

Additional Information on Efforts by Jamaica to comply with the MESICIC First Round

Recommendations

Dated April 10, 2014

Recommendation 1.1

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.

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.

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

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. There are currently some provisions in the Constitution and in legislation which prohibit post employment conflicts of interest. *Section 125(4) of the Constitution and section 120(3) restrict the employment of members of the Public Service Commission and the Auditor General after leaving office. 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.*

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

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.

There are however, currently, systems in place which ensure the ethical performance of functions. 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.

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. It is only the Senate or House which may exempt a member from vacating his seat if the circumstances warrant such exemption.

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

Such 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.” Where it is not possible to devise such a measure, the Minister must take legal advice and consult the Prime Minister. The Paper provides that in such a case it may be necessary for the Minister to cease to hold the office in question. This refers to the Constitutional requirement to vacate one’s seat under section 41 of the Constitution.

RECOMMENDATION 1.2.1:

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

In response to the recommendation, Section 127 of the Financial Management Regulations, was adopted in 2011 providing that accountable officers shall ensure that there is no waste, extravagance or abuse in the use of Government property under the custody or control of their department. The Regulations also generally provide for a duty to conserve and properly use Government resources.

The Ministry of Finance and Planning has responsibility for the implementation of the above measure.

The measure is implemented through periodic circulars to the relevant government bodies. The most recent circulars on particular subject matters are:

By Circulars Nos. 2 and 3 of 18th March 2013, the Ministry of Finance and Planning issued written guidelines to all Permanent Secretaries, Chief Executive Officers and Heads of Departments on the appropriate use of Government Funded Advanced debit cards for the procurement of certain goods such as bulk fuel and retail fuel oil and lubricants for government motor vehicles. The guidelines 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.

The circulars outline the sanctions to be imposed for failure of public officers to comply with the guidelines. Such officer will be liable to a surcharge up to the value of fuel not properly accounted for or disciplinary action taken as deemed appropriate by the Accounting Officer. All Permanent Secretaries, Chief Executive Officers and Heads of Departments are required to bring the circular to the attention of all relevant public officers.

Section 20 of the Financial Administration and Audit Act also provides as follows:

“If it appears to the Financial Secretary upon a report by the Auditor-General that any person who is or was an officer-

(a) has failed to collect any moneys owing to the Government for the collection of which such person is or was at the time of such employment responsible;
(b) is or was responsible for any improper payment of public moneys or for any payment of such moneys which is not duly vouched; or
(c) is or was responsible for any deficiency in, or for the loss or destruction of, any public moneys, stamps, securities, stores, or other Government property, and if, within a period specified by the Financial Secretary, an explanation satisfactory to him is not furnished with regard to such failure to collect, improper payment, payment not duly vouched, deficiency, loss or destruction, as the case may be, the Financial Secretary may surcharge against the said person 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, or such lesser amount as the Financial Secretary may determine.”

Recommendation 1.3:

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

Measures suggested by the Committee:

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

The Commission for the Prevention of Corruption was designated as the authority to carry out the statutory functions of the Protected Disclosure (Whistleblower) Act.

A decision was taken to name that existing agency as opposed to creating a new agency. That decision was influenced by the fact that Parliamentarians were of the position that there was no need for a new body, and therefore an existing body should be designated as such. The designation of the Corruption Prevention Commission will therefore ensure a more efficient use of public resources.

Further, while other entities were considered such as the Office of the Public Defender and the Integrity Commission, the Commission for the Prevention of Corruption was selected as there appeared to be a greater functional relationship between the functions of the designated authority under the Act and those of the Corruption Prevention Commission than in the case of the other entities.

The Ministry of Finance and the Cabinet have confirmed approval for the strengthening of the organizational structure of the Commission, to enable it to operationalize its role under the Act, subject to available budgetary support.

The Commission has begun the process of the development of procedural guidelines for the making, receiving and investigation of disclosures under the Act on an ongoing basis. These guidelines will precede the development of possible supporting regulations.

The Protected Disclosures Act, facilitates and encourages the making of disclosures of improper conduct, in the public interest.

Recommendation 2

Measure b):

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

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

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.”

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.

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*¹, 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”.

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.

Measure c):

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

ADDITIONAL INFO: The Corruption Prevention Commission 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 income assets and liabilities. During the sensitization session a total of 339 public servants participated.

By Gazette No 48 of December 6, 2013, notice was given by 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 Statutory Declaration of Assets, Incomes and Liabilities by March 31, 2014. This represents part of the process by the Commission to intensify awareness campaigns and to sensitize public servants on their legal duties under the Corruption (Prevention) Act. The Gazette was published on the website of the Commission for the Prevention of Corruption: cpcpd.gov.jm.

By circular 13 of 14th January 2014, the Office of the Services Commissions also reminded all public servants of the requirement to file their statutory declarations.

RECOMMENDATION 3.1:

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

The section from which the recommendation arises relates in general to the existence of anti-corruption bodies. It will be noted that since the report, other anti-corruption bodies and mechanisms have been established.

¹ (2000) 8 BHRC 449

Jamaica Constabulary Force (JCF) Anti-Corruption Branch

The objectives of the Anti- corruption Branch are to prevent the occurrence of corruption and unethical behavior within the JCF; actively promote a culture of professionalism, ethics and integrity; articulate the Ethics and Integrity Framework into strategic priorities to influence a robust corruption prevention culture; reduce the incidence of unethical behavior and corruption; provide and refine standards and processes to report, investigate and combat corruption.

The Branch maintains a website at acb.gov.jm. The website contains links for the filing of complaints and has statistics on a monthly basis of key performance indicators.

Since September 2007, the ACB has produced three (3) Anti-Corruption Strategies, with three key objectives namely:

- Fear of Detection and Prosecution,
- Corruption Prevention Strategies,
- Communication and Education.

The new strategic direction of the ACB has proven to be extremely effective and has vastly assisted the JCF in fulfilling its mandate which is to rid the JCF and its auxiliaries of corruption.

The current JCF Anti Corruption Strategy 2010 to 2012, promotes the phrase **WORKING TOGETHER FOR A VALUED AND TRUSTED JCF**. One of the new and dynamic work elements 2010 was the launch of the JCF Cleansing Programme. This is a priority initiative that entails the use of all available internal and external procedures in the process of removing corrupt and unethical members from the JCF.

One of the main tools being employed in the execution of the “Cleansing Programme” is the increased use of polygraph examinations to assess the ethical standards of JCF members. Polygraphing has been developed and extended as a matter of urgency, further developments in 2011 will be the opening of a new polygraph office at the Jamaica Police Academy in Spanish Town, the random polygraph initiative will be also be expanded in 2011/2012 with the addition of a mobile polygraph capability ensuring a greater number of test can be conducted without staff having to travel to a Kingston based unit.

The plan is to extend the number of JCF internationally accredited polygraph examiners from two to nine in total, this is a challenging initiative over the next two years.

Polygraph examinations are voluntary and should not be viewed as an imposition on JCF staff, however they are part of a critical process in the selection of staff for key posts within the organization, they are also mandatory in senior officer promotion procedures, also were junior officers seeking promotion but have ethical issues that need examining.

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In August 2010, the JCF established an ethics committee, chaired by the Inspector General. This new committee has been established to ensure that the JCF maintain the ethical standards demanded by the public.

The “Cleansing Programme”, is proving a useful initiative in challenging JCF staff who engage in corruption, unlawful and unethical activities or poor performance, with many officers being retired in the public’s interest or prohibited from re-enlisting at the end of their five (5) year contract.

The Financial Investigations Division

The Financial Investigations Division (FID) of the Ministry of Finance was established on the 16th December 2002 and further regulated through the Financial Investigations Divisions Act, 2010. FID is responsible for the recovery of Assets according to the Proceeds of Crimes Act 2007 and collaborates with other agencies in carrying out this function (Section 3 and 4 of the Proceeds of Crime Act). The FID consists of five units: Financial Intelligence, Financial Crimes Investigations (FCI), Information Technology, Planning and Administrative Services, and Legal Services.

The Division, among other things, advises the Minister on matters of policy relating to the detection, prevention and control of financial crimes; collects, requests, receives, processes, analyses and interprets information relating to financial crimes; investigates or causes to be investigated at the request of the DPP, the Commissioner of Police or any other public body, or on the initiative of the Chief Technical Director, any person who is reasonably suspected of being involved in the commission of any financial crime.

The Major Organized Crime and Anti-Corruption Task force (MOCA)

On 5 June 2012, the Major Organized Crime and Anti-Corruption Task Force (MOCA) was established by the Ministry of National Security as the law enforcement agencies so far were not able to investigate and prosecute high-level players often referred to as the “untouchables”. MOCA therefore complements the efforts of JFC with a focus on organized crime.

The Task Force is headed by an Assistant Commissioner of Police (ACP). MOCA is a multi-agency task force comprising core staff from the JCF and supplemented with persons assigned from other state agencies such as the Jamaica Defence Force, Financial Investigation Division (FID), Customs, Revenue Protection Division (RPD), Taxpayer Audit and Assessments Department (TAAD) and various other stakeholders. The purpose of the task force is to focus on the identification, investigation and prosecution of major organized criminals, kingpins, their facilitators, and corrupt public officials.

Recommendation 3.3:

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

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.

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.

Recommendation 4.3

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

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.

Recommendation 4.4

Measure b: Promote public awareness of available corruption prevention mechanisms.

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.

Recommendation 5.2

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

The Anti-Corruption Branch of the JCF received technical assistance support from the U.S. and the UK Department for International Development (DFID).

There is 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. The present funding commitment from DFID is 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 programme and has facilitated the training of JCF and Jamaica Defence Force polygraph examiners. This is an ongoing programme which will continue until 2015. 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.

A major conference, sponsored by the United States Agency for International Development (USAID) was held for Caribbean countries (Kingston, Jamaica) March 2011 which included senior law enforcement personnel from the Region's military and police institutions on anti-corruption. Approximately 150 Caribbean delegates were in attendance. Keynote speeches focused on efforts practised and implemented by States in tackling corruption. 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. The Cayman Islands Commissioner of Police was appointed lead Commissioner on anti-corruption issues.

The Jamaica Constabulary Force (JCF) established since 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.

There are also agreements with the USA, Canada and UK, particularly related to intelligence exchange.

The Caribbean and our North American neighbours as well as the UK, constantly share information highlighting 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.

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.

The Joint Regional Communications Centre (JRCC) and the Regional Intelligence Fusion Centre (RIFC) collate analyses and record criminal activities for further investigation.