

**QUESTIONNAIRE
ON THE PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION SELECTED IN THE SECOND ROUND AND FOR FOLLOW-UP
ON THE RECOMMENDATIONS FORMULATED IN THE FIRST ROUND**

SECTION I

**QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISIONS
SELECTED FOR REVIEW IN THE SECOND ROUND**

CHAPTER ONE

**SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS
AND SERVICES (ARTICLE III (5) OF THE CONVENTION)**

1. Government hiring systems

- a. Are there laws and/or measures in your country establishing government hiring systems? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.

There are various laws and measures that govern the government hiring of public servants. Included among these are the:

- Constitution of Jamaica Order in Council 1962,
- Public Service Regulations 1961,
- Police Service Regulations, 1961
- Judicial Service Regulations, 1961,
- Staff Orders for the Public Service 2004; and
- The Jamaica Constabulary Force – Manual Force Standing Orders (Book of Rules for the Guidance and General Direction of the Jamaica Constabulary Force)

The three bodies mainly responsible for hiring public servants are the Public Service Commission, the Police Service Commission and the Judicial Service Commission. The members of the Public Service Commission and the Police Service Commission are appointed by the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.¹ However, in the case of the Public Service Commission one member must be selected from a list of persons submitted by the Jamaica Civil Service Association.² The Judicial Service Commission is comprised of the Chief Justice, the President of the Court of Appeal, the Chairman of the Public Service Commission and three other members appointed by the Governor-General acting

¹ Constitution of Jamaica, sections 124 and 129

² Section 124

on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

PUBLIC SERVICE (GENERAL)

Role of Public Service Commission - Appointments

Section 125 of the Constitution of Jamaica provides that the Governor General, acting on the advice of the Public Service Commission may appoint persons to public offices, remove such persons from public offices and exercise disciplinary control over persons holding or acting in any such office. The Governor General may delegate these powers to a member(s) of the Public Service Commission or to a public officer.³

Where the functions have not been delegated pursuant to section 127 of the Constitution,⁴ the Public Service Commission makes recommendations regarding appointment, promotion and transfer of officers. Part III (sections 14 -22) of the Public Service Regulations, 1961 (Public Service Regulations) sets out the recommendations that the Public Service Commission may make in this regard.

Given its role in making recommendations to the Governor-General, the Public Service Commission has a general supervisory role concerning the admission to the public service.⁵ Vacancies in the public service are advertised where there are no suitable candidates already in the service or having regard to other criteria a determination is made that it would be in the best interest to hire someone not already in the service.⁶ Criteria considered by the Commission in relation to appointments include educational qualifications, general fitness, previous employment and references.

In terms of promotions and acting appointments, the Commission must take into account seniority, experience, educational qualifications, merit and ability.⁷ The regulations emphasize merit and ability where the post involves a higher degree of responsibility and initiative.⁸

Public Service Commission decisions – Challenges

The Constitution and the Public Service Regulations provide for appeals regarding disciplinary proceedings but are silent regarding challenges to decisions concerning appointments.⁹ Notwithstanding, in practice persons have sought a review by the Public Service Commission. Additionally, persons may seek judicial review of a decision of the Commission.

³ Constitution of Jamaica, section 127

⁴ Several Ministries and Executive Agencies have been delegated the power of appointment. This is discussed below.

⁵ Public Service Regulations, section 15

⁶ Ibid, section 16

⁷ Ibid, section 17

⁸ Ibid, sub-section 17(2)

⁹ Constitution, sub-sections 126 (3) and (4); 127(4)

Delegated Functions

Section 127 of the Constitution of Jamaica provides for the delegation of the power to appoint to, discipline and remove from the public service. This delegation of functions commenced in 1999 and to date 23 entities have been awarded this authority governed by the delegation of functions Order specific to that entity, the Executive Agencies Act (where applicable), an Accountability Agreement between the entity and the Public Service Commission, and an Accountability Values Framework.¹⁰ The Orders set out the functions that are delegated. These are also outlined in the Accountability Agreement which also delineates the parameters within which the functions are to be managed and how the Permanent Secretary/CEO will be held accountable. Failure to comply with the provisions of the Accountability Agreement will result in the appropriate sanctions by the Public Service Commission up to and including revocation of the delegated functions from designated personnel within the Ministry/Executive Agency or ultimately the Permanent Secretary/CEO. The Accountability Agreement is underpinned by the values of integrity, merit, fairness, transparency, equity, respect and accountability outlined in the Accountability Values Framework.¹¹

The Accountability agreements set out the steps of the recruitment and selection processes and indicate how persons may seek redress. The main points are below:

- Recruitment should provide the widest possible access and opportunity to those interested in and eligible to apply for positions available. As a general rule job opportunities should be advertised but other sources may be used, for example, job banks
- Selection panels should be used in selection processes, and the panels are to be so structured to ensure balance and objectivity
- Selection activities must be duly documented and records retained. Decisions must be based on merit and the process must be fair, equitable and transparent
- The best suited candidate must be declared as the successful candidate
- All-participants in a selection process must be notified formally of the outcome. Such notification must stipulate that no appointment action will be taken until the appeal period has expired
- All selection processes for initial entry must be through competition

¹⁰ The delegation of functions to the various entities are for posts below the rank of Permanent Secretary. The Public Service Commission retains the responsibility for making recommendations to the Governor-General regarding the post of Permanent Secretary, among the other responsibilities highlighted in the Public Service General section.

¹¹ See copies of the Delegation of Functions Orders and a sample Accountability Agreement.

- A successful candidate may be required to serve for a period temporarily. Where there is a clear vacancy and the candidate has met all the requirements, temporary appointment must not exceed 6 months
- Upon first appointment, the employee may serve a probationary period of up to 6 months. The period served in a temporary capacity may be considered towards the probationary period.
- Promotion opportunities should be through competition.
- In exceptional circumstances, the Permanent Secretary/CEO may make a case for a promotion without competition (eg. where the decision relates to a formal career development strategy.) In these cases, the promotion decision should be posted so that anyone who may have had an interest may exercise the right of appeal.
- Candidates in a selection exercise who have reason to believe that they were assessed unfairly may appeal the decision in writing to the PSC within the time specified in the Agreement.
- Appeals will be dealt with within the time specified in the Agreement.

In addition to the Public Service hiring system, the Jamaican government has in place systems to govern the recruitment and selection of the police and judiciary through the police and the judicial services commissions.

Police Service

Sections 129 and 130 of the Constitution provide for the establishment of a Police Service Commission to serve the same purpose as the Public Service Commission in relation to police officers. The members are appointed in a similar manner as the Public Service Commission. As in the case of the Public Service Commission, section 131 provides for the delegation of functions to one or more members of the Police Service Commission or to a public officer. However only the functions related to police officers at the rank of inspector and below may be delegated. The Delegation of Functions (Police Service) Order, 1964 allows the Commissioner to exercise the powers of appointment, disciplinary action and removal in relation to police officers below the rank of inspector.

The functions of the Police Service Commission are set out in the Police Service Regulations, 1961. Included among these are recommendations to the Governor-General concerning appointments and promotions of police officers from the rank of inspector upwards. The provisions concerning recruitment, advertising, and promotion set out in sections 13 to 20 of the Police Service Regulations are similar to the provisions in the Public Service Regulations. The Police Service Regulations also set out specific rules

concerning the promotion of an officer who has been reduced in rank for misconduct¹² and provide for disqualification from consideration of promotion where a police officer has attempted to influence the process.

Like the Public Service Regulations, the Police Service Regulations are silent on the issue of challenging a decision of the Police Service Commission. However, persons may seek judicial review of a decision of the Commission.

Recruitment of officers

Applicants must meet the statutory requirements regarding age, height and weight as well as meet certain academic criteria. Additionally, applicants must pass a written test, pass a medical examination, and satisfy an interview panel.¹³ This information is publicly available via the police force website – www.jamaicapolice.org.

Judicial Service

Judges of the Supreme Court and the Court of Appeal are appointed by the Governor-General acting on the advice of the Judicial Service Commission.¹⁴ A judge is appointed until he attains the age of seventy unless he resigns or is removed from office for inability to discharge the functions or for misbehaviour. A judge can only be removed by the Governor General after the procedure specified in the Constitution.¹⁵ The qualifications are set out in the Judicature (Supreme Court) Act and the Judicature (Appellate Jurisdiction) Act, respectively.

Section 112 of the Constitution provides that the Governor General, acting on the advice of the Judicial Services Commission, has the power to appoint, remove and exercise disciplinary control over Resident Magistrates, Judges of the Traffic Court, Registrars of the Supreme Court and Court of Appeal, and other judicial officers. The power to appoint may be delegated.¹⁶ Pursuant to the Delegation of Functions (Judicial Service) Order, 1976 the Chief Justice has the power to transfer Resident Magistrates and Judges of the Traffic and Family Courts as well as to make acting appointments to those offices and to the offices of Registrar of the Supreme Court, Court of Appeal and Revenue Court.

Section 13 of the Judicial Services Regulations sets out the criteria for making appointments. It requires that the Judicial Services Commission consider the eligibility of all officers for promotion, the qualifications, general fitness and previous employment. It also provides that the Commission may interview candidates for such appointments.

¹² Section 21

¹³ Jamaica Constabulary Force – Manual Force Standing Orders and www.jamaicapolice.org.jm/recruiting.html. The requirements for the Island Special Constabulary, and the District Constables are at www.jamaicapolice.org.jm/iscf/entryRequirements.html and www.jamaicapolice.org.jm/dc.html, respectively.

¹⁴ Sections 98 and 104

¹⁵ Section 100, paragraphs 4 – 9 and section 106, paragraphs 4 – 9.

¹⁶ Section 113

- b. In relation to question a), state the objective results obtained, including any available statistical data.

Over the last two years, Public Sector entities continue to witness a paradigm shift there in recruitment and selection strategies. Many recruitment and selection exercises now entail the use of selection tools as well as the panel interview. During that time (2 year time span), the Public Service Commission has not been made aware of any challenges to any selection choice resulting from the selection process. However, in 2002 a public officer who was acting in a higher post sought judicial review of a decision of the Public Service Commission to revert him to his substantive position. The Supreme Court and Court of Appeal held in favour of the Public Service Commission.¹⁷ The public officer has sought leave to appeal to the Judicial Committee of the Privy Council.

In relation to advertised posts –

2005	126 job circulars were prepared for 205 posts
2006	130 circulars for 225 posts
Jan – Oct.19, 2007	121 circulars for 193 posts

- c. If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government hiring systems, in accordance with Article III (5) of the Convention.

Not applicable.

2. Government systems for procurement of goods and services

- a. Are there laws and/or measures in your country establishing government systems for procurement of goods and services? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.

Also describe how the above systems ensure openness, equity and efficiency in your country.

In relation to the above, refer, among others, to the following aspects:

- i. Procurement systems with a public tender and without a public tender.
- ii. Governing or administrating authorities of the systems and control mechanisms.
- iii. Register of pre-approved contractors.
- iv. Electronic methods and information systems for government procurement.
- v. Public works contracts.

¹⁷ Lackston Robinson v. Daisy Coke et al (*unreported judgement*, SCCA No. 16 of 2003)

- vi. Identification of the selection criteria for contractors (e.g. price, quality and expertise).
- vii. Ways to challenge a selection.

There are a set of laws and measures that are adequate to address the procurement of goods and services in Jamaica. The Contractor General of Jamaica (“the CG”) was established as an independent anti-corruption Commission of Parliament pursuant to *Section 3 (1)* of the *Contractor General Act* (‘the Act’). He is appointed by the Governor General of Jamaica and is not subject to the direction or control of any other person or authority.

The main functions of the CG are outlined in *Section 4 (1)* of the Act and are as follows:

- (a) To monitor the award and implementation of Government contracts with a view to ensuring-
 - a. That such contracts are awarded impartially and on merit;
 - b. That the circumstances in which such contracts are awarded or terminated do not involve impropriety or irregularity; and
 - c. That the implementation of such contracts conforms to the terms of the contracts
- (b) To monitor the grant, issue, suspension or revocation of any prescribed licence.
- (c) To conduct investigations into certain matters, such as the registration of contractors, tender procedures, contract awards and grants of licences.

In order to facilitate the effective discharge of the CG’s functions, *Section 4 (2)* of the Act clothes him with very extensive investigative and monitoring powers. These include his entitlement to be advised of the award of any Government contract. He also has wide powers of enquiry that allow him unimpeded access to any public office, premises, officer, document or discharge of his functions. While his powers extend to all Government contracts and to every Ministry, statutory body or registered company in which the Government has significant controlling interest, he cannot investigate contracts entered into for the purposes of defence or for the supply of equipment to the security forces without the prior approval of Cabinet.

The CG is also empowered by *Section 18* of the Act with the powers of a Judge of the Supreme Court. He can therefore summon and examine under oath any person who he believes can provide information relevant to his investigations.

Pursuant to *Section 29* of the Act, it is a criminal offence to willfully make a false statement to mislead, or to mislead or attempt to mislead the CG or without lawful

justification or excuse obstruct, hinder or resist him or comply with a lawful requirement by him.

The Office of the CG (“the OCG”) is the Secretariat for two Commissions:

- (a) The Commission of the CG, which is responsible for the monitoring and investigation of Government contracts, licences and permits; and
- (b) The National Contracts Commission (“the NCC”), which is responsible for the registration of contractor and contract endorsements for Government procurement.

The NCC is also an independent Commission, which was established by *Section 23B* of the Act. Its principal objectives are the promotion of efficiency in the process of the award and implementation of Government contracts and ensuring transparency and equity in the awarding of such contracts. Its members are also appointed by the Governor General of Jamaica.

Although the NCC and the OCG are independent and distinct bodies, the NCC supplements the role and functions of the Commission of the CG. It attains its objectives by reviewing and endorsing recommendations for the award of Government contracts worth four million dollars or more, registering and classifying contractors who are desirous of tendering Government contracts and making recommendations to Cabinet for improving the efficiency of the procedures for the granting and implementation of Government contracts.

There are Government Procurement Procedures and Guidelines, which govern the procedure in relation to Government procurement and which are made available for public access via the website of the OCG at <http://ocg.gov.jm>.

In order to tender on a Government contract, a contractor or supplier must first be registered with the NCC. Qualification requirements for government-approved status include documented proof that applicants are capable of satisfactory performance in categories and grades within which they apply to be registered. Evaluation criteria for registration includes the following:

- (a) Experience
- (b) Professional qualification(s)
- (c) Performance record
- (d) Legal capacity to enter into a contract
- (e) Tax compliance

- (f) Capacity (managerial, technical and financial, as necessary).

Registration with the NCC does not automatically guarantee participation in public sector procurement opportunities, as participation is subject to the preceding evaluation criteria.

All Government entities are to utilize to the NCC Register, except in the following circumstances:

- (a) When there is no qualified firm in the particular discipline desired that is registered; or
- (b) When there is no response to the tender proposal invitation where open tendering is utilized.

If a public body awards a contract to a contractor who is not validly registered with the NCC, the contract would have been made in contravention of the established procedures and is liable to be voided with penalties for the procuring entity. There is a listing of registered contractors and suppliers on the OCG website, which is updated monthly. The OCG's Technical Services Division can also be contacted for verification or confirmation of a contractor's or supplier's status.

There are four methods of Government procurement:

- (a) Open tender- this is a procurement opportunity that is open to all interested local and foreign contractors.
- (b) Selective tender- this is the Government of Jamaica's primary method of procurement, which is generally advertised and open to all appropriately registered and qualified contractors.
- (c) Limited tender- this is a form of selective tender that is open to a limited number of contractors and included in the Register of Approved Contractors. It is generally not advertised. Contact is made with appropriately qualified contractors who are registered and they are invited to participate. In order to proceed with this option, the approval of the NCC is required for contracts over four million dollars, while the approval of the accounting officer of the procuring entity is required for contracts under that value.
- (d) Sole source or direct contracting- this is a form of limited tender where only one contractor is invited to participate. Electing this option can be justified for several reasons: when the procurement is of a sensitive nature, when there is an urgent need, when there is a need for highly specialized expert services or it is otherwise in the public interest. In order to elect this option, the approval of the NCC is required for contracts over one million dollars and the relevant accounting officer's approval is required for contracts of lesser value.

In relation to the procurement of works contracts, those less than two hundred and fifty thousand dollars in value are not generally advertised. However, they may be advertised by posting on the public sector electronic notice board. Participation in these contracts is restricted to domestic concerns only, except where no such qualified concern is registered with the NCC.

Contracts worth between two hundred and fifty thousand and four million dollars are posted at post offices, local libraries or works department offices, on procuring entity websites, at local or regional offices of the procuring entity (if they are within reasonable proximity to the procurement site(s)), parish council and National Works Agency offices where the procurement is to be carried out, public bulletin boards and the public sector electronic notice board. Participation in these contracts is also limited to NCC registered domestic concerns only, except where no such qualified concerns are registered.

Contracts valued between four and fifteen million dollars are advertised in national daily newspapers or business magazines or periodicals depending on the nature and/or complexity of the procurement. It is also posted on the procurement entity's website and the public sector electronic notice board. Participation is open to appropriately registered domestic contractors.

Contracts worth fifteen million dollars or more (but less than the international contract value threshold for works) are advertised in the same manner as those between four and fifteen million dollars, with the exception that they are not posted on the procurement entity's website. They are only posted on the public sector electronic notice board. Participation in these contracts is restricted to NCC registered domestic contractors, except where no such qualified concerns are registered.

Contracts of the international contract value threshold for works or more are open to both domestic and foreign contractors, and opportunities for tender are offered through open tender with pre-qualification. These contracts are advertised in national daily newspapers or business magazines or periodicals depending on the nature and/or complexity of the procurement. The Cabinet Office's approval must be obtained to procure such contracts, after referral to the NCC. It should be noted, however, that there is currently no international contract value threshold for works. That threshold ought to have emerged from the Free Trade Agreement of the Americas negotiations, but did not. Therefore, in practice, works contracts of estimated large values (for example fifty million United States dollars or more) are generally open to both domestic and foreign contractors.

The public may access information about procurement opportunities at <http://www.procurement.gov.jm/procurement>. Members of the public can search the notice board located on this website and can also register to receive e-mail notification when the notice board is updated with a tender that matches their interest.

A contractor may be disqualified and/or stricken from the NCC Register of approved contractors without liability to the Government of Jamaica, if it is found at any time that the information submitted regarding qualifications was deliberately false. A contractor

may also be stricken from the register for reasons of poor performance, pursuant to the contract documents.

Any contractor who claims to have suffered or that may suffer loss or injury due to a breach by the procurement entity under the Procurement Handbook may seek review by submitting a complaint to the procuring entity within twenty days of the date that he became aware or should have become aware (whichever is earlier) that the circumstances giving rise to the complaint had occurred. Upon receipt of the complaint, the procurement entity must copy the complaint to the Sector or Procurement Committee. If no agreement is reached between the contractor and the procurement entity within fourteen days of receipt of the complaint, then the Head of the procurement entity must issue a written decision to the contractor within that time, stating the reasons for the decision and indicating that any appeal must be lodged with the NCC within fourteen days of the contractor's receipt of the decision. The NCC then has a mandatory duty to recommend an appropriate resolution of the matter within fourteen days of receipt of the appeal. A copy of the resolution must be sent to the Head of the procurement entity, the contractor and any other person deemed appropriate. However, the following is not subject to review:

- (a) The selection of a method of procurement.
- (b) A decision by the procurement entity to reject all tenders, proposals or offers prior to acceptance pursuant to the Procurement Handbook.

The contractor has further recourse through the courts via judicial review of the decisions made or failure of the relevant bodies to make a decision.

- b. In relation to question a), state the objective results obtained, including any available statistical data (e.g. percentage of contracts awarded through public tender; sanctions imposed on contractors).

As a special anti-corruption initiative of the CG, effective May 1, 2006 all public bodies are required to file quarterly reports of their contract awards in the value range two hundred and fifty thousand to four million dollars. The reports are to be submitted within thirty days of the end of each calendar quarter. The requests are made via requisitions by the CG and pursuant to *Section 29* of the Act, it is a criminal offence to disobey the CG's requisition. As a result, failure to submit a quarterly report can lead to criminal prosecution without warning.

On September 17, 2007 the OCG referred eleven public bodies to the Director of Public Prosecutions because of their failure to submit their 2007 second quarterly report on time. Thus far in 2007, the OCG has referred sixty-two delinquent public bodies to the Director of Public Prosecutions. The reports are available for public inspection on the OCG's website.

The OCG has also exercised his investigative powers pursuant to *Section 15* of the Act and conducted investigations into the award of contracts and procurement procedures and allegations of impropriety and corruption in approximately six cases. Several recommendations were made in all cases and in one case, a financial audit of the project was recommended along with a comprehensive report detailing (inter alia) the rationale and justifications for cost overruns, the specific authorizations that accompanied them and the persons to whom those authorizations were attributable. A further recommendation was made in that case to submit the findings to Parliament to determine the equities and liabilities of each party that was part of the agreement regarding the project.

Prior to May 1, 2006 with the introduction of the CG's anti-corruption initiative requiring all public bodies to file quarterly reports of their contract awards, there was no record of the number of contracts awarded generally, and in particular for each form of tender. However, at the time of submitting this response, the OCG has been able to indicate that there were approximately ten thousand contracts between the value range two hundred and fifty thousand and four million dollars that were submitted to the NCC. There is no indication as to the quantum of these requests that were actually awarded, as the quarterly reports (which have not been submitted in some instances) are to reflect this number. There is no confirmed figure for 2007, as the numbers requested have to first be submitted to Parliament.

- c. If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government systems for procurement of goods and services, in accordance with Article III (5) of the Convention.

Not applicable.

CHAPTER TWO

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

- a. Are there laws and/or measures in your country establishing systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities? If so, briefly describe them and list and attach a copy of the related provisions and documents.

In relation to the above, refer, among others, to the following aspects:

- i. Mechanisms for reporting (e.g. anonymous reporting, protection of identity reporting)
- ii. Mechanisms for reporting threats or reprisals

iii. Witness protection mechanisms.

Jamaica has some measures to protect persons who report acts of corruption. Corruption offences are among the offences for which protection is offered under the Justice Protection Act, 2001. Although that Act is not in force, Jamaica has a witness protection programme that to a large extent adheres to the provisions of that Act.

Additionally, there is a Witnesses (Public Enquiries) Protection Act that penalizes intimidation of witnesses that have given evidence before any statutory body or authority having the power to summon witnesses. However, the penalties are minimal.

- b. In relation to question a), state the objective results obtained, including any available statistical data.

There is no information to indicate that persons involved in a corruption investigation have sought protection under the witness protection programme.

- c. If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen systems for protecting public servants and private citizens who, in good faith, report acts of corruption, in accordance with Article III (8) of the Convention.

There has been some discussion regarding measures to protect “whistleblowers”. This matter is under review.

CHAPTER THREE

ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

1. Criminalization of acts of corruption provided for in Article VI (1) of the Convention

- a. Does your country criminalize the acts of corruption provided for in Article VI (1) of the Convention transcribed in this chapter of the questionnaire? If so, describe briefly the laws and/or measures regarding them, indicating to which of the particular aforesaid acts of corruption they refer, including sanctions, and attach a copy of them.

- Acts of corruption provided for in Article VI (1) of the Convention:

- i. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions.

- ii. The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions.
- iii. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party.
- iv. The fraudulent use or concealment of property derived from any of the acts referred to in this article.
- v. Participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.

Jamaica does criminalize the acts of corruption provided for in Article VI (1). The relevant law that governs the criminalization of these acts is the Corruption (Prevention) Act, 2001. The legislation does not only contemplate the specific provisions as contemplated in Article VI (1), but it also mandates the establishment of a Commission for the Prevention of Corruption which has as its purpose the duty to monitor and review public bodies, public servants, persons who offer public service(s) and to ensure that acts of corruption are detected where they exist and dealt with in accordance with the law.

The particular section of the Corruption (Prevention) Act, 2001 which covers the provisions as stipulated in Article VI (1), is Section 14. Subsections (i) through to (v) of Article VI (1) of the Convention will be examined within the framework of the relevant Jamaican legislation and references will be made to the corresponding subsections as follows:-

(a) Subsection (i) of Article VI (1) deals with the solicitation or acceptance, whether directly or indirectly, by a government official or a person who performs public functions of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or for any other person or entity, in exchange for any act or omission in the performance of his public functions. Section 14(1)(a) of the Corruption (Prevention) Act, 2001 stipulates that a public servant is deemed to have committed an act of corruption if he corruptly solicits or accepts, whether directly or indirectly, any article or money or other benefit, being a gift, favour, promise or advantage for himself or another person for doing any act or omitting to do any act in the performance of his public functions. The Jamaican provision is therefore mutatis mutandis with the corresponding one as outlined above.

(b) Subsection (ii) of Article VI (1) focuses on the offering or granting, directly or indirectly, to a government official or a person who performs public functions, anything of value in exchange for such an individual doing an act or omitting to do any act in the

performance of his public functions. Section 14(2) of the Jamaican legislation adequately covers this provision. It is there provided that a person is deemed to commit an act of corruption if he offers or grants, directly or indirectly, to a public servant any article, money or other benefit, being a gift, favour, promise or advantage to the public servant or another person, for doing any act or omitting to do any act in the performance of the public servant's public function.

(c) Subsection (iii) of Article VI (1) deals with any act or omission by a government official or a person charged with the responsibility of performing public functions in the discharge of his duties in order to illicitly obtain benefits for himself or for a third party. The corresponding provision in the Jamaican legislation is to be found in Section 14(1)(b) of the Act. It is there stipulated that a public servant commits an act of corruption if in the performance of his public functions he does any act or omits to do any act for the purposes of obtaining any illicit benefit for himself or any other person.

(d) Subsection (iv) of Article VI (1) is the paragraph that concentrates on the fraudulent use or concealment of property derived from any of the acts referred to in subsections (i) through to (iii). The relevant provision in the Jamaican legislation is Section 14(1)(c) of the Act. That section states that a public servant commits an act of corruption where he fraudulently uses or conceals any property derived from any such act or omission to act.

(e) Subsection (v) of the Article makes it an act of corruption for anyone to participate in any way whatsoever in the commission or attempted commission of, or in any collaboration or conspiracy to commit any of the acts previously outlined. A corresponding provision exists in the Jamaican Act in Section 14(3). It is there provided that a person commits an act of corruption if he instigates, aids, abets or is an accessory after the fact or participates in whatsoever manner in the commission or attempted commission of or conspires to commit any act of corruption referred to in subsection (1) or (2).

It is to be noted that the term 'public servant' features greatly in these various provisions. Within the Corruption (Prevention) Act, 2001, that term is defined as meaning any person who is employed in the public, municipal or parochial service of Jamaica or one who is in the service of a statutory body or authority or a government company; it means any person who is an official of the state or any of its agencies; and any person appointed, elected, selected or otherwise engaged to perform a public function.

Sanctions for acts of Corruption

Section 15(1) of the Corruption (Prevention) Act, 2001 outlines the penalty(s) that one would face if convicted of one of the acts of corruption contemplated in Article VI (1) of the Convention. There is a distinction made between first time offenders and repeat offenders and also between offenders who are convicted summarily before the Resident Magistrate's Court and those who are convicted on indictment before a Circuit Court.

Section 15(1)(a) states that a first time offender before the Resident Magistrate's Court is liable to a fine not exceeding one million dollars (\$1,000,000) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment. The penalty for a second or subsequent offender is understandably harsher. Such a person would be liable to a maximum fine of three million dollars (\$3,000,000) or to a maximum term of imprisonment of three years or to a combination of both.

Section 15(1)(b) focuses on the offender who is convicted before a Circuit Court. For a first time offender, there is a maximum fine of five million dollars (\$5,000,000) or a maximum term of imprisonment of five years or to both such fine and imprisonment. The second time or subsequent offender faces a maximum fine of ten million dollars (\$10,000,000) or a maximum term of ten years imprisonment or a combination of both.

In relation to the various sections of the Corruption (Prevention) Act, 2001 referred to above, the pertinent sections are attached hereto.

- b. Briefly state the objective results that have been obtained in enforcing the above provisions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years.

Breaches of the Corruption Prevention Act
FILES RECEIVED AND RULINGS
January 2003 to July 2007

Investigative Body	2003		2004		2005		2006		2007	
	Files	Rulings								
	26	7	19	21	28	24	36	39	8	10
D/Action	-		1		3		3		1	
Charge	6		14		21		30		7	
No Charge	1		7		-		6		2	
Pending					-		-		-	

The table above captures at a glance, the number of files, submitted to the Office of the Director of Public Prosecutions for a decision to be taken on whether or not a law enforcement officer is to be held accountable for violation(s) of the Corruption (Prevention) Act [hereinafter referred to as "the Act"]. The need for files of this nature to be submitted to the Director's Office has its usual genesis in a situation that finds a police officer soliciting a bribe from a civilian. Additionally, there have been other instances,

such as when a citizen attempts to "buy his way" out of a situation and the police officer sets up a sting operation and the civilian is apprehended; the greater number of incidents, however, arise because a police officer has transgressed the law and accordingly, therefore, on many of the occasions in which charges have been preferred it is section 14(1)(a) of the Corruption (Prevention) Act that is used.

Analysis of the Table

The information captured focuses on a span of four and a half (4½) years from January 2003 to July 2007. An examination of the table over the four fully completed calendar years of 2003 to 2006, reveals that there seems to be a continuing increasing trend in the number of persons who are actually criminally charged for acts of corruption and subsequently placed before the court. In 2003, of the twenty-six files submitted, only six (6) of these resulted in persons being charged for any such offences, this number moved to fourteen (14) in 2004, then to twenty-one (21) in 2005 and in 2006 increased to a total of thirty (30). While this information outlines that the provisions of the Act are in fact being enforced and that judicial proceedings are being undertaken in relation to the Act, it is unfortunate that there is no database at present, which records the outcome of these various proceedings and as such, we are unable to tabulate the number of convictions and/or acquittals in these matters.

- c. If the aforementioned acts of corruption are not criminalized, what steps is your country taking to criminalize these acts.

Not applicable

2. Application of the Convention to acts of corruption not described therein, in accordance with Article VI (2)

- a. Has your State entered into any agreements with other States Parties to apply the Convention to any act of corruption not described therein, in accordance with Article VI (2)? If so, briefly describe the respective agreements or conventions and attach a copy of the related documents.

No.

- b. If the above answer was in the affirmative, briefly state the objective results that have been obtained in the application of the respective agreements or conventions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years.

Not applicable

SECTION II

FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORT IN THE FIRST REVIEW ROUND

In accordance with Article 29 of the *Rules*, please provide information, in the standard format attached to this questionnaire, on progress in implementation of the recommendations formulated in the report adopted by the Committee with respect to your country in the framework of the first review round (Annex entitled “Standard format for presentation of information on progress in implementation of recommendations formulated in the national report in the first review round”).

SECTION III

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

(a) State Party: Jamaica

(b) The official to be consulted regarding the responses to the questionnaire is:

() Mr.: _____

(x) Ms.: Gladys Young

Title/position: Assistant Attorney General

Agency/office: Attorney-General’s Chambers

Mailing address: NCB Towers, 2nd Floor, 2 Oxford Road, Kingston 5, Jamaica

Telephone number: (876) 512-7609

Fax number: (876) 754-5158

E-mail address: gyoung@agc.gov.jm

(x) Ms.: Stacian Bennett

Title/position: Crown Counsel

Agency/office: Attorney-General’s Chambers

Mailing address: NCB Towers, 2nd Floor, 2 Oxford Road, Kingston 5, Jamaica

Telephone number: (876) 512-7605

Fax number: (876) 754-5158

E-mail address: sbennett@agc.gov.jm

ANNEX

STANDARD FORMAT FOR PRESENTATION OF INFORMATION ON PROGRESS IN IMPLEMENTATION OF RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORT IN THE FIRST REVIEW ROUND

Instructions: Following the same structure as the country report,¹⁸ kindly supply the following information on each of the recommendations mentioned by your State in the present progress report:

- I. **RECOMMENDATION:** (Please transcribe the text of the recommendation made to your State by the Committee in the country report, on which this report contains information as regards progress):

The recommendations are under consideration.

¹⁸ By way of a guide, the last page of this standard format describes that structure in connection with the issues covered in the First Review Round.

Jamaicans For Justice's comments on the Government of Jamaica's Responses to the Questionnaire on the Provisions of the Inter American Convention Against Corruption.

Jamaicans For Justice has the honour to provide the following comments on the Government of Jamaica's responses to the questionnaire on the provisions of the Inter-American Convention Against Corruption Selected In The Second Round and for follow-up on the recommendations formulated in the first round.

General Comments

Jamaica has taken a number of key steps, which demonstrate a general desire to reform its contracting and procurement systems to be consistent with the general spirit and direction of the Inter-American Convention Against Corruption. Some examples include the Contractor-General's Act, Corruption Prevention Act, Parliament Integrity of Member Act, Financial Administration and Audit Act, as well as various ministry papers, standards of conduct, and procurement procedures handbooks. Collectively, these documents and related efforts represent important factors in preventing and detecting corruption in the performance of public functions. However, these measures do not go far enough to put Jamaica on a clear, steady course of punishing and eradicating the pervasive corruption that currently plagues almost all levels within the public sector.

More specifically, the existing laws, regulations, guidelines, and policies don't carry the weight and degree of sanctions that would effectively deter public officials (and those who interact with these officials) from wrongdoing. Also very important in the failure of the mechanisms to prevent corruption is the failure of Government to give adequate resources to the anticorruption mechanisms. Equally important, the existing corruption prevention framework does not effectively penalize individuals who violate the public trust. As a result, the system articulates an aspiration, but has little enforcement teeth.

Specific Comments

Government hiring systems

In the response on subsection (b) of the section on Government hiring systems (pg 6 of the GOJ response) reference is made to a case of Judicial Review against the Public Service Commission for a decision to revert an officer to his substantive post. That case is on appeal to the Privy Council having been unsuccessful in the Supreme and Appeal Courts locally. Unfortunately, what is omitted from that section, is that subsequent to his appeal to the Court of Appeal, the Public Service Commission took a decision to send the applicant on leave and subsequently recommended to the Governor General that he be retired in the public interest. This was done and Mr. Lackston Robinson then instituted a **separate proceeding** challenging the decision of the Public Services Commission to retire him in the public interest. This proceeding was **successful** in the Supreme Court and has not been appealed. The Supreme Court judges ruled that the arguments advanced by the applicant were unanswerable and that the decision to recommend his retirement in

the public interest was an abuse of process and therefore invalid.

Government systems for procurement of goods and services

In relation to the Contractor Generals Act, there are **no** sanctions for breaches of the Act other than failure to submit quarterly reports. The action of referring state bodies that fail to submit timely reports for prosecution, taken as special anti-corruption initiative of the Office of the Contractor General since May 1, 2006, has resulted in a significant improvement in the compliance of state entities with this provision of the act. However, the lack of other sanctions under the Act for breaches of the rules has proved a significant handicap to limiting and eradicating irregularities and acts of corruption in the award and execution of government contracts. The need for sanctions for breaches of the Act have been highlighted in successive annual reports of the Office of the Contractor General to parliament. To this point there has been no action taken on these recommendations.

Systems For Protecting Public Servants And Private Citizens Who, In Good Faith, Report Acts Of Corruption (Article Iii (8) Of The Convention

The call for special measures to protect public servants and private citizens who, in good faith, report acts of corruption has been made publicly, over many years, by various persons and organizations including the Jamaica Civil Service Association, the Police Federation and Jamaicans For Justice. For any corruption prevention and enforcement system to be effective, it must have adequate safeguards that protect individuals (as well as non-government accountability organizations) who come forward with information, which documents or otherwise sheds light on corruption activity. Without this tool in place, people with valuable information will not come forward out of fear of negative repercussions.

To date no effective action has been taken on this issue by the Government of Jamaica. Jamaicans For Justice would urge the speedy adoption by the Government of Jamaica of suitable 'Whistleblowers' legislation.

Criminalization of acts of corruption provided for in Article VI (1) of the Convention

The problem of severe under resourcing of the anti-corruption mechanisms in place is particularly germane and acute in relation to the Commission for the Prevention of Corruption established under the Corruption (Prevention) Act, 2001. That body is severely under resourced in terms of budgetary and investigative resources (e.g. there is only one data entry clerk who is responsible for entering the data from all the returns of all persons in compliance) and is thus completely ineffectual.

To assess the functioning of the Commission adequately it would be necessary to disaggregate the figures supplied by the Government of Jamaica, to see how many of the files submitted and actions taken resulted from the work of the Commission and how many from the ordinary work of the Police Anti-Corruption division. Our educated guess would be, very few.

Conclusion

The high levels of systemic corruption balanced against the relatively low number of successful prosecutions and enforcement actions highlights the need for the Government of Jamaica to resource effectively and put the teeth of sanctions and enforcement into its many anti corruption mechanisms. Until this is done, compliance with the convention will continue to be a mirage rather than a reality.