

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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JAMAICA

FINAL REPORT

(Adopted at the March 25, 2011 Plenary Session)

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

**REPORT ON IMPLEMENTATION IN THE 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
ROUNDS¹**

INTRODUCTION

1. Contents of the Report

[1] This report presents, first, a review of implementation in Jamaica of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the third round: Article III, paragraphs 7 and 10, and Articles VIII, IX, X and XIII.

[2] Second, the report will examine follow-up to the recommendations that were formulated to Jamaica by the MESICIC Committee of Experts in the previous rounds, which are contained in the report on that country adopted by the Committee and published at the following web pages: http://www.oas.org/juridico/english/mec_rep_jam.pdf and http://www.oas.org/juridico/english/mesicic_II_inf_jam_en.pdf

2. Ratification of the Convention and adherence to the Mechanism

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

[4] 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, 2001.

I. SUMMARY OF THE INFORMATION RECEIVED

Response of Jamaica

[5] 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 contents. Together with its response, Jamaica sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following webpage: http://www.oas.org/juridico/english/mesicic3_jam.htm

[6] For its review, the Committee took into account the information provided by Jamaica up to August 13, 2010, and that furnished and requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and the review Methodology.

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 March 25, 2011, at its Eighteenth meeting, held at OAS Headquarters, March 21-25, 2011.

II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE THIRD ROUND

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT² FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

1.1. Existence of provisions in the legal framework and/or other measures

[7] Jamaica has a set of provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, among which the following should be noted:

[8] – Statutory provisions such as the Income Tax Act³, of which the following should be noted:

[9] Section 5 which provides that Income tax shall, subject to the provisions of this Act, be payable by every person⁴ at the rate or rates specified hereafter for each year of assessment in respect of all income, and lists the type of income to be taxed;

[10] Section 13, which outlines the method by which chargeable income is to be ascertained. It makes provision for the deduction of disbursements and expenses in specified cases⁵;

[11] Section 15, which outlines those deductions which are not allowable in ascertaining the chargeable income or statutory income of a person, including domestic or private expenses, any capital employed in improvements and any loss not connected with or arising out of the trade, profession or vocation;

[12] Section 17[1], which states *inter alia* that where the Commissioner⁶ is of the opinion that (a) any transaction carried out between connected persons was carried out for a consideration substantially different from that obtainable at arms length or for no consideration; and (b) the effect of this would be to reduce the amount of tax payable by any person, the Commissioner may, for the purposes of that person's tax liability, treat the transaction as having been carried out for such consideration as would in his opinion have been obtainable at arm's length. This section also establishes liabilities for those who fail to submit the required certifications or submit false ones.

[13] Section 67, which provides that every person liable to pay income tax is required to deliver a true and correct return of his whole income in the prescribed form;

2. For the purposes of this report, the MESICIC Committee of Experts defines favorable tax treatment as all exemptions and any deductible items used for the purposes of determining the income tax base, and other treatment that gives rise to favorable reductions in the amount of tax payable by taxpayers.

3. Income Tax Act, <http://www.moj.gov.jm/laws/statutes/The%20Income%20Tax%20Act.pdf>

4. Section 2(1) of the Income Tax Act defines person as any individual and also any body of persons. The same section defines body of persons as "body of persons" any body politic, corporate or collegiate, and any company, fraternity, fellowship and society of persons, whether corporate or not corporate

5. The country under review notes that the Income Tax Act sets out the only permissible deductions allowed for a person in ascertaining the chargeable income for any year of assessment. Any other deductions that are not expressly stated within the Act are not allowed.

6. Section 2(1) of the Income Tax Act defines Commissioner as the Commissioner of Taxpayer Audit and Assessment appointed under section 11 E of the Revenue Administration Act.

[14]Section 70, which provides, among other things, that a person is required to make and deliver a return of his income to the Commissioner of Inland Revenue within fifteen days after a notice is served requiring such return;

[15]Section 72, which grants the Commissioner the power to make assessments and apply penalties for making fraudulent statements;

[16] Section 75(5), which allows the Commissioner, for the purpose of the assessment of a taxpayer, to summon by notice any person to give evidence respecting an assessment to attend before him and may examine such person under oath or otherwise;

[17] Section 79 makes provision for the enforcement of payment of taxes which may also be recovered by suit under Section 80;

[18]Section 91(2) empowers the Commissioner to authorize any person for the purpose of verifying the correctness of any return, statement, declaration or particulars delivered under the ITA to enter upon any premises and inspect and make copies of any books, documents, or other material relating to a return, statement or declaration.

[19]Sections 99-103 which establish penalties for breaches of the Act. These include a fine and treble the amount of tax with which a person ought to be charged or to imprisonment in cases where a person knowingly makes any false statement or representation for the purpose of obtaining any allowance, reduction, rebate or repayment in respect of income tax. Penalties are also outlined for persons who aid, abet, assist, counsel, incite or induce any other person to make, deliver or prepare any false declarations, accounts or particulars under the Act.

[20]– The Revenue Administration Act⁷, whose section 17G(1) empowers the Commissioner, where a taxpayer does not cooperate, to apply to a judge in Chambers for a production order to compel a third party to produce the information. Such an order can be requested in relation to a person suspected of having possession or control of the information, document or record which is relevant to the duties of the Commissioner in relation to making an assessment in relation to a taxpayer, making an investigation into any case involving tax evasion or for the prevention of fraud on the revenue, determining the tax liability or collecting outstanding tax due.

[21]– The Transfer Tax Act⁸, which provides exemptions, allowances and abatements for certain instances, including the transfer of land used for residential, agricultural, religious or educational purposes and whose Sections 41 and 42 provide for penalties for false statements or false representations or accounts with a view to receiving a favorable tax treatment.

[22]– The Tax Collection Act⁹, whose Section 25 establishes penalties for the evasion of taxes.¹⁰

7. Revenue Administration Act: <http://www.moj.gov.jm/laws/statutes/Revenue%20Administration%20Act.pdf>

8. Transfer Tax Act: <http://www.moj.gov.jm/laws/statutes/Transfer%20Tax%20Act.pdf>

9. Tax Collection Act: <http://www.moj.gov.jm/laws/statutes/Tax%20Collection%20Act.pdf>

10. Article 25 of the Tax Collection Act states that: *If any person liable to the payment of any taxes or duties whatsoever shall, in any return required by him to be made, charge himself with less duty than he is liable to pay under the enactment or enactments imposing such taxes or duties, or in any other manner evade the payment of any such taxes or duties, every such person shall, on conviction, not only be liable to pay the taxes and duties so evaded, but an additional sum, by way of a penalty, equal to the amount of the taxes or duties so evaded, and the costs of the proceeding to recover the same, and shall be further liable to a penalty not exceeding five thousand dollars.*

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

[23] With respect to provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[24] Notwithstanding, the Committee considers it appropriate to make some observations on the advisability of developing and complementing certain legal provisions that refer to the tax treatment in Jamaica of expenditures made in violation of anticorruption laws.

[25] The Committee believes that it would be beneficial for the country under review to consider taking such steps as it deems appropriate to make it easier for the appropriate authorities to detect sums paid for acts of corruption in the event that they are being used as grounds for obtaining such treatment (see Recommendation 1.4(a) in Section 1.4 of Chapter II of this Report)

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

[26] With respect to results in this field, Jamaica states that no data is available at this time.¹¹

[27] Considering that the Committee does not have information that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see Recommendation 1.4(b) in Section 1.4 of Chapter II of this Report)

1.4. Conclusions and recommendations

[28] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 7 of the Convention:

[29] Jamaica has considered and adopted measures intended to create, maintain and strengthen standards on the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, as described in section 1 of Chapter II of this report.

[30] In light of the comments formulated in the above-noted sections, the Committee suggests that Jamaica consider the following recommendations:

[31] Strengthen the standards for the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws. To comply with this recommendation, Jamaica could take the following measures into account:

- a. Consider adopting the measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for acts of corruption in the event that they are being used as

11. Response of Jamaica to the Questionnaire for the Third Round, pg. 7:
http://www.oas.org/juridico/english/mesicic3_jam_resp.pdf

grounds for obtaining such treatment, such as the following: (see Section 1.2 of Chapter II of this Report)

- i. Manuals, guidelines or directives that will guide them in reviewing those applications, so that they are able to verify that the applications contain the established requirements, to confirm the truthfulness of the information provided, and to confirm the origin of the expenditure or payment on which the claims are based.
 - ii. The possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests for information from financial institutions, taking into account relevant bank secrecy and confidentiality laws.
 - iii. Computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.
 - iv. Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities and such aspects as certifying the authenticity of the documents submitted with the applications.
 - v. Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications.
 - vi. Channels of communication so that they may promptly report to those who must decide on favorable treatment and warn them of the anomalies detected or of any irregularity that could affect the decision.
- b. Select and develop, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto. (See section 1.3 of Chapter 2 of this Report)

2. PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III (10) OF THE CONVENTION)

2.1. Existence of provisions in the legal framework and/or other measures

[32]Jamaica has a set of provisions related to prevention of bribery of domestic and foreign government officials, among which the following should be noted:

[33]– Statutory provisions such as the Companies Act¹², of which the following should be noted:

[34]Section 144 states that:

[35] *(1) Every company shall cause to be kept proper books and documents of account with respect to---*

12. The Companies Act: <http://www.moj.gov.jm/laws/statutes/companies1-447.pdf>

[36] (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

[37] (b) all sales and purchases of goods by the company;

[38] (c) the assets and liabilities of the company.

[39] (2) For the purposes of subsection (1), proper books and documents of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books and documents as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

[40] (3) Subject to the provisions of subsection (4) relating to books and documents of account kept outside the Island, books and documents of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

[41] (4) If books and documents of account are kept at a place outside the Island there shall be sent to, and kept at a place in the Island and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the books and documents of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months and will enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given:

[42] Provided that the Minister, if, having regard to the nature and volume of the business done in the Island by any company, he is satisfied that it is just to do so, may by order grant, subject to such conditions as may be specified in the order, exemption from any of the obligations imposed by this subsection.

[43] (5) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own willful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars:

[44] Provided that-

[45] (a) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and

[46] (b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.

[47] Section 146(1) states that subject to the provisions of the Seventh Schedule, the accounts of a company shall give a true and fair view of the state of affairs of the company as at the end of its

financial year; and section 146(2) provides that the accounts of a company shall comply with the requirements of the Seventh Schedule, so far as applicable thereto.

[48]Section 154(1) states that every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.

[49]Section 155 provides that a person shall not be qualified for appointment as auditor of a company which is not a private company or of a private company which is obliged to file accounts unless he is a registered public accountant as defined in section 2 of the Public Accountancy Act¹³.

[50]Section 156 states that none of the following persons shall be qualified for appointment as auditor of a company: an officer or servant of the company; a person who is a partner of in the employment of an officer or servant of the company; and a body corporate.

[51]Section 157 states that: (1) the auditors shall make a report to the members on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during their tenure of office, and the report shall contain statements as to the matters mentioned in the Seventh¹⁴ and Eighth Schedules¹⁵; (2) the auditors' report shall be read before the company in general meeting and shall be open to inspection by any member; (3) every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary for the performance of the duties of the auditors; (4) the auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors; (5) if any person makes default in complying with any of the requirements of this section, he shall be liable to a fine not exceeding one hundred thousand dollars.

[52]– The Seventh Schedule to the Companies Act¹⁶ provides that accounts referred to in sections 146(2) and 157 of the Act shall, except as otherwise provided in Part II of the Schedule in relation to small companies or small groups¹⁷ be prepared in accordance with generally accepted accounting principles promulgated by the Institute of Chartered Accountants of Jamaica, from time to time, or such other body as the Minister may prescribe. Said accounts must contain the following: a balance sheet; a statement of changes in equity; a profit and loss account; a statement of changes in financial position; notes to the accounts; such other variation or addition to this list as may be promulgated by the Institute of Chartered Accountants of Jamaica.

[53] Section 4(1) states that a small company is not required to comply with the generally accepted accounting principles referred to in subsection 4(2), unless (a) otherwise decided by the directors; or (b)

13. Section 2 of the Public Accountancy Act defines "registered public accountant" as a person whose name is on the register, not being a person whose registration is for the time being suspended. It also defines "register" as the register of public accountants mentioned in section 9 of the aforementioned Act.

14. The Seventh Schedule of the Companies Act refers to financial disclosure, form and content of company accounts.

15. The Eighth Schedule of the Companies Act refers to matters to be expressly stated in Auditor's Report.

16. The Seventh Schedule can be found on pgs 423-425 of the Companies Act.

<http://www.moj.gov.jm/laws/statutes/companies1-447.pdf>

17. Section 1 of the Seventh Schedule defines "small company" as a company that qualifies under Part II of this Schedule, to be treated as a small company; and "small group" as a group that qualifies under Part II of this Schedule, to be treated as a small group.

disqualified under paragraph 8. In that regard, subsection 4(2) states that the fact of such non-compliance shall be disclosed in notes to the accounts.

[54] Section 5 states that a small company shall present accounts in accordance with accounting principles that are appropriate to its circumstances having regard to the requirement for those accounts to present a true and fair view of the state of affairs and the results of operation of the company.

[55] Section 8 states that a small company is disqualified for the purposes of this Part if it is or was at anytime within the financial year to which the accounts relate: (a) a public company; (b) a company licensed under the Banking Act; (c) an insurance company registered under the Insurance Act; (d) a licensee under the Securities Act; (e) a company licensed under the Financial Institutions Act, or; (f) a society registered under the Building Societies Act or the Cooperative Societies Act.

[56] Section 10 states that a holding company and its subsidiaries qualify as a small group in relation to a financial year if they meet on a consolidated basis, two or more of the following criteria for that financial year and the immediately preceding financial years: (a) the groups turnover is less than \$80 million; (b) the balance sheet total is less than \$60 million; (c) the total number of employees is less than 50.

[57] Section 11 states that a group of companies is disqualified for the purposes under this Part if any of the companies within that group is: (a) public company; (b) a company licensed under the Banking Act; (c) an insurance company registered [or exempted from registration] under the Insurance Act; (d) a licensee under the Securities Act; (e) a company licensed under the Financial Institutions Act; (f) a society registered under the Building Societies Act or the Cooperative Societies Act.

[58] – The Public Accountancy Act¹⁸, of which the following should be noted:

[59] Section 3(1) establishes the Public Accountancy Board.

[60] Section 4(1) determines that the functions of the Board shall be, generally, to promote, in the public interest, acceptable standards of professional conduct among registered public accountants in Jamaica, and, in particular (but without prejudice to the generality of the foregoing) to perform the functions assigned to the Board by the other provisions of this Act.

[61] Section 4(2) states that the Board shall: (a) register applicants who qualify as public accountants; (b) establish systems for the review of the products, methods and records of work of registered public accountants to ensure adherence to any prescribed standard of professional conduct and established accounting and auditing standards; (c) make, with the approval of the Minister, rules in relation to the promotion by the Board, in the public interest of acceptable standards of professional conduct among registered public accountants; (d) take disciplinary action against registered public accountants for breach of any provision of this Act or any regulation made hereunder; and (e) remove from the register persons who no longer qualify to be registered public accountants.

[62] Section 4(3) states that the Board may: (a) establish, evaluate and monitor the experience requirements of registered public accountants, as well as accounting and auditing standards to be complied with by registered public accountants; (b) establish, implement and regulate a system of continuing professional education for registered public accountants, prescribe requirements therefore and monitor compliance with the requirements; (c) implement, regulate and monitor a system of quality control reviews; and (d) perform such other monitoring functions as it considers necessary or expedient.

18. Public Accountancy Act: <http://www.moj.gov.jm/laws/statutes/Public%20Accountancy%20Act.pdf>

[63] Section 11 establishes the requirements and procedures for registration of Public Accountants.

[64] Section 15(1) of the Public Accountancy Act states that no person, unless he is a registered public accountant, shall in Jamaica (a) practice as a public accountant; (b) use, in relation to himself, the designation "Public Accountant", either alone or in conjunction with any other words or initials; or (c) use, in relation to himself, any designation, title, name, initials or description indicating or implying that he is entitled to so use the designation mentioned in paragraph (b), or that he is a registered public accountant.

[65] Section 15(2) determines that a person practices as a public accountant within the meaning of paragraph (a) of subsection (1) if: (a) he practices accountancy within the meaning of subsection (3); and (b) in practicing accountancy as aforesaid, he holds himself out (whether expressly or by implication) as being a professionally qualified accountant or an expert in accounting or auditing matters.

[66] Section 15(3) states that a person practices accountancy within the meaning of paragraph (a) of subsection (2) if, for reward, he prepares or examines financial, accounting or related statements, or issues any written opinion, report or certificate concerning any such statement, but a person does not practice accountancy as aforesaid by reason only that: (a) he does so in the course of his duties as an employee of any person; or (b) he engages in book-keeping or cost accounting or the installation of book-keeping, business or cost systems, not including the preparation of financial statements purporting to reflect a true and fair view or to be in conformity with generally accepted accounting standards or in such work as may be prescribed for the purposes of this subsection.

[67] Section 15(4) determines criminal and financial liabilities for any person who contravenes the provisions of section 15.

[68] Sections 16 to 25 is dedicated to Chartered Accountants and section 16(1) provides for the incorporation of the Institute of Chartered Accountants of Jamaica¹⁹. The object of the Institute include promoting and increasing the knowledge, skill and proficiency of its members and students, regulating the discipline and professional conduct of its members and students, promoting and protecting the welfare and interest of the Institute and the accounting profession in Jamaica, making provision for the training, education and examination of persons engaging in or intending to engage in the profession. The Institute is also empowered to make by-laws for, among other things, the exercise of disciplinary authority over members and students of the Institute.

[69] – The Code of Ethics for the members of the Institute of Chartered Accountants of Jamaica²⁰, of which the following should be noted:

[70] Section 4 regarding confidentiality, applicable to all members, particularly section 4.8 which reads: *The following are examples of the points which should be considered in determining whether confidential information may be disclosed:*

[71] (...)

[72] b) *When disclosure is required by law:*

19. Section 16(1) states that: *As from the 6th July, 1970, the persons who are for the time being members of the organization constituted on the eighteenth day of January, 1965, under the name of the Institute of Chartered Accountants of Jamaica shall be a body corporate under the name of the Institute of Chartered Accountants of Jamaica.*

20. The Code of Ethics of the Institute of Chartered Accountants of Jamaica can be found at:

http://www.ica.j.org/index.php?option=com_content&task=view&id=22&Itemid=59

[73] *Examples of when a member is required by law to disclose confidential information are:*

[74] *i) To produce documents or to give evidence in the course of legal proceedings; and*

[75] *ii) To disclose to the appropriate public authorities infringements of the law which come to light.*

[76]– The Annual Report of the Institute of Chartered Accountants of Jamaica (2001-2002), which indicates the adoption in July 2002 of the International Accounting Standards (IAS).²¹

[77]– Other provisions such as the Financial Administration and Audit Act²², which governs the management of government accounts; the Public Bodies Management and Accountability Act, which regulates public bodies²³; the Cooperative Societies Act, which regulate cooperative societies and credit unions. The Financial Institutions Act and the Financial Institutions Regulations regulate financial institutions. The Financial Services Commission Act which supervises and regulates prescribed financial institutions. The Insurance Act and Regulations which govern the operation of insurance companies. The Banking Act which provides for the proper regulation and control of Banks. The Securities Act which regulates the securities Market in Jamaica; and the Building Societies Act which regulates the conduct of building societies.

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

[78] With respect to the provisions that refer to the prevention of bribery of domestic and foreign government officials that the Committee has examined, based on the information available to it, they constitute a set of measures relevant for promoting the purposes of the Convention.

[79] Notwithstanding, the Committee considers it appropriate to express some comments regarding the advisability of developing and complementing certain legal provisions that might be useful for the country under review to consider.

[80]– First, the Committee notes that although the Companies Act does require from every company to keep proper books and documents of account, there is no provision which establishes a time-frame for the custody period of accounting records. The Committee will formulate recommendations in that regard (see Recommendation 2.4(a) in Section 2.4 Chapter II of this Report).

[81]– The Committee also notes that there are no provisions in the Companies Act that require a company to take reasonable precautions to prevent the loss, destruction or mutilation of accounting records, or to prevent falsification of entries and facilitate detection and correction of inaccuracies. The Committee considers that it would be beneficial for the country under review to consider establishing appropriate measures that would require a company to take reasonable precautions for that purpose, as well as establishing sanctions for contravening the proposed provisions. The Committee will formulate a recommendation (see Recommendation 2.4(b) in Section 2.4 Chapter II of this Report).

[82]– The Committee takes notice that there is no obligation for publicly held companies and other associations to have legally qualified accountants in charge of their internal accounting controls. The

21. General Accounting Standards of Jamaica: http://www.oas.org/juridico/english/mesicic3_jam.htm

22. The Financial Administration and Audit Act: <http://www.moj.gov.jm/laws/statutes/Public%20Accountancy%20Act.pdf>

23. A public body is defined in section 2 of the Public Bodies Management Act “a statutory body or authority or any government company”. In that regard, a government company is defined in Section 2 as “a company registered under the Companies Act, being a company in which the Government or an agency of the Government, by the holding of shares, is in a position to direct the policy of the company.”

Committee will formulate a recommendation (see Recommendation 2.4(c) in Section 2.4 Chapter II of this Report).

[83]– The Committee also notes that Section 15(1)(a) of the Public Accountancy Act establishes that no person, unless he is a registered public accountant with the Public Accountancy Board (PAB), shall practice as such, and that Section 4(2)(b)(i) states that the PAB shall establish systems for the review of the products, methods and records of work of registered public accountants to ensure adherence to any prescribed standard of professional conduct. Nevertheless, no standard of professional conduct that is applicable to all registered public accountants has been issued, and the Code of Ethics issued by the Institute of Chartered Accountants of Jamaica (ICAJ) does not apply to all registered public accountants since its affiliation is entirely voluntary. The Committee will make a recommendation (see Recommendation 2.4(d) in Section 2.4 Chapter II of this Report).

[84]– The Committee takes notice as well that although the ICAJ adopted in July 2002 the International Accounting Standards, this information is not available on their website or in any other official portal, which hampers their consultation and application. Therefore, the Committee believes that it would be highly useful for the country under review to consider the possibility of publishing that information through official portals, so that it is freely available in order to facilitate its consultation, application, and dissemination (see Recommendation 2.4(e) in Section 2.4 Chapter II of this Report).

[85] – The Committee also believes that it would be useful to consider the use of guidelines or manuals on the conduct of internal audits designed to detect anomalies or corrupt acts and to make it a duty for individuals and accountants responsible for the entry of accounting records and for internal auditors when they detect anomalies, to bring them to the attention of the officers and the partners (in the case of companies) or members (in the case of associations), and to report them to the appropriate authorities in the event that they could constitute an offense, as well as assuring that professional confidentiality is not an obstacle to that end. The Committee will formulate recommendations in this regard (see Recommendation 2.4 (f) and (g) in Chapter II of this report).

[86]– The Committee believes that it would be advisable for the country under review to consider promoting training for the individuals responsible for the entry of accounting records and for accounting for their accuracy, including raising awareness of the importance of abiding by the standards in force for ensuring the veracity of those records and the consequences of their violation. The Committee will formulate a recommendation in that regard (see Recommendation 2.4 (h) in Chapter II of this report).

[87]– The Committee believes as well that it would be useful for the country under review to consider holding awareness and integrity promotion campaigns targeting the private sector, and also consider measures such as preparation of handbooks and guidelines for companies on good practices that should be implemented to prevent corruption (see Recommendation 2.4 (i) in Chapter II of this report).

[88]– Finally, the Committee believes that it would be beneficial for the country under review to consider adopting such measures as it deems appropriate to make it easier for the organs or agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records to detect sums paid for corruption concealed through said records (see Recommendation 2.4 (j) in Chapter II of this report).

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

[89] In the results section of Jamaica's response to the questionnaire, the country undergoing review reports that *"Pursuant to Section 4(1) of the Contractor General Act, the Office of the Contractor General (OCG) has used the provisions of the Financial Administration and Audit Act, the Corruption Prevention Act, and the Public Bodies Management and Accountability Act as guidelines for the conduct of public administration.*

[90] *"In this regard, the OCG has on several occasions referred breaches of the referenced statutes to the respective authorities, namely the Director of Public Prosecutions, the Auditor General and the Attorney General for any action as they deem appropriate, having regard to the breaches identified"*.

[91] Considering that the Committee does not have additional information other than that referred above that might enable it to *make* a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see recommendation 2.4 (k) in Chapter II of this report).

2.4. Conclusions and recommendations

[92] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 10 of the Convention:

[93] Jamaica has considered and adopted measures intended to create, maintain and strengthen provisions for the prevention of the bribery of domestic and foreign government officials, as described in section 2 of Chapter II of this report.

[94] In light of the comments formulated in the above-noted sections, the Committee suggests that Jamaica consider the following recommendation:

[95] Strengthen the standards and measures on the prevention of bribery of domestic and foreign government officials. To comply with this recommendation, Jamaica could take the following measures into account:

- a. Adopt the appropriate measures to ensure that the companies to which the provisions of the Companies Act are applicable maintain accounting records for a prescribed custody period (see Section 2.2 of Chapter II of this Report)
- b. Adopt the appropriate measures to require a company to take reasonable precautions to prevent the loss, destruction or mutilation of accounting records, prevent falsification of entries and facilitate detection and correction of inaccuracies, and establish sanctions for contravening the proposed provisions (see Section 2.2 of Chapter II of this Report)

- c. Introduce the obligation for publicly held companies and other associations, when their size, reflected by factors such as the possession of substantial proprietary capital or the considerable funds that they manage, make it advisable, to have legally qualified accountants in charge of their internal accounting controls (see Section 2.2 of Chapter II of this Report)
- d. Pursuant to Section 4(2)(b)(i) of the Public Accountancy Act, adopt the necessary measures in order to issue the prescribed standards of professional conduct applicable to all registered public accountants, which will include provisions for their compliance and establish sanctions for non-compliance (see Section 2.2 of Chapter II of this Report)
- e. Publish the generally accepted accounting principles promulgated by the ICAJ or any other body that the Minister may have prescribed, and all related information, through official portals, so that this information is freely available in order to facilitate its consultation, application, and dissemination (see Section 2.2 of Chapter II of this Report)
- f. Consider the use of guidelines or manuals on the conduct of internal audits designed to detect anomalies or corrupt acts (see Chapter II, Section 2.2 of this report).
- g. Adopt the necessary measures to make it a duty for individuals and accountants responsible for the entry of accounting records and for internal auditors when they detect anomalies to bring them to the attention of the officers and the partners (in the case of companies) or members (in the case of associations), and to report them to the appropriate authorities in the event that they could constitute an offense, ensuring that professional or commercial confidentiality is not an obstacle for that purpose (see Chapter II, Section 2.2 of this report).
- h. Promote training for individuals responsible for the entry of accounting records and for accounting for their accuracy, including raising awareness of the importance of abiding by the standards in force for ensuring the veracity of those records and the consequences of their violation (see Chapter II, Section 2.2 of this report).
- i. Consider holding awareness and integrity promotion campaigns that target the private sector, and consider adopting measures such as production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption (see Chapter II, Section 2.2 of this report).
- j. Consider adopting such measures necessary to facilitate the detection, by the organs and agencies responsible for preventing and/or investigating violations of measures designed to ensure the accuracy of accounting records, of sums paid for corruption that are concealed in those records, such as the following: (see Chapter II, Section 2.2 of this report):
 - i. Review methods, including account inspections and analysis of periodically requested information, by which to detect anomalies in accounting records that could indicate the payment of sums for corruption;
 - ii. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred.
 - iii. Manuals, guidelines or directives for those organs and agencies that do not yet have them, on how to review accounting records in order to detect sums paid for corruption.

- iv. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based.
- v. Institutional coordination mechanisms that enable these organs or agencies to easily obtain timely collaboration needed from other institutions or authorities to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity.
- vi. Training programs for officials of organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records, specifically designed to alert them to the methods used to disguise payments for corruption through said records and to instruct them on how to detect them.
- k. Select and develop, through the organs and agencies responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records and for ensuring that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations made in this report (see Chapter II, Section 2.3 of this report).

3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

3.1. Existence of provisions in the legal framework and/or other measures

[96]Jamaica has the following provisions related to transnational bribery:

[97]The Corruption Prevention Act, of which the following should be noted:

[98]Section 14(4) provides that “*Any citizen or resident of Jamaica or any corporation, either aggregate or sole, any club, society or other body of one or more persons, who offers or grants, directly or indirectly, to a person performing a public function in a foreign state, any article or money or other benefit, being a gift, favour, promise or advantage in connection with any economic or commercial transaction for any act to be performed by or for the omitting to do any act by that person in the performance of that person’s public functions, commits an act of corruption.*”

[99]Section 14(9) provides that: “*Where a citizen of Jamaica commits in another State, an act of corruption specified in subsection (1), (2), (3), (4), (5), (6), (7), or (8), he shall be liable to be prosecuted and tried for such act as if he had committed the act in Jamaica.*”

[100] Section 15(1) provides that: “*any person who commits an act of corruption commits an offence and is liable-*

[101](a) *on summary conviction in a Resident Magistrate’s Court –*

[102] (i) *in the case of a first offence to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and*

[103] (ii) *in the case of a second or subsequent offence to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment;*

[104] *(b) on conviction in a Circuit Court-*

[105] (i) *in the case of a first offence to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment; and*

[106] (ii) *in the case of a second or subsequent offence to a fine not exceeding ten million dollars or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.”*

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

[107] With respect to the provision through which Jamaica has criminalized the offense of transnational bribery, as provided in Article VIII of the Convention, the Committee notes that, on the basis of the information available to it, it may be said to be pertinent for promoting the purposes of the Convention.

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

[108] With respect to results in this field, Jamaica states that information is currently unavailable.

[109] Considering that the Committee does not have enough information that might enable it to make a comprehensive and fair evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies charged with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see Recommendation 3.4 of Chapter II of this Report)

3.4 Conclusions and recommendations

[110] Based on the review conducted in the foregoing sections, the Committee offers the following conclusion and recommendation with respect to implementation in the country under review of the provisions contained in Article VIII of the Convention:

[111] Jamaica has adopted measures on the offense of transnational bribery as provided in Article VIII of the Convention, as described in Chapter II, Section 3 of this report.

[112] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendation:

- Strengthen the existing procedures and indicators used by the organs and agencies charged with the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, to analyze the objective results in this area. (See section 3.3 of chapter II of this report)

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

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

[113] Jamaica has a set of provisions related to illicit enrichment, among which the following should be noted:

[114]– The Corruption Prevention Act, of which the following should be noted:

[115] Section 14(5), which states that: *Where a public servant-*

[116] *(a) owns assets disproportionate to his lawful earnings;*

[117] *and*

[118] *(b) upon being requested by the Commission²⁴ or any person duly authorized to investigate an allegation of corruption against him, to provide an explanation as to how he came by such assets, he-*

[119] *(i) fails to do so; or*

[120] *(ii) gives an explanation which is not considered to be satisfactory, he shall be liable to prosecution for the offence of illicit enrichment, and on conviction thereof, to the penalties specified in section 15 (1)ⁱ*

[121] Section 14(5A) which states that -

[122] *It shall be a defence to a person charged with an offence of illicit enrichment to show the courts that he came by the assets by lawful means.*

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

[123] With respect to the provisions related to illicit enrichment as provided for by Article IX of the Convention, the Committee notes that based on the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

[124] Notwithstanding, the Committee notes that the criminalization of illicit enrichment set forth in Section 14(5) of the Corruption Prevention Act contains elements that are not found in Article IX of the Convention, while others are missing, as follows:

[125] The Committee notes that Section 14(5) of the Corruption Prevention Act states that, “Where a public servant – (a) *owns* assets disproportionate to his lawful earnings; ...” In this regard, the Committee notes that what the Convention states is that “Subject to its Constitution and the fundamental principles of its legal system, each State Party that has not yet done so shall take the necessary measures to establish under its laws an offence of a *significant increase* in the assets of a government official that he cannot reasonably explain *in relation to his lawful earnings during the performance of his functions.*” In this case, the Committee takes notice that owning assets disproportionate to lawful earnings is not the same as increasing significantly his or her assets in relation to his or her lawful earnings during the

24. The Commission for the Prevention of Corruption established under section 3 of the Corruption Prevention Act. Under sections 12(1) and (2) of the Act, the Commission is required to report acts of corruption to the Director of Public Prosecutions and to the appropriate Service Commission, Board, Body or other authority.

performance of his functions. The Committee, therefore, will formulate a recommendation (see Recommendation 4.4(a) in Section 4.4 of Chapter II of this Report)

4.3 Results of the legal framework and/or other measures

[126] With respect to results in this field, Jamaica states that no data is available at this time.²⁵

[127] Considering that the Committee does not have sufficient information to enable it to make a fair and comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies responsible for requesting and/or providing assistance and cooperation with respect of the offense of illicit enrichment, as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see Recommendation 4.4(b) in Section 4.4 of Chapter II of this Report)

4.4 Conclusions and recommendations

[128] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article IX of the Convention:

[129] Jamaica has adopted measures regarding the offense of illicit enrichment as provided in Article VIII of the Convention, as described in Chapter II, Section 4 of this report.

[130] In light of the comments formulated in that section, the Committee suggests Jamaica considers the following recommendations:

- a. Adopt the pertinent measures to align Section 14(5) of the Corruption Prevention Act with Article IX of the Convention by replacing the “owns” element from the criminalization of illicit enrichment with “*significant increase,*” adding “*during the performance of his functions.*” (See Chapter II, Section 4.3 of this report).
- b. Strengthen the existing procedures and indicators used by the organs and agencies charged with the investigation and/or prosecution of the offense of illicit enrichment, and with requesting and/or providing assistance and cooperation with respect thereto, to analyze the objective results obtained in this area. (See section 4.3 of chapter II of this report)

5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)

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

[131] Jamaica criminalized the offenses of transnational bribery and illicit enrichment as provided for in Articles VIII and IX of the Inter-American Convention against Corruption after the date on which it ratified the Convention and notified the OAS Secretary General of said criminalization in a communication dated 28th July, 2010²⁶.

25. Response of Jamaica to the Questionnaire, pg. 15.

26. Response of Jamaica to the Questionnaire, p. 15.

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

[132] Since Jamaica criminalized the offenses of transnational bribery and illicit enrichment as provided in Articles VIII and IX, respectively, of the Inter-American Convention against Corruption, after the date on which it ratified said Convention, and that on July 28th, 2010 it notified the Secretary General of said criminalization, in accordance with Article X thereof, the Committee shall not offer any recommendation in that respect (see conclusion in Section 5.3 in Chapter II of this Report).

5.3. Conclusion

[133] **Based on the review conducted in the foregoing sections, the Committee concludes that Jamaica has complied with the provisions of Article X of the Convention.**

6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

6.1. Existence of provisions in the legal framework and/or other measures

[134] Jamaica has a set of provisions related to extradition, among which the following should be noted:

[135] – The Extradition Act²⁷, of which the following should be noted:

[136] Section 5(1) which states that:

[137] *“For the purposes of this Act, any offence of which a person is accused or has been convicted in an approved State²⁸ is an extradition offence, if-*

[138] *(a) in the case of an offence against the law of a designated Commonwealth State²⁹ -*

[139] *(i) it is an offence which is punishable under that law with imprisonment for a term of two years or any greater punishment; and*

[140] *(ii) the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Jamaica if it took place within Jamaica (or in the case of an extraterritorial offence, in corresponding circumstances outside Jamaica) and would be punishable under the law of Jamaica with imprisonment for a term of two years or any greater punishment;*

[141] *(b) in the case of an offence against the law of a treaty State³⁰ -*

27. Extradition Act: <http://www.moj.gov.jm/laws/statutes/The%20Extradition%20Act.pdf>

28. Section 2(1) of the Extradition Act defines “approved State” as “*either a designated Commonwealth State or a treaty State, as circumstances may require.*”

29. Section 2(1) of the Extradition Act defines “Commonwealth State” as “*a country designated by order published under section 3, and includes –*

- (a) a colony, territory, protectorate or other dependency of such country;*
- (b) a territory for the international relations of which such country is responsible;*
- (c) a ship or aircraft of, or registered in, such country”*

30 Section 2(1) of the Extradition Act defines “treaty State” as “

- (a) a foreign State in relation to which an order under section 4 is for the time being in force and includes –*
 - (i) a colony, territory, protectorate or other dependency of such State;*
 - (ii) a territory for the international relations of which such State is responsible; and*
 - (iii) a ship or aircraft; or registered in, such State;*

[142] (i) it is an offence which is provided for by the extradition treaty with that State; and

[143] (ii) the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Jamaica if it took place within Jamaica or, in the case of an extraterritorial offence, in corresponding circumstances outside Jamaica.”

[144] Section 5(1) which provides that: “For the purposes of this Act, any offence of which a person is accused or has been convicted in an approved State is an extradition offence, if-

[145] (a) in the case of an offence against the law of a designated Commonwealth State-

[146] (i) it is an offence which is punishable under that law with imprisonment for a term of two years or any greater punishment; and

[147] (ii) the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Jamaica if it took place within Jamaica (or in the case of an extraterritorial offence, in corresponding circumstances outside Jamaica) and would be punishable under the law of Jamaica with imprisonment for a term of two years or any greater punishment;

[148] (b) in the case of an offence against the law of a treaty State-

[149] (i) it is an offence which is provided for by the extradition treaty with that State; and

[150] (ii) the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Jamaica if it took place within Jamaica or, in the case of an extraterritorial offence, in corresponding circumstances outside Jamaica”.

[151] Section 6, which states that “Subject to the provisions of this Act, a person found in Jamaica who is accused of an extradition offence in any approved State or who is alleged to be unlawfully at large after conviction of such an offence in any such State, may after conviction of such an offence in any such State, may be arrested and returned to that State as provided by this Act.”

[152] Section 7, which outlines general exemptions on extradition. Among those exemptions, subsection 5 of section 7 states that: “the Minister may, in his discretion, refuse to extradite a fugitive on the ground that the fugitive is a citizen of Jamaica, but he shall not refuse to extradite the fugitive on that ground if the fugitive is also a citizen of the approved State that has requested the extradition.”

[153] The bilateral extradition treaty with the United States of America.³¹

[154] The London Scheme for Extradition³² within the Commonwealth, which covers the following States Parties to the Convention: Antigua and Barbuda, the Bahamas, Belize, Canada, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines.

(b) a contracting party to a Convention specified in Column A of the Schedule, in so far as specified in relation thereto in Column B of the Schedule.”

31. See: <http://www.oas.org/juridico/MLA/en/jam/index.html>

32. The London Scheme for Extradition within the Commonwealth:
http://www.oas.org/juridico/english/mesicic3_jam_london.pdf

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

[155] With respect to provisions related to extradition, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[156] The Committee nevertheless deems it appropriate to express the following comments that could be considered by the country under review, as follows:

[157] The Committee takes notice that according to Section 5 of the Extradition Act, the Minister, in his discretion, may refuse to extradite a fugitive on the grounds that the fugitive is a citizen of Jamaica. Nevertheless, there is no provision that requires for the state under review to submit the case to its competent authorities for the purpose of prosecution, and to report the final outcome to the Requesting State in due course, in the cases in which the extradition is refused solely on the basis of the nationality of the person sought or because the Requested State deems that it has jurisdiction over the offense, as per Article XIII(6) of the Convention. The Committee will formulate a recommendation (see Recommendation 6.4(a) in Section 6.4 of Chapter II of this Report)

[158] In addition, the Committee considers that it might be useful for the country under review to consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases. This could consist, among other measures, in the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (see Recommendation 6.4(b) in Section 6.4 of Chapter II of this Report)

6.3 Results of the legal framework and/or other measures

[159] With respect to results in this field, Jamaica states that no data is available at this time.³³

[160] Considering that the Committee does not have sufficient information that might enable it to make a fair and comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies responsible for requesting and/or providing assistance and cooperation with respect of the offense of illicit enrichment, as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see Recommendation 6.4(c) in Section 4.4 of Chapter II of this Report)

6.4. Conclusions and recommendations

[161] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article XIII of the Convention:

[162] Jamaica has adopted measures regarding extradition as provided in Article XIII of the Convention, as described in Chapter II, Section 6 of this report.

³³ Response of Jamaica to the Questionnaire, pg. 20.

[163] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendations:

- a. Consider the convenience of adopting relevant measures to establish the requirement of submitting the case to its competent authorities for the purpose of prosecution and reporting the final outcome to the requesting State on a timely basis, in the cases in which extradition is refused solely on the basis of the nationality of the person sought, or because the requested State deems that it has jurisdiction over the offense. (See Section 6.2 of Chapter II of this Report)
- b. Consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases, which could consist of, among other measures, the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (See Section 6.2 of Chapter II of this Report)
- c. Select and develop, through the competent organs or agencies, procedures and indicators, when appropriate and where they do not yet exist, to verify the follow up to the recommendations formulated in this report with respect to this area; and to analyze objective results obtained in relation to requests for extradition formulated to other States Parties to the Convention, for the investigation or prosecution of the crimes that have been criminalized pursuant thereto and the steps that have been taken to respond to similar requests from other States Parties. (See Section 6.3 of Chapter II of this Report)

III. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN REPORTS FROM PREVIOUS ROUNDS

FIRST ROUND³⁴

[164] With respect to the implementation of the recommendations issued to Jamaica in the report from the First Round on which it did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those for which it supplied information but which the Committee considered in Section IV of the report for that round that they needed additional attention, and on the basis of the information available to it, referring to progress in implementation subsequent to that report, the Committee notes the following:

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

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

Recommendation 1.1:

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

34. The references to sections that appear in italics in the recommendations and measures transcribed herein refer to the report from the First Round of Review.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round³⁵:

- 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. *Establish written guidelines within the public service that require hiring on the basis of merit.*
- c. *Develop, where appropriate, provisions that limit participation by former public servants in situations that could involve taking undue advantage of one's status as a former public servant for an appropriate period of time.*
- d. *Encourage the implementation of a code of ethics for Senators and Members of the House of Representatives, including sanction mechanisms for violations.*
- e. *Ensure that there are mechanisms in place that provide transparency and eliminate risks of conflict of interest in the cases where the Prime Minister allows a Minister to keep any relevant interest the latter is unable or unwilling to dispose.*

[165] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information that it considers related, as follows³⁶:

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

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

[168] In that regard, the Committee wishes to recall the assessment on which measure a) was based:³⁷

[169] *"Nevertheless, the Committee notes that the Staff Orders do not apply to all personnel employed by the Government. 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*

35. Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 24 –27,

http://www.oas.org/juridico/english/mesicic_II_inf_jam_en.pdf

36. Response of Jamaica to the questionnaire, p.p. 22-23.

37. Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the First Round, pg. 9.

public offices for the purpose of the constitutional provisions also are exempt from these controls. The Committee notes that in relation to the constitutionally established positions, i.e., the Director of Public Prosecutions, the Auditor General, judges of the Supreme Court and Court of Appeal, the Public, Police and Judicial Services Commission, there are procedures established under that Constitution for removal in the event of misconduct. The Committee also notes that the Attorney-General (in his capacity of Minister of Justice) is subject to provisions of the Parliament (Integrity of Members) Act and the Code of Conduct of Ministers. 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. The Committee will formulate a recommendation in that regard. (See recommendation 1.1(a) in Chapter III of this report).

[170] The Committee therefore takes note of the need for the country under review to give additional attention to the implementation of measure a) of the above-transcribed recommendation.

[171] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the measures, the following³⁸:

[172] *“The Public Service Commission is currently in the process of completely revising the Public Service Regulations. The changes proposed include:*

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

[173] The Committee takes note of the step taken by the country under review to advance in its implementation of measure b) of the foregoing recommendation, as well as the need for it to continue to give attention thereto.

[174] With respect to measures c), d) and e) of the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to their implementation.

38. Response of Jamaica to the questionnaire, p. 23.

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

Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round³⁹:

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.

[175] With respect to the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to their implementation.

Recommendation 1.2.2:

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

[176] With respect to the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to their implementation.

1.3. Measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

Recommendation 1.3:

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

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round⁴⁰:

- 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.*

39. Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 24–27,

http://www.oas.org/juridico/english/mesicic_II_inf_jam_en.pdf

40. Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 24–27,

http://www.oas.org/juridico/english/mesicic_II_inf_jam_en.pdf

- b. *Adopt and implement measures of protection for public officials who report acts of corruption in good faith in order to protect them from the threats or reprisals that they may be subject as a result of carrying out this obligation.*
- c. *Provide appropriate training to officials and employees concerning the requirement and the processes to report acts of corruption and the protection mechanisms in favor of those who report.*

[177] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the aforementioned measure⁴¹:

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

[179] The Committee takes note of the step taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need to give additional attention thereto.

[180] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the aforementioned measure⁴²:

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

[182] The Committee takes note of the step taken by the country under review to advance in its implementation of measure b) of the foregoing recommendation, as well as the need for it to continue to give attention thereto.

[183] With respect to measure c) of the foregoing recommendation, in its Response, the country under review presents information that it considers related, as follows⁴³:

[184] *“The Office of the Contractor General (OCG) on its website, (www.ocg.gov.jm), has a “Report Impropriety” link, which allows the public to report to the OCG any acts of impropriety or irregularity in the procurement, award or termination of a Government contract, permit or licence (sic).*

41./ Response of Jamaica to the questionnaire, p. 24.

42 Response of Jamaica to the questionnaire, p. 24.

43 Response of Jamaica to the questionnaire, p. 25.

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

[186] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure c) of the foregoing recommendation, bearing in mind that measure c) refers specifically to providing 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.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round⁴⁴:

- a. *Maximize the use of the systems for analyzing the contents of the declarations, and adopt the appropriate measures so that they can also be used to help detect and prevent conflicts of interest and detect cases of illicit enrichment, using modern technologies, when possible, to expedite the filing of declarations and also as a means of improving systems, analysis and case investigations.*
- 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.*
- 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.*
- d. *Strengthen the bodies responsible for overseeing the compliance of public officials to furnish their declarations of income, assets and liabilities, as well as consider strengthening the Office of the Director of Public Prosecutions, as necessary, to ensure that these bodies have the material and human resources needed to enforce the law and prosecute those who fail to submit their declarations, those who provide a statement with false information, or those who commit the offence of illicit enrichment.*

[187] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, as follows⁴⁵:

44. Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 24 –27,
http://www.oas.org/juridico/english/mesicic_II_inf_jam_en.pdf

45. Response of Jamaica to the questionnaire, p. 25.

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

[189] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure a) of the foregoing recommendation, bearing in mind that measure a) refers to maximizing the use of the systems for analyzing the contents of the declarations, and adopting 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.

[190] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, as follows⁴⁶:

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

[192] The Committee wishes to recall that the assessment on which measure b) was based was as follows⁴⁷:

[193] *“Jamaica has a set of provisions that clearly establish the requirement that public officials who hold certain posts must submit a sworn declaration of assets, liabilities and income, which is relevant to the purposes of the provision of the Convention the implementation of which is being reviewed. Additionally, the Committee notes with satisfaction the criminalization of illicit enrichment under Jamaican laws.*

[194] *“The Committee also wishes to underscore the existence of a brochure entitled “Guide to the Corruption (Prevention) Act, 2000 and Regulations, 2002”, which explains in a clear and detailed manner the duty of public officials to declare their assets, liabilities and income; and the content of such declarations. This guide is available at the following internet address: <http://law.moj.gov.jm/pdf/brochure.pdf>.*

[195] *“Nevertheless, the Committee notes that the aforementioned declarations are not made public and are not used to detect and prevent conflict of interests. The Committee will formulate recommendations in that regard. (See recommendations 2(a) and 2(b) in Chapter III of this report)”*

[196] The Committee takes note of the need to provide additional attention to the implementation of measure b) of the foregoing recommendation.

[197] With respect to measure c) of the foregoing recommendation, in its Response, the country under review presents information that it considers related, as follows⁴⁸:

46 Response of Jamaica to the questionnaire, p.26.

47 Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the First Round, pgs. 17-18

48 Response of Jamaica to the questionnaire, p.26

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

[199] The country under review also presents the following information in its Progress Report for September 2009-March 2010 that it considers related, as follows⁴⁹:

[200] *“The Corruption Prevention Commission advises all relevant Government Ministries, Departments, Companies, Statutory Bodies, and Local Government Agencies on an ongoing basis of the legal requirements under the Corruption Prevention Act and seeks their assistance in informing public servants of their duties under the Act. The Commission was established under the Corruption (Prevention) Act to reduce corruption in public life by receiving and analyzing statutory declarations of the assets, liabilities and income of public servants. The Commission is also charged with investigating acts of corruption.”*

[201] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure c) of the foregoing recommendation bearing in mind that measure c) refers specifically to intensifying awareness campaigns and 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; and that the country under review did not provide any information on whether or not these awareness campaigns and training took place.

[202] With respect to measure d) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to the progress in the implementation of the aforementioned measure as follows⁵⁰:

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

[204] *“The resources of the Commission for the Prevention of Corruption were supplemented following a review of the Organisational Structure which provides for a new Staff Structure inclusive of investigators.”*

[205] [182] The Committee takes note of the step 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.

49 Jamaica's Progress Report (September 2009- March 2010), p.1.

50. Response of Jamaica to the questionnaire, p.26

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

Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round⁵¹:

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.

[206] With respect to the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to its implementation.

Recommendation 3.2:

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

[207] With respect to the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to its implementation.

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.

[208] With respect to the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to its implementation.

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

4.1 General participation mechanisms

No recommendations were made to Jamaica in this section.

51. Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 24–27, http://www.oas.org/juridico/english/mesicic_II_inf_jam_en.pdf

4.2 Mechanisms for access to information

Recommendation 4.2:

Strengthen the mechanisms for ensuring public access to information.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round⁵²:

- a. *Review and if necessary modify the provisions under the Access to Information Act which allows the Minister of Information to exclude any statutory body or authority from the application of the Act.*
- b. *Continue developing training and dissemination programs dealing with the mechanisms for public access to information, in order to help civil servants and citizens understand them and to optimize the use of available technology to that end.*
- c. *Continue the preparation of quarterly reports on the access to information requests presented to public authorities, including more detailed information on the status of such requests (e.g., average time taken for completion).*
- 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.*

[209] With respect to measure a) of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to the progress in the implementation of the measures, the following⁵³:

[210] *“All provisions of the Access to Information Act (2002) are currently being reviewed by a Joint Select Committee of Parliament.”*

[211] The Committee takes note of the step 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.

[212] With respect to the measure b) of the foregoing recommendation, in its response the country under review presents the following information further to that analyzed by the Committee in the report from the Second Round. In that regard the Committee highlights the following measure as a step that leads it to conclude that the recommendation has been satisfactorily considered⁵⁴:

[213] *“The Access to Information Unit implements public education programmes targeted at various stakeholder groups and interests, ranging from senior citizens to young people in rural and urban communities. The Unit also develops and implements training programmes for public servants. These programmes are reviewed and updated on an ongoing basis. These activities include:*

52. Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 24 –27, http://www.oas.org/juridico/english/mesicic_II_inf_jam_en.pdf

53. Response of Jamaica to the questionnaire, p.27.

54. Response of Jamaica to the questionnaire, p.28.

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

[215] *b) Right to Know Week activities (annually)*

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

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

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

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

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

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

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

[223] The Committee takes note of the satisfactory consideration by the State under review of the recommendation transcribed above, which by its nature requires continuity in its implementation.

[224] With respect to measure c) of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to the progress in the implementation of the measures, the following⁵⁵:

[225] *“Steps are being taken to enhance the current reporting system (including Quarterly Reports). A comprehensive review of reporting standards is being completed and new standards are being developed. Training and implementation will begin within the current fiscal year 2010/2011.”*

[226] The Committee takes note of the step 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.

55. Response of Jamaica to the questionnaire, p.p. 28-29.

[227] With respect to measure d) of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to the progress in the implementation of the measures, the following⁵⁶:

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

[229] *“Grant funding for real-time electronic tracking systems to monitor how requests are being treated is necessary.*

[230] *“The Joint Select Committee reviewing the Act is also examining this issue.”*

[231] The Committee takes note of the step 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.

4.3 Mechanisms for consultation

Recommendation 4.3:

Strengthen the existing mechanisms of consultation.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round⁵⁷:

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.

[232] With respect to the measure of the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to their implementation.

4.4 Mechanisms to encourage participation in public administration

Recommendation 4.4:

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

56. Response of Jamaica to the questionnaire, p. 29.

57. Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 24–27, http://www.oas.org/juridico/english/mesicic_II_inf_jam_en.pdf

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round⁵⁸:

- 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.*

[233] With respect to measures a) and b) of the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to their implementation.

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

Recommendation 4.5:

Strengthen and continue implementing mechanisms to encourage civil society and nongovernmental organizations to participate in the follow up of public administration and generate opinions and proposals to be taken into account in preventing, detecting, investigating and punishing corruption.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round⁵⁹:

- 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.*

[234] With respect to measures a) and b) of the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to their implementation.

58. Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 24–27,

http://www.oas.org/juridico/english/mesicic_II_inf_jam_en.pdf

59. Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 24–27,

http://www.oas.org/juridico/english/mesicic_II_inf_jam_en.pdf

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

Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round⁶⁰:

Recommendation 5.1:

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

[235] With respect to the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to their implementation.

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.

[236] With respect to the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to their implementation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round⁶¹:

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.

[237] With respect to the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to their implementation.

60. Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 24–27,

http://www.oas.org/juridico/english/mesicic_II_inf_jam_en.pdf

61. Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 24–27,

http://www.oas.org/juridico/english/mesicic_II_inf_jam_en.pdf

7. GENERAL RECOMMENDATIONS

Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round⁶²:

Recommendation 7.1:

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

[238] With respect to the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to their implementation.

Recommendation 7.2:

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

[239] With respect to the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to their implementation.

Recommendation 7.3:

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

[240] With respect to the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to their implementation.

SECOND ROUND

[241] The Committee offers the following observations with respect to the implementation of the recommendations made to Jamaica in the report from the Second Round, based on the information available to it:

62. Report on Implementation in Jamaica of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 24 –27, http://www.oas.org/juridico/english/mesicic_II_inf_jam_en.pdf

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

1.1. Systems of government hiring

Recommendation:

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

Measures suggested by the Committee:

- a) *Adopt, through the appropriate legislative and/or administrative procedures provisions that explicitly provide that government hiring into the Public Service is to be based on the principle of merit.*
- b) *Adopt, through the appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for the advertisement of hiring opportunities, and to ensure that when a Civil Public Service position is open to the public, the Public Service Commission is required to advertise it.*
- c) *Make the necessary changes so that probationary employment system, as part of the selection process, is applied with uniform criteria throughout the public administration, in order to promote the principles of equity and efficiency as set out in the Convention.*
- d) *Strengthen the legal provisions regarding the Service Commissions to ensure that these authorities have the competence to revoke or take other corrective measures when is found that an appointment process was, among other things, irregular, improper, or made through a fraudulent competition.*
- e) *Adopt, through the appropriate legislative and/or administrative procedures, provisions concerning those positions in the Judicial Service that are not governed by the Constitution, that explicitly provides that government hiring into the Judicial Service is to be based on the principle of merit.*
- f) *Take the necessary steps, including the amendments of its legislation that it deems relevant, in order to ensure that when a position is open to the general public in the Judicial Service it is advertised to the general public, and that use is made of mass media.*
- g) *Adopt, through the appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for the advertisement of hiring opportunities for all vacancies within the Judicial Service.*

[242] In its response, the country under review presents information with respect to the implementation of measure a) of the above-transcribed recommendation⁶³. In this regard, the Committee notes the following measure as a step that contributes to progress in implementation thereof:

63. Response of Jamaica to the Questionnaire, p. 32.

[243] *“The Public Service Commission is currently in the process of completely revising the Public Service Regulations. The changes proposed include:*

[244] • *express provisions that recruitment and appointment in the public service shall be based on merit.*

[245] • *provisions requiring that where a vacancy exists, the Public service Commission is required to consider the eligibility of all officers for filling such vacancy and take such other steps including advertisement for the filling of the vacancy.*

[246] • *that unsuccessful applicants should have the right of appeal and that an appeal should be considered in light of the requirements outlined in the Public Service Regulations, including merit.”*

[247] The Committee takes note of the step taken by the country under review to progress with implementation of measure a) of the above-transcribed recommendation, and of the need for it to continue to give attention thereto.

[248] In its response, the country under review presents information with respect to the implementation of measure b) of the above-transcribed recommendation⁶⁴. In this regard, the Committee notes the following measure as a step that contributes to progress in implementation thereof:

[249] *“The Public Service Commission is currently in the process of completely revising the Public Service Regulations. The changes proposed include requiring the advertisement of posts in the filling of vacancies.”*

[250] The Committee takes note of the step taken by the country under review to progress with implementation of measure b) of the above-transcribed recommendation, and of the need for it to continue to give attention thereto.

[251] In its response, the country under review presents information with respect to the implementation of measure c) of the above-transcribed recommendation⁶⁵. In this regard, the Committee notes the following measure as a step that contributes to progress in implementation thereof:

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

[253] The Committee takes note of the step taken by the country under review to progress with implementation of measure c) of the above-transcribed recommendation, and of the need for it to continue to give attention thereto.

[254] In its response, the country under review did not refer to measures d) and e) the above-transcribed recommendation. Accordingly, the Committee notes the need for the country under review to give additional attention thereto.

64. Response of Jamaica to the Questionnaire, p. 32.

65. Response of Jamaica to the Questionnaire, p. 32.

[255] In its response, the country under review presents information with respect to the implementation of measure f) of the above-transcribed recommendation⁶⁶. In this regard, the Committee notes the following measure as a step that contributes to progress in implementation thereof:

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

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

[258] The Committee takes note of the step taken by the country under review to progress with implementation of measure f) of the above-transcribed recommendation, and of the need for it to continue to give attention thereto.

[259] In its response, the country under review presents the following information with respect to the implementation of measure g) of the above-transcribed recommendation⁶⁷:

[260] *“The Judicial Service Commission has recently outlined a procedures mentioned in 1.1 (f) above⁶⁸ for the advertisement of posts in the Judicial service.”*

[261] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure g) of the above-transcribed recommendation, bearing in mind that no information was provided as to when and how the Judicial Service Commission outlined the aforementioned procedures, if they are an administrative or legislative in nature, how are they being implemented and whether or not they are mandatory.

1.2. Government systems for the procurement of goods and services

Recommendation:

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

Measures suggested by the Committee:

- a) *Set up appropriate deadlines, where possible, in which the steps of the procurement process will take place.*
- b) *Adopt appropriate legislative and/or administrative procedures that establish clear criteria for determining when procurement is of a “sensitive” nature, when an unsolicited proposal is meritorious, what circumstances justify an unusual and compelling urgency, and what the criteria will be when there is more than one source that could provide highly specialized services.*

66. Response of Jamaica to the Questionnaire, p. 33.

67. Response of Jamaica to the Questionnaire, p. 33.

68. Although this paragraph mentions “paragraph f),” this information appears as information related to paragraph g) in Jamaica’s response.

- c) *Strengthen the legal provisions regarding the National Contracts Commission, so that contractors who have been denied registration, or have been disqualified, suspended or stricken from the NCC registers of approved contractors, have access to the dispute resolution mechanisms of Section 2.12 of the Handbook of Public Sector Procurement Services.*
- d) *Strengthen and increase the scope of use of electronic communications, such as the internet for publicizing the tender and consulting opportunities, status of bids and awards and the progress in the execution of major projects, and consider the possibility of making it mandatory.*
- e) *Strengthen the electronic procurement system, to continue to facilitate the acquisition of goods and services through those means.*
- f) *Publicize to bidders that they are able to request from the contracting agency an explanation in those cases where their bid is unsuccessful.*
- g) *Implement provisions to strengthen citizen oversight mechanisms to monitor the execution of contracts where the nature, importance or magnitude so warrants, in particular public works contracts.*
- h) *Expand sanctions for breaches of the Contractor General Act, taking into account the recommendations of the Office of the Contractor General in its annual reports to the Parliament.*

[262] In its response, the country under review did not refer to measure a) of the above-transcribed recommendation. Accordingly, the Committee notes the need for the country under review to give additional thereto.

[263] In its response, the country under review presents information with respect to the implementation of measure b) of the above-transcribed recommendation⁶⁹. In this regard, the Committee notes the following measure as a step that contributes to progress in implementation thereof:

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

[265] The Committee takes note of the step taken by the country under review to progress with implementation of measure b) of the above-transcribed recommendation, and of the need for it to continue to give attention thereto.

[266] In its response, the country under review did not refer to measure c) of the above-transcribed recommendation. Accordingly, the Committee notes the need for the country under review to give additional thereto.

[267] In its response, the country under review presents information with respect to the implementation of measure d) of the above-transcribed recommendation⁷⁰. In this regard, the Committee notes the following measures as steps that contribute to progress in implementation thereof:

69. Response of Jamaica to the Questionnaire, p. 34.

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

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

[270] The Committee takes note of the steps taken by the country under review to progress with implementation of measure d) of the above-transcribed recommendation, and of the need for it to continue to give attention thereto.

[271] The country under review provides the following information in its response in regards to measure e):⁷¹

[272] *“In 2007, the Ministry of Finance and the Public Service initiated a process for the launch of E-Procurement.”*

[273] In this regard, the Committee wishes to recall that the assessment on which measure e) was based was as follows⁷²:

[274] *“Fifth, the Committee also notes that Jamaica has an electronic procurement system, and it believes the country under review may benefit from strengthening such a system, and more strongly encourage its use by all agencies of the Public Administration, and it will formulate a recommendation in that regard.”*

[275] The Committee notes the need for the country under review to give additional attention to measure e) of the foregoing recommendation.

[276] In its response, the country under review did not refer to measure f) of the above-transcribed recommendation. Accordingly, the Committee notes the need for the country under review to give additional thereto.

[277] The country under review provides the following information in its response in regards to measure g):⁷³

[278] *“The OCG currently publishes a list of all contracts which are (a) approved by the NCC and (b) awarded by Public Bodies below the NCC contract value threshold. The publication of this information*

70. Response of Jamaica to the Questionnaire, p. 34.

71. Response of Jamaica to the questionnaire, p.34.

72. Report on Implementation in Jamaica of the Convention Provisions Selected for Review in the Second Round, adopted at the June 27, 2008 plenary session, p. 14

73. Response of Jamaica to the questionnaire, p.35.

promotes transparency in the Government's procurement process and allows the public to scrutinize information with regard to the award of government contracts.

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

[280] In this regard, the Committee wishes to recall that the assessment on which measure g) was based was as follows⁷⁴:

[281] *"Seventh, the Committee has no information regarding provisions that allow for the establishment of citizen oversight mechanisms to monitor the execution of contracts where the nature, importance or magnitude so warrants, in particular public works contracts. In this regard, the Committee will formulate a recommendation."*

[282] The Committee notes the need for the country under review to give additional attention to measure g) of the foregoing recommendation.

[283] In its response, the country under review presents the following information on implementation of measure h) of the above transcribed recommendation. In that regard the Committee highlights, as a step that leads it to conclude that the measure has been satisfactorily considered, the following⁷⁵:

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

[285] *"Section 40 of the Public Sector Procurement Regulations provides that:*

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

[287] In light of the foregoing, the Committee takes note of the satisfactory consideration by the country under review of measure h) of the above-transcribed recommendation.

74. Report on Implementation in Jamaica of the Convention Provisions Selected for Review in the Second Round, adopted at the June 27, 2008 plenary session, p. 15.

75. Response of Jamaica to the questionnaire, p.35.

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

Recommendation:

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

Measures suggested by the Committee:

- a) *Protection for public servants and private citizens who in good faith report acts of corruption, which may be subject to investigation in administrative or judicial proceedings.*
- b) *Measures to protect not only the physical integrity of whistleblowers and their families, but also to provide protection in the workplace, especially when the person is a public official and the acts of corruption involve his superior or co-workers.*
- c) *Mechanisms for reporting, such as anonymous reporting or protection of identity reporting, that guarantee the personal security and the confidentiality of the identity of public servants and private citizens who in good faith report acts of corruption.*
- d) *Mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it.*
- e) *Stronger witness protection mechanisms that provide the same guarantees to both public servants and private citizens.*
- f) *Stronger mechanisms that facilitate international cooperation on the foregoing matters, when appropriate, including the technical assistance and cooperation provided for by the Convention, as well as the exchanges of experiences, training, and mutual assistance.*
- g) *A simple whistleblower protection application process.*
- h) *Provisions which sanction the failure to observe the rules and/or duties relating to protection, stating the appropriate authorities to process protection requests and the bodies responsible for providing it.*
- i) *The respective competence of judicial and administrative authorities with respect to whistleblower protection, clearly distinguishing one from the other.*

[288] In its response, the country under review presents information with respect to the implementation of measure a) of the above-transcribed recommendation⁷⁶. In this regard, the Committee notes the following measures as steps that contribute to progress in implementation thereof:

[289] *“The Protected Disclosures (whistleblower) Bill which is currently being debated in the Joint Select Committee of Parliament aims to provide that persons who make protected disclosures or*

76. Response of Jamaica to the Questionnaire, p. 36.

investigate or otherwise deal with a protected disclosure shall not be liable in any civil or criminal proceedings or to any disciplinary proceeding by reason of having made, investigated or otherwise dealt with the disclosure.

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

[291] The Committee takes note of the steps taken by the country under review to progress with implementation of measure a) of the above-transcribed recommendation, and of the need for it to continue to give attention thereto.

[292] In its response, the country under review presents information with respect to the implementation of measure b) of the above-transcribed recommendation⁷⁷. In this regard, the Committee notes the following measure as a step that contributes to progress in implementation thereof:

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

[294] The Committee takes note of the step taken by the country under review to progress with implementation of measure b) of the above-transcribed recommendation, and of the need for it to continue to give attention thereto.

[295] In its response, the country under review presents information with respect to the implementation of measure c) of the above-transcribed recommendation⁷⁸. In this regard, the Committee notes the following measures as steps that contribute to progress in implementation thereof:

[296] *“When the Bill is passed it will provide for secrecy and confidentiality of, among other things, the identity of the employee making the disclosure. The Act will also establish a long list of prescribed persons to whom a disclosure may be made thus allowing a person to choose the person who he deems would be best able to preserve confidentiality and his identity.*

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

77. Response of Jamaica to the Questionnaire, p. 36.

78. Response of Jamaica to the Questionnaire, p. 36-37.

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

[299] The Committee takes note of the steps taken by the country under review to progress with implementation of measure c) of the above-transcribed recommendation, and of the need for it to continue to give attention thereto.

[300] In its response, the country under review presents information with respect to the implementation of measure d) of the above-transcribed recommendation⁷⁹. In this regard, the Committee notes the following measure as a step that contributes to progress in implementation thereof:

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

[302] The Committee takes note of the step taken by the country under review to progress with implementation of measure d) of the above-transcribed recommendation, and of the need for it to continue to give attention thereto.

[303] In its response, the country under review did not refer to measure e) of the above-transcribed recommendation. Accordingly, the Committee notes the need for the country under review to give additional thereto.

[304] In its response, the country under review presents the following information on implementation of measure f) of the above transcribed recommendation⁸⁰:

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

[306] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure f) of the above-transcribed recommendation, bearing in mind that measure f) refers specifically to cooperation on the protection of public servants and private citizens who in good faith report acts of corruption, whereas Section 12 of the Financial Investigations Division Act 2010 contemplates cooperation regarding investigation or prosecution of financial crimes.

[307] In its response, the country under review presents information with respect to the implementation of measure g) of the above-transcribed recommendation⁸¹. In this regard, the Committee notes the following measure as a step that contributes to progress in implementation thereof:

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

79. Response of Jamaica to the Questionnaire, p. 36-37.

80. Response of Jamaica to the questionnaire, p.37.

81. Response of Jamaica to the Questionnaire, p. 37.

[309] The Committee takes note of the step taken by the country under review to progress with implementation of measure g) of the above-transcribed recommendation, and of the need for it to continue to give attention thereto.

[310] In its response, the country under review presents information with respect to the implementation of measure h) of the above-transcribed recommendation⁸². In this regard, the Committee notes the following measures as steps that contribute to progress in implementation thereof:

[311] *“The Bill when passed will include sanctions for the failure to observe the rules and/or duties related to protection.”*

[312] The Committee takes note of the steps taken by the country under review to progress with implementation of measure h) of the above-transcribed recommendation, and of the need for it to continue to give attention thereto.

[313] In its response, the country under review presents information with respect to the implementation of measure i) of the above-transcribed recommendation⁸³. In this regard, the Committee notes the following measures as steps that contribute to progress in implementation thereof:

[314] *“The Bill makes a clear distinction between the competence of judicial and administrative authorities with respect to whistleblower protection.”*

[315] The Committee takes note of the steps taken by the country under review to progress with implementation of measure i) of the above-transcribed recommendation, and of the need for it to continue to give attention thereto.

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

Recommendation:

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

[316] In its response, the country under review did not refer to the above-transcribed recommendation. Accordingly, the Committee notes the need for the country under review to give additional thereto.

4. GENERAL RECOMMENDATIONS

Recommendation 4.1.

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

[317] In its response, the country under review did not refer to the above-transcribed recommendation. Accordingly, the Committee notes the need for the country under review to give additional thereto.

82. Response of Jamaica to the Questionnaire, p. 38.

83. Response of Jamaica to the Questionnaire, p. 38.

Recommendation 4.2.

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

[318] In its response, the country under review did not refer to the above-transcribed recommendation. Accordingly, the Committee notes the need for the country under review to give additional thereto.

ENDNOTES

ⁱ Section 15(1) of the Corruption Prevention Act states that: *Any person who commits an act of corruption commits an offence and is liable –*

(a) on summary conviction in a Resident Magistrate's Court –

(i) in the case of a first offence to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and

(ii) in the case of a second or subsequent offence to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment;

(b) on conviction in a Circuit Court –

(i) in the case of a first offence to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment; and

(ii) in the case of a second or subsequent offence to a fine not exceeding ten million dollars or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.