on any steps taken.³² The Committee observes that as of the time of the writing of this Report, they appear to be sharing the same offices, telephone and fax number.³³

[44] The Committee does observe that there is a current bill before the Jamaican Parliament, the Integrity Commission Act, 2014, which would establish a single anti-corruption entity that would assume the functions of the OCG, as well as that of the Commission for the Prevention of Corruption and the Integrity Commission, in order to have a coordinated national anti-corruption strategy to effectively tackle the pervasive problem of corruption and address shortcomings in the existing anti-corruption regime in Jamaica, which has been found to be inadequate in the fight against corruption.³⁴ If passed, it would also make the NCC a separate entity from the OCG, not reliant on it for funding or human personnel.

[45] Given the apparent overlap in functions and real one with personnel that could affect the operation and independence of both entities, the country under review should consider carrying out the institutional and legislative reforms necessary to separate the two institutions, so that the OCG can carry out its functions of ensuring probity, transparency, fair competition and accountability in government contracting. The Committee will formulate a recommendation. (see Recommendation 1.4.1 in Section 1.4 of Chapter II of this Report)

[46] Second, by providing human and financial resources to the NCC, this has also strained the OCG in carrying out its functions. The Technical Services Division (TSD) of the OCG acts as the Secretariat of the NCC. In the Annual Reports of the OCG, reference is made on temporarily assigning OCG staff from other functional critical OCG divisions to the TSD, so as to satisfy the overwhelming demands of the NCC in its function to implement a 100% due diligence assessment of all registration and re-registration

³⁰ National Contracts Commission Overview, <http://www.ocg.gov.jm/ocg/page/national-contracts-commission-ncc-overview>

³¹ 2010 Twenty-Fourth Annual Report of the OCG, pg. 45, http://www.ocg.gov.jm/ocg/sites/default/files/annual_report/annual_report_2010_0.pdf

³² 2011 Twenty-Fifth Annual Report of the OCG, pg. 18, http://www.ocg.gov.jm/ocg/sites/default/files/annual_report/annual_report_2011.pdf and 2012 Twenty-Sixth Annual Report of the OCG, pg. 8, *supra* note 19.

³³ See the contact information provided in the ‘Contact Us’ sections of both the OCG and the NCC, which provide identical information, NCC Contact Us, http://www.ncc.gov.jm/ncc/contact_us.php and OCG Contact Us, <http://www.ocg.gov.jm/ocg/page/contact-us>

³⁴ Integrity Commission Act, 2014, Memorandum of Objects and Reasons, pg. 67, http://www.japarliament.gov.jm/attachments/339_The%20Integrity%20Commission%20Act.%202014.pdf

applications that are submitted by contractor applicants to the NCC.³⁵ As noted in the 2011 Twenty-Fifth Annual Report of the OCG:

[47] *“While the OCG is cognisant of the fact that the NCC’s Contractor registration and re-registration processes are currently somewhat protracted, the reality is that with the OCG’s limited TSD staff, and the failure of the Government to assign additional staff to the OCG, despite innumerable requests having been made over the past three (3) years, the issue will continue to be of concern to the OCG, Contractors, and the OCG’s other stakeholders alike.*

[48] *The bald fact, however, is that the OCG has been doing its best under extremely trying and difficult circumstances and has received absolutely no assistance whatsoever from the Government, or support from the NCC, in its quest to secure additional staffing resources to effectively address the problem.”*

[49] Reference is also made in the 2012 Annual Report that in carrying out its functions, the TSD continues to be hampered by limited human resources, and there was a reduction in the number of non-construction contracts, licenses, permits and concessions monitored in 2012, due to, among other reasons, the re-assignment of human resources to assist with the reduction of a backlog faced by the TSD in the registration of contractors.³⁶

[50] One avenue that may relieve the strain on human resources is the separation of the NCC from the OCG, in a manner that does not weaken or undermine the OCG. Mention has been also made in the past by the Contractor General that in order to address staff allocations and resources, all decisions regarding the OCG’s budgetary, resource and personnel should be removed from the purview of the Ministry of Finance, and be vested in a Bi-Partisan Committee of Parliament to be chaired by the Opposition.³⁷ In whatever form the country under review may address the issue of personnel in the OCG, the Committee believes that Jamaica should consider providing the human resources necessary to adequately carry out the functions of the OCG, within available resources. (see Recommendation 1.4.2 in Section 1.4 of Chapter II of this Report)

[51] Third, the Committee observes that the OCG does not have the powers to stop a contract already in progress or to prosecute offending parties where impropriety or irregularity is uncovered. As noted in the 2012 Twenty-Sixth Annual Report of the OCG, its *“powers are limited to investigating allegations and where necessary, making Referrals to the relevant authorities for further action, pursuant to Section 21 of the Contractor General Act.”*³⁸ In addition to a referral, once an investigation is concluded, the OCG may issue recommendations for a government body to take corrective measures to address any shortcomings the OCG has identified in the awarding of a contract or granting, issuance, use, suspension or revocation of any prescribed license, among other matters.³⁹ These OCG then issues formal reports to Parliament and to a variety of State Authorities containing recommendations and/or findings, whether contained in the annual reports, or in reports of investigation.

[52] The Committee observes, however, that the recommendations of the OCG are generally not being followed by government bodies, an issue of concern for this oversight body. For example, in the 2007

³⁵ 2011 Twenty-Fifth Annual Report of the OCG, pg. 17, *supra* note 32.

³⁶ 2012 Twenty-Sixth Annual Report of the OCG, pg. 15 and 45, *supra* note 19.

³⁷ 2011 Twenty-Fifth Annual Report of the OCG, pgs. 9 and 59, *supra* note 32.

³⁸ 2012 Twenty-Sixth Annual Report of the OCG, pg. 1, *supra* note 19.

³⁹ See sections 15, 20 and 21 of the Contractor General Act, *supra* note 3.

Twenty-First Annual Report, the following sentiment was noted by the Contractor General, which was repeated in the 2008, 2009 and 2010 Annual Reports:⁴⁰

[53] *“It would be remiss of me, however, if I did not place upon record the OCG’s continued disappointment regarding the unacceptable levels of attention which the Government and the Parliament of Jamaica continue to pay to the considered Recommendations of the OCG, most of which are typically communicated in (a) official OCG correspondence (b) OCG Investigation Reports and (c) OCG Annual Reports.*

[54] *Several of these Recommendations, whether made in 2007 or before, or by myself or by other Contractors General, have, again, for another year, gone wholly un-heeded. If this is to become a continuing trend, then it may very well provide the basis upon which the OCG, itself, might become forced to question its own relevance.”*

[55] Moreover, the Contractor General has observed that some of the recommendations have been repeated ad infinitum and ad nauseum, addressing the same types of failures and/or breakdowns in compliance levels, probity, accountability and transparency in government contracting.⁴¹

[56] This difficulty is noted in the response to the Questionnaire, where the country under review notes that:⁴²

[57] *“The challenges faced by the OCG are those related to the prevention and detection of corrupt acts relevant to the award and termination of government contracts. Whilst the OCG has wide and varied investigative powers, inclusive of the power to enter and seize information related to the award of contracts, there are still challenges to the OCG obtaining the compliance of persons/entities under investigation. The OCG faces a challenge once the corrupt acts have been detected.”*

[58] This sentiment is echoed in the 2012 Annual Report, the last one tabled, where the OCG notes that:⁴³

[59] *“We have continued to observe weaknesses in the compliance levels, probity, accountability and transparency in Government contracting and have over the years made considered recommendations to respective Public Bodies and Public Officers in an effort to address the issues and concerns which are the subject of Investigations.*

[60] *There is, however, heightened concern in the fact that upon the completion of several Reports of a similar nature, particularly as it regards issues of irregularity and impropriety in the award and implementation of government contracts, the majority of our Recommendations have been recapitulated, but to no avail. The OCG is of the considered position that Public Officer and Officials must commence acting in a manner and form that promotes due care, transparency and integrity, and for all Public*

⁴⁰ 2007 Twenty-First Annual Report of the OCG, pg. 1, http://www.ocg.gov.jm/ocg/sites/default/files/annual_report/annual_report_2007.pdf; 2008 Twenty-Second Annual Report of the OCG, pgs. 18 – 19, http://www.ocg.gov.jm/ocg/sites/default/files/annual_report/annual_report_2008.pdf; 2009 Twenty-Third Annual Report of the OCG, pgs. 11 – 12, http://www.ocg.gov.jm/ocg/sites/default/files/annual_report/annual_report_2009.pdf; and 2010 Annual Report of the OCG, pg. 23, http://www.ocg.gov.jm/ocg/sites/default/files/annual_report/annual_report_2010_0.pdf

⁴¹ See 2009 Twenty-Third Annual Report of the OCG, pg. 12, and 2010 Twenty-Fourth Annual Report of the OCG, pg. 15, *ibid.*

⁴² Response to the Questionnaire, pg. 7, *supra* note 7.

⁴³ 2012 Twenty-Sixth Annual Report of the OCG, pg. 210, *supra* note 19.

Officers/Officials to be held accountable for such actions which are ultra vires and in breach of Public Sector policies, rules, procedures and all other applicable legislations which govern public procurement and contracting.”

[61] The lack of compliance appears to continue, as the OCG has issued 5 special investigative reports, containing recommendations for the time period of September 2013 – March 2014, which are not being complied with. To illustrate, in a March 27, 2014, the OCG issued a media release regarding the issuance of a licence to a utility company, in disregard to an OCG recommendation that the company not be included in a bidding process, as its bid was submitted subsequent to the expiration of a bid submission deadline.⁴⁴

[62] The Committee observes that the lack of compliance with the recommendations issued by the OCG undermines the important work that this institution undertakes in monitoring the award and implementation of contract awards and licences. In this respect, the Committee is in agreement with the observation by the OCG in its last annual report that:⁴⁵

[63] “[T]he OCG stands firm in its recurring recommendation to be given the power and the authority to halt a procurement and/or contract award matter which exhibits signs of irregularity, impropriety, corruption and/or certain questionable occurrences which it considers to be administered in a manner harmful to the interests of the People and Taxpayers of this country.”

[64] The country under review should consider establishing mechanisms that can be applied by the OCG to halt or regularize the awarding of a contract or licence based on the findings of an investigation. Moreover, the country under review should consider establishing a follow-up mechanism whereby government bodies subject to a recommendation issued by the Office of the Contractor General are required to report, within an established time period, on the actions taken to implement them and provide written reasons if they are not to be considered. The Committee will formulate recommendations in this regard. (see Recommendations 1.4.3 and 1.4.4 in Section 1.4 of Chapter II of this Report)

[65] This lack of compliance with recommendations issued by the OCG was raised by the representatives of the civil society organization, National Integrity Action, where in their view, the OCG is a good office that has strong legislation on paper, but they have insufficient powers to carry out their work as they only have the power to issue recommendations. In their estimation, in the last 5 – 6 years, the OCG has issued 40 recommendations, which have been ignored in whole or in part.

[66] Fourth, the Committee notes that under section 21 of the Contractor General Act, if the Contractor General finds, during the course of an investigation, that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, the matter shall be referred to the person or persons competent to take disciplinary or other proceedings as may be appropriate, and lay a special report before Parliament. These referrals are sent to institutions such as the Attorney General’s Department, the Office of the Director of Public Prosecutions, the Commission for the Prevention of Corruption and the Office of the Auditor General, among others, in order for appropriate action to be taken. However, the OCG notes, in its annual reports, its concern on the failure

⁴⁴ See Media Release of March 27, 2014, Office of the Contractor General Expresses Concerns as it regards the 360 Megawatt Project and the Office of the Utilities Regulations’ Pending Recommendation for the Provision of Licence to Energy World International, http://www.ocg.gov.jm/ocg/sites/default/files/media_releases/OCG%20Media%20Release%20OCG%20-%20The%20Office%20of%20the%20Contractor%20General%20Expresses%20Concerns%20as%20it%20regards%20the%20360%20Megawatt%20Project%20and%20the%20OURs%20Pending%20Recomme.pdf

⁴⁵ 2012 Twenty-Sixth Annual Report of the OCG, pg. 210, *supra* note 19.

on the part of the aforementioned institutions to act upon or respond to these referrals in a timely and/or effective manner, or at all.⁴⁶ The OCG also observes that in many instances, it does not receive an acknowledgement of the receipt of these referrals from some of these institutions.⁴⁷ As with its recommendations, the OCG notes, “*if nothing becomes of the OCG’s Referrals or Recommendations, then what good purpose does the OCG really have?*”⁴⁸

[67] In the 2011 Twenty-Fifth Annual Report of the OCG, in a section entitled “Failure of the State to Hold Offenders Accountable,” the OCG notes that in the past 5 years to that report, very little prosecutorial, enforcement or punitive action has resulted as a result of a referral made by it. In the 2012 version of the Report, the last one published online, in a section that summarizes the referrals made for 2012, of 10 referrals made to various government bodies, in four instances the OCG received acknowledgement letters from them, with only one that led to further action, a meeting that was convened with representatives of the Fraud Squad and a Witness Statement provided to assist with the investigation.⁴⁹

[68] The Committee observes that the general failure to take steps with respect to the referrals provided by the OCG undermines the object and functions of this oversight body. The country under review should consider reviewing this situation, and consider making it obligatory for government bodies to report to the OCG on the outcomes of their referrals, in a timely and effective manner. If no steps are taken to prosecute or sanction the conduct identified by the OCG that led to a referral, this should be stated as well. The Committee will formulate a recommendation. (see Recommendation 1.4.5 in Section 1.4 of Chapter II of this Report)

[69] Fifth, the Committee further observes that the OCG has in past Annual Reports, lamented the inaction by the Office of the Director of Public Prosecutions to carry out prosecutions for corruption offences. In the 2011 Twenty-Fifth Annual Report of the OCG, the Contractor General has laid out the major reasons for this situation. For instance, corruption crimes lose out for attention to offences against the person, in particular with other serious crimes such as murder. Moreover, the OCG asserts that “*[i]t is also an irrefutable fact that the country’s inordinately high rates of violent crime have literally swamped the already limited resources and assets of the JCF [Jamaica Constabulary Force], the DPP [Director of Public Prosecutions], and the Judiciary.*”⁵⁰ The OCG also refers to a high backlog of cases, which it places as high as 400 000. This has led the OCG to conclude that the DPP is not structured or adequately resourced to effectively and efficiently investigate and prosecute sophisticated crimes of corruption.

[70] Further, the OCG notes that it is not the only government body whose referrals have led to a lack of action or prosecutions by the Office of the DPP. It notes that Anti-Corruption Branch of the Jamaica Constabulary Force, and the Commission for the Prevention of Corruption have all publicly lamented that several criminal matters referred to the DPP have not been prosecuted.⁵¹

[71] As these government bodies rely exclusively upon the DPP to carry out prosecutions of corruption and corruption related offences, their effectiveness can only go so far if prosecutions are not being carried out. The Committee observes that the country under review should consider addressing the lack

⁴⁶ 2009 Twenty-Third Annual Report of the OCG, pg. 12, *supra* note 40.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ 2012 Twenty-Sixth Annual Report of the OCG, pgs. 216 – 221, *supra* note 19.

⁵⁰ 2011 Twenty-Fifth Annual Report of the OCG, pg. 48, *supra* note 32.

⁵¹ *Ibid.*, pg. 49.

of prosecutions or actions undertaken by the Office of the DPP, whether it is an issue of priorities or resources. The Committee will formulate a recommendation. (see Recommendation 1.4.6 in Section 1.4 of Chapter II of this Report)

[72] Related to this issue, the country under review may consider promoting coordination mechanisms among these oversight bodies with the Office of the DPP. As this Office has the exclusive competence to carry out prosecutions, open channels of communication between the OCG and this Office can help facilitate its work and lead to prosecutions for corruption and corruption related offences and assist the OCG in preparing relevant documentation to support a prosecution. The Committee will formulate a recommendation. (see Recommendation 1.4.7 in Section 1.4 of Chapter II of this Report)

[73] Sixth, the Committee observes that section 29 of the Contractor General Act sets out three instances where criminal sanctions may apply for breaching this legislation. This may occur when a person a) willfully makes any false statement to mislead or misleads or attempts to mislead a Contractor General or any other person in the execution of the Contractor General's functions under the Act; b) without lawful justification or excuse obstructs, hinders or resists a Contractor General or person in the execution of his functions under the Act or fails to comply with any lawful requirement of a Contractor General or any other person under the Act; and c) the Contractor General and every person concerned with the administration of the Act discloses documents, information and things made to them in the execution of any provisions of the Act, which are to be regarded as secret and confidential. The penalty for violation of these provisions is a fine not exceeding J\$5000 or imprisonment not exceeding one year.⁵² The Committee notes that in terms of US dollars, the maximum fine that can be levied against a person for violation of the Act is approximately \$45.

[74] The OCG has in the past commented on how the low penalties that can be imposed for violation of the Act do not act as an effective deterrent, and that they have not changed for close to three decades.⁵³

[75] *“But even if the commission of corruption and other related offences were today being effectively and efficiently investigated and prosecuted in Jamaica – a situation which, unfortunately, as you have seen, is not the case – the fact of the matter is that the sanctions that are associated with breaches of the said offences are so low that they cannot possibly serve as a deterrent, but yet nothing is being done about it.*

[76] *A case in point is the innumerable OCG recommendations which have been made to have the situation remedied as regards the prescribed sanctions for the three (3) anti-corruption offences that are specified under the Contractor General Act. The subject sanctions have remained, for the past 28 years, at the inexplicable low level of a fine not exceeding J\$5,000 and/or to imprisonment for a term not exceeding 12 months....*

[77] *As a matter of urgency and necessity, it is, therefore, crystal clear that the situation in Jamaica is in dire need of critical address. Significantly tougher criminal sanctions must be legislated, **and enforced**, if corruption in public contracting is to be effectively tackled. These must include mandatory custodial and economic based penalties, where appropriate.”* [emphasis in the original]

[78] The Committee observes that since the penalties in place in the Contractor General Act have not been updated in close to three decades, the country under review should consider reviewing them in

⁵² J\$1 is equivalent to US 1 cent.

⁵³ 2011 Twenty-Fifth Annual Report of the OCG, pgs. 49 – 50, *supra* note 32.

order to have in place an effective deterrent for breach of the Act. The Committee will formulate a recommendation. (see Recommendation 1.4.8 in Section 1.4 of Chapter II of this Report)

[79] In this respect, with the direction by the country under review to consolidate the powers of the OCG under a new Integrity Commission, the Committee observes that this new regime should take into consideration the need to provide stronger penalties for violation of the matters currently covered by the the OCG under the Contractor General Act.

1.3. Results of the legal framework and/or other measures.

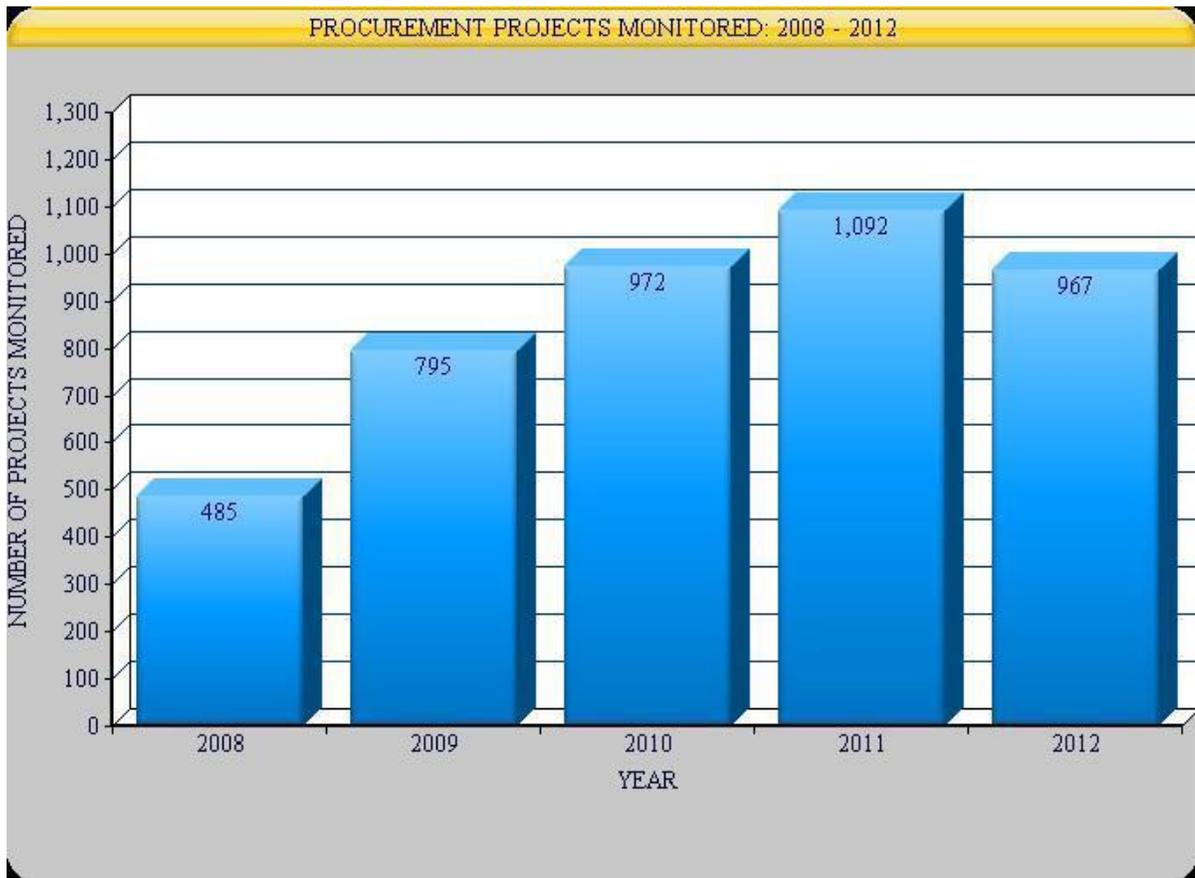
[80] In its response to the Questionnaire, the country under review notes that the OCG has taken the following actions and/or implemented initiatives to aid in the prevention of corrupt acts associated with the award and/or termination of government contracts and prescribed licences: Quarterly Contract Awards Report; Conduct of Statutory Investigations; Enquiry Management and Procurement Audits; Public Body Presentations; implementation of a Prescribed Licence Information Database; Public Speeches by the Contractor General; Involvement in the Public Private Partnership Oversight; Establishment of targeted monitoring portfolios; Audit of the Contractor Registration Process; and Issuance of Media Releases on varying issues related to, amongst other things, corruption.⁵⁴

[81] In addition, as set out under section 1.1 of this Report, the OCG publishes an annual report, which contains a comprehensive account of its activities. For example, information is provided on the activities carried out by the various divisions that make up the OCG. The Inspectorate Division, which is primarily responsible for monitoring government contracts, monitored a total of 967 procurement opportunities in 2012, 600 of which were non-construction projects while the remaining 367 were construction projects.⁵⁵ The total number of procurement projects monitored between 2008 – 2012 is replicated below from the 2012 Twenty-Sixth Annual Report of the OCG:⁵⁶

⁵⁴ Response to the Questionnaire, pgs. 6 – 7, *supra* note 19.

⁵⁵ 2012 Twenty-Sixth Annual Report of the OCG, pg. 9, *supra* note 32.

⁵⁶ *Ibid.*



[82] Detailed information and recommendations issued by the OCG with respect to these procurements are found in these annual reports,⁵⁷ in addition to pre and post monitoring activities and comments on construction and non-construction contracts, as well as a summary of monitored construction and non-construction contracts.⁵⁸

[83] These annual reports also contain information on the Quarterly Contracts Award Report that are prepared and submitted by all procuring public bodies, which indicate the particulars of contracts, which have been awarded by these bodies that have a value between J\$500 000 to infinity in value.⁵⁹ These Reports are to be submitted to the OCG, in the manner stipulated, in arrears, within one calendar month following the ending of the Quarter to which they relate. Of note, since the first quarter of 2009, the OCG has seen a 100% compliance rate for three consecutive calendar years from 2009 to 2012, or twelve consecutive running quarters, with the exception of the 1st quarter 2012, wherein a compliance rate of 99% was achieved.⁶⁰ For the year 2012, this amounted to 9399 awards which were valued at

⁵⁷ See 'Monitoring of Construction Contracts' and 'Monitoring of Non-Construction Contracts, Licences, Permits and Concessions', found on pgs. 21 and 45, respectively, of the 2012 Twenty-Sixth Annual Report of the OCG, *ibid.*

⁵⁸ See Appendices III – VIII of the Appendices for the Twenty Sixth Annual Report of the OCG, http://www.ocg.gov.jm/ocg/sites/default/files/annual_report/OCG%20Annual%20Report%202012%20Appendices.pdf

⁵⁹ See Quarterly Contracts Award (QCA) Regime, <http://www.ocg.gov.jm/ocg/view/qca-reporting>. These reports further captures additional information such as the tender opening date and approvals received and allows Public Bodies the ability to provide justifications for the use of Direct Contracting or Limited Tender over a certain value. Additionally, Public Bodies are able to insert comments for each contract reported, as needed.

⁶⁰ *Ibid.*, pg. 158.

more than J\$25.7 billion.⁶¹ A summary of these reports is found in the Appendix IX and X of the Appendices for the Twenty-Sixth Annual Report to the OCG.⁶²

[84] Detailed information is also provided regarding the work of the various divisions that make up the OCG (Construction Contracts, Non-Construction Contracts, Licences and Permits, Technical Services, Corporate Services, Information Systems, Special Investigations Unit), as well as the training provided to staff during the year.

[85] Significantly, the annual report also sets out the investigations carried out by the OCG each year, and the recommendations that arise from them. These reports also maintain results on how many referrals have been made by the OCG to various government bodies, and if any feedback has been received as a result of these referrals.

1.4. Conclusions and recommendations.

[86] Based on the comprehensive review conducted with respect to the Office of the Contractor General in the foregoing sections, the Committee offers the following conclusions and recommendations:

[87] **Jamaica has considered and adopted measures intended to maintain and strengthen the Office of the Contractor General as an oversight body, as described in Chapter II, Section 1 of this Report.**

[88] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 1.4.1. Consider carrying out the institutional and legislative reforms necessary to separate the National Contracts Commission from the Office of the Contractor General. (See section 1.2. of Chapter II of this Report)
- 1.4.2. Provide the Office of the Contractor General with the human resources needed for the proper performance of its function, within available resources. (See section 1.2 of Chapter II of this Report)
- 1.4.3. Consider the possibility of providing the Office of the Contractor General with the power and authority to halt or regularize a contract or licence award that exhibits signs of corruption, irregularity or impropriety. (See section 1.2 of Chapter II of this Report)
- 1.4.4. Establish a follow-up mechanism whereby government bodies subject to a recommendation issued by the Office of the Contractor General are required to report, within an established time period, on the actions taken to implement them and provide written reasons if they are not to be considered. (See section 1.2 of Chapter II of this Report)

⁶¹ *Ibid.*, pg. 162.

⁶² Appendices for the Twenty-Sixth Annual Report to the OCG, pgs. 541 and 569, http://www.ocg.gov.jm/ocg/sites/default/files/annual_report/OCG%20Annual%20Report%202012%20Appendices.pdf

- 1.4.5. Make it obligatory for the Commission to receive feedback from the government bodies regarding the outcome of the referrals of wrongdoing in a timely and effective manner. (See section 1.2 of Chapter II of this Report)
- 1.4.6. Address the lack of prosecutions being carried out by the Office of the Director of Public Prosecutions for corruption and corruption related offences. (See section 1.2 of Chapter II of this Report)
- 1.4.7. Establish, as appropriate, an information exchange and coordination mechanism or arrangement between the Office of the Contractor General and the Office of the Director of Public Prosecutions, in order to assist the Office of the Contractor General in preparing relevant documentation to support a prosecution. (See section 1.2 of Chapter II of this Report)
- 1.4.8. Consider updating the sanctions in place for breaches of the Contractor General Act so that they act as an effective deterrent. (See section 1.2 of Chapter II of this Report)

2. THE INTEGRITY COMMISSION

2.1 Existence of a legal framework and/or other measures

[89] The Integrity Commission has a set of provisions in its legal framework and other measures concerning, among others, the following:

[90] With respect to its objectives and scope of functions, section 5(1) of the Parliamentary (Integrity of Members) Act provides that it is to receive and keep on record statutory declarations furnished by Parliamentarians; examine these declarations; request from these Parliamentarians any information relevant to these declarations that would assist the Commissioners in their examination; make independent inquiries and investigations with respect to these declarations; and to receive and investigate any complaint against a Parliamentarian regarding an act of corruption within the meaning of section 14 of the Corruption of Prevention Act.⁶³

[91] The Integrity Commission is also empowered to summon witnesses, require the productions of documents and to do all such things as it considers necessary or expedient for the purpose of carrying out its functions.⁶⁴

[92] Regarding the manner in which decisions are adopted, pursuant to section 15 of the First Schedule of the Parliamentary (Integrity of Members) Act, decisions reached by the Integrity Commission are to be made by majority of votes, of a quorum of at least three Commissioners. The Chairman, in addition to having an original vote, shall also have the casting vote in any case in which the voting is equal. The decisions of the Integrity Commission are subject to judicial review.

[93] With respect to the selection of senior officers, members of the Integrity Commission are made up of the Auditor General and four other members (referred to as ‘appointed members’), who are

⁶³ Parliamentary (Integrity of Members) Act, http://www.oas.org/juridico/PDFs/mesicic4_jam_parlia.pdf. Parliamentarians are defined as meaning members of the House of Representatives and Senators. See also section 14 of the Corruption of Prevention Act which sets out acts of corruption, <http://moj.gov.jm/sites/default/files/laws/The%20Corruption%20Prevention%20Act.pdf>

⁶⁴ Section 5(2) of the Parliamentary (Integrity of Members) Act, *supra* note 63.

appointed by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition. These four members are chosen from 5 categories of persons: i) members of the Privy Council; ii) president or past president of the Institute of Chartered Accountants of Jamaica; iii) retired Judges of Appeal or retired Judges of the Supreme Court; iv) persons who have held the post of Commissioner of Income Tax, Financial Secretary or Auditor-General; and v) persons, who in the opinion of the Governor-General are persons of high integrity and are able to exercise competence, diligence and sound judgment in fulfilling their responsibilities under the Act.⁶⁵

[94] Appointed members hold office for a period of not less than two years nor more than five years, and they are eligible for reappointment. The Governor-General appoints one of the members as Chairman of the Integrity Commission.⁶⁶ The Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may at any time revoke the membership of any appointed member.

[95] Regarding the identification of human resource needs and selection of personnel, section 13 of the First Schedule to the Act provides that the Integrity Commission shall appoint and employ a Secretary and such other officers and servants as it thinks necessary for the proper carrying out of its work. In addition, the Governor-General may approve the appointment of any officer in the service of the Government to any office with the Integrity Commission.

[96] Moreover, in the response to the questionnaire, the country under review notes that all staff appointments are merit based, requiring varying education and professional qualifications. Selection of personnel is governed by a tiered interview process, which is preceded by either a public and/or internal advertisement as well as security vetting.⁶⁷

[97] During the on-site visit, the representatives of the Integrity Commission stated that contracts are for a fixed 3 or 5-year term, and as they are not considered as members of the public service, their removal/dismissal is governed by the terms and conditions of contracts of employment.⁶⁸ The staff of the Integrity Commission consists of 5 persons: a secretary manager, investigating officer, executive officer, senior secretary and office attendant.⁶⁹

[98] With respect to the use of modern technologies to facilitate its work, the representatives of the Integrity Commission, during the on-site visit, stated that it has access to databases to help verify the content of the statutory declarations, such as those of the National Land Agency, the Companies Office of Jamaica and the Motor Vehicle Registry at the Inland Revenue Department.⁷⁰

[99] Regarding the manner in which budgetary needs are ensured, in its response to the questionnaire, the country under review notes that the funds for the Integrity Commission consists of amounts provided for the execution of its work by Parliament or such other monies as may be lawfully paid to it.⁷¹ Moreover, the Integrity Commission is to submit to the Prime Minister for

⁶⁵ Section 1 of the First Schedule of the Parliamentary (Integrity of Members) Act, *ibid.*

⁶⁶ Sections 2, 3 and 4 of the First Schedule, *ibid.*

⁶⁷ Response to the Questionnaire, pg. 9, *supra* note 7.

⁶⁸ Response to the Questionnaire, *ibid.*

⁶⁹ See Report of the Integrity Commission Appointed Under the Parliamentary (Integrity of Members) Act for the Year ended 31st December 2010, pg. 4, http://www.japarliament.gov.jm/attachments/1158_Report%20of%20the%20Integrity%20Commission.pdf

⁷⁰ See also pg. 4 of the 2010 Annual Report of the Integrity Commission, *ibid.*

⁷¹ Response to the Questionnaire, pg. 9, *supra* note 7. See also section 10 of the First Schedule to the Parliament (Integrity of Members) Act, *supra* note 63.

approval, before October 31 of year, its estimates for revenue and expenditure for the period commencing on April 1 of the following year and ending on March 31 of the subsequent year.⁷² In addition, during the on-site visit, the representatives of the Integrity Commission provided the following information regarding its budget for the past five fiscal years:

Year	Budget (in Jamaican dollars)
2009/2010	11.4 million
2010/2011	11.6 million
2011/2012	12.8 million
2012/2013	17.3 million ⁷³
2013/2014	15.5 million

[100] Section 11 of the First Schedule to the Act further provides that the Integrity Commission is to keep proper accounts of its receipts, payments, assets and liabilities and that these accounts are to be audited annually by an auditor appointed each year by the Integrity Commission with the approval of the Prime Minister.

[101] With respect to coordination mechanisms, the Act provides that the Integrity Commission is to report any acts of corruption to the Parliamentary Leaders (Prime Minister, Leader of the Opposition, Speaker of the House, and President of the Senate) and the Director of Public Prosecutions.⁷⁴ Moreover, when any person fails to furnish to the Integrity Commission a statutory declaration as required under the Act, or the Integrity Commission is not satisfied with the any aspect of a declaration, the Integrity Commission is to report the matter to the Parliamentary Leaders. This report may also be referred to the Director of Public Prosecutions or the Commissioner of Police, who may take action as he thinks appropriate in a particular case.⁷⁵

[102] Regarding accountability mechanisms, section 12(2) of the First Schedule to the Act provides that the Commission is to submit to the Prime Minister an annual report relating generally to the execution of its functions. This report is to be tabled to the House of Representatives and of the Senate. Moreover, the annual report provides the salary and traveling allowance for its senior executives (Secretary Manager, Investigating Officer and Executive Officer), as well as the compensation received by the members of the Integrity Commission.⁷⁶

⁷² First Schedule to the Parliament (Integrity of Members) Act, section 12(1), *supra* note 63.

⁷³ The country under review notes that with respect to the budget that was presented for the past five years, the budget for 2012/2013 includes the amount of \$4.2 million, being retiring benefits for the former Secretary Manager.

⁷⁴ Parliament (Integrity of Members) Act, section 12(4), *ibid.*

⁷⁵ *Ibid.*, section 12(3).

⁷⁶ See Senior Executive Compensation and Directors Compensation in the 2010 Report of the Integrity Commission, *supra* note 69.

[103] Finally, the financial statements of the Integrity Commission are also made available, and they are independently audited.⁷⁷

2.2. Adequacy of the legal framework and/or other measures.

[104] The Integrity Commission has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 2.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures.

[105] The Committee first notes that the important role that the Integrity Commission undertakes in tackling corruption in Jamaica. As stated under section 2.1, this oversight body is responsible for receiving, reviewing and investigating the statutory declarations that Parliamentarians are required to submit, as well as receive and investigate complaints of acts of corruption carried out by these elected officials. In that respect, the Committee further observes that in the 2013 National Security Policy for Jamaica, which was prepared by the National Security Policy Coordination Unit (Cabinet Office) and the Ministry of National Security, one of the clear and present dangers facing Jamaica is the corruption of elected officials.⁷⁸ This threat has been identified as Tier 1, meaning they are high impact, high probability threats and have been identified as having top priority and requiring an active response.⁷⁹

[106] The Committee further notes that the country under review has tabled a bill, the Integrity Commission Act, 2014, which will repeal the Parliamentary (Integrity of Members) Act, and substitute the current iteration of the Integrity Commission with a newer one, responsible for promoting and enhancing the standards of ethical conduct not just for parliamentarians, but also public officials.⁸⁰ This bill would consolidate laws relating to the prevention of corruption and the award, monitoring and investigating of government contracts and prescribed licences and provide for the establishment of a single body, a new Integrity Commission, to promote and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption.⁸¹ This bill would merge the Integrity Commission, the Office of the Contractor General and the Commission for the Prevention of Corruption into a single anti-corruption agency, a measure that the aforementioned National Security Policy has also recommended.⁸²

[107] In the Memorandum of Objects and Reasons to this bill, the following is noted:⁸³

[108] *“The existing regime provided by the Corruption of Prevention Act and the Parliamentary (Integrity of Members) Act has been found to be inadequate in the fight against corruption.”*

[109] The Committee further observes, that the creation of a single anti-corruption agency in Jamaica is favorably looked upon as it would help eliminate overlap and duplication of resources and address the

⁷⁷ Integrity Commission Financial Statements, March 31, 2010, http://www.japarliament.gov.jm/attachments/1158_Integrity%20Commission%20Financial%20Statements%20-%20March%2031%202010.pdf

⁷⁸ 2013 National Security Policy for Jamaica, pg. 15, [http://www.cabinet.gov.jm/files/NATSEC%20March%2025%202014%20\(1\)%20\(1\).pdf](http://www.cabinet.gov.jm/files/NATSEC%20March%2025%202014%20(1)%20(1).pdf)

⁷⁹ *Ibid.*, pg. 4.

⁸⁰ See Preamble to the Integrity Commission Act 2014, *supra* note 34. This bill was tabled in March 2014.

⁸¹ *Ibid.*

⁸² 2013 National Security Policy for Jamaica, pg. 33, *supra* note 78.

⁸³ Memorandum of Objects and Reasons, pg. 67, *supra* note 34.

perceived weakness of the current institutional framework, which is seen as disjointed, splintered, highly ineffective, inefficient, under-resourced and non-responsive to combating corruption.⁸⁴

[110] Keeping in mind the important role carried out by the Integrity Commission in detecting acts of corruption carried out by elected officials, the objects and reasons of the Integrity Commission Act, 2014, the conclusion by the Jamaican government that the current regime in place, in particular that governed by the current Integrity Commission, is inadequate to tackle corruption in the country under review, and the need to address the clear and present danger identified in the 2013 National Security Policy for Jamaica, the Committee formulates the following observations to help strengthen the work of this oversight body.

[111] First, the Committee notes that this oversight body, despite carrying out important functions to combat corruption in Jamaica, lacks a website whereby the general public, and those subject to its regime, namely Parliamentarians, can access and consult on the work it carries out.

[112] The Committee observes that the only manner to find any information on the work of this oversight body is to access the website of the Parliament of Jamaica, and conduct a search. The country under review should consider establishing a website for the Integrity Commission, containing, for example, information on those that form the Commission, access to its annual reports and statistics on its work, as well as provide information to Parliamentarians on their obligations to provide statutory declarations and instructions on how to do so. The Committee will formulate a recommendation. (see Recommendation 2.4.1 in Section 2.4 of Chapter II of this Report)

[113] The Committee observes that the country under review states it has several ways in which the public may submit a complaint to the Integrity Commission, such as: i) in writing – under confidential cover or anonymously; ii) by telephone; and iii) by attending the office personally. It also notes that the public may also complain to a member of the Commission, the Secretary Manager or the Investigating officer. Moreover, all annual reports of the Commission contain its address. However, the Committee notes that these methods are not publicized in an easily accessible manner for the public. As noted earlier, the Integrity Commission does not have a website, and the Committee could not find any contact information for this oversight body in the website for the Parliament of Jamaica.⁸⁵ It is therefore unclear to the Committee how this oversight body is carrying out its function effectively of receiving and investigating any complaint against a Parliamentarian regarding an act of corruption, as set out under section 5(1)(d) of the Parliament (Integrity of Members) Act. The Committee believes that the country under review should consider establishing and implementing an awareness building program to inform individuals on the manner by which they may submit complaints to the Integrity Commission respecting alleged acts of corruption carried out by Parliamentarians. The Committee will formulate a recommendation. (see Recommendation 2.4.2 in Section 2.4 of Chapter II of this Report)

[114] The Committee notes that the Integrity Commission carries out its work with a staff size of 5 persons. During the on-site visit, the representatives stated that they were in favor of a larger size Commission, as it would help with the work at hand. For example, in the 2010 Annual Report, the Integrity Commission notes that it had acquired on-line access to the National Land Agency and the Companies Office of Jamaica, which would enable this oversight body to obtain information on properties and investments owned by Parliamentarians and be useful in verifying the content of their

⁸⁴ See the comments by the Contractor General in its 2011 Twenty-Fifth Annual Report, pg. 41, *supra* note 32.

⁸⁵ The annual report of this oversight body does provide the location of its offices, but does not provide any further information where a complaint may be made, whether by fax, phone, email, or any other means, 2010 Annual Report, pg. 5, *supra* note 69.

declarations and for investigations. As such, this meant that the workload of the Investigating Officer would increase substantially, and it sought approval for the employment of an additional officer. However, the Committee notes that during the on-site visit, the representatives of the Integrity Commission stated that the number of personnel remained at 5, same as when the 2010 Annual Report was prepared, with only one employed investigator. Moreover, in the Response to the Questionnaire, the country under review notes that:⁸⁶

[115] *“The Integrity Commission faces certain budgetary constraints which prevent the employment of additional staff. The Commission has requested approval from the Ministry of Finance and Planning for two additional posts; 1. one (1) Investigating Officer; and 2. one (1) Financial Analyst. The request has not yet been approved. With additional staff, the Integrity Commission would be in a position to conduct more investigations and more meaningful analyses of declarations and financial statements.”*

[116] The representatives during the on-site visit also mentioned that they were in favor of the proposed Integrity Commission Act 2014, as it would increase the number of personnel and allow them to be more effective in their work. For example, it could allow them to investigate further when a Parliamentarian has not provided information on the assets, liabilities and income of their spouse and children, which the representatives of the Integrity Commission, during the on-site visit, stated that some Parliamentarians have indicated that they have difficulty in obtaining.

[117] Given the foregoing, the Committee observes that the country under review should consider providing the Integrity Commission with the budgetary and human resources needed for the proper performance of its function, within available resources. The Committee will formulate a recommendation. (see Recommendation 2.4.3 in Section 2.4 of Chapter II of this Report)

[118] In this respect, civil society organizations during the on-site visit expressed concern on the resources provided to anti-corruption agencies in general in Jamaica, and in particular, with the ones to the Integrity Commission, noting that it is unclear if the Investigating Officer employed by this oversight body is a certified fraud investigator.⁸⁷

[119] With respect to the use of systems or modern technologies to facilitate their work, the Committee observes that the Integrity Commission has access to databases to help verify the content of the statutory declarations, such as those of the National Land Agency and the Companies Office of Jamaica. In the 2010 Annual Report of the Integrity Commission, reference is made to having online access, on a limited basis from the Inland Revenue Department, which has now been consolidated into the Tax Administration Jamaica. The Committee believes that access to the information contained by the Tax Administration Jamaica is important in order to assist in the review and investigation of corruption, especially with respect to allegations of illicit enrichment. To this end, the Committee believes that the country under review may consider implementing measures that would allow the Integrity Commission to inspect and make copies of records and documents held by government departments and agencies, not just those held by Revenue services. The Committee observes that under section 5(2) of the Parliament (Integrity of Members) Act, the Commission has the power to summon witnesses, require the production of documents and to do all such things as it considers necessary or expedient for the purpose of the carrying out its functions. However, some

⁸⁶ Response to the Questionnaire, pg. 36, *supra* note 7.

⁸⁷ The country under review notes that although the Investigating Officer is not a certified fraud investigator, he/she is usually a Certified Accountant.

information may be bound by confidentiality requirements and not contained in public records.⁸⁸ In those cases, the lack of ability to require production of documents may hamper the work of the Integrity Commission in verifying the content of the declarations of elected officials. The Committee will formulate a recommendation. (see Recommendation 2.4.4 in Section 2.4 of Chapter II of this Report)

[120] The Committee further observes that during the on-site visit, the representatives of the Integrity Commission stated that the submission of declarations are paper based, in other words, they are not filed electronically. Notwithstanding that the topic of systems for registering income, assets and liabilities was reviewed in the First Round and recommendations were formulated, the country under review should consider implementing an electronic system for declarations so that submission is made easier and the process and help facilitate review of the information provided. The Committee will formulate a recommendation. (see Recommendation 2.4.5 in Section 2.4 of Chapter II of this Report)

[121] With respect to the review of the declarations, the representatives of the Integrity Commission explained the process. In essence, a review is made of the declared net worth by looking at total assets less liabilities. The Integrity Commission then reviews this net worth, which is prepared by the investigating officer. Further information might be requested, such in cases where there is a significant increase in net worth from one year to another. As noted in the country report for Jamaica of the First Round of Review, though these declarations are used to detect possible cases of illicit enrichment, they are not used to detect and prevent conflicts of interest.⁸⁹ In this respect, the Committee observes that the legislation does not appear to contemplate that Parliamentarians declare their interests, such as directorships held in any company or corporate body, particulars of any contracts held with the State, or the name or description of any company, association or partnership in which the Parliamentarian is an investor, among other things. The Committee considers that the country under review should consider maintaining a register of interests, whereby Parliamentarians provide a list of these interests, whether pecuniary in nature or not, which may appear to raise a conflict between a Parliamentarians private interest and his or her public duty. Such a register may help identify these possible conflicts of interest, which the Integrity Commission may then be able to address through suitable tools, such as requiring the creation of blind trusts. The Committee will formulate a recommendation. (see Recommendation 2.4.6 in Section 2.4 of Chapter II of this Report)

[122] In this respect, the Committee notes that the National Security Policy for Jamaica, in its description of the corruption of elected officials as a clear and present danger to the country, sets out the harm that occurs to the country under review when there are close links between a politician and a contractor, especially with respect to public works contracts.⁹⁰

⁸⁸ See for example the observation of the Commission for the Prevention of Corruption, that has the same powers as the Integrity Commission, but whose mandate is to receive, review and investigate declarations of public officials, and has asked for the power of inspection and making copies of records in order to facilitate its own work, 2012/2013 Annual Report of the Commission for the Prevention of Corruption, pg. 16, <http://www.cpepd.gov.jm/sites/default/files/reports/CPC%20Annual%20Report%202012-2013.pdf>

⁸⁹ The country under review notes that during the preparation of the net worth the Investigating Officer if necessary will request additional information such as interest in companies/corporate bodies, number and value of shares or amounts invested otherwise, such as director's loans etc. Moreover, Parliamentarians are required to make an application and declare to the House of Representatives particulars of any contract held with the state during their tenure. A file is opened and retained for each person and this application/contract is also sent to the Contractor General for review.

⁹⁰ 2013 National Security Policy for Jamaica, pg. 20, *supra* note 78.

[123] The Committee further observes that during the on-site visit, the representatives stated that the Integrity Commission reports to the Office of the Prime Minister and its budgetary proposals are also submitted through this Office. Moreover, the annual reports of the Integrity Commission, which provides details of its functions, are submitted to this same Office, which then causes a copy to be tabled to the House of Representatives and Senate. The Office of the Prime Minister also determines the salary of the staff of the Commission, in that no salary in excess of seven hundred and fifty thousand dollars shall be assigned to any post without prior approval of this Office.⁹¹ This Office also plays an important role in the appointment and removal of the Commissioners as well. The Committee observes that during the on-site visit, there was no indication that the autonomy of this oversight body was an issue, given the important role the Office of the Prime Minister plays in its operations. Nevertheless, in order to strengthen the important work that the Integrity Commission carries out, and help ensure the integrity of this work, the Committee believes that the country under review should consider enacting provisions that state that this oversight body, in the exercise of its functions under the Parliament (Integrity in Members) Act, is not subject to the control or direction of any person or authority, much like what is found in the Contractor General Act, which explicitly sets out the independence of the Contractor General.⁹² The Committee will formulate a recommendation. (see Recommendation 2.4.7 of Chapter II of this Report)

[124] Similarly, the Committee further observes that, unlike the Office of the Contractor General, there are no provisions in place to indicate under what circumstances the persons that make up the Integrity Commission may be removed as a Commissioner or disqualified to act in this office. The First Schedule to the Act provides that a Commissioner may be removed by the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition. Moreover, it further provides that a recommendation for removal shall take into account the representations made by a Parliamentarian showing cause why a person should not remain a member of the Commission. The Committee, however, notes that the country under review may wish to consider enacting provisions that provide parameters for revocation of appointment. Such parameters may assist in providing transparency on the grounds for a revocation. The Committee will formulate a recommendation. (see Recommendation 2.4.8 in Section 2.4 of Chapter II of this Report)

[125] With respect to building awareness among Parliamentarians of their duties to provide a declaration, the Committee notes that during the on-site visit, the representatives indicated that some training is provided to Parliamentarians regarding their responsibilities under the Act. They observed that the Speaker of the House holds a seminar once a year, especially for new members, in which the Secretary Manager of the Integrity Commission participates to answer questions. Moreover, in the Response to the Questionnaire, the country under review notes that:⁹³

[126] *“The Clerk of the Houses of Parliament has arranged sessions with parliamentarians and the Integrity Commission was asked to give a brief talk concerning the requirements under the Parliamentary (Integrity of Members) Act. Parliamentarians were sensitized to the provisions of the Act and were reminded of their obligation to complete their declarations accurately and present same with necessary supporting documents in a timely manner.”*

[127] In addition, the country under review notes that training is conducted if and when necessary and that training sessions are conducted by Parliament to build awareness by Parliamentarians of their obligations under the Act. Parliamentarians attend the office of the Commission regularly seeking

⁹¹ Section 13(2) of the First Schedule to the Parliament (Integrity in Members) Act, *supra* note 69.

⁹² See section 5 of the Contractor General Act, *supra* note 3.

⁹³ Response to the Questionnaire, pg. 35, *supra* note 7.

consultations as to how best to complete their declaration forms and how the respective assets should be classified.

[128] However, the Committee notes that it is difficult to ascertain whether a training program established by the Integrity Commission is carried out on an on-going permanent basis. The Committee observes that in the 2010 Annual Report of the Integrity Commission, no mention is made regarding a training program or any kind of outreach provided by this oversight body to Parliamentarians. And as the Integrity Commission does not have a website, it is unclear how Parliamentarians may be able to receive more information on their responsibilities under the Act. The Committee will formulate a recommendation. (see Recommendation 2.4.9 in Section 2.4 of Chapter II of this Report)

[129] In this respect, the Committee notes that the Handbook for Parliamentarians, which serves as a guide to Parliamentarians and provides basic information about Parliament as well as their privileges and obligations, and the benefits and services that are afforded them during their tenure, does not contain information on their duties and obligations with respect to the submission of the statutory declarations, other than a reference that the members of Parliament are to be aware of the Parliamentary (Integrity of Members) Act.⁹⁴

2.3. Results of the legal framework and/or other measures.

[130] The country under review, subsequent to the on-site visit, provided the following table with respect to the work of the Integrity Commission:⁹⁵

STATUTORY DECLARATIONS

	2008	2009	2010	2011	2012
No. of Statutory Declarations due	81	81	81	81	186 ⁹⁶
Declarations filed on or before due date	53	52	61	63	119
Total number of declarations filed for the year	73	80	102 ⁹⁷	81	185
Number of declarations examined and cleared	76	74	82	92	177
Number of persons reported to DPP	8	1	1	19	14
Number of persons taken before the Courts	5	2	0	7	2

[131] The Committee observes the relatively low level of compliance by Parliamentarians to file their declarations on or before the legislatively mandated timeframe. In the 2010 Annual Report, the Integrity Commission stated its concern at the high rate of incomplete declarations being furnished by

⁹⁴ Handbook for Parliamentarians, pg. 6,

http://japarliament.gov.jm/attachments/702_Handbook%20for%20Parliamentarians.pdf.pdf

⁹⁵ Integrity Commission: Results, http://www.oas.org/juridico/english/mesicic4_jam.htm

⁹⁶ Persons had to file two declarations because of general elections, which is in keeping with the Parliamentary (Integrity of Members) Act.

⁹⁷ Excess is due to some declarants making final submissions while some are from previous years.

Parliamentarians, resulting in unnecessary correspondence and queries.⁹⁸ In this respect, the Committee observes that section 12 of the Parliamentary (Integrity of Members) Act provides that the Commission is to report the matter to the Parliamentary Leaders, who may refer the report to the Committee of Privileges of the House of Representatives or Senate. Moreover, section 15 of the Act provides that failure to furnish the Commission a declaration is punishable, on summary conviction, of a fine not exceeding two hundred thousand dollars and/or to imprisonment for a term not exceeding two years. This sanction is of a criminal nature, which may require a lengthy process before a final outcome is reached on a case. For example, the Committee notes that in the 2010 Annual Report, Appendix II lists the name of the Parliamentarians whose declarations are still outstanding as of December 31, 2010, and were referred to the Director of Public Prosecutions for further action. In this report for 2010, there are cases involving Parliamentarians from 2002, and referrals made to the Director of Public Prosecutions in 2003, that were still outstanding as of the date of that report. This was true of outstanding declarations for 2006, 2007, 2008 and 2009, which in a majority of cases involved the same individual.⁹⁹

[132] Moreover, the Act provides that Parliamentarians are to also submit a final declaration once they leave office. However, the representatives stated during the on-site visit that there is not much the Integrity Commission can do to require a former Parliamentarian to file, especially in cases where they leave the country. The Committee notes that this may give rise to cases of illicit enrichment going undetected.

[133] The Committee does observe, however, that it appears that eventually the majority of sitting Parliamentarians do submit their declarations in a given year. Nevertheless, the Committee considers that the country under review may consider granting the Commission the power to impose a persuasive administrative penalty for the late or non-filing of a declaration. This may serve as a deterrent and help the Integrity Commission utilize their time and resources on other matters. Moreover, it may also help encourage those Parliamentarians leaving office to file their declarations. The Committee will formulate a recommendation. (see Recommendation 2.4.10 in Section 2.4 of Chapter II of this Report)

[134] The Committee observes that the Integrity Commission has made referrals to the Director of Public Prosecutions for violations of the Act and acts of corruption, and that some action has been taken. Nevertheless, the number of persons taken to court is low, compared to the number of referrals made. Reference has been made in section 1.2 of the concerns the Office of the Contractor General has with respect to the low number of prosecutions carried out by the Office of the Director of Public Prosecutions regarding corruption cases, which also impacts and has relevance on the work of the Integrity Commission. If the Office of the Director of Public Prosecutions does not carry out prosecutions for acts of corruption committed by elected officials, as identified by the Integrity Commission, this undermines the efforts by the country under review to address the security issues identified in the 2013 National Security Policy. The Committee reiterates its recommendation formulated regarding the lack of prosecutions carried out by the Office of the Director of Public Prosecutions in section 1.2 of this Report. (see Recommendation 1.4.6 in Section 1.4 of Chapter II of this Report)

[135] With respect to this issue the Committee notes that there is a perception in Jamaica that no action is taken to punish elected officials for alleged acts of corruption, even amongst other oversight bodies. For example, in the 2011 Twenty-Fifth Annual Report of the OCG, the Contractor General lamented that very little is heard about the arrest and/or prosecution, on corruption charges, of politicians and public

⁹⁸ 2010 Annual Report of the Integrity Commission, pg. 7, *supra* note 69.

⁹⁹ *Ibid.*, pg. 11.

officials and on the lack of action on using the provisions of illicit enrichment to combat corruption, for example.¹⁰⁰

[136] This was also noted in the comments made by the representative of the Jamaican Bar Association, where it was observed that it was puzzling that there has been no conviction of a high ranking official in Jamaica in decades, other than a government minister or Member of Parliament.

[137] In addition, the Committee notes that any action undertaken by the Office of the Director of Public Prosecutions depends on a referral to be made by the Integrity Commission. Although the table indicates a significant improvement for 2011 and 2012, for the years 2009 and 2010, only one referral was made per year.¹⁰¹ In this respect, the Office of the Contractor General, in its 2011 Twenty-Fifth Annual Report states that a representative of the Integrity Commission, before the Public Administration and Appropriations Committee in October 2011, conceded that despite several infractions of the Integrity Law by Parliamentarians, the Commission had “*not been very prosecutorial, in that it had failed to make the requisite referrals to the DPP [Director of Public Prosecutions].*”¹⁰²

[138] The Committee believes that the country under review should consider ensuring that the Integrity Commission makes the appropriate referrals to the Director of Public Prosecutions, so that effective action can be undertaken for detected acts of corruption committed by Parliamentarians. Failure to make the requisite referrals can only undermine the confidence in the important work this oversight body carries out. The Committee will formulate a recommendation. (see Recommendation 2.4.11 in Section 2.4 of Chapter II of this Report)

[139] Furthermore, with respect to the referrals, it is difficult to ascertain whether they were made for suspected cases of illicit enrichment, or for cases where Parliamentarians have not submitted their declaration or fails to supply information to the Integrity Commission to clarify a declaration, for example. During the on-site visit, the representatives of this oversight body stated that these referrals encompass situations where illicit enrichment was found or for not supplying information to a declaration. It would be useful for the country under review to consider providing information on referrals on a more detailed manner, so that the public can have a better understanding of the reasons a matter has been referred to the Director of Public Prosecutions. The Committee will formulate a recommendation. (see Recommendation 2.4.12 in Section 2.4 of Chapter II of this Report)

[140] Related to this issue, the country under review may consider promoting coordination mechanisms among these oversight bodies with the Office of the Director of Public Prosecutions. As this Office has the exclusive competence to carry out prosecutions, open channels of communication between the Integrity Commission and this Office can help facilitate its work and lead to prosecutions for corruption and corruption related offences. The Committee will formulate a recommendation. (see Recommendation 2.4.13 in Section 2.4 of Chapter II of this Report)

[141] Finally, the Committee notes that the information provided in the table is not available anywhere publicly, other than some numbers provided for the year 2010, the only annual report available online.¹⁰³

¹⁰⁰ *Ibid.*, pg. 34.

¹⁰¹ The country under review notes that the Commission has done as the Act requires ie. reporting Parliamentarians to the Parliamentary Leaders and if there is no response and after sending reminders the matter is then reported to the Director of Public Prosecutions. In this respect, they were reported either for non-presentation of their statutory declarations or for the non-presentation of additional information which would facilitate the speedy completion of the examination of the documents. Some of these Parliamentarians are reported on more than one occasion during the same year.

¹⁰² 2011 Twenty-Fifth Annual Report of the OCG, pg. 49, *supra* note 32.

¹⁰³ See 2010 Annual Report, pgs. 6 – 7, *supra* note 69.

A lack of website, as set out under section 2.2 of this report, hinders the availability of this type of information. But another issue is the fact that although the Integrity Commission has submitted its annual reports for 2011 and 2012 to the Office of the Prime Minister, these reports have not been tabled to Parliament and therefore not been made available publicly. Without these reports being made available, it is difficult to determine, for the Committee and the public, the work being carried out by the Integrity Commission. In interests of transparency and integrity of the system in place, the country under review should have these reports tabled already and made public; especially considering it involves the oversight of elected officials and identifies those Parliamentarians who have not complied with their statutory obligations to file a declaration. Moreover, all past annual reports should also be made available, not just the 2010 version. The Committee will formulate recommendations. (see Recommendations 2.4.14 and 2.4.15 in Section 2.4 of Chapter II of this Report)

2.4. Conclusions and recommendations.

[142] Based on the comprehensive review conducted with respect to Integrity Commission in the foregoing sections, the Committee offers the following conclusions and recommendations:

[143] Jamaica has considered and adopted measures intended to maintain and strengthen the Integrity Commission as an oversight body, as described in Chapter II, Section 1 of this Report.

[144] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 2.4.1 Establish a website for the Integrity Commission. (See section 2.2. of Chapter II of this Report)
- 2.4.2 Establish and implement an awareness building program to inform individuals on the manner by which they may submit complaints to the Integrity Commission respecting alleged acts of corruption carried out by Parliamentarians. (See section 2.2 of Chapter II of this Report)
- 2.4.3 Provide the Integrity Commission with the budgetary and human resources needed for the proper performance of its function, within available resources. (See section 2.2 of Chapter II of this Report)
- 2.4.4 Provide the Integrity Commission the power to inspect and make copies of all records and documents of government departments and agencies, including that of the Tax Administration Jamaica. (See section 2.2 of Chapter II of this Report)
- 2.4.5 Implement an electronic system for the submission of declarations by Parliamentarians. (See section 2.2 of Chapter II of this Report)
- 2.4.6 Implement a register of declared interests in order to help identify potential conflicts of interest between a Parliamentarians private interests and his or her public duty. (See section 2.2 of Chapter II of this Report)
- 2.4.7 Consider establishing provisions that set out that the Integrity Commission, in exercising its functions under the Parliament (Integrity of Members) Act, is not

subject to the control or direction of any person or authority. (See section 2.2 of Chapter II of this Report)

- 2.4.8 Consider establishing further provisions that set out the circumstances under which members to the Integrity Commission may have their appointment revoked. (See section 2.2 of Chapter II of this Report)
- 2.4.9 Establish a training program by the Integrity Commission in order to ensure that permanent, ongoing training is provided to all Parliamentarians regarding their duties and obligations under the Parliament (Integrity of Members) Act, as well as ensure that outreach programs are in place. (See section 2.2 of Chapter II of this Report)
- 2.4.10 Consider providing the Integrity Commission the ability to impose administrative sanctions for the late or non-filing of a declaration by a Parliamentarian. (See section 2.3 of Chapter II of this Report)
- 2.4.11 Ensure that the Integrity Commission makes the appropriate referrals to the Office of the Director of Public Prosecutions for acts of corruption allegedly committed by Parliamentarians. (See section 2.3 of Chapter II of this Report)
- 2.4.12 Maintain results in a detailed manner on the reasons a referral has been made to the Office of the Director of Public Prosecutions, in order to identify challenges and recommend corrective measures. (See section 2.3 of Chapter II of this Report)
- 2.4.13 Establish, as appropriate, an information exchange and coordination mechanism or arrangement between the Integrity Commission and the Office of the Director of Public Prosecutions. (See section 2.3 of Chapter II of this Report)
- 2.4.14 Ensure that all annual reports that have been submitted to the Office of the Prime Minister are tabled to Parliament in a timely manner so that they can be made public. (see section 2.3 of Chapter II of this Report)
- 2.4.15 Make available all past and current annual reports of the Integrity Commission in a manner that is easily available to the general public (see section 2.3 of Chapter II of this Report)

3. THE COMMISSION FOR THE PREVENTION OF CORRUPTION

3.1 Existence of a legal framework and/or other measures

[145] The Commission for the Prevention of Corruption (CPC) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[146] With respect to its objectives and scope of functions, section 5(1) of the Corruption (Prevention) Act provides that it is to receive and keep on record statutory declarations furnished by public servants; examine these declarations; request from these public servants any information relevant to these declarations that would assist the Commissioners in their examination; make independent inquiries and investigations with respect to these declarations; to receive and investigate any complaint against a public servant regarding an act of corruption; and to conduct its own

investigation into an act of corruption on its own initiative.¹⁰⁴ The CPC is also empowered to summon witnesses, require the productions of documents and to do all such things as it considers necessary or expedient for the purpose of carrying out its functions.¹⁰⁵

[147] The CPC is not empowered to receive and examine the statutory declarations of Parliamentarians nor is it generally empowered to receive and examine the statutory declarations of public servants who are in receipt of total emoluments less than J\$2 000 000 per year, although section 4(5A) of the Act does allow it under some circumstances.¹⁰⁶ Moreover, in the response to the questionnaire, the country under review notes that members of the Judiciary are also not covered by the provisions of the Corruption (Prevention) Act.¹⁰⁷

[148] The CPC is also the designated authority to monitor compliance of the Protected Disclosures Act, 2011.¹⁰⁸ The purpose of this Act is to encourage and facilitate the making by employees of disclosures of improper conduct in the public interest; to regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct; and to protect employees who make specified disclosures from being subjected to occupational detriment.¹⁰⁹ As the designated authority, it is responsible for: a) publishing procedural guidelines on the making, receiving and investigating disclosures; b) provide assistance to any person who seeks to make a disclosure and any person who is a designated officer, employer or other person subject to the Act; c) implement and monitor public awareness programs aimed at informing and educating employees, employers and the general public about making disclosures and about the procedures for receiving and investigating disclosures; and d) initiate an investigation, take over an investigation or authorize a body to undertake in whole or in part an investigations, among other functions.¹¹⁰ Moreover, the Act provides that the CPC is to receive disclosures as well from employees under certain cases.¹¹¹

[149] Regarding the manner in which decisions are adopted for its functions under the Corruption (Prevention) Act, pursuant to section 15 of the First Schedule, decisions reached by the CPC are to be made by majority of votes, of a quorum of at least three Commissioners. The Chairman, in addition to having an original vote, shall also have the casting vote in any case in which the voting is equal. The decisions of the CPC are subject to judicial review.

¹⁰⁴ Corruption (Prevention) Act, http://www.oas.org/juridico/PDFs/mesicic4_jam_prev.pdf. Public servants means: a) any person employed in the public, municipal or parochial service of Jamaica or in the service of a statutory body or authority or a government body; b) who is an official of the State or any of its agencies; and c) appointed, elected, selected or otherwise engaged in a public function. Public function is defined as meaning any activity performed in a single time or continually, whether or not payment is received therefore, which is carried out by a) a person for, or on behalf of or under the direction of a Ministry, Department of Government, a statutory body or authority, a Parish Council, the Kingston and St. Andrew Corporation or a government company; b) a body, whether public or private, providing public services; or c) a Member of the House of Representatives or of the Senate in that capacity.

¹⁰⁵ Section 5(2) of the Corruption (Prevention) Act, *ibid*.

¹⁰⁶ See section 4(5A) of the Corruption (Prevention) Act, *ibid*, which allows the CPC to 1) request individual Statutory Declarations from persons earning less than J\$2 000 000; and 2) request Statutory Declarations from amongst groups of individuals earning less than J\$2 000 000. Once received, they are examined in accordance with the provisions noted under Section 5 of the Corruption Prevention Act. See also section 3(1) of the Corruption (Prevention) Regulations, 2003, [http://www.cpcpd.gov.jm/sites/default/files/pdf/Corruption%20\(Prevention\)%20Regulations%202003.pdf](http://www.cpcpd.gov.jm/sites/default/files/pdf/Corruption%20(Prevention)%20Regulations%202003.pdf). The amount of J\$2 000 000 is approximately US \$18 100.

¹⁰⁷ Response to the Questionnaire, pg. 11, *supra* note 7.

¹⁰⁸ Protected Disclosures Act, 2011, <http://www.cpcpd.gov.jm/sites/default/files/pdf/The%20Protected%20Disclosures%20Act%202011.pdf>

¹⁰⁹ Section 3, *ibid*. For definitions of ‘improper conduct’, ‘employees’, ‘improper conduct’, and ‘occupational detriment’, see section 2 of the Act.

¹¹⁰ Section 21, *ibid*.

¹¹¹ Section 10, *ibid*.

[150] With respect to the selection of senior officers, members of the CPC are made up of the Auditor General and four other members (referred to as ‘appointed members’), who are appointed by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition. These four members are chosen from the following category of persons: i) members of the Privy Council; ii) retired Judges of Appeal or retired Judges of the Supreme Court; and iii) persons, who in the opinion of the Governor-General are persons of high integrity and are able to exercise competence, diligence and sound judgment in fulfilling their responsibilities under the Act.¹¹²

[151] Appointed members hold office for a period of seven years and are eligible for reappointment. The Governor-General appoints one of the members as Chairman of the CPC.¹¹³ In addition, the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may at any time revoke the membership of any appointed member.

[152] Regarding the identification of human resource needs and selection of personnel, section 13 of the First Schedule to the Act provides that the CPC shall appoint and employ a Secretary and such other officers and servants as it thinks necessary for the proper carrying out of its work. In addition, the Governor-General may approve the appointment of any officer in the service of the Government to any office with the CPC.

[153] Moreover, in the response to the questionnaire, the country under review notes that all staff appointments are merit based, and suitable background checks are carried out. As well, personnel are selected on the basis of advertisements placed in the press and by interview by the panel of Commission members for senior staff and are accountable to them in the performance of duties. Staff members serve on fixed terms/tenure, removable by the Commission and a review of their performance is done on an annual basis.¹¹⁴ Regarding the creation of positions and manpower planning, this is carried out by the Cabinet Office. During the on-site visit, the representatives stated that the CPC has 23 staff members.

[154] Regarding the existence of manuals or documents describing the function of personnel and training, in its response to the questionnaire, the country under review notes that it has manuals and documents in place and on-going training are in place in respect of all positions.¹¹⁵ In addition, during the on-site visit, the representatives of the CPC stated that each position has a job description. These representatives also stated that training is provided with the analysis, investigation and inputting of declarations, and training documents have been adopted in this respect. Analysts also participate in training courses carried out by the Ministry of National Security, and regional training is also provided. The representatives further stated that annual training is provided to personnel of government agencies so that they are made aware of their duty to file.

[155] With respect to the use of modern technologies to facilitate its work, the representatives of the CPC, during the on-site visit, stated that it maintains a database of approximately 30 000 declarants who have the obligation to file a declaration. They further stated that they consult with land, taxation and motor vehicles databases to help verify the content of a declaration.

[156] Regarding the manner in which budgetary needs are ensured, in its response to the questionnaire, the country under review notes that under section 10 of the First Schedule of the

¹¹² Section 1 of the First Schedule of the Corruption (Prevention) Act, *supra* note 104.

¹¹³ Sections 2, 3 and 4 of the First Schedule, *ibid.*

¹¹⁴ Response to the Questionnaire, pg. 11, *supra* note 7.

¹¹⁵ *Ibid.*

Corruption (Prevention) Act, the funds of as may from time to time be placed at their disposition for the purposes of the Act by Parliament, and such other moneys as may be lawfully paid to the Commission.¹¹⁶ Moreover, the CPC is to submit to the Minister of Justice for approval, before October 31 of year, its estimates for revenue and expenditure for the ensuing financial year.¹¹⁷ In this respect, during the on-site visit, the representatives of the CPC stated that the budget is crafted at the Secretariat; it is submitted to the Minister of Justice to be forwarded to the Minister of Finance.

[157] Section 11 of the First Schedule to the Act further provides that the CPC is to keep proper accounts of its receipts, payments, assets and liabilities and that these accounts are to be audited annually by an auditor appointed each year by the CPC with the approval of the Minister of Justice. With respect to the approved budget for five years, the following is noted:¹¹⁸

Year	Budget (in Jamaican dollars)
2010/2011	59 382 000
2011/2012	61 191 000
2012/2013	58 840 000
2013/2014	68 808 000
2014/2015	75 318 000

[158] With respect to coordination mechanisms, the Act provides that if any person fails to furnish the CPC with a declaration as required under the Act, or after examining one and any related information or documents, or conducts an enquiry into a declaration and is not satisfied with any aspect thereof, it shall report the matter to the appropriate Service Commission, Board, Body or other Authority and the Director of Public Prosecutions, setting out such details and particulars. In addition, the CPC is to report to these same government agencies for any act of corruption, so that they may take such disciplinary action as appropriate.¹¹⁹

[159] Regarding coordination mechanisms under the Protected Disclosures Act, 2011, if the CPC finds, during the course of an investigation or on the conclusion thereof that there is a breach of duty or misconduct or criminal offence on the part of an officer or member of the public body, the CPC is

¹¹⁶ *Ibid.*, pg. 12.

¹¹⁷ First Schedule to the Corruption (Prevention) Act, section 12(3), *supra* note 104.

¹¹⁸ Commission for the Prevention of Corruption: Approved Budget for the Five Year Period 2010/2011 to 2014/2015, http://www.oas.org/juridico/english/mesicic4_jam.htm

¹¹⁹ Corruption (Prevention) Act, section 12, *supra* note 104.

to refer the matter to the person or persons competent to take such disciplinary or other appropriate proceeding.¹²⁰

[160] Regarding accountability mechanisms, section 12(1) of the First Schedule to the Act provides that the Commission is to submit to the Minister of Justice an annual report relating to its activities during the preceding financial year. This report is to also contain a statement of its audited accounts. These annual reports are available in the website of the CPC, which are available at <http://cpcpd.gov.jm/reports>. In addition, in the response to the questionnaire, the country under review notes that the general public is provided with information by way of presentations to Parliament of these annual reports, and in information sessions requested by State Agencies on a regular basis.¹²¹

[161] Moreover, the annual report provides the salary and traveling allowance for its senior executives (Secretary/Manager and 2 Senior Financial Analysts), as well as the compensation received by the Commission members of the CPC.¹²²

[162] Finally, as the designated authority under the Protected Disclosures Act, 2011, the CPC is required to submit to the Minister, within six months after the end of each year, a report dealing generally with its activities during the preceding year. This report is to be tabled in the House of Representatives and Senate.¹²³

3.2. Adequacy of the legal framework and/or other measures.

[163] The Commission for the Prevention of Corruption (CPC) has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 3.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures.

[164] The Committee first notes that the important role that the Commission for the Prevention of Corruption undertakes in tackling corruption in Jamaica. As stated under section 3.1, this oversight body is responsible for receiving, reviewing and investigating the statutory declarations that public servants are required to submit, as well as receive and investigate complaints of acts of corruption carried out by them. In addition, this oversight body has been given the additional responsibility of monitoring the Public Disclosures Act, 2011, regarding whistleblower protection.

[165] The Committee further observes that in the 2013 National Security Policy for Jamaica, which was prepared by the National Security Policy Coordination Unit (Cabinet Office) and the Ministry of National Security, one of the clear and present dangers facing Jamaica is the corruption of public officials.¹²⁴ This threat has been identified as Tier 1, meaning they are high impact, high probability threats and have been identified as having top priority and requiring an active response.¹²⁵

[166] The Committee notes that the country under review has tabled a bill, the Integrity Commission Act, 2014, which will repeal the Corruption (Prevention) Act, and create a single anti-corruption body responsible for promoting and enhancing the standards of ethical conduct not just for public servants, but

¹²⁰ See section 3(4) of the Third Schedule to the Public Disclosures Act, 2011, *supra* note 108.

¹²¹ Response to the Questionnaire, pg. 12, *supra* note 7.

¹²² See Appendix 1 to the 2012/2013 Annual Report of the Commission for the Prevention of Corruption, Directors Compensation and Senior Executive Compensation, pgs 40 – 41, *supra* note 88.

¹²³ Protected Disclosures Act, 2011, sections 21(4) and 21(5), *supra* note 108.

¹²⁴ 2013 National Security Policy for Jamaica, pg. 15, *supra* note 78.

¹²⁵ *Ibid.*, pg. 4.

also Parliamentarians and other persons.¹²⁶ This bill would consolidate laws relating to the prevention of corruption and the award, monitoring and investigating of government contracts and prescribed licences and to provide for the establishment of a single body, a new Integrity Commission, to promote and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption.¹²⁷ Thus, this bill would merge the Commission for the Prevention of Corruption, the Integrity Commission, and the Office of the Contractor General into a single anti-corruption agency, a measure that the aforementioned National Security Policy has also recommended.¹²⁸

[167] Moreover, the Committee would also like to highlight the following, as noted in the Memorandum of Objects and Reasons to this bill:¹²⁹

[168] *“The existing regime provided by the Corruption of Prevention Act and the Parliamentary (Integrity of Members) Act has been found to be inadequate in the fight against corruption.”*

[169] The Committee further observes, that the creation of a single anti-corruption agency in Jamaica is favorably looked upon as it would help eliminate overlap and duplication of resources and address the perceived weakness of the current institutional framework, which is seen as disjointed, splintered, highly ineffective, inefficient, under-resourced and non-responsive to combating corruption.¹³⁰

[170] Keeping in mind the important role carried out by the CPC in detecting acts of corruption carried out by public officials, the conclusion by the Jamaican government that the current regime in place, in particular that governed by the CPC, is inadequate to tackle corruption in the country under review, and the need to address the clear and present danger identified in the 2013 National Security Policy for Jamaica, the Committee formulates the following observations to help strengthen the work of this oversight body.

[171] The Committee notes that for the year 2012, the number of public servants required to submit a declaration of assets, liabilities and income numbers thirty one thousand one hundred and thirty two (31 132), a considerable number to be entered into its database. Of the large number of declarations received, 31 were examined, bringing to a total of 625 cases examined up to the date of the last annual report of the CPC. Significantly, of the 31 cases, 28 were forwarded for further investigations, bringing a total of 350 cases the CPC had under investigation. The main issues of concern with respect to these declarations were the following: acquisition of assets with no evidence of financing; non-declaration of assets, such as properties or motor vehicles; omission of source of funds; insufficient information submitted on a declaration, in particular the receipt of gifts; and non-declaration of business interests/income.¹³¹

[172] The Committee observes that 31 examinations of a potential pool of 31 132 declarations is a very low number, representing approximately 0.001% of submitted declarations. This might be due to the resources at the disposal of the CPC. The Committee notes that this oversight body carries out its work with a staff size of 23 persons, of which 4 are financial analysts and 6 financial investigators, which would presumably be responsible for examining these declarations and verifying their content.¹³² The

¹²⁶ See Preamble to the Integrity Commission Act 2014, *supra* note 34.

¹²⁷ *Ibid.*

¹²⁸ 2013 National Security Policy for Jamaica, pg. 33, *supra* note 78.

¹²⁹ Memorandum of Objects and Reasons, pg. 67, *supra* note 34.

¹³⁰ See the comments by the Contractor General in its 2011 Twenty-Fifth Annual Report, pg. 41, *supra* note 32.

¹³¹ 2012/2013 Annual Report of the Commission for the Prevention of Corruption, pg. 11, *supra* note 88.

¹³² See 2012/2013 Annual Report of the Commission for the Prevention of Corruption, pg. 5, *ibid.*, and Organisational Structure of the Commission for the Prevention of Corruption, http://cpcpd.gov.jm/sites/default/files/pdf/Organization_Chart.pdf

Committee observes that in the past, the CPC lacked financial analysts and investigators that would facilitate its work. For example, in its annual reports for 2003 to 2006, the CPC noted that its ability to conduct investigations of declarations was hampered due to staff constraints and a request for investigators had been forwarded to the Ministry of Justice.¹³³ In 2007, with one investigator on hand, a sample of 104 declarations was examined, carried out by 2 financial analysts and one investigator. Despite having fewer analysts and investigators, it was able to examine more than 3 times the number of declarations, despite having half the complement currently in place at the CPC. More recently, for 2008, 2009, 2010 and 2011, the number of declarations examined was 105, 153, 110, and 46, respectively.¹³⁴

[173] The Committee also observes that the CPC, in 2012, was appointed as the designated authority in order to monitor compliance with the Protected Disclosures Act, 2011. As set out under section 3.1, since 2012, it is responsible for important resource heavy matters, such as providing assistance to any person who seeks to make a disclosure and any person who is a designated officer, employer or other person subject to the Act; implementing and monitoring public awareness programs aimed at informing and educating employees, employers and the general public about making disclosures and about the procedures for receiving and investigating disclosures; initiating an investigation; and receiving disclosures as well from employees under certain cases.¹³⁵

[174] During the on-site visit, the representatives of the CPC noted that requests had been made to increase its budget in order to adequately take on these new responsibilities, but no support has been provided for the 2013/2014 fiscal year.

[175] Given the foregoing, the Committee observes that the country under review should consider providing the CPC with the budgetary and human resources needed for the proper performance of its function, within available resources. The Committee will formulate a recommendation. (see Recommendation 3.4.1 in Section 3.4 of Chapter II of this Report)

[176] Related to this, the Committee notes that the regime under the Protected Disclosures Act, 2011, has still not been put in place, despite having been enacted, as of the date of this report, 3 years ago, and the designated authority appointed in 2012. The Committee observes that this important legislation can play an important role in combating corruption, by implementing a system whereby public servants and private citizens may report acts of corruption carried out by those in public service, as well as put in place mechanisms for protecting those that do report. As the responsibilities of the CPC as the designated authority is still in the process of being implemented, the Committee considers that it would be useful to consider adopting a timetable setting out priorities, actions to be undertaken, deadlines for their execution, and annual targets to be reached, and to publicize that timetable so that the public can appreciate the CPC's efforts to move forward with the full exercise of its functions. The Committee will formulate a recommendation. (see Recommendation 3.4.2 in Section 3.4 of Chapter II of this Report)

[177] In this respect, the Committee observes that section 25(1)(d) of the Protected Disclosures Act, 2011 provides that the Minister may make regulations in relation to the operations of the designated authority. The Committee considers that the country under review should consider enacting regulations with respect to the operation of the CPC as the designated authority, setting out such fundamental matters such as the hiring of personnel and the manner its budget is provided. Without these basic

¹³³ See, for example, the 2003 Annual Report of the Commission for the Prevention of Corruption, pg. 2, <http://cpcpd.gov.jm/sites/default/files/reports/CPC%20Annual%20Report%202003-2004.pdf>

¹³⁴ These numbers are available in the Annual Reports of the Commission for the Prevention of Corruption, which are available at: <http://www.cpcpd.gov.jm/reports>

¹³⁵ Protected Disclosures Act, 2011, section 10, *supra* note 108.

provisions, it will be a challenge for this oversight body to comply with its mandate in overseeing the implementation of this Act. The Committee will formulate a recommendation. (see Recommendation 3.4.3 in Section 3.4 of Chapter II of this Report)

[178] A step that the CPC may take is to begin to publicize its work as the designated authority on its website. The Committee observes that although the CPC website contains information on its responsibilities under the Corruption (Prevention) Act, it has no component with respect to its responsibilities under the Protected Disclosures Act, 2011. The oversight body should consider establishing such a component, containing information, on the rights that a declarant has in submitting a disclosure, the manner in which a disclosure may be submitted and the protections that can be afforded, for example. In addition, it should also post the report on its activities that it is required to submit on a yearly basis. Significantly, one of the mandates of the CPC is to publish a procedural guideline regarding the making, receiving and investigation of disclosures. The Committee, during the on-site visit, received a copy of these guidelines; however, they have yet to be posted on the CPC website.¹³⁶ By establishing this component in its website, the Committee observes that this would assist in the CPC's mandate as the designated authority in planning, implementing and monitoring public awareness programs aimed at informing and educating employees, employers and the general public in Jamaica about the making of protected disclosures and the procedures for receiving and investigating such disclosures.¹³⁷ The Committee will formulate a recommendation. (see Recommendation 3.4.4 in Section 3.4 of Chapter II of this Report)

[179] In this respect, the Committee also notes that it appears that there is no manner in which the public may submit a complaint to the CPC regarding an alleged act of corruption that may be committed by a public servant, such as that of illicit enrichment, or for submitting a disclosure under the framework of the Protected Disclosures Act, 2011. The Committee believes that it will be beneficial for the country under review to consider making the contact information for submission of complaints easily and publicly available, using methods similar to that of the Office of the Contractor General, that is, online, an impropriety hotline, through email, or allowing for the reception of anonymous complaints. The Committee will formulate a recommendation. (see Recommendation 3.4.5 in Section 3.4 of Chapter II of this Report)

[180] The Committee observes that during the on-site visit, the representatives of the CPC noted that a webpage for receiving complaints will be added.

[181] With respect to the use of systems or modern technologies to facilitate their work, the Committee observes that during the onsite visit, the representatives of the CPC stated that it has access to databases to help verify the content of the statutory declarations, involving land ownership, taxation, banking and motor vehicles. Nevertheless, the Committee notes that the CPC has been recommending that the Corruption (Prevention) Act be amended in order to allow this oversight body to inspect and make copies of records and documents held by government departments and agencies, including complete access to the Tax Administration Jamaica.¹³⁸ The Committee observes that under section 5(2) of the Act, the Commission has the power to summon witnesses, require the production of documents and to do all such things as it considers necessary or expedient for the purpose of the carrying out its functions. However, some information may be bound by confidentiality requirements and not

¹³⁶ Procedural Guidelines for the Protected Disclosures Act, 2011, http://www.oas.org/juridico/english/mesicic4_jam.htm

¹³⁷ Section 21(3)(c) of the Protected Disclosures Act, 2011, *supra* note 108.

¹³⁸ The country under review notes that the CPC has been granted electronic access to records available [not to include income tax] from Tax Administration Jamaica.

contained in public records.¹³⁹ In those cases, the inability to require production of documents may hamper the work of the CPC in verifying the content of the declarations of public servants. The Committee will formulate a recommendation. (see Recommendation 3.4.6 in Section 3.4 of Chapter II of this Report)

[182] The Committee further observes that during the on-site visit, the representatives of the CPC stated that the submission of declarations are paper based, in other words, they are not filed electronically. For these purposes, its Secretariat employs 5 data entry officers.¹⁴⁰ Notwithstanding that the topic of systems for registering income, assets and liabilities was reviewed in the First Round and recommendations were formulated, the country under review should consider implementing an electronic system for receiving declarations so that the submission process is made easier and would help facilitate review of the information provided, especially given that there are over 30 000 declarations that are to be submitted each year. The Committee will formulate a recommendation. (see Recommendation 3.4.7 in Section 3.4 of Chapter II of this Report)

[183] With respect to the review of the declarations, as noted in the country report for Jamaica of the First Round of Review, though these declarations are used to detect possible cases of illicit enrichment, they are not used to detect and prevent conflicts of interest. In this respect, the Committee observes that the legislation does not appear to contemplate that public servants declare their interests, such as directorships held in any company or corporate body, particulars of any contracts held with the State, or the name or description of any company, association or partnership in which the public servant is an investor, among other things. The Committee considers that the country under review should consider maintaining a register of interests, whereby public servants provide a list of these interests, whether pecuniary in nature or not, which may appear to raise a conflict between a public servant's private interest and his or her public duty. Such a register may help identify these possible conflicts of interest, which the CPC may then be able to address through suitable tools, such as requiring the creation of blind trusts. In this respect, the Committee observes that the CPC has recommended in its annual reports that public sector officers and employees should not engage in work that creates a conflict of interest with their official duties and sanctions should be provided for such activity.¹⁴¹ The Committee will formulate a recommendation. (see Recommendation 3.4.8 in Section 3.4 of Chapter II of this Report)

[184] In this respect, the Committee notes that the National Security Policy for Jamaica, in its description of the corruption of elected officials as a clear and present danger to the country, sets out the harm that occurs to the country under review when there are close links between public servants and a contractor, especially with respect to public works contracts.¹⁴²

[185] The Committee further observes that during the on-site visit, the representatives stated that the CPC reports to Ministry of Justice and its budgetary proposals are also submitted through this Ministry. Moreover, the annual reports of the CPC, which provides details of its functions, are submitted to the Minister of Justice. This Minister also determines the salary of the staff of the Commission, in that no salary in excess of seven hundred and fifty thousand dollars shall be assigned to any post without prior

¹³⁹ See for example the observation of the Commission for the Prevention of Corruption, on page 16 of the 2012/2013 Annual Report of the Commission for the Prevention of Corruption, *supra* note 88.

¹⁴⁰ Organisational Structure of the Commission for the Prevention of Corruption, *supra* note 132.

¹⁴¹ See, for example, the observation of the Commission for the Prevention of Corruption, on pages 3 and 21 of the 2012/2013 Annual Report of the Commission for the Prevention of Corruption, *supra* note 88.

¹⁴² 2013 National Security Policy for Jamaica, pg. 20, *supra* note 78.

approval.¹⁴³ The Committee observes that during the on-site visit, the representatives stated that the Ministry of Justice had no influence on the examinations it carries out, and its decisions and operations are autonomous. Nevertheless, in order to strengthen the important work that the CPC carries out, and help ensure the integrity of this work, the Committee believes that the country under review should consider enacting provisions that state that this oversight body, in the exercise of its functions under the Corruption (Prevention) Act, is not subject to the control or direction of any person or authority, much like what is found in the Contractor General Act, which explicitly sets out the independence of the Contractor General.¹⁴⁴ The Committee will formulate a recommendation. (see Recommendation 3.4.9 in Section 3.4 of Chapter II of this Report)

[186] Similarly, the Committee further observes that, unlike the Office of the Contractor General, there are no provisions in place to indicate under what circumstances the persons that make up the CPC may be removed as a Commissioner or disqualified to act in this office. The First Schedule to the Act solely provides that a Commissioner may be removed by the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition. The Committee believes that the country under review may wish to consider enacting provisions that provide the parameters for dismissal, such as if a Commissioner is removed for inability to discharge the functions of the post, whether arising from infirmity of body or mind or any other cause; misbehavior; or due to a conflict of interest. Parameters for disqualifications to hold a post should also be set out, such as for reasons of an undischarged bankruptcy or having been convicted of an offence involving dishonesty or moral turpitude, such as the provisions found in the Contractor General Act, or the proposed Integrity Commission Act, 2014. By providing parameters, it may assist in providing transparency on the grounds for dismissal or removal and disqualification, as well as indicate to appointed members what conduct may come to question their eligibility as Commissioners. The Committee will formulate a recommendation. (see Recommendation 3.4.10 in Section 3.4 of Chapter II of this Report)

[187] Finally, an issue that may affect the overall work of the CPC, as identified in their annual reports since its inception, is the requirement to submit a declaration on December 31 of each year, as set out under section 3(3) of the Corruption (Prevention) Regulations. However, the CPC points out that section 4(5) of the Corruption (Prevention) Act, which establishes the times at which statutory declarations are to be furnished to the Commission, does not contain this requirement for a yearly submission of a declaration. As such, the view of the CPC is that the prescribed time contained in the Regulations is *ultra vires* the Act.¹⁴⁵ A similar provision in the original Act was deleted by the Corruption (Prevention) Act, 2002. The Committee believes that the country under review should consider amending the Act to include the yearly requirement to submit a declaration and at any intervals as the Commission may direct. The Committee will formulate a recommendation. (see Recommendation 3.4.11 in Section 3.4 of Chapter II of this Report)

3.3. Results of the legal framework and/or other measures.

[188] In its Response to the Questionnaire, the country under review provides the following information with respect to public education campaigns to publicize the consequences of corruption:¹⁴⁶

Public Education Campaigns		
2007	Agency	Attendees

¹⁴³ Section 13(1) of the First Schedule to the Corruption (Prevention) Act, *supra* note 104.

¹⁴⁴ See section 5 of the Contractor General Act, *supra* note 3.

¹⁴⁵ For example, see 2012/2013 Annual Report, pg. 16, *supra* note 88.

¹⁴⁶ Response to the Questionnaire, pgs. 12 – 13, *supra* note 7.

Sept	4	55
Oct	10	138
Nov	8	136
Dec	22	329
	44	658
2008		
Jan	3	108
Feb	4	156
Mar	1	35
	8	299
2011		
Jan	2	75
Feb	9	320
Mar	4	81
	15	476
2013		
Jan	4	86
Feb	8	164
Mar	4	89
	16	339

[189] The CPC undertakes an important role in detecting and investigating acts of corruption, and the country under review should consider continuing carry out these outreach programs, building awareness among public servants of their obligations under the Corruption (Prevention) Act, 2000, as well as that of the Protected Disclosures Act, 2011. However, the Committee notes that these outreach programs appear to be carried out on an ad hoc basis, and for a limited number of public servants, which may be due to limited resources made available to this oversight body. The Committee also notes that description of these programs is not found in the annual reports of the CPC, or in its website. The Committee considers that the country under review should consider continuing with these outreach programs, but in an expanded, permanent manner and that these activities, as well as the content of these outreach programs, be made publicly available so that it can reach a wider audience. The Committee will formulate recommendations. (see Recommendations 3.4.12 and 3.4.13 in Section 3.4 of Chapter II of this Report)

[190] The Committee would also like to highlight the following table, found in the 2012/2013 Annual Report of the CPC, regarding the historically high incidence of outstanding declarations:¹⁴⁷

Outstanding Statutory Declarations

Declaration Period	Expected No. of Declarations	No. of Declarations Received	Outstanding Declarations	Outstanding Percentage
January 31, 2003	14 705	12 819	1886	13%
December 31, 2003	14 705	11 020	3685	25%
December 31, 2004	17 228	12 870	4358	25%
December 31, 2005	14 104	9112	4992	35%
December 31, 2006	15 409	9185	6224	40%
December 31, 2007	20 684	12 789	7895	38%
December 31, 2008	23 447	13 090	10 357	44%
December 31, 2009	23 447	13 271	10 176	43%
December 31, 2010	24 389	15 034	9355	38%

¹⁴⁷ 2012/2013 Annual Report of the Commission for the Prevention of Corruption, pg. 7, *supra* note 88.

December 31, 2011	25 040	14 788	10 252	41%
December 31, 2012	31 132	14 916	16 216	52%
Total	224 290	138 894	85 396	38%

[191] The Committee believes that the large number of public servants in breach of their duty to submit a declaration is alarming and that the country under review should consider implementing measures that ensure that public servants file their declaration as required under Jamaican law. One such measure may consist in making this obligation a condition for retention of employment in the public service. Another measure the country under review may wish to consider is granting the CPC the power to impose a persuasive administrative penalty for the late or non-filing of a declaration.¹⁴⁸ The country under review may also want to consider reviewing the current sanctions in place, as they appear to not act as an effective deterrent for violation of the Act. Currently, section 15(2) of the Act provides that failure to furnish the CPC a declaration is punishable, on summary conviction, of a fine not exceeding two hundred thousand dollars and/or to imprisonment for a term not exceeding two years. The Committee will formulate recommendations. (see Recommendations 3.4.14, 3.4.15 and 3.4.16 in Section 3.4 of Chapter II of this Report)

[192] In this respect, during the on-site visit, the representatives of the National Integrity Action noted that if the fines are relatively insignificant as to not act as an effective deterrent, it brings the system into disrepute.

[193] The Committee further observes that the number of examinations undertaken by the CPC of submitted declarations is very low. For example, in the year 2012, the number of declarations of assets, liabilities and income received was 14 916. Of this number of declarations received, 31 were examined, bringing a total of 625 cases examined since the inception of the CPC up to the date of its last annual report.¹⁴⁹ The Committee observes that 31 examinations of a potential pool of 14 916 declarations is a very low number, representing approximately 0.002% of submitted declarations, and if all examinations and declarations received are included, 625 of 138 894, respectively, this represents 0.004%. The Committee believes that a review of such a miniscule number of declarations does not provide an incentive for public servants to truthfully set out their income, assets and liabilities, if, statistically speaking, a review of their declarations will not occur. One reason for the low number of examinations is due to the resources at the disposal of the CPC. The Committee notes that the this oversight body carries out its work with a staff size of 23 persons, of which 4 are financial analysts and 6 financial investigators, which would presumably be responsible for examining these declarations and verifying their content.¹⁵⁰ It will be a challenge for any oversight body with a staff this size to effectively oversee a regime that receives over 30 000 declarations a year. In order to assist the CPC's ability to conduct investigations of declarations, and not be hampered by budgetary and staff constraints, the Committee reiterates its recommendation 3.4.1 that was formulated in section 3.2 of this Report, whereby this oversight body is provided with adequate budgetary and personnel resources in order to effectively carry out its function. The Committee also believes that the country under review should also begin to consider increasing the number of examinations of declarations, so that it can be an effective regime that reduces and prevents

¹⁴⁸ The representatives of the CPC, during the on-site visit, noted that the Jamaican Constabulary Force, which has a high number of outstanding declarations as a body, has implemented a measure to increase compliance among its members by requiring proof of adherence to the requirements of the Corruption (Prevention) Act, 2000 before members are recommended for promotion and training opportunities, see also pg. 9 of the 2012/2013 Annual Report of the Commission for the Prevention of Corruption, *ibid.*

¹⁴⁹ 2012/2013 Annual Report of the Commission for the Prevention of Corruption, pg. 11, *ibid.*

¹⁵⁰ See 2012/2013 Annual Report of the Commission for the Prevention of Corruption, pg. 5, *ibid.* and Organisational Structure of the Commission for the Prevention of Corruption, http://cpcpd.gov.jm/sites/default/files/pdf/Organization_Chart.pdf

corruption in the public sector. These examinations are especially needed, given that out of the 31 examined, 28 were found to be deficient, a significantly high number that may be representative of the quality of the majority of declarations submitted.¹⁵¹ The Committee will formulate a recommendation. (see Recommendation 3.4.17 in Section 3.4 of Chapter II of this Report)

[194] In this respect, during the on-site visit, the representative from the Jamaica Bar Association expressed its point of view that it was unknown how much checking is done with respect to these declarations, and stated that he was unaware if anyone had ever been charged for doing so.

[195] The country under review also provides the following table in its Response to the Questionnaire with respect to actions taken in the past five years to detect acts of corruption, up to November 28, 2013.¹⁵²

Delinquency Cases	2009	2010	2011	2012	2013
Total Cases	487	512	555	619	764
Cases in Progress	16	13	4	12	
At Stage for Decision					
Referred to the Director of Public Prosecutions	487	512	555	619	764
Closed - no further action	42	471	428	428	450
Fines	\$300,000.00	\$437,000.00	\$1,407,000.00	\$2,336,000.00	\$3,946,500.00

[196] The Committee notes that these numbers are cumulative as each year progresses and that the referrals acted on by the Office of the Director of Public Prosecutions are for instances that public servants have not submitted their declaration. The Committee observes, however, that the total number of outstanding declarations, 85 396, dwarfs the total number of 764 referrals taken up by the Office of the Director of Public Prosecutions since the establishment of the CPC. Moreover, of these 764 referrals, the Office of the Director of Public Prosecutions has dismissed 450 of them, which the CPC lamented in the past that the low number of delinquents brought to court, as well as the high number of withdrawal of charges, has frustrated its efforts to reduce corruption.¹⁵³

[197] In addition, the Committee believes that the extremely large number of delinquency not only affects the work of the CPC, but also the Office of the Director of Public Prosecutions. Under section 1.2 of this Report, mention is made of the challenges faced by the Office of the Director of Public Prosecutions in carrying out its work, with reference being made to its lack of resources and significant backlog in cases. It is noted that the CPC has referred 18 431 cases to the Office of the Director of Public Prosecutions for action, and is currently preparing a new delinquency listing for submission to that Office, which can only stretch the limited resources at its disposal.¹⁵⁴

[198] The Committee further observes that in the instance that the CPC does come across an issue of illicit enrichment, it has forwarded this to the Office of the Director of Public Prosecutions for action. In the 2012/2013 Annual Report of the CPC, the following table is provided:¹⁵⁵

¹⁵¹ 2012/2013 Annual Report of the Commission for the Prevention of Corruption, pg. 11, *ibid*. The main issues of concern with respect to these declarations were the following: acquisition of assets with no evidence of financing; non-declaration of assets, such as properties or motor vehicles; omission of source of funds; insufficient information submitted on a declaration, in particular the receipt of gifts; and non-declaration of business interests/income.

¹⁵² *Ibid.*, pg. 13.

¹⁵³ See 2009/2010 Annual Report of the Commission for the Prevention of Corruption, pg. 10, <http://www.cpcpd.gov.jm/sites/default/files/reports/CPC%20Annual%20Report%202009-2010.pdf>

¹⁵⁴ 2012/2013 Annual Report of the Commission for the Prevention of Corruption, pg. 9, *supra* note 88.

¹⁵⁵ *Ibid.*, pg. 15.

Cases Investigated

Year	Number of Cases Reported to DPP	Number Taken Before the Court	Outcome in Court	Number of Cases awaiting DPP's Decision
2008/2009	2	-	-	2
2009/2010	2	2	2	-
2010/2011	4	1	1	3
2011/2012	2	-	-	2
2012/2013	8	1	1	7
Total	18	4	4	14

[199] These cases represent serious breaches of the Corruption (Prevention) Act, such as illicit enrichment or failure without reasonable cause to give such information as requested by the CPC in relation to a statutory declaration. As can be seen by the table, of the 18 cases reported, 14 are still awaiting rulings from the Office of the Director of Public Prosecutions. As such, only 4 matters for serious breaches of the Act have concluded in court since the inception of the CPC in 2003.

[200] The Committee observes that the number taken before the court is low compared to the number of cases reported to the Office of the Director of Public Prosecutions. Reference has been made in section 1.2 of the concerns the Office of the Contractor General has with respect to the low number of prosecutions carried out by the Office of the Director of Public Prosecutions regarding corruption cases, which also impacts and has relevance on the work of the CPC. If the Office of the Director of Public Prosecutions does not carry out prosecutions for acts of corruption committed by public servants, this undermines the efforts by the country under review to address the security issues identified in the 2013 National Security Policy. The Committee reiterates its recommendation formulated regarding the lack of prosecutions carried out by the Office of the Director of Public Prosecutions in section 1.2 of this Report. (see Recommendation 1.4.6 in Section 1.4 of Chapter II of this Report)

[201] In this respect, during the on-site visit, the representatives from the National Integrity Action expressed their concern on the fact that of 18 serious breaches of the Corruption (Prevention) Act forwarded to the Office of the Director of Public Prosecutions; only 4 have gone to court.

[202] Related to this issue, the country under review may wish to consider promoting coordination mechanisms among these oversight bodies with the Office of the Director of Public Prosecutions. As this Office has the exclusive competence to carry out prosecutions, open channels of communication between the CPC and this Office can help facilitate its work and lead to prosecutions for corruption and corruption related offences. The Committee will formulate a recommendation. (see Recommendation 3.4.18 in Section 3.4 of Chapter II of this Report)

[203] The Committee also observes that the CPC updates its database on those required to file a declaration, by making an annual request to public sector agencies for an update of persons required to file the statutory declarations of assets, liabilities and income, and received responses. The Committee observes that the CPC has never received a complete list from the public sector agencies. For example, in the 2012/2013 Annual Report, the CPC reports that it received a response from 130 out of 176 entities.¹⁵⁶ In the 2003 Annual Report of the CPC, the oversight body stated the following, which still has relevance,

¹⁵⁶ *Ibid.*, pg. 11.

regarding the obstacles it has encountered in determining how many public servants are required to file a declaration.¹⁵⁷

[204] *“The work of the Commission in establishing the database was also hampered by the fact that there is no central Public Service agency from which all information pertinent to Public Servants could be obtained and most agencies have not supplied updates or informed the Commission of any necessary changes to the personnel structure. This in turn has created problems in determining the completeness of the delinquency list.”*

[205] The Committee believes that the country under review should consider establishing a central public service agency database from which the CPC may access to have a complete and up to date list of public servants who are required to file a statutory declaration. The Committee will formulate a recommendation. (see Recommendation 3.4.19 in Section 3.4 of Chapter II of this Report)

3.4. Conclusions and recommendations.

[206] Based on the comprehensive review conducted with respect to Commission for the Prevention of Corruption in the foregoing sections, the Committee offers the following conclusions and recommendations:

[207] **Jamaica has considered and adopted measures intended to maintain and strengthen the Commission for the Prevention of Corruption as an oversight body, as described in Chapter II, Section 3 of this Report.**

[208] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 3.4.1 Provide the Commission for the Prevention of Corruption with the budgetary and human resources needed for the proper performance of its function, within available resources. (See section 3.2 of Chapter II of this Report)
- 3.4.2 Adopt a timetable for the implementation of the Commission for the Prevention of Corruption as the designated authority under the Protected Disclosures Act, 2011, setting out priorities, actions to be carried out, deadlines for executing them, and annual targets to be met, and disseminate that schedule so that the public can appreciate the Commission’s efforts to move forward with the full exercise of its functions. (See section 3.2 of Chapter II of this Report)
- 3.4.3 Consider enacting regulations in relation to the operations of the Commission for the Prevention of Corruption as the designated authority under the Protected Disclosures Act, 2011. (See section 3.2 of Chapter II of this Report)
- 3.4.4 Establish a component in the website of the Commission for the Prevention of Corruption that sets out its responsibilities as the designated authority under the Protected Disclosures Act, 2011, containing information on the rights of a person making a disclosure, the manner they may be carried out and the protections that can be afforded, for example. (See section 3.2 of Chapter II of this Report)

¹⁵⁷ 2003 Annual Report of the Commission for the Prevention of Corruption, pg. 9, <http://www.cpcpd.gov.jm/sites/default/files/reports/CPC%20Annual%20Report%202003-2004.pdf>

- 3.4.5 Establish a mechanism by which individuals may submit complaints respecting acts of corruption carried out by public servants and for submitting a disclosure under the framework of the Protected Disclosures Act, 2011. (See section 3.2 of Chapter II of this Report)
- 3.4.6 Provide the Commission for the Prevention of Corruption the power to inspect and make copies of all records and documents of government departments and agencies, including complete access to the Tax Administration Jamaica. (See section 3.2 of Chapter II of this Report)
- 3.4.7 Implement an electronic system for the submission of declarations by public servants. (See section 3.2 of Chapter II of this Report)
- 3.4.8 Implement a register of declared interests in order to help identify potential conflicts of interest between a public servant's private interests and his or her public duty. (See section 3.2 of Chapter II of this Report)
- 3.4.9 Consider establishing provisions that set out that the Commission for the Prevention of Corruption, in exercising its functions under the Corruption (Prevention) Act, is not subject to the control or direction of any person or authority. (See section 3.2 of Chapter II of this Report)
- 3.4.10 Consider establishing provisions that set out the circumstances under which the appointed members to the Commission for the Prevention of Corruption may be removed or dismissed from their position, as well as the parameters for disqualifications. (See section 3.2 of Chapter II of this Report)
- 3.4.11 Consider amending the Corruption (Prevention) Act to establish the requirement that public servants are to submit a statutory declaration on December 31 of each year or at such intervals as the Commission for the Prevention of Corruption may direct. (See section 3.2 of Chapter II of this Report)
- 3.4.12 Expand and implement outreach programs that raise awareness for public servants and the public on the obligations of public servants under the Corruption (Prevention) Act and the Protected Disclosures Act, 2011. (See section 3.3 of Chapter II of this Report)
- 3.4.13 Include details on the public education campaigns in the annual reports of the Commission for the Prevention of Corruption. (See section 3.3 of Chapter II of this Report)
- 3.4.14 Make as a condition for retention of employment in the public service the submission of the statutory declaration as required in the Corruption (Prevention) Act. (See section 3.3 of Chapter II of this Report)

- 3.4.15 Considering providing the Commission for the Prevention of Corruption the power to impose administrative penalties for the late or non-filing of a statutory declaration by a public servant. (See section 3.3 of Chapter II of this Report)
- 3.4.16 Consider updating the sanctions in place for breaches of the Corruption (Prevention) Act, so that they act as an effective deterrent. (See section 3.3 of Chapter II of this Report)
- 3.4.17 Increase the number of examinations of statutory declarations carried out by the Commission for the Prevention of Corruption. (See section 3.3 of Chapter II of this Report)
- 3.4.18 Establish, as appropriate, an information exchange and coordination mechanism or arrangement between the Commission for the Prevention of Corruption and the Office of the Director of Public Prosecutions. (See section 3.3 of Chapter II of this Report)
- 3.4.19 Establish a central public service agency database containing a complete and up to date list of public servants required to file a statutory declaration, from which the Commission for the Prevention of Corruption may have access. (See section 3.3 of Chapter II of this Report)

4. AUDITOR GENERAL'S DEPARTMENT

4.1 Existence of a legal framework and/or other measures

[209] The Auditor General's Department has a set of provisions in its legal framework and other measures concerning, among others, the following:

[210] With respect to its objectives and functions, section 122(1) of the Constitution of Jamaica establishes that the Auditor General shall audit and report at least once every year on the accounts of the Court of Appeal; the Supreme Court; the offices of the Clerks to the Senate and the House of Representatives; and the accounts of all departments and offices of the Government of Jamaica, including the offices of the Cabinet, the Judicial Service Commission, the Public Service Commission and the Police Service Commission.¹⁵⁸ In addition, section 122(5) empowers the Auditor General to perform such functions in relation to the accounts of the Government of Jamaica and the accounts of other public authorities and other bodies administering public funds in Jamaica as may be prescribed by or under any law in force in Jamaica or; such other functions in relation to the supervision and control of expenditure from public funds in Jamaica as may be prescribed; or such other functions in relation to the accounts of any other government as he or she may be empowered to perform by any authority in that behalf. As noted in the Response to the Questionnaire, the country under review asserts that there is nothing in law, which limits the right of the Auditor General to audit the books of all Ministries, Departments and Agencies of Government.¹⁵⁹

[211] The Financial Administration Act further provides, under section 25, that the Auditor General, in performing his or her functions under section 122(1) of the Constitution, must ascertain, among other

¹⁵⁸ Constitution of Jamaica, http://www.oas.org/juridico/PDFs/mesicic4_jam_council.pdf

¹⁵⁹ Response to the Questionnaire, pg. 15, *supra* note 7.

things, a) the accounts referred to in that section are being faithfully and properly kept; b) the rules and procedures applied are sufficient to secure an effective check on the assessment, collection and proper allocation of the revenue on other receipts of the Government; c) all money expended and charged to an appropriation account has been applied to the purpose for which the provision made by Parliament was intended and that any payment of public money conforms to the authority which governs it, and has been incurred with due regard to the avoidance of waste and extravagance; d) essential records are maintained and the rules and procedures framed and applied are sufficient to safeguard the control of Government property; e) the provisions of this or any other enactment relating to the administration of public moneys and Government have been complied with; and f) satisfactory procedures have been established to measure and report on the effectiveness of programs and services.¹⁶⁰

[212] The Auditor General, however, is prohibited from auditing its department accounts, in accordance with section 122(4) of the Constitution, as these are audited and reported on for the Minister responsible for finance.

[213] Pursuant to section 122(3) of the Constitution, the Auditor General, in the exercise of his or her functions, is not subject to the direction or control of any person or authority.

[214] Section 122(1) further provides that in carrying out its work, the Auditor General shall have access to all books, records, returns and reports relating to the accounts. Section 25(3) of the Financial Administration and Audit Act further expands on the powers of the Auditor General in this respect. For example, for the purpose of the examination of any account, the Auditor General is entitled to have access to all books, records, vouchers, documents, returns, reports, information storage devices, cash, stamp, securities, stores or other Government property in the possession of any officer; to request in writing and be given custody to any books, accounts, vouchers or papers under the control of any officer relating to the public accounts; and to call upon any officer for any explanations and information.

[215] Section 120(1) provides that the Auditor General is to be appointed by the Governor General, on the recommendation of the Public Service Commission.¹⁶¹ Section 121(3) of the Constitution further provides that the Auditor General may only be removed from office only for inability to discharge the functions of the office whether arising from infirmity of mind, body or any other cause, or for misbehavior. Furthermore, section 121(4) provides that the Auditor General may only be removed from office by the Governor General if the questions of removal from office has been referred to a tribunal, and this tribunal has recommended to the Governor General that the Auditor General ought to be removed for inability as aforesaid or for misbehavior.

[216] With respect to the staff of the Office of the Auditor General, these are considered public officers and are subject to the Public Service Staff Orders.¹⁶² As such, the entity responsible for the appointment, removal of and exercise of disciplinary control over these public officers is the Office of the Public Service Commission. The country under review, in its Response to the Questionnaire, notes that the Auditor General has delegated responsibility for its human resources and can appoint officers to a certain level, however senior staff appointments are carried out by the Public Service Commission and these senior officers are subject to the Code of Conduct contained in the Public Service Staff Orders, as well as

¹⁶⁰ Financial Administration and Audit Act, http://www.oas.org/juridico/PDFs/mesicic4_jam_finan.pdf

¹⁶¹ Section 121(1) further provides that the Auditor General shall hold until he or she attains the age of sixty or until sixty five, if recommended by the Public Service Commission. In addition, section 120(3) provides that a person holding the office of Auditor General is not eligible for appointment to any other public office.

¹⁶² Staff Orders for the Public Service, <http://jis.gov.jm/media/revisedStaffOrders.pdf>

its disciplinary regime.¹⁶³ As the Office of the Auditor General has been given delegated authority for its human resources, these functions include appointments, separation, discipline and training. In this respect, it has developed a Human Resource and Administration Policies and Procedures Manual.¹⁶⁴

[217] Furthermore, in the Response to the Questionnaire, the country under review provides the following on the hiring of staff:¹⁶⁵

[218] *“The Department is required to hire staff for vacancies which exist within the public service establishment. Vacant posts are advertised both internally and externally and the selection is based on merit based competition. There are specific job descriptions for every post with the requisite competence, qualification and experience. The Public Service Staff Orders prescribes the regime of disqualification for employees.”*

[219] With respect to the existence of manuals or documents for performing their tasks and describing their functions, the country under review, in its Response to the Questionnaire, states that the Department of the Auditor General has specific manuals for each operational unit, which includes an audit manuals, accounts and human resource manuals.¹⁶⁶ In this respect, the Committee notes that the country under review provided an Audit Procedural Manual and a Human Resource and Administrations Policies and Procedures Manual.¹⁶⁷

[220] A training program is also put in place, which offers various training courses to staff throughout the year.¹⁶⁸ This training is conducted both internally and externally. In this respect, Appendix 9 to the 2012/2013 Annual Report of the Auditor General sets out the training undertaken during the year, as well as the planned training program for 2014.¹⁶⁹ In addition, during the on-site visit, the representatives stated that there is a budget for providing training, which includes classroom training and fieldwork. Mention was also made of the assistance provided by international lending agencies, such as the World Bank and the Inter-American Development Bank, with respect to training.

[221] Regarding the existence of documented procedures for performing their tasks, the country under review, the Audit Procedural Manual sets out the policies and procedures relating to all aspects of the auditing function; facilitates the preparation and presentation of accurate, timely and reliable financial statements and audit reports; ensures consistent application of policies and facilitates staff training an the auditing procedures, among other things.¹⁷⁰ Moreover, audits are to be carried out in accordance to international standards, such as those promulgated by the International Organisation of Supreme Audit Institutions as well as International Standards on Auditing.¹⁷¹

[222] Moreover, in the Response to the Questionnaire, the country under review states that the Department has recently contracted for the provision of an Audit Suite to automat the audit process, and

¹⁶³ Response to the Questionnaire, pg. 16, *supra* note 7.

¹⁶⁴ Auditor General’s Department, Human Resource and Administration Policies and Procedures Manual, http://www.oas.org/juridico/english/mesicic4_jam.htm

¹⁶⁵ Response to the Questionnaire, pg. 17, *supra* note 7.

¹⁶⁶ *Ibid.*

¹⁶⁷ Both available at http://www.oas.org/juridico/english/mesicic4_jam.htm.

¹⁶⁸ Response to the Questionnaire, pg. 17, *supra* note 7.

¹⁶⁹ 2012/2013 Annual Report of the Auditor General, Appendix 9, Training Undertaken During the Year, pg. 138, http://www.auditorgeneral.gov.jm/files/u5/AGD_ANNUAL_REPORT_2013.pdf

¹⁷⁰ Audit Procedural Manual, pg. 5, *supra* note 164.

¹⁷¹ See the Audit Process, Auditor General’s Department of Jamaica, <http://www.auditorgeneral.gov.jm/audit-process-of-auditor-genreal-jamaica>

as part of this initiative, is in the process of automating the registry process.¹⁷² As noted in the 2012/2013 Annual Report of the Auditor General:¹⁷³

[223] “*In line with capacity building strategies, the AuGD [Auditor General’s Department] acquired the necessary hardware and software to enable the automation of the entire audit process so as to enhance the information management with the ultimate aim of transitioning to a paperless system. The system is scheduled for full implementation during 2014.*”

[224] With respect to the manner the general public is provided information with respect to their objectives and functions, the reports of the Auditor General’s Department, including all annual reports, performance and special reports, are posted on the website of the Auditor General, available at www.auditorgeneral.gov.jm/reports. In addition, the role and function of the Department, its mandate, organizational information, and explanation of the audit process is found on this website. Finally, it also provides contact information for the general public, such as a postal address, telephone and fax number and email, as well as provides the opportunity to submit an electronic contact form. The country under review, in its Response to the Questionnaire, notes that there is a designated officer in house that handles all interaction with the public, questions, and queries.¹⁷⁴

[225] Regarding mechanisms for internal control dealing with claims, complaints or allegations, the country under review, in its Response to the Questionnaire, states that these mechanisms are detailed in the Department’s audit manual, and that a proposed structure of the of this Department will include a quality assurance unit, which will have specific responsibilities in this area. The country under review also states that the quality control mechanism currently in place is robust with several levels of review.¹⁷⁵

[226] With respect to the manner in which budgetary resources are provided for their operations, the country under review, in its Response to the Questionnaire, states that: the “*Department receives its budgetary resources from the Ministry of Finance and Planning, through funds which are made available from the Consolidated Fund, in a manner similar to all other Public Bodies, which are not self-financing.*”¹⁷⁶

[227] Regarding coordination mechanisms for harmonizing functions, the country under review, in its Response to the Questionnaire, notes that the most apparent one is with the Public Accounts Committee of Parliament.¹⁷⁷ The reports of the Department are tabled in Parliament and deliberated on at the sitting of this Committee.

[228] With respect to accountability mechanisms, the Auditor General, under section 29(1) of the Financial and Administration Act, is to report annually as soon as possible and not later than December 31 following the end of each fiscal year the results of his or her examination. Moreover, the Auditor General may prepare a special report if it appears to him or her to be desirable, to be addressed to the

¹⁷² Response to the Questionnaire, pg. 17, *supra* note 7.

¹⁷³ 2012/2013 Annual Report of the Auditor General, pg. 5, *supra* note 169.

¹⁷⁴ Response to the Questionnaire, pg. 17, *supra* note 7.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*, pgs. 17 – 18.

Speaker who shall lay it before the House of Representatives.¹⁷⁸ These reports are available on the website of the Auditor General's Department at: www.auditorgeneral.gov.jm/reports

4.2. Adequacy of the legal framework and/or other measures.

[229] The Office of the Auditor General has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 4.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures.

[230] First, the Committee notes, that during the on-site visit, the representatives of the Auditor General noted that it had difficulty in attracting and retaining personnel, when the remuneration of the private sector is more attractive. As a result, there are instances where new staff stay on for 3 months, then leave for a higher paying position. In addition, it is not only higher pay in the private sector that affects retention of staff, but also the lack of sufficient resources. The country under review, in its Response to the Questionnaire, notes the following:¹⁷⁹

[231] *“The Department, like many other Government entities, is constrained by insufficient resources and as a result suffers from both insufficient staff complement and difficulty in attracting staff. These factors increase the risk that audits may fail to identify fraudulent activities, non-compliance with Government guidelines, inefficiency of Government operations and misstatements of Government accounts.”*

[232] The issue of resources and difficulty in attracting qualified staff was noted in the 2009/2010 Annual Report of the Auditor General:¹⁸⁰

[233] *“The human resource constraint places a limitation on the scope of our audit and increases the audit risk of non-detection of errors and irregularities. In this regard the AGD [Auditor General's Department] requested additional staff to function in the Financial Statement, Performance Audit, IT Audit and Special Investigations units and to respond to specific request of stakeholders; especially Government and international agencies. Accordingly, the Ministry of Finance approved the request for sixteen additional middle management posts. The additional posts will be phased in over a three year period and, at the same time; we agreed to give up six audit clerk posts. However, because of the remuneration attached to these posts we were challenged to attract qualified staff.”*

[234] The strain on resources is also apparent when the Department expands its activities to better comply with its mandate. For example, the Department has expanded activity based audits, which, as described in the 2012/2013 Annual Report of the Auditor General, entails *“the examination of an entity's core activity to ascertain whether the management has implemented a robust system of control to guarantee the achievement of its overarching objective or mandate.”*¹⁸¹ These form part of the compliance audits carried out by the Assurance Audit Unit, which ascertain the extent to which the

¹⁷⁸ Financial and Administration Act, section 29, *supra* note 160. See also section 122(2) of the Constitution of Jamaica, which provides that that Auditor General is to submit reports to the Speaker who shall cause them to be laid before the House of Representatives, *supra* note 158.

¹⁷⁹ Response to the Questionnaire, pgs. 18 – 19, *supra* note 7.

¹⁸⁰ 2009/2010 Annual Report of the Auditor General, pgs. 25 – 26, http://www.auditorgeneral.gov.jm/files/u5/AUDITOR_GENERAL_S_ANNUAL_REPORT_2010_0.pdf

¹⁸¹ 2012/2013 Annual Report of the Auditor General, para. 2.1.7, pg. 11, *supra* note 169.

Ministries, Departments and Agencies follow the rules, laws and regulations, policy, and established codes.¹⁸²

[235] However, with the expansion of these activity based audits, this has led to significant challenges to the Auditor General's Department:¹⁸³

[236] *“The AuGD [Auditor General's Department] had to contend with the negative effect of the learning curve associated with the roll out of the activity based audit methodology. This was exacerbated by competing priorities such as, capacity building initiatives, which placed additional burden on our already limited resources.”*

[237] In addition, the Department has not been able to complete all audits, or certify all financial statements as required during a year. For example, in the 2012/2013 Annual Report of the Auditor General, it is noted that of 32 planned compliance audits, which are conducted to ascertain the extent to which Ministries, Departments and Agencies follow the rules, laws and regulations, policy, and established codes, the Department completed 15.¹⁸⁴ Of 83 planned audits of financial statements, the Department was able to carry out 77 of them, and of that total, certify 50 of them.¹⁸⁵

[238] Given the foregoing, the country under review should consider providing the Auditor General's Department with sufficient human and budgetary resources to adequately carry out its functions, within available resources. The Committee will formulate a recommendation. (see Recommendation 4.4.1 see in Section 4.4 of Chapter II of this Report)

[239] The issue of sufficient human resources has also been affected by a proposed organizational structure presented to the Ministry of Finance and Planning for approval. In 2012, in order to ensure that the Department is staffed with competent personnel and that the organizational structure is sufficiently robust to meet its demands, the Auditor General engaged the services of PricewaterhouseCoopers (PwC) to do a comprehensive organization review (processes and people) to establish the type of staff complement and organizational structure that would best suit the Department in meeting its mandate.¹⁸⁶ In this same year, it received the findings and recommendations from the PwC report and submitted them to Cabinet Office for approval, and an 'interim organisational structure' has been developed by the Ministry of Finance and Planning and Cabinet, as a first step towards the achievement of a proposed structure.¹⁸⁷ To that end, the Ministry of Finance and Planning Budget Section received this new structure for costing and funding to be approved, which it is hoped will be implemented in 2014 - 2015. This process, however, has led the Department to put on hold any recruitment process, pending approval by the Ministry of Finance and Planning and Cabinet for implementation of the structure, a stalled recruitment process referred to in the 2011/2012 and 2012/2013 Annual Report. The Committee believes that the country under review should consider undertaking consideration of this proposed structure as soon as possible, so that the Auditor General's Department may begin to recruit personnel so that it can effectively carry out effectively its important work in ensuring transparency, accountability and best practices are maintained in government operations. The Committee will formulate a recommendation. (see Recommendation 4.4.2 see in Section 4.4 of Chapter II of this Report)

¹⁸² *Ibid.*, par. 3.1.2, pg. 17.

¹⁸³ *Ibid.*, pgs. 5 – 6.

¹⁸⁴ *Ibid.*, pg. 17.

¹⁸⁵ *Ibid.*, pg. 18.

¹⁸⁶ See 2011/2012 Annual Report of the Auditor General, par. 3.1.11, pg. 26, http://www.auditorgeneral.gov.jm/files/u5/AGD_ANNUAL_REPORT_2012_-_COMPLETE.pdf

¹⁸⁷ 2012/2013 Annual Report of the Auditor General, para. 3.1.2, pg. 19, *supra* note 169.

[240] With respect to the difficulty in attracting and retaining personnel, the Committee notes that during the on-site visit, the representatives stated that one limitation is the salary level of new personnel as established by the Public Service Commission. In addition, a challenge identified by the country under review in its Response to the Questionnaire with respect to the work of the Auditor General's Department is that its human resource profile is restricted to what is provided for in the Establishment Order of the Minister of Finance, which sets out the number of employees that can be employed by the Department, as well as the established positions, their grade and salary.¹⁸⁸ Being bound to this order, according to the country under review, the Department is unable to access specified skill and related experience, which has stymied its capacity to undertake certain activities.¹⁸⁹ The Committee observes, however, that the Auditor General's Department has been identified as one of twelve entities to be conferred with devolution and deconcentration of authority status. As set out in the 2012/2013 Annual Report of the Auditor General, this means that this Department will be granted autonomy over its operations, human and financial resources, which will involve significant changes in its operations. Phased implementation is to take place within 2014 to 2015. The Committee notes that with greater autonomy over its human and financial resources, the Department may be in a better position to attract and retain personnel, providing competitive salaries than what is currently being offered, and thus better fulfill the human resource needs of this Department. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.3 in Section 4.4 of Chapter II of this Report)

[241] The Committee observes that one of the important functions of the Auditor General's Department is the detection of irregularities when conducting an audit. In this respect, if the Department finds that an officer has: a) failed to collect any money owing to the Government; b) responsible for any improper payment of public funds or any payment that is not duly vouched; or c) is responsible for any deficiency in, or for the loss or destruction of, public moneys, stamps, securities, stores or other Government property, it shall report this to the Financial Secretary and recommend the surcharge to be levied for recovery.¹⁹⁰ In this case, the Financial Secretary may then levy this surcharge against the officer for the amount not collected or such improper payment, payment not duly vouched, deficiency, loss or the value of the property destroyed, as the case may be, if, within a period specified, a satisfactory explanation for such negligence is not submitted. The Act further states that no surcharge can be made after the expiration of a period of three years from the date of the negligent act and that the Financial Secretary should notify the Auditor General and the accounting officer of the department concerned of any surcharge made under the Act. Thus, as noted in the Response to the Questionnaire, the Department can only recommend surcharges, which are subject to the discretion of the Financial Secretary who may vary or withdraw the same.¹⁹¹

[242] The Auditor General, in its 2010/2011 Annual Report, made note of the amount collected by the Financial Secretary, for the years 2007 – 2011.¹⁹² During this time period, there were 14 cases involving losses and improper payments totaling approximately \$13 million, were reported to the Financial Secretary for possible surcharge. Of these cases, a surcharge of \$1.5 million was imposed for five of the cases involving losses/improper payments of \$6.3 million, of which only 1 million was recovered as of the date of that report. Furthermore, three of the cases involving \$2.9 million were withdrawn, two

¹⁸⁸ Response to the Questionnaire, pg. 19, *supra* note 7. See the Civil Service Establishment (General) Order, 2010, <http://www.mof.gov.jm/sites/default/files/publications/2010-est-full.pdf>, and the Civil Service Establishment (General) Order, 2011, <http://www.mof.gov.jm/sites/default/files/publications/2011-est-full.pdf>

¹⁸⁹ Response to the Questionnaire, *ibid*.

¹⁹⁰ Section 20 of the Financial Administration and Audit Act, *supra* note 160.

¹⁹¹ Response to the Questionnaire, pg. 18, *supra* note 7.

¹⁹² 2010/2011 Annual Report of the Auditor General, Section 7, Surcharge Matters, pgs. 50 – 51, http://www.auditorgeneral.gov.jm/files/u5/AGD_ANNUAL_REPORT_2011.pdf

because the three year limit had elapsed and the other, on the grounds that the guidelines were misinterpreted by the officers concerned. Finally, in decisions made in four of the cases involving \$1.5 million, the Auditor General's Department was not informed.¹⁹³

[243] The Committee observes that the Financial Secretary should be levying surcharges to recover the full amount of unauthorized loss of moneys, payments or property, and not let the three-year statute of limitation lapse for collection. In cases of a satisfactory explanation, or if the Financial Secretary levies a lesser amount, this should also be explained with written reasons which should be forwarded to the Department. In all cases, the Financial Secretary should be communicating with the Auditor General's Department of the levy imposed, and amount recovered. It is a concern for the Committee that the Financial Secretary, in many cases, does not communicate to the Department regarding this process. The system of levying surcharges is to recover an improper loss to the State, and should act as an effective deterrent to accounting officers as to not act in a manner that breaches the Financial Administration and Audit Act and the other laws in place in Jamaica. However, with only \$1 million recovered from \$13 million of detected irregularities, which can entail acts of corruption, this regime is not operating as it should be. The Committee believes that the country under review should consider amending the law so that there is no statute of limitation for the recovery of a surcharge. Moreover, the Financial Secretary should act in timely manner for the levying of surcharges, and if for any reason the Financial Secretary imposes a lesser surcharge than the total loss, it should be a requirement that this be made in writing with stated reasons and communicated to the Auditor General's Department. The Committee will formulate recommendations. (see Recommendations 4.4.4, 4.4.5 and 4.4.6 in Section 4.4 of Chapter II of this Report)

4.3. Results of the legal framework and/or other measures.

[244] The Committee notes that the country under review, in its Response to the Questionnaire, makes the following observation:¹⁹⁴

[245] *“The various reports of the Department are tabled in parliament and are published on the Department's website. Reports are also made on CDs and these are made available to the public and entities on request. The reports often highlight issues of malfeasance and other corrupt acts. Officers are constantly exposed to various audit methodologies via training. Various audits of different activities are conducted yearly and these decisions are done with the ascertained risk profile assigned to the entity. The reports also detail the methodology, scope and constraints if any. The audit findings are accompanied by the relevant recommendations to correct these issues.”*

[246] In this respect, the outcome of the performance and financial statements audits carried out by the Auditor General's Department is provided in their annual reports.

[247] In addition, in the annual reports, the Committee observes that the Auditor General provides information statistics on improper payments, which for 2012/2013, amounted to \$3.96 million; unapproved payments amounting to J\$213.2 million, US\$60 million and Euro 925 726; overpayments amounting to \$1 million, of which \$100 916 was recovered; uncleared advances amounting to US\$485 934; as well as identified procurement breaches of goods and services costing approximately \$24

¹⁹³ *Ibid.*, and see Appendix P of the 2010/2011 Annual Report.

¹⁹⁴ Response to the Questionnaire, pg. 18, *supra* note 7.

million.¹⁹⁵ The annual reports break down these numbers by Ministry, Department or Agency, amount, and other than unapproved payments, for the years 2008/2009 to 2012/2013.

[248] The Committee takes note of the valuable information provided in these annual reports with respect to these findings of these unauthorized payments. Nevertheless, the committee observes that the annual reports do not maintain statistics on the amount recovered from those responsible for improper and unapproved payments, as well as uncleared advances, unlike the case of overpayments. The country under review should consider maintaining statistics on the amounts ordered to be paid back to the State in these cases, and amount actually received, as is currently done for overpayments. The Committee notes that in the 2009/2010 and 2010/2011 Annual Reports of the Auditor General, it contained a chapter on surcharge matters, as well as an appendix setting out a chart identifying the Ministry, Department or Agency for which a surcharge was laid, the amount ordered to be applied by the Financial Secretary, and the amount received. This information should be included once again in the annual reports, as by making public this information, it may encourage action on the part of those owing a surcharge, as well as that of the Financial Secretary. The Committee will formulate a recommendation. (see Recommendation 4.4.7 in Section 4.4 of Chapter II of this Report)

[249] Moreover, the Committee notes that the legal regime does not appear to allow the Auditor General to report to the police if an audit reveals that a criminal offence has been committed, or report to the appropriate Service Commission for a breach of discipline, such as for a conflict of interest as set out under the Staff Orders for the Public Service. The country under review, in its Response to the Questionnaire states that as a consequence of an audit, corrupt acts that are detected are referred to the relevant bodies for a decision to be made.¹⁹⁶ However, section 26 of the Financial Administration Act solely provides that if any time the Auditor General discovers an irregularity in the receipt, custody or expenditure of public moneys or in the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other State property or in the accounting for the same, it shall report this to the Treasury. The Committee does observe that under section 80 of the Financial Management Regulations, 2011, when a loss is discovered,¹⁹⁷ the accounting officer is to investigate the circumstances of the loss and if the investigation reveals that a criminal offence has been committed, it is to be dealt with by the Police, if a criminal offence is involved, or by the Public Service Commission, Police Service Commission or Judicial Service Commission, as appropriate, if breach of discipline is involved. Moreover, the investigating officer is to report to the police if the circumstances of the loss indicate that a criminal offence has been committed.¹⁹⁸ The Committee believes that the country under review should consider allowing the Auditor General reporting breaches to other authorities, such as the Police and Service Commissions, as already allowed for accounting officers, so that appropriate action can be taken. The Committee will formulate a recommendation. (See Recommendation 4.4.8 in Section 4.4 of Chapter II of this Report).

[250] Moreover, the Committee notes that the annual reports break down procurement breaches by Ministry, Department and Agency, and by cost of the procurement, for the years 2008/2009 – 2012/2013.¹⁹⁹

¹⁹⁵ See pgs. 12 – 14 and Appendices 1 – 5 of the 2012/2013 Annual Report of the Auditor General, *supra* note 169.

¹⁹⁶ Response to the Questionnaire, pg. 18, *supra* note 7.

¹⁹⁷ Section 78 of the Financial Management Regulations provides that a loss is to have occurred when the Government is deprived of the use of any public or trust moneys, public property, stores or any other financial or physical asset, Financial Management Regulations, http://www.oas.org/juridico/PDFs/mesicic4_jam_finan_reg.pdf

¹⁹⁸ Section 86(2)(b), *ibid.*

¹⁹⁹ 2012/2013 Annual Report of the Auditor General, pg. 129, *supra* note 169.

Procurement Breach	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013
Total (Jamaican dollars)	\$365 508 182	\$398 821 064	\$527 800 000	\$286 998 917	\$24 470 822

[251] Regarding the breaches, these represent a significant amount. For the year 2012/2013 alone, the Auditor General states that these were cases where the government agency failed to obtain the requisite approval from the National Contracts Commission as well as to invite the required competitive price quotations before awarding a contract for less than \$10 million. Moreover, the Auditor General notes that it was unable to determine how these organizations satisfied themselves that prices paid were fair and reasonable.²⁰⁰ The Committee believes that the country under review should also consider having the Auditor General communicate to the Office of the Contractor General for appropriate action to be taken for any procurement breaches the Auditor General has come across. The Committee will formulate a recommendation. (See Recommendation 4.4.9 in Section 4.4 of Chapter II of this Report).

[252] Finally, as set out in section 4.1, one of the most important functions carried out by the Auditor General's Department is the auditing of the financial statements and appropriate accounts of the Ministries, Departments and Agencies of Jamaica. The Committee notes, however, that 85 financial statements had not been received as required under law, as set out in the 2012/2013 Annual Report of the Auditor General, a total including outstanding statements from past years.²⁰¹ In addition, the Annual Report also notes that there are 108 outstanding appropriation accounts that have not been submitted by Ministries, Departments or Agencies, a total including outstanding accounts from past years, and that there were 23 instances of outstanding financial statements, including receipts and payments statements, from statutory bodies.²⁰² As noted in this Report by the Auditor General:²⁰³

[253] *“Delay in the submission of the annual financial statements undermined the public accountability process, prevented a proper assessment of the entities financial performance and their state of affairs, and increased the risk of delayed or non-detection of errors and fraud.”*

[254] The Committee notes that section 71 of the Financial Management Regulations, 2011 provide that accounting officers, principal receivers of revenue and accountable officers shall take appropriate disciplinary proceedings in accordance with the Public Service Regulations against officers responsible for the delay in the timely submission of financial statements. Moreover, action shall be immediately reported to the Auditor General and the Financial Secretary. The Financial Secretary is to also report to the Minister any accounting officer or principal receiver of revenue whose financial statements are consistently late in submission and are in arrears. However, it appears that the penalties for submission of late financial statement do not appear to be working effectively.²⁰⁴

[255] Given the foregoing, the country under review should consider reviewing the measures in place that penalizes those persons or agencies that fail to submit their financial statements and implement ones that penalizes those persons or agencies that do not submit their accounts, in order to encourage compliance, and thus facilitate the Auditor General's role in promoting accountability, transparency and efficiency in government operations. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.10 in Section 4.4 of Chapter II of this Report)

²⁰⁰ *Ibid.*, pg. 14.

²⁰¹ *Ibid.*, pg. 14 and Appendix 7.

²⁰² *Ibid.*, pgs. 14 – 15 and Appendices 6 and 8.

²⁰³ *Ibid.*, pg. 15.

²⁰⁴ Financial Management Regulations, 2011, section 71, *supra* note 197.

4.4. Conclusions and recommendations.

[256] Based on the comprehensive review conducted with respect to the Auditor General's Department in the foregoing sections, the Committee offers the following conclusions and recommendations:

[257] Jamaica has considered and adopted measures intended to maintain and strengthen the Auditor General's Department, as an oversight body, as described in Chapter II, Section 4 of this Report.

[258] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 4.4.1 Provide the Auditor General's Department with the budgetary and human resources needed for the proper performance of its function, within available resources. (See section 4.2 of Chapter II of this Report)
- 4.4.2 Conclude the approval process by the Ministry of Finance and Planning and the Cabinet regarding the proposed new organizational structure for the Auditor General's Department. (See section 4.2. of Chapter II of this Report)
- 4.4.3 Implement the devolution and deconcentration of authority status to the Auditor General's Department in a timely manner. (See section 4.2 of Chapter II of this Report)
- 4.4.4 Consider amending the Financial Administration and Audit Act so as to eliminate the three year statute of limitation for the recovery of a surcharge. (See section 4.2 of Chapter II of this Report)
- 4.4.5 Ensure that the Financial Secretary acts on a timely manner when it receives a report from the Auditor General with a recommendation of the imposition of a surcharge. (See section 4.2 of Chapter II of this Report)
- 4.4.6 Provide that the Financial Secretary is to put in writing with stated reasons for a decision to impose a lesser surcharge than recommended by the Auditor General, and that this be communicated to the Auditor General's Department. (See section 4.2 of Chapter II of this Report)
- 4.4.7 Maintain statistics on the surcharges recommended by the Auditor General, broken down by government agency, amount ordered to be paid back, amount ordered to be levied the Financial Secretary as well as the amounts actually received, in order to identify challenges and recommend corrective measures. (See section 4.3 of Chapter II of this Report)
- 4.4.8 Consider amending the Financial Administration and Audit Act so as to allow the Auditor General to report to the Police and the Service Commissions, a criminal offence, or breach of discipline, respectively, that it discovers when carrying out an audit. (See section 4.3 of Chapter II of this Report)

- 4.4.9 Allow the Auditor General to report to the Office of the Contractor General any procurement breaches it discovers when carrying out an audit. (See section 4.3 of Chapter II of this Report)
- 4.4.10 Consider reviewing the measures in place that penalizes those persons or government agencies that fail to submit their financial statements and accounts. (See section 4.3 of Chapter II of this Report)

III. BEST PRACTICES

[259] In accordance with Section IV of the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round* and the *Format* adopted by the Committee for the Reports of said Round, reference is made to the best practice for conducting an audit and thus ensuring that the information is comprehensive, accurate and relevant, as contained in the Audit Procedural Manual.²⁰⁵ In addition, this best practice ensures that the process is fair to the entity involved.

IV. FOLLOW-UP ON PROGRESS AND NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST ROUND OF REVIEW²⁰⁶

[260] The Committee will refer below to the progress, information, and new developments made by Jamaica in relation to the recommendations and measures suggested by the Committee for implementation in the Report of the First Round, and with respect to which the Committee deemed that additional attention was required in the Reports from the Second and Third Rounds,²⁰⁷ and shall, as appropriate, take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them pursuant to section VI of the Methodology adopted by the Committee for the Fourth Round of Review.

[261] The Committee will also take note in this section of the Report of the difficulties in implementing the aforementioned recommendations and the measures to which the country under review has drawn attention, as well as of its technical cooperation needs to that end.

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

1.1 Standards of conduct to prevent conflicts of interest and mechanisms to enforce them

Recommendation:

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.

²⁰⁵ Response to the Questionnaire, pg. 19, *supra* note 7.

²⁰⁶ The list of recommendations that still require additional attention or which have been reformulated following this analysis, have been included as Annex 1 to this Report.

²⁰⁷ These Reports are available at: <http://www.oas.org/juridico/english/jam.htm>

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[262] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²⁰⁸

[263] – The country under review notes that the Public Service Regulations, 1961, governs the standard of conduct for all public offices within central government and provide guidance for other public sector organizations. However, the country under review notes that the regulation does not specify in its interpretation section to whom it applies. In this respect:

[264] *“For clarity it is being proposed through the amendments, to the said regulations, which are currently being discussed, that it must be clearly stated the Public Service Regulations “apply to all public officers in central government; to public officers transferred to other public bodies in relation to any pension, gratuity and other retiring benefits; and (iii) to Executive Agencies.”*

[265] Moreover, the country under review notes that: *“Standards of conduct have been implemented in the Executive Agencies Act, the Executive Agencies (General) Regulations Resolution, 2010 (second Schedule) incorporating sections of the Public Service Regulations, 1961 with respect to provisions of the Public Service Regulations, 1961 to be included in the Code of Conduct and Human resource Manuals of Executive Agencies. These relate to breaches of discipline and the process of dismissals.”*²⁰⁹

[266] These developments were reiterated by the representatives of the Public Service Commission during the on-site visit. In addition, the representatives from the Office of the Attorney General also mentioned that a legal consultant knowledgeable of Commonwealth law would be hired to provide guidance, consult stakeholders like the Office of the Attorney General, in order to ensure that the proposed amendments to the Public Service Regulations fulfill the requirements.

[267] Moreover, in a documents presented by the country under review subsequent to the on-site visit, it is noted that:²¹⁰

[268] *“Judicial Guidelines were developed during the first half of 2012 and are currently in force. Efforts are currently under way to amend the existing code. The committee which formulated the guidelines is now in the process of revisiting them with a view to adding more detailed commentaries for the better guidance of judges. The process of revision is being conducted with assistance from Canada under the JUST programme. It is expected that the revisions to the guidelines will be approved shortly.”*²¹¹

²⁰⁸ Response to the Questionnaire, pg. 21, *supra* note 7.

²⁰⁹ *Ibid.*, pg. 22.

²¹⁰ Recommendations for Round 1: Additional Information, http://www.oas.org/juridico/english/mesicic4_jam.htm

²¹¹ Judicial Conduct Guidelines, http://www.oas.org/juridico/english/mesicic4_jam.htm

[269] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that the proposed amendments to the Public Service Regulations which would clarify the scope of its coverage, still have to be enacted. (see measure a) of section 1.1 of Annex 1 to this Report)

[270] In addition, the Committee notes that the issue identified in the First Round, that led to measure a), was the limited scope of the Staff Orders, as it does not apply to all personnel employed by the Government. As stated in that Report:²¹²

[271] *“In accordance with the interpretation of the term “Public Officer” established at the introduction section of the Staff Orders, these exceptions are: the members of the Public Service Commission, the Judicial Service Commission and the Police Service Commission; the Attorney-General; the Auditor-General; and officers whose appointment is regulated by the Judicial Service Commission or the Police Service Commission. These are not the only offices that do not form part of the Public Service and that therefore do not fall under the Staff Orders. All political offices, as well as Judges of the Supreme Court and Judges of the Court of Appeal, members of boards, panels, committees or similar bodies established by law, and other offices specified not to be public offices for the purpose of the constitutional provisions also are exempt from these controls...These exceptions present a means to undermine the system in place to prevent conflicts of interest and corruption and it would be convenient to put standards in place to monitor and regulate the actions of those offices.”*

[272] While the adoption of the Judicial Guidelines provide ethical guidelines for judges of the Court of Appeal and the Supreme Court, Masters of the Supreme Court and Resident Magistrates, it appears that the country under review has not implemented measures that would prevent conflicts of interest and corruption. The Committee notes that the Staff Orders, in its introduction, provides that any or all the provisions of the Staff Orders may be adopted for use by any other entity within the wider Public Service.²¹³ However, the Committee cannot ascertain that this has occurred.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Establish written guidelines within the public service that require hiring on the basis of merit. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[273] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²¹⁴

[274] – *The Office of the Services Commissions’ mission statement is “to uphold the principle of merit in the appointment, development and discipline of public servants through processes that are transparent and fair.” In carrying out that mission, the Public Service Commission is guided by the written guidelines in The Public Service Regulations, 1961 (the PSR). Regulation 17 (1) of the PSR states “ from time to time as vacancies occur the Commission shall consider the eligibility of all*

²¹² Report on the Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the First Round, pg. 9, http://www.oas.org/juridico/english/mec_rep_jam.pdf

²¹³ Staff Orders for the Public Service, Introduction, *supra* note 162.

²¹⁴ Response to the Questionnaire, pgs. 22 – 23, *supra* note 7.

officers for promotion, and in respect of every such officer shall take into account not only his seniority, experience and educational qualifications but also his merit and ability.” In regulation 17 (2) of the said PSR it is also outlined that “ for promotion to a post involving work of a routine nature more weight may be given to seniority than where the work involves greater responsibility and initiative. Merit and ability shall be given more weight progressively as the work involves a higher degree of responsibility and initiative.” Also in regulation 19 (2) of the PSR, requirements as it relates to the performance of the functions of the candidate to be interviewed, there must be certain criteria that should be fulfilled. Furthermore, in upholding the mission statement and to ensure a system which is founded on meritocracy, the Public Service Commission has utilized assessment centers, use of different selection tools, case studies, and selection boards (panels) (Regulation 20 of the Public Service Regulations, 1961) that assist in ensuring that government hiring into the public service is based on the principle of merit. It should be noted that current discussions are being held to amend the Public Service Regulations, 1961 to include other requirements for the Commission to consider, such as performance appraisal reports and letters of commendation in relation to special work done, when interviewing candidates for hiring.

[275] In addition, the country under review notes that there is a current review and amendments to the Public Service Regulations which will include other requirements such as performance appraisal reports and letters or recommendation in relation to special work done, when interviewing candidates for hiring, and that Ministries to which functions are delegated are audited to ensure that the principle of meritocracy is adhered to and where weaknesses are identified ameliorative actions are recommended and/or taken.²¹⁵

[276] Moreover, during the on-site visit, the representatives stated that included in the review and amendments to the Public Service Regulations are provisions that will specifically mention that entry into the public service should be based on merit, as well as amendments that will require all advertisements of vacancies to be publicized to all eligible candidates.

[277] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the foregoing recommendation.

[278] However, the Committee takes note that the issue of merit in the systems of government hiring is reviewed in a more comprehensive manner in the Second Round of Review and the country under review received a similar recommendation that provides for the adoption, 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 country under review will have an opportunity to provide more comprehensive information on the manner it is meeting this recommendation on the follow-up to this round of review. Given the foregoing, the Committee considers that measure b) is no longer valid.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

²¹⁵ *Ibid.*, pg. 23.

[279] With respect to the aforementioned measure, the country under review presented information and new developments in a document submitted subsequent to the on-site visit. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²¹⁶

[280]– “A Committee has been established by the Permanent Secretaries Board to develop a Code of Ethics for Public Servants. Significant work has been done to date in conducting research on the issue of post employment conflict of interest. The Committee will take into account the research that has been done and expects to have prepared a draft by the end of 2014. An index of items to be included in the draft Code has already been prepared.”

[281] Moreover, the country under review notes, and as reflected in the Report of the First Round of Review for Jamaica,²¹⁷ that there are provisions in the Constitution and in legislation which prohibit post employment conflicts of interest, such as those applicable to members of the Public Service Commission and the Auditor General after leaving office. Moreover, the country under review also highlights that Paragraph 3 (d) (VI) of the First Schedule of the Contactor General Act, Public Sector Procurement Regulations, prohibits a procurement officer from discussing or accepting future employment with bidders or prospective bidders, suppliers, contractors or consultants.

[282] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure c) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that the proposed Code of Ethics for the Public Servants that would address post-employment conflict of interests has yet to be adopted. (see measure b) of section 1.1 of Annex 1 to this Report)

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Encourage the implementation of a code of ethics for Senators and Members of the House of Representatives, including sanction mechanisms for violations. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[283] With respect to the aforementioned measure, the country under review presented information and new developments in a document submitted subsequent to the on-site visit. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²¹⁸

[284] “A draft Code of Ethics for Senators and Members of the House has been drafted and will be forwarded to the Cabinet Secretary in April 2014. The Integrity Commission Bill, when enacted, is expected to provide for the development of Codes of Conduct. It is expected that the draft Code of Ethics may become part of the process envisaged under the new Bill for the development of Codes of Conduct.”

[285] To this end, the representatives of the Attorney General’s Chambers, during the on-site visit, stated that the Cabinet Secretary had written to them requesting that this Code be drafted and submitted to Cabinet for consideration.

²¹⁶ Recommendations for Round 1: Additional Information, pg. 1, *supra* note 210.

²¹⁷ Report of the First Round of Review, pg. 10, *supra* note 212.

²¹⁸ Recommendations for Round 1: Additional Information, pg. 1, *supra* note 210.

[286] Moreover, in the document submitted subsequent to the on-site visit, and during this visit, the country under review noted that section 21(1) of the Senate and House of Representatives (Powers and Privileges Act) provides that no member shall accept or receive either directly or indirectly any fee, compensation, gift or reward for or in respect of the promotion of or opposition to any bill, resolution, matter or thing submitted or intended to be submitted for the consideration of either House. In addition, sections 40 and 41 of the Constitution also require that a person seeking appointment to the Senate or election to the House and who are parties to or a partner in a firm or a director or manager of a company which to his knowledge is party to any contract with the Government who does not previously disclose the interest shall be disqualified from election. In the case of a Senator, he must inform the Governor General and in the case of a prospective member of the House, he must publish a notice in the Gazette within one month before the day of election. Failure to disclose such interests arising after his appointment or election gives rise under section 41 to his seat becoming vacant.²¹⁹

[287] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure d) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that the proposed Code of Ethics for Senators and Members of the House of Representatives has yet to be adopted. (see measure c) of section 1.1 of Annex 1 to this Report)

Measure e) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[288] With respect to the aforementioned measure, the country under review in a document submitted subsequent to the on-site visit notes that mechanisms already exist in Ministry Paper 19, paragraphs 39 and 40, which require the Prime Minister to “give such instructions as are appropriate to remove the conflict of interest,” and where it is not possible to devise such a measure, the Minister must take legal advice and consult the Prime Minister. Furthermore, the Ministry Paper provides that in such a case it may be necessary for the Minister to cease to hold the office in question.²²⁰

[289] During the on-site visit, the representatives of the Attorney General’s Chambers stated that Ministry Paper 19 requires these conflicts of interest to be removed, and if a mechanism cannot be put in place for this removal, the Minister must cease to hold office immediately. As such, the Prime Minister does not have discretion to allow a Minister to keep any relevant interest he or she is unable to or unwilling to dispose of.

[290] The Committee notes that paragraphs 39 and 40 of the Ministry Paper was reviewed and considered in the Report of the First Round of Review of Jamaica, and the issue at hand was the apparent discretion that the Prime Minister has in allowing a relevant interest to be maintained by a Minister.²²¹

²¹⁹ *Ibid.*, pgs. 1 – 2.

²²⁰ *Ibid.*, pg. 2. The Ministry Paper 19 is available at <http://www.cabinet.gov.jm/files/The%20GOJ%20Conduct%20of%20Ministers.pdf>

²²¹ Report of the First Round of Review, pgs. 6 and 10, *supra* note 212.

[291] However, given the foregoing, the Committee considers it appropriate to eliminate measure e) of the aforementioned recommendation of section 1.1 of Chapter IV of this Report.

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 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.2.2 of Chapter II of the First Round Report)

[292] With respect to the aforementioned recommendation, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered.²²²

[293] - Section 127 of the Financial Management Regulations, 2011 provides that accountable officers shall ensure that there is not waste, extravagance or abuse in the use of Government property under the custody or control of their department. Responsibility for implementation of this measure is the responsibility of the Ministry of Finance and Planning.²²³

[294] Moreover, in a document provided subsequent to the on-site visit, the country under review notes that the measure is implemented through periodic circulars issued to government bodies, the most relevant recent ones being Circulars Nos. 2 and 3 of March 2013, which sets out the appropriate use of Government Funded Advanced debit cards for the procurement of certain goods and provides guidelines that outline payment responsibilities, expenditure limits, receipt and custody of cards, exchange of cards for fuel, reporting arrangements, conservation, the requirement for control of consumption and the recording of expenditure patterns in order to ensure prudent management of scarce resources. Moreover, these circulars outline sanctions to be imposed for not complying with these guidelines.²²⁴

[295] The Committee takes note of the satisfactory consideration by the country under review of the foregoing recommendation.

Recommendation 1.2.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.2.3 of Chapter II of the First Round Report)

²²² Response to the Questionnaire, pgs. 26 – 27, *supra* note 7.

²²³ Financial Management Regulations, 2011, *supra* note 197.

²²⁴ Recommendations for Round 1: Additional Information, pgs. 2 – 3, *supra* note 7. The cited circulars, as well as other relevant ones, are found at <http://www.mof.gov.jm/mofpcirculars>

[296] With respect to the aforementioned recommendation the country under review notes that the Financial Management Regulations, 2011 provide the manner and timeframe for submitting financial statements, as well as the penalties imposed on officers responsible for the delay in the timely submission of these statements. It also provides that no expenditure shall be reallocated to any new service not provided for the Appropriation Act; or exceed the aggregate sums for such services.²²⁵

[297] The Committee notes however that there continues to be an issue with the timely delivery by government agencies of appropriation accounts. As observed under section 4.3 of Chapter II of this Report, the 2012/2013 Annual Report of the Auditor General noted that there are 108 outstanding appropriation accounts that have not been submitted by Ministries, Departments or Agencies, a total including outstanding accounts from past years, a fact recognized by the country under review in the Response to the Questionnaire where it notes that the accounts of some government entities may on occasion not be up to date.²²⁶ Moreover, while there have been developments in the submission of financial statements and penalties for failing to do so within the approved timeframe, the same cannot be said about appropriation accounts. Moreover, the measures mentioned in the Response to the Questionnaire appear to not address the instances where there has been excess in the expenditure approved by Parliament in several government agencies.

[298] The Committee does observe that the lack of timely delivery by government agencies of appropriation accounts is examined in greater detail in section 4.3 of Chapter IV of this Report. Given the foregoing, the Committee considers the reformulation of the recommendation for section 1.2 of Chapter IV of this Report, as follows:

[299] Adopt measures to encourage greater accountability in instances where some agencies exceed expenditures approved by Parliament. (see sole recommendation of section 1.2 of Annex 1 to this Report)

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:

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.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)

²²⁵ Response to the Questionnaire, pgs. 27 – 28, *supra* note 7.

²²⁶ 2012/2013 Annual Report of the Auditor General, pg. 15 and Appendix 6, *supra* note 169 and see Response to the Questionnaire, pg. 29, *ibid*.

[300] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²²⁷

[301] – The Protected Disclosures Act, 2011, facilitates and encourages the making of disclosures of improper conduct in the public interest. Section 20 of this Act also provides that any provision of an agreement will be void and no effect if the provision precludes an employee from making a protected disclosure.

[302] In addition, in a document submitted subsequent to the on-site visit, the country under review notes that the Commission for the Prevention of Corruption was designated as the authority to carry out the statutory functions of the Act. Moreover, the Committee notes that Procedural Guidelines have been adopted for the making, receiving and investigation of disclosures under the Act.²²⁸

[303] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that while the Protected Disclosures Act, 2011 facilitates and encourages the making of disclosures for improper conduct in the public interest, the legislation does not make it a requirement for government officials to report to appropriate authorities acts of corruption in the performance of public functions, as set out under the Inter-American Convention against Corruption. (see measure a) of section 1.3 of Annex 1 to this Report)

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)

[304] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²²⁹

[305] – The country under review notes that the “*Protected Disclosures Act (whistleblower legislation) was passed in 2011. The objects 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.*”

[306] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the foregoing recommendation. However, the Committee takes note that the issues 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 is reviewed in a more comprehensive manner in the Second Round of Review and the

²²⁷ Response to the Questionnaire, pg. 30, *supra* note 7.

²²⁸ Recommendations for Round 1: Additional Information, pgs. 3 – 4, *supra* note 210.

²²⁹ Response to the Questionnaire, pgs. 30 - 31, *supra* note 7.

country under review received similar recommendations in this respect. As such, Jamaica will have an opportunity to provide more comprehensive information on the manner it is meeting this recommendation on the follow-up to this round of review. Given the foregoing, the Committee considers that measure b) of Recommendation 1.3 is no longer valid.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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 basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)

[307] In its Response, the country under review did not report any developments with respect to measure c) of the foregoing recommendation.²³⁰

[308] The Committee takes note that the issues 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 is reviewed in a more comprehensive manner in the Second Round of Review. However, the provision of training to officials and employees on protection mechanisms in favor of those who report acts of corruption is not subject to a recommendation Report of the Second Round of Review for Jamaica. Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure b) of section 1.3 of Annex 1 to this Report)

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.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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 basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[309] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²³¹

[310] – The country under review notes that 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*

²³⁰ *Ibid.*, pgs. 31 – 32.

²³¹ Response to the Questionnaire, pgs. 32 - 33, *supra* note 7.

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.”

[311] In addition, the Committee observes that the database in place is being used to detect cases of illicit enrichment and for serious breaches of the Corruption (Prevention) Act, 2000. As noted under section 3.3 of Chapter II of this Report, for the year 2012/2013, 8 such cases were forwarded to the Director of Public Prosecutions.²³²

[312] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that the systems for analyzing the contents of the declarations are not being used to detect and prevent conflicts of interest, as well as there are no systems in place for the filing of declarations electronically.

[313] Given the foregoing, the Committee considers the reformulation of measure a) of the foregoing recommendation for section 2 of Chapter IV of this Report, as follows:

[314] Maximize the use of the systems for analyzing the contents of the declarations, and adopt the appropriate measures so that they can be used to help detect and prevent conflicts of interest and use modern technologies, when possible, to expedite the filing of declarations and also as a means of improving systems, analysis and case investigations. (see measure a) of section 2 of Annex 1 to this Report)

[315] Additionally, the Committee, notes that in the annual reports of the Commission for the Prevention of Corruption, the system for registering income, assets and liabilities does not necessarily require all public servants to file a statutory declaration, due to extensive restructuring in agencies and departments, which have resulted in the abolition of posts, mergers and establishment of others.²³³ Since the Commission may only receive declarations from the posts set out in Parts 1 and 2 of the Corruption (Prevention) Regulations, 2003, these new posts are not subject to the Corruption (Prevention) Act, and thus not required to submit a declaration. These new posts are located in important government agencies such as the Customs Department, the Inland Revenue Department, the Ministry of Transport and Works, as well as all members of the Financial Crimes Unit of the Financial Investigative Division.²³⁴ Moreover, a restructuring of the Tax Authorities in Jamaica has resulted in the creations of the Tax Administration Jamaica, which is not subject to the Act as well being a new agency not found in Parts 1 and 2 of the Regulations. In order to properly maximize the use of the systems for analyzing the contents of the declarations, and adopt the appropriate measures so that they can be used to help detect and prevent conflicts of interest and detect cases of illicit enrichment, the Committee believes that the country under review should consider reviewing and updating Parts 1 and 2 of the Corruption (Prevention) Regulations in order to include all appropriate posts required to submit a statutory declaration.

²³² See 2012/2013 Annual Report of the Commission for the Prevention of Corruption, pg. 14, *supra* note 88.

²³³ 2012/2013 Annual Report of the Commission for the Prevention of Corruption, *ibid.*, pg. 17.

²³⁴ *Ibid.*, pgs. 17 – 19.

[316] Similarly, the Commission for the Prevention of Corruption, in its 2012/2013 Annual Report, notes that the Solicitor General has advised that the Chief Justice, the President of the Court of Appeal and the Resident Magistrates fall within the provisions of the Corruption (Prevention) Act, but other judges do not, the justification being that these positions perform administrative functions, and other judges do not.²³⁵ The Committee believes that the country should consider addressing this anomalous situation.

[317] In order to maximize properly maximize the use of the systems for analyzing the contents of the declarations, and adopt the appropriate measures so that they can be used to help detect and prevent conflicts of interest and detect cases of illicit enrichment, the Committee considers that it would be appropriate to formulate the following measures:

[318] Review and update Parts 1 and 2 of the Corruption (Prevention) Regulations in order to include all appropriate posts in the public service who are required to submit a statutory declaration. (see measure b) of section 2 of Annex 1 to this Report)

[319] Consider amending the Corruption (Prevention) Act so as to require all members of the Judiciary to submit a statutory declaration. (see measure c) of section 2 of Annex 1 to this Report)

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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 basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[320] With respect to the aforementioned measure, the country under review in a document submitted subsequent to the on-site visit noted that: “*Section 13(1) J (ii) of the Charter of Rights and Fundamental Freedoms provides the right of everyone to respect for and protection of private and family life, and privacy of the home; and (ii) protection of privacy of other property and of communication. The information constitutes “personal information” which in the case law of other common law jurisdictions enjoys the protection of privacy. Dagg v. Canada (Minister of Finance), [1997] 2 SCR 403.*

[321] *The jurisprudence on the interpretation of the Charter within Jamaica is limited and as such illustrations of the rights protected by section 13 of the Charter may be drawn from the European Convention on Human Rights (ECHR). Notably, article 8 of the European Convention on Human Rights provides that: “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

[322] *Like section 13 of the Charter, article 8 of the ECHR protects the right to private life, privacy/protection of the home and correspondence/communication. The rights under article 8 of the ECHR, like under section 13 of the Charter are guaranteed, except as is necessary in a free and democratic society.*

²³⁵ *Ibid.*, pg. 19.

[323] *The European Court of Human Rights (the “Court”) has widened the scope of article 8 to include in the concept of “private life”, public information held in the files of public authorities. In the case of Rotaru v. Romania, the Court found that the information collected about the applicant which included information about his studies, his political activities, his criminal record fell within the scope of the term “private life”.*

[324] *Having regard to the jurisprudence above, and the extension of the term “private life” to include certain information held about an individual by public authorities, it is our view that information on statutory declarations should not be publicly disclosed. In addition public disclosure could have security implications for individuals.*²³⁶

[325] Given the foregoing, the Committee considers that measure b) of Recommendation 2 is no longer valid.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 2.3 of Chapter II of the First Round Report)

[326] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²³⁷

[327] – In the Response to the Questionnaire, the country under review notes that the Office of the Service Commissions has intensified awareness campaigns and has provided training to staff on their legal and ethical duty to furnish their statutory declarations. Compliance is encouraged through meetings and circulars have been issued that indicate to staff the importance of obeying the provisions of the Corruption (Prevention) Act and its regulations. The Office has also provided staff the forms to file the statutory declarations and notified them of the deadline for doing so. Moreover, the Office has issued circulars to remind staff of the need for all officers in Ministries and Departments to whom the Act applies to furnish to the Commission for the Prevention of Corruption the statutory declaration, such as Circular No., 23 of September 26, 2012.

[328] As for the requirements under the Parliament (Integrity of Members) Act, the Clerk of the Houses of Parliament has arranged sessions with parliamentarians where the Integrity Commission was asked to give a brief talk concerning the requirements under that Act to file. Parliamentarians were sensitized to the provisions of the Act and reminded of their obligation to complete the declarations accurately and present the necessary supporting documents in a timely manner.

[329] Finally, the country under review, in its Response to the Questionnaire, notes that the Commission for the Prevention of Corruption has conducted on-going localized training and education programs. These sensitization sessions with public agencies focus on the process of complying with the Corruption (Prevention) Act.

²³⁶ Recommendations for Round 1: Additional Information, pgs. 4 – 5, *supra* note 210.

²³⁷ Response to the Questionnaire, pgs. 34 - 35, *supra* note 7.

[330] In addition, in a document submitted subsequent to the on-site visit, the country under review notes that the Commission for the Prevention of Corruption has conducted a total of 16 public education sessions from January to March 2013 to sensitize public servants on their legal duty to furnish their declarations, of which a total of 339 public servants participated.²³⁸ Also, notice was given to the Chairman of the Commission for the Prevention of Corruption that all public servants as defined in section 2 of the Corruption (Prevention) Act are required to file their declarations by March 31, 2014, through Gazette No. 48 of December 6, 2013.²³⁹ The country under review further observes that this represents part of the process by the Commission to intensify awareness campaigns and to sensitize the public servants on their legal duties under the Act. The Office of the Service Commission also reminded all public servants of their requirements to file a declaration by circular 13 of January 14, 2014.²⁴⁰

[331] The Committee observes that this recommendation was formulated to the country under review in its Report of the First Round as a result of the considerable number of public servants and parliamentarians who were not meeting the deadlines for submission of the declarations with respect to the Commission for the Prevention of Corruption.²⁴¹ As set out under section 3.3 of Chapter II of this Report, this issue continues to be the case for the country under review. Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure d) of section 2 of Annex 1 to this Report)

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 2.3 of Chapter II of the First Round Report)

[332] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²⁴²

[333] – The country under review notes that the “*full complement of staff at the Office of the Director of Public Prosecutions (DPP) has been increased from thirty (30) to forty-three (43) between 2008 and present. The Office however, remains short of the number required to satisfactorily handle its general workload. An additional ten (10) to fifteen (15) attorneys are needed to effectively undertake the increasing number of criminal matters. Anti-corruption cases are often treated with some urgency, and matters specially noted to be urgent are usually returned within one (1) to three (3) days.*”

[334] In addition, it notes that the Integrity Commission faces certain budgetary constraints, which has prevented it from employing additional staff. It has requested approval from the Ministry of

²³⁸ Recommendations for Round 1: Additional Information, pg. 5, *supra* note 210.

²³⁹ Available at: <http://cpcpd.gov.jm/sites/default/files/gazettes/Gazette%202013.pdf>

²⁴⁰ Available at: <http://www.osc.gov.jm/OSC%20Circulars/Corruption%20Prevention%20Reminder.pdf>

²⁴¹ See Report of the First Round, pgs. 18 – 19, *supra* note 212.

²⁴² Response to the Questionnaire, pg. 36, *supra* note 7.

Finance and Planning for two additional posts, an investigating officer and a financial analyst, which has not yet been approved. With this additional staff, the Commission would be in a position to conduct more investigations and more meaningful analysis of declarations and financial statements.

[335] The Committee notes that under sections 2 and 3 of Chapter II of this Report, respectively, the Integrity Commission and the Commission for the Prevention of Corruption is reviewed in a more comprehensive manner and recommendations have been formulated to strengthen these bodies that are responsible for overseeing the compliance of public officials to furnish their declaration of income, assets and liabilities.

[336] The Committee further observes that throughout this Report, mention is made of the concerns by specific oversight bodies of the lack of action by the Office of the Director of Public Prosecutions in bringing forward prosecutions for acts of corruption, and the overall low number of prosecutions being carried out by this Office in this respect. Instances can be found in sections 1.2, 2.3, and 3.3 of Chapter II of this Report with respect to the Office of the Contractor General, the Integrity Commission and the Commission for the Prevention of Corruption, respectively.

[337] Given the foregoing, the Committee considers the reformulation of measure d) of the foregoing recommendation for section 2 of Chapter IV of this Report, as follows:

[338] Strengthen the Office of the Director of Public Prosecutions with the necessary budgetary, 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, within available resources. (see measure e) of section 2 of Annex 1 to this Report)

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

Recommendation 3.1 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 3.2 of Chapter II of the First Round Report)

[339] With respect to the aforementioned measure, the country under review in a document submitted subsequent to the on-site visit noted that other anti-corruption bodies and mechanisms have been established. In this respect, it sets out, in a detailed manner, the objectives and actions undertaken by the Jamaica Constabulary Force Anti-Corruption Branch, the Financial Investigations Division of the Ministry of Finance and the Major Organized Crime and Anti-Corruption Task Force.²⁴³

[340] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto, bearing in mind that the recommendation was formulated in the Report of the First Round of Review as the Staff Orders do not apply to conduct of all personnel employed by the Government. In addition, as seen under Section 2 of Chapter IV of this Report, under the system for registering income, assets and liabilities, there are segments of the public service for which the Corruption (Prevention) Act does not apply, such as new posts or organizations

²⁴³ Recommendations for Round 1: Additional Information, pgs. 6 – 7, *supra* note 210.

created since the enactment of the Corruption (Prevention) Regulations, or select members of the Judiciary being excluded from the Act. While the creation of new anti-corruption bodies help strengthen the anti-corruption regime in the country under review, the bodies cited do not put in place a mechanism to oversee those office that currently do not fall under the purview of any controls. (see recommendation 3.1 of section 3 of Annex 1 to this Report)

Recommendation 3.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 3.2 of Chapter II of the First Round Report)

[341] In its Response, the country under review did not report any developments with respect to recommendation 3.2.²⁴⁴ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 3.2 of section 3 of Annex 1 to this Report)

Recommendation 3.3 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 3.3 of Chapter II of the First Round Report)

[342] With respect to the aforementioned recommendation, the country under review in a document submitted subsequent to the on-site visit noted the following:²⁴⁵

[343] *“In section, 1.1.3 of the 2005 Report Jamaica submitted data on a number of cases of corruption which were addressed by the various oversight bodies including the Public Services Commission, the Police Services Commission, including judicial convictions, pending cases, fines imposed and dismissals. The Committee however indicated that the information was of a general nature and that it was unable to analyze comprehensively the results in the field. In section 2.3 of the report Jamaica also provided information on the system of statutory declarations, including number of declarations filed, cases submitted to the DPP, the number of cases brought before the Resident Magistrates Court, , the number of cases withdrawn, among other data. It is unclear what further information was needed and therefore in order to adequately comply with this recommendation it would be useful to obtain clarity on the precise information to be recorded and systematized.*

[344] *It is noted that there is ongoing recording and systematization of data on results by the Auditor General, the Contractor General, the Corruption Prevention Commission and the Commission for the Prevention of Corruption in their annual reports.”*

²⁴⁴ Response to the Questionnaire, pgs. 37 – 38, *supra* note 7.

²⁴⁵ Recommendations for Round 1: Additional Information, pg. 8, *supra* note 210.

[345] The Committee notes that in sections 1.3, 2.3, 3.3 and 4.3 of this Report, a review of the information maintained by these oversight bodies has been carried out, which has allowed the Committee to evaluate the results of the legal framework and other measures, and for which recommendations have been formulated. However, the Committee notes that there are oversight bodies that have not been subject to review and for which the recommendation is applicable, such as those listed in section 3.1 of the Report of the First Round for Jamaica, such as the Police Public Complaints Authority, the National Contracts Commission, the Public Accounts Committee, and the Public Administration and Appropriations Committee.²⁴⁶ Moreover, the country under review has established additional oversight bodies, as set out under the review of recommendation 3.1 of Chapter IV of this Report: the Jamaica Constabulary Force Anti-Corruption Branch, the Financial Investigations Division of the Ministry of Finance and the Major Organized Crime and Anti-Corruption Task Force.

[346] Given the foregoing, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto. (see recommendation 3.3 of section 3 of Annex 1 to this Report)

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

[347] The Committee did not formulate a recommendation in this section.

4.2 Mechanisms for access to information

Recommendation:

Strengthen the mechanisms for ensuring public access to information.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 4.2.2 of Chapter II of the First Round Report)

[348] With respect to measure a) of the aforementioned recommendation, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following:²⁴⁷

[349] – The country under review notes that “*Jamaica has reviewed this measure and is of the view that it is not necessary to modify the provision under section 5(6) (d) of the Access to Information Act which allows the Minister to exclude from the application of the Act “any statutory body or authority as the Minister may specify by order subject to affirmative resolution. The power of the Minister under this*

²⁴⁶ Report of the First Round, pgs. 20 – 22, *supra* note 212.

²⁴⁷ Response to the Questionnaire, pg. 40, *supra* note 7.

section is subject to strict Parliamentary scrutiny and therefore any order made by the Minister must be approved by Parliament. The Minister therefore does not have complete authority to exclude a statutory body from the application of the Act without Parliamentary oversight. This allows for effective control of the Minister's action. This is a stringent form of parliamentary control since the instrument or order must receive parliamentary approval before it can come into force. The ministerial powers in section 5 (3) of the Act are also progressive as they give the Minister the power to broaden the application to more bodies and organizations not currently defined as "public authorities" in section 3 of the Act subject to adjustments approved by Parliament."

[350] In addition, during the on-site visit, the representative from the Access to Information Unit emphasized that section 5(6)(d) did not allow for an exclusion from the Act. They also noted that an order has never been made, and any if one is ever to be made, it is subject to Parliamentary approval, meaning there is strict Parliamentary control of use of this section. It was reiterated that any order would need an affirmative resolution by Parliament, meaning that a vote has to be made in this body in favor of the order for it to have any force.

[351] Given the foregoing, the Committee is satisfied with the explanation provided by the country under review and it finds that measure a) of the aforementioned recommendation has been considered and is no longer valid.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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). (the basis for this measure is found in section 4.2.3 of Chapter II of the First Round Report)

[352] With respect to measure c) of the aforementioned recommendation, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²⁴⁸

[353] – The country under review notes that the “*Access to Information Unit reviewed the reporting standards to enhance and strengthen the reporting system (including Quarterly Reports). A Statistical Notice was published and issued in July 2012 (available on: www.ati.gov.jm). This Notice reminded public authorities on their reporting obligations and provided guidance on the new reporting standards and forms developed by the Access to Information Unit. Public Authorities were also advised of a new Three Tier monitoring Regime (Tier-1 (High Risk), Tier-2 (Medium Risk), Tier-3 (Low Risk). The new reporting standards and Forms are required from all public authorities with effect from January 1, 2013 after a transition period. Please see link below: <http://www.ati.gov.jm/sites/default/files/Documents/ATI%20Statistical%20Reporting%20Notice%20No%201%20of%202012.pdf>. The new monitoring framework, reporting standards and forms have improved the monitoring of the status of requests.*”

[354] In addition, during the on-site visit, the representative from the Access to Information Unit noted that the Access to Information Unit has carried out public education programs on compliance with the Access to Information Act. Moreover, as stated in the Response to the Questionnaire, the

²⁴⁸ Response to the Questionnaire, pg. 41, *supra* note 7.

Access to Information Unit has begun to issue institutional report cards, which rank authorities as high risk, medium risk and low risk, with regard to their compliance with the Act.

[355] The Committee takes note that in the Report of the First Round of Review, the recommendation was aimed at strengthening the quarterly reports, such as including, but not limited to information such as rate of completion and response time. While the issuance of new reporting standards and forms and issuance of a report card is a positive step to progress in the implementation of measure c) of the aforementioned recommendation, it remains unclear if the new reporting standards will also include more detailed information on the status of such requests, for example, average time taken for completion of a access to information request. Given the foregoing, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure c) of the foregoing recommendation, as well as the need for it to continue to give attention thereto. (see measure a) of recommendation 4.2 of section 4 of Annex 1 to this Report)

[356] The Committee also observes that the report cards, known as Annual Public Authority Access to Information Report Cards, were to be issued in 2013. However, when looking at the website of the Access to Information Unit, it appears that these report cards are not being published. The Committee considers that publication of these reports be made in the interests of transparency, and perhaps also serve to encourage government institutions to comply with the Act, knowing that their performance will be made public.

[357] Moreover, the Committee notes that the Access to Information Act, under section 36, provides that an annual report is to be prepared, as soon as practicable after the end of each year, but no later than June 30 of the following year, on the operation of the Act, containing the following matters: the number of applications for access received, granted, deferred, refused or granted subject to deletions; the categories of exemptions claimed and the numbers of each category; the number of applications received for amendment of personal records or annotation of personal records; the number of applications for internal review of relevant decisions as well as appeals against relevant decisions, and the rate of success or failure thereof; and such other matters as are considered relevant. This report is to be tabled to the House of Representatives and the Senate.²⁴⁹ The aforementioned quarterly reports by public authorities are also to be prepared containing the information set out in the annual report. The Committee notes, however, that copies of the annual reports are not found in the website of the Access to Information Unit, and it appears that the quarterly reports were last published in 2007.²⁵⁰ The Committee observes that these reports should be made public, as it would help serve to gauge the effectiveness of the Act in fulfilling its objective of reinforcing and giving further effect to certain fundamental principles underlying the system of constitutional democracy, namely a) governmental accountability; b) transparency; and c) public participation in national decision-making.²⁵¹

[358] Given the foregoing, the Committee considers that it would be appropriate to formulate the following measures:

[359] Make public on the Access to Information Unit website the Annual Public Authority Access to Information Report Cards. (see measure b) of recommendation 4.2 of section 4 of Annex 1 to this Report)

²⁴⁹ Access to Information Act, section 36, http://www.ati.gov.jm/sites/default/files/Documents/atiact_0.pdf

²⁵⁰ Access to Information Unit: Reports, <http://www.ati.gov.jm/reports>

²⁵¹ Access to Information Act, section 2, *supra* note 249.

[360] Make public on the Access to Information Unit website all Annual and Quarterly Reports. (see measure c) of recommendation 4.2 of section 4 of Annex 1 to this Report)

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 4.2.3 of Chapter II of the First Round Report)

[361] With respect to measure d) of the aforementioned recommendation, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²⁵²

[362] The country under review notes that “*On-going training in this area has continued 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; The Unit has also improved its complaints review and ‘follow up’ procedures with public authorities by e-mail and telephone. This includes its early intervention process once an applicant contacts the Unit. The Unit continues to provide guidance and advice to public authorities on this and other areas through its training programme.*”

[363] In addition, during the on-site visit, the representative from the Access to Information Unit noted that there are guidelines in place for public authorities so they can meet the time-frame of 30 days as established in the Access to Information Act to respond to an application. In these guidelines, the public authorities are encouraged not to wait 30 days, but rather respond as soon as possible. The representatives further stated that the public authorities have an additional 30 days, but an explanation is to be provided, such as the application is for a large volume of documents. After 60 days, this is deemed to be a refusal. The representative further stated that there is a website where individuals may consult to know their rights under the Act. Moreover, its training programs are being reviewed this year, as part of a new strategic process. Things to be looked at are the issuance of new guidelines on responding to a request.

[364] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure d) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that the steps to ensure that requests to access to information are responded to within the time-frame established by the Access to Information Act, such as on-going training, were already noted in the Report of the Third Round,²⁵³ and information has not been provided on the impact the guidelines have had on improving the response time to an application, which was the subject of concern for the Report of the First Round.²⁵⁴ (see measure d) of recommendation 4.2 of section 4 of Annex 1 to this Report)

4.3. Mechanisms for consultation

²⁵² Response to the Questionnaire, pg. 42, *supra* note 7.

²⁵³ Report on the Implementation in Jamaica of the Convention Provisions Selected for Review in the Third Round, and on Follow-Up to the Recommendations Formulated to that Country in Previous Rounds, pg. 32, http://www.oas.org/juridico/english/mesicic3_jam_rep.pdf

²⁵⁴ Report of the First Round, pgs. 26 – 27, *supra* note 212.

Recommendation:

Strengthen the existing mechanisms of consultation.

Measure suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Continue implementing consultation mechanisms with interested sectors of civil society and non-governmental organizations regarding the design of public policies and the legislative process in efforts to prevent corruption. (the basis for this measure is found in section 4.3.3 of Chapter II of the First Round Report)

[365] With respect to the aforementioned recommendation, the country under review in a document submitted subsequent to the on-site visit noted the following:²⁵⁵

[366] *“Jamaica has continued to implement consultation mechanisms in relation to the formulation of legislation and Government policy. Under the Standing Orders of the House of Representatives and the Senate, Joint Select Committees continue to be established. These Committees debate reports and Bills which have been tabled in Parliament. These Committees invite comments and suggestions from the public and civil society in general. Civil society has been very active in participating in these fora. The Government also invites comments from civil society generally on a number of policy initiatives and legislation by conducting stakeholder workshops and island wide consultations with civil society groups.”*

[367] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto, bearing in mind that the consultation mechanism cited were already referred to in the Report of the First Round of Review.²⁵⁶ (see sole measure of recommendation 4.3 of section 4 of Annex 1 to this Report)

[368] In meeting this measure, the country under review may take into account the Legislative Guideline: Basic Elements on Civil Society Participation that has been prepared by the MESICIC Technical Secretariat, which provides basic elements to be included in legal frameworks related to civil society participation mechanisms.²⁵⁷

4.4. Mechanisms to encourage participation in public administration**Recommendation:**

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

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

²⁵⁵ Recommendations for Round 1: Additional Information, pg. 8, *supra* note 210.

²⁵⁶ Report of the First Round, pgs. 27 – 28, *supra* note 212.

²⁵⁷ Legislative Guideline: Basic Elements on Civil Society Participation, http://www.oas.org/juridico/english/gl_consultation.doc

Establish additional mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption. (the basis for this measure is found in section 4.4 of Chapter II of the First Round Report)

[369] In its Response, the country under review did not report any developments with respect to measure a) of the foregoing recommendation.²⁵⁸

[370] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure a) of recommendation 4.4 of section 4 of Annex 1 to this Report)

[371] In meeting this measure, the country under review may take into account the Legislative Guideline: Basic Elements on Civil Society Participation that has been prepared by the MESICIC Technical Secretariat, which provides basic elements to be included in legal frameworks related to civil society participation mechanisms.²⁵⁹

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Promote public awareness of available corruption prevention mechanisms. (the basis for this measure is found in section 4.4 of Chapter II of the First Round Report)

[372] With respect to the aforementioned recommendation, the country under review in a document submitted subsequent to the on-site visit noted the following:²⁶⁰

[373] “*One major anti-corruption initiative launched by the JCF is the 1800-CORRUPT toll free line. The initiative allows citizens to report corrupt acts without fear of being exposed and to provide an independent, secure, and anonymous telephone line through which members of the force, customs department and the general public, may relay information or intelligence on corrupt practices, in which members of these and other agencies may be engaged. The hotline is answered offshore. Calls are then filtered to the Jamaica Constabulary Force, through the Anti Corruption Branch. Some of the 1800 calls have led to charges being laid and prosecution. Also other bodies such as the Corruption Prevention Commission and the Contractor General encourage the public to report alleged cases of corruption.*”

[374] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto, bearing in mind that one of the areas identified in sections 2.2 and 3.2 of Chapter II of this Report that the Integrity Commission and the Commission for the Prevention of Corruption may strengthen is in the need to establish a component in their respective websites for receiving reports of alleged cases of corruption. A dedicated page for receiving reports is an important step in promoting public awareness of available corruption prevention mechanisms. Moreover, in the case of the Integrity Commission, there is no website which the public may consult on its work, and be made aware of available corruption prevention mechanisms available to them for reporting alleged acts of corruption carried out by Parliamentarians. (see measure b) of recommendation 4.4 of section 4 of Annex 1 to this Report)

²⁵⁸ Response to the Questionnaire, pgs. 44 – 45, *supra* note 7.

²⁵⁹ Legislative Guideline: Basic Elements on Civil Society Participation, *supra* note 257.

²⁶⁰ Recommendations for Round 1: Additional Information, pg. 8, *supra* note 210.

[375] In addition, in meeting this measure, the country under review may take into account the Legislative Guideline: Basic Elements on Civil Society Participation that has been prepared by the MESICIC Technical Secretariat, which provides basic elements to be included in legal frameworks related to civil society participation mechanisms.²⁶¹

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

Recommendation:

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.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 4.5 of Chapter II of the First Round Report)

[376] In its Response, the country under review did not report any developments with respect to measure a) of the foregoing recommendation.²⁶²

[377] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure a) of recommendation 4.5 of section 4 of Annex 1 to this Report)

[378] In meeting this measure, the country under review may take into account the Legislative Guideline: Basic Elements on Civil Society Participation that has been prepared by the MESICIC Technical Secretariat, which provides basic elements to be included in legal frameworks related to civil society participation mechanisms.²⁶³

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Design and implement specific programs to publicize the mechanisms for encouraging participation in the follow up of public administration. (the basis for this measure is found in section 4.5 of Chapter II of the First Round Report)

[379] In its Response, the country under review did not report any developments with respect to measure b) of the foregoing recommendation.²⁶⁴

[380] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure b) of recommendation 4.5 of section 4 of Annex 1 to this Report)

²⁶¹ Legislative Guideline: Basic Elements on Civil Society Participation, *supra* note 257.

²⁶² Response to the Questionnaire, pgs. 46 – 47, *supra* note 7.

²⁶³ Legislative Guideline: Basic Elements on Civil Society Participation, *supra* note 257.

²⁶⁴ Response to the Questionnaire, pgs. 47 – 48, *supra* note 7.

[381] In meeting this measure, the country under review may take into account the Legislative Guideline: Basic Elements on Civil Society Participation that has been prepared by the MESICIC Technical Secretariat, which provides basic elements to be included in legal frameworks related to civil society participation mechanisms.²⁶⁵

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

Recommendation 5.1 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 5.2.2 of Chapter II of the First Round Report)

[382] In its Response, the country under review did not report any developments with respect to the foregoing recommendation.²⁶⁶

[383] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see sole recommendation of section 5 of Annex 1 to this Report)

Recommendation 5.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 5.2.2 of Chapter II of the First Round Report)

[384] With respect to the aforementioned recommendation, the country under review in a document submitted subsequent to the on-site visit noted the following:²⁶⁷

[385] – The Anti-Corruption Branch of the Jamaica Constabulary Force (JCF) has received technical assistance support from the United States and the United Kingdom Department for International Development (DFID). There is also an ongoing structured programme of financial support from DFID which includes training, funding for training, technical equipment, community outreach and the development of cyber capabilities, which will be scheduled to continue until 2015 at which point it will be assessed to determine whether further support will be provided. Canada also fully supports the JCF's polygraph program and has facilitated the training of JCF and Jamaica Defence Force polygraph examiners and Canada has also committed funds for the expansion of a polygraph training facility which will be built to facilitate training which will be offered to other Caribbean partners. It is intended that the centre will be designated a centre of excellence for polygraph in the Caribbean region.

²⁶⁵ Legislative Guideline: Basic Elements on Civil Society Participation, *supra* note 257.

²⁶⁶ Response to the Questionnaire, pg. 48, *supra* note 7.

²⁶⁷ Recommendations for Round 1: Additional Information, pgs. 9 – 10, *supra* note 210.

[386] Moreover, the country under review notes that a major conference, sponsored by the United States Agency for International Development (USAID) was held for Caribbean countries in March 2011 in Kingston, Jamaica, which included approximately 150 senior law enforcement personnel from the region's military and police institutions on anti-corruption. Keynote speeches focused on efforts practised and implemented by States in tackling corruption, and at the end of the conference, relevant protocols (multi-lateral agreement) were agreed which were subsequently formally ratified by the Association of Caribbean Commissioners of Police (ACCP) to be used as way forward in the exchange of intelligence and information on corrupt activities across the region.

[387] As well, the JCF established in 2008 an anti-corruption database, which includes established procedures policies and strategies employed to tackle anti-corruption within the force and if needed, to assist Caribbean colleagues with information. Jamaica has also hosted officer from other Caribbean territories for short periods of time, to enable them to learn best practices and which also serves the purpose of establishing a liaison. Joint training is also conducted.

[388] There are also agreements with the USA, Canada and UK, particularly related to intelligence exchange. This exchange of information has highlighted the need to maintain high levels of integrity, ethics and strategies used, to arrest and charge corrupt officers. In addition, there is another effective database in place named the Anti-Corruption Intelligence Database (ACID) which serves to share and disseminate anti-corrupt activity and information within Jamaica and the Caribbean. There are appointed Single Points of Contacts (SPOC's) in each territory to ensure that all law enforcement entities are not only represented but do not become bogged down in bureaucracy as specifically named persons are appointed and function to represent their respective entity. Participating states in ACID also include law enforcement from the UK, USA and Canada. The country under review further notes that within CARICOM, an Intelligence Committee has been established to promote the exchange of intelligence among member states. Each country has at least one (1) point of contact on the Committee which meets at least once a year but who are in constant contact through appropriate technologies. Finally, there is a Joint Regional Communications Centre and the Regional Intelligence Fusion Centre collates analyses and record criminal activities for further investigation.

[389] The Committee takes note of the satisfactory consideration by the country under review of the foregoing recommendation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 6.2 of Chapter II of the First Round Report)

[390] In its Response, the country under review did not report any developments with respect to the foregoing recommendation.²⁶⁸

[391] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see sole recommendation of section 6 of Annex 1 to this Report)

7. GENERAL RECOMMENDATIONS

Recommendation 7.1 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

[392] In its Response, the country under review did not report any developments with respect to measure a) of the foregoing recommendation.²⁶⁹

[393] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 7.1 of section 7 of Annex 1 to this Report)

Recommendation 7.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

[394] In its Response, the country under review did not report any developments with respect to measure a) of the foregoing recommendation.²⁷⁰

[395] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 7.2 of section 7 of Annex 1 to this Report)

Recommendation 7.3 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

[396] In its Response, the country under review did not report any developments with respect to measure a) of the foregoing recommendation.²⁷¹

[397] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 7.3 of section 7 of Annex 1 to this Report)

²⁶⁸ Response to the Questionnaire, pgs. 49 – 50, *supra* note 7.

²⁶⁹ *Ibid.*, pgs. 50 – 51.

²⁷⁰ *Ibid.*, pgs. 51 – 52.

²⁷¹ *Ibid.*, pgs. 52 – 53.

ANNEX I

**OUTSTANDING AND REFORMULATED RECOMMENDATIONS REGARDING THE
TOPICS REVIEWED IN THE FIRST ROUND**

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

**1.1. Standards of conduct to prevent conflicts of interest and mechanisms to enforce
them**

Recommendation:

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.

Suggested Measures:

- 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.
- b) 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.
- c) Encourage the implementation of a code of ethics for Senators and Members of the House of Representatives, including sanction mechanisms for violations.

**1.2. 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:

Adopt measures to 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:

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.

Suggested Measures:

- 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.
- b) 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.

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.

Suggested Measures:

- a) Maximize the use of the systems for analyzing the contents of the declarations, and adopt the appropriate measures so that they can be used to help detect and prevent conflicts of interest and use modern technologies, when possible, to expedite the filing of declarations and also as a means of improving systems, analysis and case investigations.
- b) Review and update Parts 1 and 2 of the Corruption (Prevention) Regulations in order to include all appropriate posts in the public service who are required to submit a statutory declaration.
- c) Consider amending the Corruption (Prevention) Act so as to require all members of the Judiciary to submit a statutory declaration.
- d) 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.
- e) Strengthen the Office of the Director of Public Prosecutions with the necessary budgetary, 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, within available resources.

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

Recommendations:

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.

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.

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 ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11)

4.1. General participation mechanisms

The Committee did not offer any recommendations in this section.

4.2 Mechanisms for access to information

Recommendation:

Strengthen the mechanisms for ensuring public access to information.

Suggested Measures:

- a) 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).
- b) Make public on the Access to Information Unit website the Annual Public Authority Access to Information Report Cards.
- c) Make public on the Access to Information Unit website all Annual and Quarterly Reports.
- 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*.

4.3. Mechanisms for consultation

Recommendation:

Strengthen the existing mechanisms of consultation.

Suggested Measure:

- Continue implementing consultation mechanisms with interested sectors of civil society and non-governmental 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:

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

Suggested Measures:

- 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:

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.

Suggested Measures:

- 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:

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.

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

Recommendations:

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.

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.

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.

ANNEX II**AGENDA OF THE ON-SITE VISIT TO
JAMAICA**

<u>Monday, March 31 2014</u>	
14:00 hrs. – 15:30 hrs. <i>Courtleigh Hotel</i>	Coordination meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
15:30 hrs. – 17:30 hrs. <i>Courtleigh Hotel</i>	Coordination meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat.
<u>Tuesday, April 1, 2014</u>	
09:00 hrs. – 10:30 hrs. <i>First Floor Conference Room, Attorney General's Chambers</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers.
	Topic: <ul style="list-style-type: none"> • Private sector participation in initiatives to combat corruption
	<u>Participants:</u> <i>Jamaican Bar Association</i> Mr. Donovan Walker, President Miss Althea McBean, Secretary <i>Private Sector Organisation of Jamaica</i> Professor Anthony Harriot, Standing Committee Member on National Security
10:30 hrs. – 12:30 hrs.	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers. (<i>continuation</i>)

	<p>Topics:</p> <ul style="list-style-type: none"> • Civil society perspectives on government oversight bodies that prevent, detect, punish and eradicate corrupt acts • Efforts to address Follow-Up Recommendations of the First Round <p><u>Suggested Participants:</u> <i>Jamaica Civil Society Coalition</i> Rev. Dr. Paul Gardener, Chairman <i>National Integrity Action</i> Professor Trevor Munroe, Executive Director Ms. Nadiya Figueroa, Deputy Director External Relations</p>
12:30 hrs. – 14:00 hrs.	Lunch
14:00 hrs. – 18:30 hrs.	Office of the Contractor General
14:00 hrs. – 15:00 hrs.	<p>Panel 1:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Scope of Functions – Revocation of Contracts • Human Resources • Manner in which Decisions are Adopted <p><u>Participants:</u> Mr. Dirk Harrison, Contractor General Mr. Maurice Barrett, Acting Senior Director –Non Construction Contracts Miss Gillian Pottinger, Legal Officer Miss Carla Kelly, Acting Chief Investigator</p>
15:00 hrs. – 16:00 hrs.	<p>Panel 2:</p> <ul style="list-style-type: none"> • Selection of Senior Officers • Selection of Personnel • Training

	<p><u>Participants:</u></p> <p>Mr. Dirk Harrison, Contractor General</p> <p>Mr. Maurice Barrett, Acting Senior Director –Non Construction Contracts</p> <p>Miss Gillian Pottinger, Legal Officer</p> <p>Miss Carla Kelly, Acting Chief Investigator</p>
16:00 hrs. – 17:00 hrs.	<p>Panel 3:</p> <ul style="list-style-type: none"> • Manner in which Public is provided with Information about Objectives and Functions • Mechanisms for Internal Control and Dealing with Complaints or Allegations • Manner in which Budgetary Needs are Ensured
	<p><u>Participants:</u></p> <p>Mr. Dirk Harrison, Contractor General</p> <p>Mr. Maurice Barrett, Acting Senior Director –Non Construction Contracts</p> <p>Miss Gillian Pottinger, Legal Officer</p> <p>Miss Carla Kelly, Acting Chief Investigator</p>
17:00 hrs. – 18:30 hrs.	<p>Panel 4:</p> <ul style="list-style-type: none"> • Coordination with other Government bodies • Results • Difficulties Encountered in Preventing, Detecting and Punishing Corrupt Acts • Corruption Prevention (Special Prosecutor) Bill, 2011
	<p><u>Participants:</u></p> <p>Mr. Dirk Harrison, Contractor General</p> <p>Mr. Maurice Barrett, Acting Senior Director –Non Construction Contracts</p> <p>Miss Gillian Pottinger, Legal Officer</p> <p>Miss Carla Kelly, Acting Chief Investigator</p>
18:30 hrs.	<p>Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.</p>
<p><u>Wednesday, April 2, 2014</u></p>	
9:00 hrs. – 12:30 hrs.	<p>Integrity Commission</p>

9:00 hrs. – 10:00 hrs.	<p>Panel 5:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Autonomy in Pursuit of Functions • Manner in which Decisions are Adopted • Selection of Senior Officers and Personnel <p><u>Participants:</u> Mr. Clive Nicholas, Member of the Integrity Commission Ms. Joy Powell, Secretary of the Commission</p>
10:00 hrs. – 11:00 hrs.	<p>Panel 6:</p> <ul style="list-style-type: none"> • Mechanisms for Internal Control and Dealing with Complaints or Allegations • Manner in which Budgetary Needs are Ensured • Coordination with other Government bodies <p><u>Participants:</u> Mr. Clive Nicholas, Member of the Integrity Commission Ms. Joy Powell, Secretary of the Commission</p>
11:00 hrs. – 12:30 hrs.	<p>Panel 7:</p> <ul style="list-style-type: none"> • Accountability Mechanisms • Training • Results • Corruption Prevention (Special Prosecutor) Bill, 2011 • Resources <p><u>Participants:</u> Mr. Clive Nicholas, Member of the Integrity Commission Ms. Joy Powell, Secretary of the Commission</p>
12:30 hrs. – 14:00 hrs.	Lunch
14:00 hrs. – 17:30 hrs.	Commission for the Prevention of Corruption

14:00 hrs. – 15:00 hrs.	<p>Panel 8:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Objectives and Functions • Autonomy in Pursuit of Functions • Manner in which Decisions are Adopted
	<p><u>Participant:</u> Mr. David Grey, Secretary/Manager</p>
15:00 hrs. – 16:00 hrs.	<p>Panel 9:</p> <ul style="list-style-type: none"> • Selection of Senior Officers and Personnel • Training • The Manner in which Budgetary Needs are Ensured
	<p><u>Participant:</u> Mr. David Grey, Secretary/Manager</p>
16:00 hrs. – 17:30 hrs.	<p>Panel 10:</p> <ul style="list-style-type: none"> • Coordination with other Government bodies • Mechanisms for Internal Control and Dealing with Complaints or Allegations • Accountability Mechanisms • Difficulties and Legislative Proposals
	<p><u>Participant:</u> Mr. David Grey, Secretary/Manager</p>
17:30 hrs.	<p>Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.</p>
<p><u>Thursday, April 3, 2014</u></p>	
09:00 hrs. – 12:30 hrs.	<p>Auditor General</p>

09:00 hrs. – 10:00 hrs.	<p>Panel 11:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Scope of Functions – Monetary Sanctions Imposed • Manner in which Decisions are Adopted <p><u>Participants:</u> Mrs. Delores Linton Williams, Acting Divisional Director Mr. Marlon McAdam, Senior Director of Audit</p>
10:00 hrs. – 11:00 hrs.	<p>Panel 12:</p> <ul style="list-style-type: none"> • Selection of Senior Officers and Personnel • Use of Technology • Training <p><u>Participants:</u> Mrs. Delores Linton Williams, Acting Divisional Director Mr. Marlon McAdam, Senior Director of Audit</p>
11:00 hrs. – 12:30 hrs.	<p>Panel 13:</p> <ul style="list-style-type: none"> • Mechanisms for Internal Control and Dealing with Complaints or Allegations • Manner in which Budgetary Needs are Ensured • Coordination with other Government bodies • Difficulties Encountered in Preventing, Detecting and Punishing Corrupt Acts • Best Practices <p><u>Participants:</u> Mrs. Delores Linton Williams, Acting Divisional Director Mr. Marlon McAdam, Senior Director of Audit</p>
12:30 hrs. – 14:00 hrs.	Lunch
14:00 hrs. – 16:30 hrs.	Follow-Up

	<p>Panel 14: Follow-Up</p> <ul style="list-style-type: none"> • Standards of Conduct for the Correct, Honorable, and Proper Fulfillment of Public Functions • Systems for Registering Income, Assets and Liabilities • Oversight Bodies • Mechanisms for Civil Society Participation • Assistance and Cooperation • General recommendations <p><u>Participants:</u></p> <p><i>Office of the Services Commission</i></p> <p>Mrs. Judith Cheese-Morris, Deputy Chief Personnel Officer</p> <p>Mrs. Lenster Lewis-Meade, Legal Officer</p> <p><i>Access to Information Unit</i></p> <p>Mr. Damion Cox, Director</p>
16:30 hrs. – 17:00 hrs.	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
17:00 hrs.	Final meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat.
<p>Government Officials in Attendance During the On-Site Visit</p> <p>The following government officials will be present throughout the on-site visit:</p> <p>Mrs. Nicole Foster-Pusey, Solicitor General</p> <p>Mr. O’neil Francis, Assistant Attorney General</p>	

**CONTACT AUTHORITY FROM THE COUNTRY UNDER REVIEW FOR
COORDINATION OF THE ON-SITE VISIT, AND REPRESENTATIVES OF THE
MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP AND THE
TECHNICAL SECRETARIAT OF THE MESICIC**

COUNTRY UNDER REVIEW:

JAMAICA

Nicole-Foster Pusey, Q.C.
Solicitor General
Attorney General's Chambers

O'neil Francis
Assistant Attorney General
Attorney General's Chambers

MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP:

REPUBLIC OF EL SALVADOR

Álvaro Magaña Granados
Executive Secretary
National Council for Sustainable Development

Miguel Girón
Counsel
Member of the Inter-Institutional Working Group for Following-Up on the IACAC

GRENADA

Robert Branch
Senior Legal Counsel
Attorney General's Chambers

TECHNICAL SECRETARIAT OF THE MESICIC

Rodrigo Silva
Legal Officer, Department of Legal Cooperation
Secretariat for Legal Affairs of the OAS