

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

FINAL REPORT

(Adopted at the June 27, 2008 plenary session)

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

**REPORT ON IMPLEMENTATION IN JAMAICA OF THE CONVENTION PROVISIONS  
SELECTED FOR REVIEW IN THE SECOND ROUND, AND ON FOLLOW-UP TO THE  
RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN THE FIRST ROUND<sup>1</sup>**

**INTRODUCTION**

**1. Contents of the Report**

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 second round: Article III, paragraphs 5 and 8, and Article VI.

Second, the Report will examine follow-up to the recommendations that were formulated to Jamaica by the MESICIC Committee of Experts in the first round, which are contained in the Report on that country adopted by the Committee at its Seventh meeting, and published at the following web page: [http://www.oas.org/juridico/english/mec\\_rep\\_tto.pdf](http://www.oas.org/juridico/english/mec_rep_tto.pdf)

**2. Ratification of the Convention and adherence to the Mechanism**

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

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 INFORMATION RECEIVED**

**1. Response of Jamaica**

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, the Jamaica sent the provisions and documents it considered pertinent.

For its review, the Committee took into account the information provided by the Government of Jamaica up to November 2, 2007, and that requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and Other Provisions.

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<sup>1</sup> This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on June 27, 2008, at its Thirteenth meeting, held at OAS Headquarters, June 23-27, 2008.

## **2. Document submitted by civil society**

The Committee also received, within the deadline established in the Calendar for the Second Round adopted at its Ninth Meeting,<sup>2</sup> a document from Jamaicans for Justice, a citizens' rights action group.

## **II. REVIEW OF IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND**

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

#### **1.1 SYSTEMS OF GOVERNMENT HIRING**

##### **1.1.1. Existence of provisions in the legal framework and/or other measures**

Jamaica has a set of provisions related to the above systems, among which the following provisions related to the principal systems should be noted:

- Legal and other provisions, applicable to a majority of public servants, such as those contained in the following:

- Constitutional provisions, such as:

- Section 70 of the Constitution which provides for the appointment of Ministers. Once Ministers have been appointed, responsibility for subjects and departments will, pursuant to Section 77 of the Constitution, be assigned to various Ministers. At the present time, responsibility for the public service has been assigned to a particular Minister, who has also been given responsibility for finance.
- Section 124, which creates the Public Service Commission and establishes the manner in which its members shall be appointed; the conditions, limitations and prohibitions for their appointment; as well as their term limits.
- Section 125 which provides that the Governor General, acting on the advice of the Public Service Commission may appoint persons to public offices, remove such persons from public offices and exercise disciplinary control over them.
- Section 127 which states that, on the advice of the Public Service Commission, the Governor General may delegate these powers to a member or members of the Public Service Commission, another authority, or to a public officer and regulates all matters pertaining to said delegation of functions.

- Statutory provisions, such as the Public Service Regulations, which are a legislative enactment made by the Governor General pursuant to Section 81 of the Constitution of 1959, preserved by the Order in Council of 1962, after consultation with the Public Service Commission:<sup>3</sup>

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<sup>2</sup> This Meeting was held from March 27 to 31, 2006, at OAS Headquarters in Washington D.C., United States

<sup>3</sup> All of the Laws of Jamaica are available online by accessing the Ministry of Justice's website at <http://www.moj.gov.jm>. The Ministry of Finance and the Public Service's publications include finance, planning and budgetary documents and legislation.

- Section 14 states that the Public Service Commission shall make recommendations to the Governor General with respect to appointments, promotions and transfers of suitable officers, while Section 15 establishes the supervisory role of that Commission on the selection of persons for admission to the public service.
- Section 16 determines that vacancies in the public service will be advertised where there are no suitable candidates already in the service or *“that having regard to qualifications, experience and merit it would be advantageous and in the best interest of the public service that the services of a person not already in the service be secured”*<sup>4</sup>.
- Section 19 provides that *“the Commission shall be responsible for the form and manner in which applications are to be made for appointment to public offices within its purview and for the conduct of any examinations for recruitment to such offices, and shall determine whether any candidate has the necessary qualifications for appointment to such offices”*. In that regard, *“the Commission may interview candidates for appointment and shall consider in respect of each candidate: (a) his educational qualifications; (b) his general fitness; (c) any previous employment of his in the public service or otherwise; and (d) any reports for which the Commission may call from persons such as the principal, headmaster or headmistress of a candidate’s university, college or school or any referees named by the candidate”*.
- In regards to probationary service, Section 23 states that on first appointment to the public service, an officer will be required to serve a probationary period of one year unless a shorter term is specified in his letter of appointment. At intervals of six months and nine months during the probationary period, permanent Secretaries and Heads of Departments shall submit to the Chief Personnel Officer a report on every officer appointed on probation in their Ministries or Departments. One month before the end of the probationary period, Permanent Secretaries and Heads of Departments shall submit a further report and a recommendation that (a) the officer be confirmed in the appointment; (b) that the probationary period be extended; or (c) that the officer’s services be terminated. This same section states that subject to the provisions of the Public Service Regulations, the appointment on probation of any officer may, at any time during the period of probation and without any reason being given, be terminated by the Governor-General acting on the recommendation of the Commission upon one month’s notice in writing or payment of one month’s salary in lieu thereof.

- The Staff Orders for the Public Service of 2004, whose Chapter 1 regulates appointments. Of particular interest are the following issues: how appointments are made, authority to make appointments, eligibility, entry into service, probation, confirmation of appointment and other types of appointments<sup>5</sup>.

- Legal and other provisions applicable to public servants of the Parliament, among which the following should be noted:

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<sup>4</sup> Section 16 states that: *“Where the Commission considers either that there is no suitable candidate already in the public service available for the filling of any vacancies or that having regard to qualifications, experience and merit it would be advantageous and in the best interest of the public service that the services of a person not already in the service be secured, the Commission shall take such steps (including local advertisement of the existence of such vacancy) as it may think necessary for the filling of such vacancy.”*

<sup>5</sup> The full document is available at the following website: <http://www.jis.gov.jm/revisedStaffOrders.pdf>

- Constitutional provisions, such as Section 47 of the Constitution which constitutes the offices of the Clerk and Deputy Clerk of the Senate that are subject to appointment by the Governor General, acting on advice of the President of the Senate. Section 47 of the Constitution constitutes these offices, along with those of the Clerk and Deputy Clerk of the House of Representatives. Appointment to these offices is made by the Governor General acting on the Speaker's (Speaker of the House of Representatives) recommendation. These Constitutional provisions also speak to the term of such offices and the removal of persons from such offices.

- Written guidelines, such as the Guidelines for all fixed term contract officers, contained in Appendix 5 of the Ministry of Finance and the Public Service's Circular No. 11 dated September 23, 1997.

- Legal and other provisions applicable to public servants of the Judicial Service, among which the following should be noted:

- Constitutional provisions, such as:

- Sections 98 and 104 which determine that the judges of the Supreme Court and the Court of Appeal are appointed by the Governor-General on the advice of the Judicial Service Commission.
- Section 111 which provides for the establishment of a Judicial Service Commission, and sets out its composition, manner of appointment, the conditions, limitations and prohibitions for their appointment as well as term limits
- Section 112 provides that the Governor General, acting on the advice of the Judicial Services Commission, has the power to appoint, remove and exercise disciplinary control over Resident Magistrates, Judges of the Traffic Court, Registrars of the Supreme Court and Court of Appeal, and other judicial officers.
- According to Section 113, this power to appoint may, upon the advice of the Judicial Service Commission, be delegated to one or more members of the Judicial Service Commission or to another authority or a public officer.

- Statutory provisions, such as:

- The Judicial Service Regulations whose section 4 provides for the appointing of administrative officers to assist the Commission, while section 5 establishes functions and Section 6 outlines its the procedures of the Commission and the manner in which it shall meet.

Additionally, section 13 states that for the purpose of making recommendations in relation to appointments to vacancies in any relative offices, the Commission shall consider the eligibility of all officers for promotion, may interview candidates for such appointments and shall in respect for each candidate consider, amongst others, their qualifications, general fitness and any previous employment of the candidate in the public service or in private practice.

### 1.1.2. Adequacy of the legal framework and/or other measures

With respect to the constitutional and legal provisions that refer to the systems of government hiring that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention.

Notwithstanding, the Committee considers it appropriate to make a number of observations on the advisability of developing and complementing certain legal provisions that refer to those systems.

- With respect to the system for hiring public servants under the central system, the Committee considers the following:

First, as stated in Section 1.1.1., the Constitution provides that the Public Service Commission provides advice to the Governor General regarding the appointment of those public officers that fall under their purview. The Public Service Regulations further provide that the Commission shall be responsible for the form and manner in which applications are to be made for appointment to public offices within its purview and for the conduct of any examinations for recruitment to such offices, and shall determine whether any candidate has the necessary qualifications for appointment to such offices. The Commission may also interview candidates for appointment, where educational qualifications, general fitness, previous employment within or outside Public Service, and other reports from college or school shall be taken into consideration. However, the legislation does not make it explicitly clear that selection into the Public Service is based on merit.

Furthermore, the Staff Orders for the Public Service are silent in regards to any merit-based competition and selection, and Staff Order 1.4 only states that persons entering the Public Service may be appointed by the appointing authority<sup>6</sup>, and while the Committee recognizes the efforts made by Jamaica, in the form of Accountability Agreements between hiring entities and the Public Service Commission<sup>7</sup> where the Commission's functions have been delegated, the legislation scheme in place does not state that the candidate that is best qualified for the job is to be selected on the basis of the examination and interview, when carried out. In order to properly assure the openness, equity and efficiency of the government hiring system, the Committee believes that the legislation in place should explicitly state that selection is made on merit, and should also set out the criteria which will be taken into account in making that determination such as written competitive examinations, practical tests and interviews, and develop this system accordingly. In this regard, the Committee will formulate a recommendation (see Recommendation 1.1(a) in Section 1 of Chapter III of this Report).

Secondly, the Committee also notes that there are provisions for the advertising of positions in the Public Service. However, the provisions applicable to the Public Service under Section 16 of the Regulations determine that where the Commission considers "*either that there is no suitable*

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<sup>6</sup> Staff Order 1.4 for the Public Service, "ENTRY INTO THE SERVICE," state the following:

"Persons entering the Public Service may be appointed on a temporary or permanent basis, at the discretion of the appointing authority.

"1.4.1 Temporary Appointment:

"In instances where the appointment is to a position which is on the Public Service Establishment, is clearly vacant and the candidate has met all the requirements of the position, the temporary appointment should not normally exceed six (6) months.

"1.4.2 Permanent Appointment

"Upon permanent appointment persons will receive a letter of appointment from the appointing authority setting out the terms and conditions of the appointment, which may include the requirement for probation and medical certification."

<sup>7</sup> See page 3 of Jamaica's Response to the Questionnaire.

*candidate already in the public service available for the filling of any vacancies or that having regard to qualifications, experience and merit it would be advantageous and in the best interest of the public service that the services of a person not already in the service be secured, the Commission shall take such steps (including local advertisement of the existence of such vacancy) as it may think necessary for the filling of such vacancy.”*

The Committee notes that the language in the aforementioned provision is discretionary rather than obligatory and does not guarantee that these vacancies, when they arise in these circumstances, are available to the general public. Moreover, the legislation appears to be silent on the content and form of these advertisements as well as the timeframe for their publication. Additionally, the vacancies appear to receive limited publication and, as such, candidates may not become aware of them as they arise. For instance, Section 16, regarding vacancies in the Public Service, does not state how these vacancies are to be advertised. In this regard, the Committee will formulate recommendations (see Recommendation 1.1 (b) in Section 1 of Chapter III of this Report).

Third, the Public Service Regulations also state that on first appointment to the public service, an officer will be required to serve a probationary period of one year unless a shorter term is specified in his letter of appointment. In this regard, the Committee notices that although the probationary period is mandatory for everyone, the length of this period is not the same for everyone and no reasons are offered to justify a shorter term in a contract. Moreover, Section 1.5 of the Staff Orders for Public Service state that persons who are appointed to the service for the first time may be required to serve a probationary period of six months, extendable under the conditions set forth in said Section<sup>8</sup>.

In that regard, the Committee notes that there is no consistency in the application of probationary period. While the Public Service Regulations state that a probationary period is mandatory and for a minimum of one year unless otherwise specified, the Staff Orders say that the persons who are appointed to the Service for the first time *may* be required to serve a probationary period of six months. Taking into account that the probationary period is part of the selection process, and that this requirement must be met in order to obtain a confirmation of appointment<sup>9</sup>, the Committee considers that in order to promote the principle of equity as set out in the Convention, it would be advantageous for Jamaica to consider making the necessary amendments so that probation is applied with uniform criteria throughout the public administration. In this regard, the Committee will formulate recommendations (see Recommendation 1.1 (c) in Section 1 of Chapter III of this Report).

Jamaica, on page two of its Response to the Questionnaire states that *“The Constitution and the Public Service Regulations provide for appeals regarding disciplinary proceedings but are silent*

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<sup>8</sup> Section 1.5 of the Staff Orders for the Public Service, “PROBATION,” state the following:

*“i) Persons who are appointed to the Service for the first time may be required to serve a probationary period of six (6) months;*  
*ii) Any period served in a temporary capacity may be considered, in whole or in part, in the determination of the probationary period;*  
*iii) It is the responsibility of the supervisor to assess the performance of an employee on probation and the employee must be formally advised of his/her status at least one (1) month prior to the expiration of the probationary period;*  
*iv) The probationary period may be extended, with the approval of the appointing authority, for a period not exceeding six (6) months, on the basis of the supervisor’s assessment.”*

<sup>9</sup> Section 1.7 of the Staff Orders, “CONFIRMATION OF APPOINTMENT,” state the following:

*“The permanent appointment of a new employee is to be confirmed in writing by the appointing authority and may be done at any time once the requirements of probation are met and proof of satisfactory medical examination is provided.”*

*regarding challenges to decisions concerning appointments.*<sup>10</sup> *Notwithstanding, in practice persons have sought a review by the Public Service Commission. Additionally, persons may seek judicial review of a decision of the Commission.*” The Committee recognizes the efforts of Jamaica to provide in practice a method of review for challenges concerning appointments. However, in order to ensure the observance of the principles of openness, equity, and efficiency enshrined in the Convention, the Committee suggests that the state under review considers taking the necessary steps, including the amendments of its legislation that it deems relevant in order to provide an administrative basis of redress regarding appointments. In this regard, the Committee will formulate recommendations (see Recommendation 1.1 (d) in Section 1 of Chapter III of this Report).

Finally, the Committee considers it advisable that the country under review implements training programs for those responsible for managing the selection and staffing processes. In this regard, the Committee will formulate a recommendation (see Recommendation 4.1 in Chapter III of this Report).

- With respect to the system of government hiring of public servants in the Judicial Service, the Committee takes note of the following:

As stated in Section 1.1.1 of this Report, Section 13 of the Judicial Services Regulations states that for the purpose of making recommendations in relation to appointments to vacancies in any relative offices<sup>11</sup> the Commission shall consider the eligibility of all officers for promotion, may interview candidates for such appointments and shall in respect of each candidate consider, amongst others, the candidate’s qualifications; general fitness; and any previous employment in the public service or in private practice .

Although Section 13 of the Judicial Service Regulations does mention that the Commission may interview candidates for such appointments, this interview process is entirely discretionary, and the legislation does not make it explicitly clear that selection into the Judicial Service is based on merit and does contemplate a procedure such a merit based competition. Moreover, no provision is made for the publication of any vacancies that may occur in the Judicial Service, including the deadlines for application and of requirements for the post. Neither are there provisions for notification of appointment, information of results to candidates or for administrative procedures for challenging decisions concerning appointments. In this regard, the Committee will formulate recommendations (see Recommendation 1.1 (e), (f) and (g) in Section 1 of Chapter III of this Report).

Finally, the Committee considers it advisable that the country under review implement training programs for those responsible for managing the selection and staffing processes. In this regard, the Committee will formulate a recommendation (see Recommendation 4.1 in Chapter III of this Report).

### **1.1.3. Results of the legal framework and/or other measures**

With respect to results, the Committee notes that Jamaica states the following on page 6 of its Response to the Questionnaire:

*“Over the last two years, Public Sector entities continue to witness a paradigm shift there in recruitment and selection strategies. Many recruitment and selection exercises now entail the use of selection tools as well as the panel interview. During that time (2 year time span), the Public Service*

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<sup>10</sup> Public Service Regulations, section 15.

<sup>11</sup> The Judicial Service Regulations defines “relative office” as “an office in respect of which the Commission is required to make recommendations for appointment to the Governor-General.”

*Commission has not been made aware of any challenges to any selection choice resulting from the selection process.”*

Jamaica also provided the following statistics regarding advertised posts:

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

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, it will formulate a recommendation to the Service Commissions in this regard (see Recommendation 4.2 in Chapter III of this Report).

## **1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES**

### **1.2.1. Existence of provisions in the legal framework and/or other measures**

Jamaica has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- Statutory provisions such as the Contractor General Act, whose Section 3 creates a Commission of Parliament known as the Contractor-General, which will consist of such person or persons as shall be appointed by the Governor-General by instrument under the Broad Seal, after consultation with the Prime Minister and the Leader of the Opposition.

- Section 4(1) of the Act establishes that the functions of the Contractor General, are as follows: to monitor the award and the implementation of government contracts with a view to ensuring that such contracts are awarded impartially and on merit; that the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve impropriety or irregularity; without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof; and to monitor the grant, issue, suspension or revocation of any prescribed license, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof.
- Section 4(2) of the Act, which states that for the purpose of the discharge of his functions, the Contractor General shall be entitled to be advised of the award and, where applicable, the variation of any government contract by the public body responsible for such contract. This Section also provides the Contractor General with extensive investigative and monitoring powers which extend to all Government contracts and to every Ministry, statutory body or registered company in which the Government has any significant controlling interest, except for those contracts entered into for the purposes of defense or for the supply of equipment to the security forces without the prior approval of Cabinet.
- Section 5 of the Act, which determines that in the exercise of the powers conferred upon him by said Act, a Contractor General shall not be subject to the direction or control of any other person

or authority. However, subsection (2) of this section states that this stipulation is without prejudice to the freedom to assign a Minister responsibility for aspects of the administration of the Act as necessary or desirable to facilitate liaison between Parliament and the Contractor General.

- Section 7 of the Act, provides that the Contractor General can only be removed from office during his tenure for misbehaviour or inability to discharge his functions.
- Sections 8 and 9 of the Act respectively set out the disqualifications for appointment and restrictions for employment of the Contractor General.
- Section 15 of the Act, which states that a Contractor-General may conduct an investigation into the registration of contractors; tender procedures relating to contracts awarded by public bodies; the award of any government contract; the implementation of the terms of any government contract; the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence; and the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences. Prior approval from the Secretary to the Cabinet acting at the direction of the Cabinet will be needed to investigate government contracts or any matters concerning such contracts entered for purposes of defense or for the supply of equipment to the Security Forces, or the grant or issue of any prescribed licence for the purposes of defence of the supply of equipment to the Security Forces.
- Section 18(3) of the Act provides that for the purposes of an investigation under the Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents.
- Section 19(2) of the Act, which states that except as provided in subsection (I),<sup>i</sup> no law which authorizes or requires the refusal to answer any question or the withholding of any information or document or thing on the ground that the answering of the question or the disclosure of the information, document or thing would be injurious to the public interest, shall apply in respect of any investigation by or proceedings before a Contractor-General.
- Section 21 of the Act determines that if a Contractor-General, during the course of his investigations or on the conclusion thereof, finds evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.
- Section 29 of the Act deals with the topic of offences and their consequences<sup>ii</sup>, including obstruction to the functions of the Contractor-General.
- Part IIIA of the Act creates and regulates the National Contracts Commission (NCC), whose principal objects are the promotion of efficiency in the process of award and implementation of government contracts and ensuring transparency and equity in the awarding of such contracts.

- Provisions such as the Handbook of Public Sector Procurement Procedures,<sup>12</sup> which applies to all procurement carried out by procuring entities as defined on its Section 1.4.<sup>13</sup> Said procuring entities shall, in carrying out procurement activities, follow the procedures set out in the Handbook, with the exception of procurements of a “sensitive” nature for national defense and/or security purposes.

- Section 1.5, entitled “The Public Sector Procurement System” briefly describes the responsibilities of the various entities involved in the procurement process, including the Ministry of Finance and the Public Service, the Office of the Contractor General, the National Contracts Commission (NCC), the NCC Sector Committees, the Procurement Committees, and the Accounting Officers. The Ministry of Finance and Planning has overall responsibility for the public sector procurement system including the development and implementation of public sector procurement policy. Pursuant to the Financial Administration and Audit Act it also has the power to conduct routine investigations of the procurement activities or operations of a procuring entity. The National Contracts Commission (“the NCC”) supplements the role and functions of the Contractor General by reviewing and endorsing recommendations for the award of contracts J\$4 million and above<sup>14</sup>, registering and classifying contractors and making recommendations to Cabinet for improving the efficiency of procedures for granting and improving contracts
- Section 1.6 of the Handbook determines that public sector procurement proceedings shall be afforded the highest practical degrees of objectivity, and that in circumstances of conflicting interests, the Government party must so declare at the on-set of the procurement process or whenever the party becomes aware of the conflict, whichever is sooner, and shall immediately disqualify himself/herself from participation in the particular procurement process.
- Section 2.1.2 of the Handbook states that the duration of time required to properly carry out the procurement process<sup>15</sup> should be estimated and used to develop a plan so that the procuring entity has realistic expectations on which any necessary recruitment and financing plans may be predicated.
- Section 2.1.3 of the Handbook, which establishes four procurement methods and the conditions for their use:
  - *Open Tender*: Procurement opportunity is open to all interested local and foreign contractors. Contracts for construction works with estimated value equal to or greater than the international value threshold<sup>16</sup> must be offered through open tender.

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<sup>12</sup> The Procurement Procedures Handbook can be found in the following Website:

<http://www.ncc.gov.jm/ncc/gpphandbook.php>

<sup>13</sup> Section 1.4 defines Procuring Entity as: “Any government Ministry, Department, Statutory Organization, Executive Agency, Local Government Authority, Public Company or any other Agency of Government that engages in procurement.”

<sup>14</sup> As of June 2008, the exchange rate of the Jamaican dollar was \$J 1.00 = 0.0141343 USD.

<sup>15</sup> Section 2.1.2 states that the procurement process comprises the following activities: research, design, development of tender documentation, advertising, prequalification, tendering, evaluation, approval, acceptance, implementation and completion.

<sup>16</sup> In page 10 of its Response to the Questionnaire, Jamaica points out that this threshold ought to have emerged from the Free Trade Agreement of the Americas negotiations, but did not. Therefore, in practice, works contracts of estimated large values (e.g. USD\$50,000,000) are generally open to both domestic and foreign contractors.

- *Selective Tender*: All contractors must be registered with the Government of Jamaica (GOJ), through the National Contracts Commission, and included in the GOJ Register of Approved Contractors. It is the GOJ's primary method of procurement.
- *Limited Tender*: A form of selective tender, open to a limited number of contractors included in the Register of Approved Contractors. It is not generally advertised, and procuring entities may invite appropriately qualified contractors on the register and invite them to participate. Criteria for selection should include nature of the work required; the contractor's relevant experience, past performance record and current financial and technical abilities. Contracts for less than J\$4,000,000 must have the prior written approval of Accounting Officers. Contracts for J\$4,000,000 or greater must receive prior written approval from the NCC through the Accounting Officer. Request for permission to utilize Limited Tender Procedures must include the selection of a minimum of three contractors and the criteria for the selection. Prepared lists of contractors shall be submitted to the Procurement Committee or such other person or persons as may be nominated by the Procurement Committee for approval prior to any contractor being invited to tender.
- *Sole Source or Direct Contracting*: A form of limited tendering where only one contractor is invited to participate. Use of this method may be justified when procurement is of a "sensitive" nature, when the procuring entity receives an unsolicited proposal that it considers to be meritorious, in the case of follow-up on procurements, when there is unusual and compelling urgency, industrial mobilization, where there is need for highly specialized expert services, pursuant to external agency agreement or treaties, or where it is otherwise in the public interest. Procurement effected through the use of sole source of direct contracting methods must contain justification for its use in the record of the procurement. Contracts for less than J\$1,000,000 require prior written approval from Accounting Officers. Contracts for more than J\$1,000,000 require prior written approval from the NCC through the Accounting Officer.
- Section 2.5 of the Handbook establishes the publication requirements, which include provisions for information disclosure to the public, public accessibility of procurement documentation, the publicizing of procurement opportunities<sup>17</sup>, and the publication of contract awards<sup>18</sup>.
- Section 2.6 deals with contractor registration and classification, establishes qualification requirements for government approved status and, evaluation criteria for registration.<sup>19</sup> It also sets out the exceptions for the Government to utilize the registers, which would include the following: when no qualified firm in the particular discipline desired has been registered no response to tender or proposal invitation is received, or where open tendering is utilized. It also adds that contracts with an estimated value of J\$150,000,000, shall require a pre-qualification process. Subsection 2.6.1 for disqualification. or removal of a contractor from the registers without liability for the Government where it is found at any time that the

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<sup>17</sup> Advertising and publicizing of procurement opportunities are contained in the procedures at the various contract value threshold levels, and it is coordinated through the Jamaica Information Service (JIS).

<sup>18</sup> Contract award data is available in print from the NCC and at the NCC Website at <http://www.ncc.gov.jm>

<sup>19</sup> Evaluation criteria for registration include experience, professional qualifications, performance record, legal capacity to enter into a contract, tax compliance and capacity (managerial, technical and financial, as necessary).

information submitted concerning the qualifications of the contractor was deliberately false. Additionally, that subsection provides that poor performance pursuant to contract documents can be cause for disqualification, suspension or removal from the registers of approved contractors. In all cases, procurement entities shall promptly report such findings, along with any evidence they might have collected.

- Section 2.12 regulates dispute resolution and states that any contractor that claims to have suffered, or that may suffer, loss or injury due to a breach under the Handbook by the procurement entity may seek review. Notwithstanding the foregoing, the selection of a method of procurement or a decision by the procurement entity under Section 2.8<sup>20</sup> to reject all tenders, proposals or offers prior to acceptance, is not subject to review. Said review may be made by the procuring entity and contractors may appeal their decision to the NCC. Ultimately, they may request a judicial review from the Courts of decisions made by review bodies, or of the failure of those bodies to make a decision within the prescribed time limits.
- Section 5.1 of the Handbook regulates general consulting services, and states that the selection process for consultants is based on both quality and cost based selection (QCBS), which uses a competitive process among short-listed firms that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm. This section also establishes the basis for the selection process, which shall include the preparation of the Terms of Reference (TOR); preparation of cost estimate and budget; advertising, pursuant to the contract value guidelines as stated in the Handbook; preparation of the short-list of consultants; preparation and issuance of the Request for Proposals, which include a letter of invitation, information to consultants, terms of reference and proposed contract; receipt of proposals; evaluation of technical proposals and quality considerations; evaluation of financial proposal; final evaluation of quality and cost; and negotiations, approving authorities, and award of the contract to the selected firm.
- Section 5.1.2.3 of the Handbook establishes the advertising guidelines for general consulting services as follows:
  - *Contracts under J\$4 Million:* Advertising is not required. Invitation to a minimum of 3 qualified consultants registered with the NCC. Domestic consultants only, except if there are no qualified consultants registered with the NCC.
  - *J\$4M to less than J\$15 Million:* Advertise in a national newspaper. Domestic consultants only, except if there are no qualified consultants registered with the NCC.
  - *J\$15 Million to less than International Contract Value Threshold for Services:* Advertise in a national newspaper. Domestic consultants only, except if there are no qualified consultants registered with the NCC.
  - *Equal or greater than the International Contract Value Threshold for Services:* Advertise in a national newspaper. Open to all properly qualified domestic and foreign consultants.

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<sup>20</sup> Section 2.8 of the Handbook states that “*The procuring entity may reject all tenders, proposals, offers or quotations at any time prior to the acceptance of a tender, proposal, offer or quotation, without incurring liability to tenderers, “( . . . )”*”

### **1.2.2. Adequacy of the legal framework and/or other measures**

With respect to the legal provisions governing public procurement systems, the Committee notes that, on the basis of the information available to it, they may be said to constitute a set of measures that are relevant for promoting the purposes of the Convention.

The Committee nevertheless deems it appropriate to express some comments for the country under review to consider in supplementing, developing or adapting the legal framework and the government procurement measures now in force, in light of the following:

First, the Committee observes that Section 2.1.2 of the Handbook states that the duration of time to properly carry out the procurement process should be estimated and used to develop a plan so that the procuring entity has realistic expectations on which any necessary and financing plans may be predicated. No deadlines or a specific time table are provided in order to carry out the procurement process. In order to promote the principles of transparency and efficiency, the Committee considers that the state under review could consider making the necessary modifications so as to set up appropriate deadlines in which the steps of the process will take place. In this regard, the Committee will formulate a recommendation (see Recommendation 1.2 (a) in Section 1 of Chapter III of this Report)

Second, the Committee notes that the procurement entity can utilize direct contracting when procurement is of a “sensitive” nature, when it receives an unsolicited proposal that it considers to be meritorious, in the case of follow-up on procurements, when there is unusual and compelling urgency, industrial mobilization, where there is need for highly specialized expert services, pursuant to external agency agreement or treaties, or where it is otherwise in the public interest. In that regard, and although it is true that the same section of the Handbook states that prior authorization would be required to resort to this method of contracting, it does not explain the criteria for making those determinations. In this regard, the Committee will formulate a recommendation (see Recommendation 1.2 (b) in Section 1 of Chapter III of this Report).

Third, although Section 2.12 regulates dispute resolution for contractors that claim to have suffered, or who may suffer, loss or injury due to a breach under the Handbook by the procurement entity, including an administrative review by the NCC and a judicial review of decisions made by review bodies, it is silent regarding appeals for contractors who are denied registry by the NCC, or who are disqualified, suspended or stricken from the NCC registers of approved contractors<sup>21</sup>. In this regard, the Committee will formulate a recommendation (see Recommendation 1.2 (c) in Section 1 of Chapter III of this Report).

Fourth, the Committee notices that the Handbook does provide guidelines for the advertisement of tender opportunities, which are contained in the procedures at the various contract value threshold levels. It also notices that the contract award data is available at the NCC Website, as well as in print from the NCC. Nevertheless, the electronic form of informing the public is not mandatory, and the Committee would encourage the Government of Jamaica to consider including this in its regulations. In this regard, the Committee will formulate a recommendation (see Recommendation 1.2 (d) in Section 1 of Chapter III of this Report).

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<sup>21</sup> See Section 2.6 of the Handbook.

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 (see Recommendation 1.2.3 (e) in Section 1 of Chapter III of this Report).

Sixth, the Committee notes that Jamaica might benefit from publicizing to bidders that they are able to request an explanation from the contracting agency in the case that their bids are unsuccessful (see Recommendation 1.2(f) in Section 1 of Chapter III of this Report).

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 (see Recommendation 1.2(g) in Section 1 of Chapter III of this Report).

Finally, Jamaicans for Justice make the following comment to Jamaica's Response to the Questionnaire:

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

The Committee suggests that the Government of Jamaica considers making the changes it may deem necessary in order to establish additional sanctions for breaches of the Act, taking into account the recommendations of the Office of the Contractor General in its annual reports to the Parliament. In this regard, the Committee will formulate a recommendation (see Recommendation 1.2 (h) in Section 1 of Chapter III of this Report).

### **1.2.3. Results of the legal framework and/or other measures**

With respect to results, the Committee notes that Jamaica provided the following information<sup>22</sup>:

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

*"On September 17, 2007 the OCG referred eleven public bodies to the Director of Public Prosecutions because of their failure to submit their 2007 second quarterly report on time. Thus far*

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<sup>22</sup> Jamaica's Response to the Questionnaire, pp. 11-12.

*in 2007, the OCG has referred sixty-two delinquent public bodies to the Director of Public Prosecutions. The reports are available for public inspection on the OCG's website.*

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

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

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, it will formulate a recommendation in this regard (see Recommendation 4.2 in Chapter III of this Report).

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

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

Jamaica has a set of measures and provisions related to the above-mentioned systems, among which the Witnesses (Public Enquiries) Protection Act<sup>iii</sup> should be noted. The country under review also reports that it has a witness protection program<sup>23</sup>.

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

With respect to the legal provisions for protecting public servants and private citizens who in good faith report acts of corruption, the Committee notes that, on the basis of the information available to it, they may be said to constitute a set of measures that are pertinent for promoting the purposes of the Convention.

Notwithstanding the foregoing, the Committee notes that while there are provisions that provide protection measures that might be applied to whistleblowers, such as those contained in Sections 2, 3 and 3(2) of the Witnesses (Public Enquiries) Protection Act, those provisions are basically intended

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<sup>23</sup> The Committee notes that Jamaica states that the Justice Protection Act of 2001 deals with corruption offences. Nevertheless, since the Act is not in force no review of this regulation was conducted.

for persons involved in proceedings in the Senate, or the House of Representatives, or a joint committee of both Houses of Parliament, or a committee of either House; or before any Commission appointed under the Commissions of Enquiry Act; or before any statutory body or authority having power to summon and examine witnesses, but does not include any proceedings before any court or administrative instance. In addition, Jamaica states in its Response to the Questionnaire that the penalties are minimal.<sup>24</sup>

In regards to the witness protection program, the Committee notices that although it could potentially be utilized to protect whistleblowers, it is a program that is mostly geared towards protecting witnesses involved in criminal proceedings in general, and not specifically designed to protect persons who in good faith report acts of corruption. Furthermore, Jamaica states that there is no information to indicate that persons involved in a corruption investigation have sought protection under the witness protection program.

The Government of Jamaica also states in its Response to the Questionnaire that there has been some discussion regarding measures to protect “whistleblowers” and that this matter is under review.<sup>25</sup>

For their part, Jamaicans for Justice formulate the following comment to Jamaica’s Response to the Questionnaire and state that<sup>26</sup>:

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

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

Taking into account all of the above, the Committee feels that the mechanism in place is inadequate for promoting the purposes of the Convention. As such, the Committee will formulate recommendations that it deems advisable for Jamaica to consider, in accordance with Article III(8) of the Convention, in establishing systems for protection public servants and private citizens who, in good faith, report acts of corruption (see recommendation 2 (a) to (i) in Section 2 of Chapter III of this Report).

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

Jamaica states that there is no information to indicate that persons involved in a corruption investigation have sought protection under the witness protection program.

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<sup>24</sup> Response of Jamaica to the Questionnaire, p. 13.

<sup>25</sup> The Committee takes note of the information provided by Jamaica that whistleblower legislation is being contemplated and a Green Paper has been tabled in Parliament in that regard. This information was submitted after the deadline of November 2, 2007.

<sup>26</sup> Jamaican’s for Justice Comments on the Response of Jamaica to the Questionnaire, p. 2.

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, it will formulate a recommendation in this regard. (See Recommendation 4.2 in Chapter III of this Report)

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

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

Jamaica has a set of provisions related to the criminalization of the acts of corruption provided for in Article VI (1) of the Convention, among which the following should be noted:

a. With regard to paragraph (a) of Article VI(1):

- Section 14(1) (a) of the Corruption Prevention Act, states that a public servant<sup>27</sup> commits an act of corruption if he “*corruptly solicits or accepts, whether directly or indirectly, any article or money or other benefit, being a gift, favour, promise or advantage for himself or another person<sup>28</sup> for doing any act or omitting to do any act in the performance of his public functions.*”

b. With regard to paragraph (b) of Article VI(1):

- Section 14(2) of the Corruption Prevention Act states that: “*A person commits an act of corruption if he offers or grants, directly or indirectly, to a public servant any article, money or other benefit, being a gift, favour, promise or advantage to the public servant or another person, for doing any act or omitting to do any act in the performance of the public servant's public function.*”

c. With regard to paragraph (c) of Article VI(1):

- Section 14(1)(b) of the Corruption Prevention Act, states that a public servant commits an act of corruption if “*in the performance of his public functions does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person.*”

d. With regard to paragraph (d) of Article VI(1):

- Section 14(1) (b) of the Corruption Prevention Act, states that a public servant commits an act of corruption if he “*fraudulently uses or conceals any property derived from any such act or omission [to perform his functions] to act.*”

- Section 56 of the Proceeds of Crime Act, which states:

“(1) *This Part has effect for the purposes of:*

“(a) *enabling the enforcing authority to recover, in civil proceedings before the Court, property which is, or represents, property obtained through unlawful conduct;*

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<sup>27</sup> Section 2 of the Corruption Prevention act states that “public servant” means “any person:

(a) *employed-*

(i) *in the public, municipal or parochial service of Jamaica;*

(ii) *in the service of a statutory body or authority or a government company;*

(b) *who is an official of the State or any of its agencies;*

(c) *appointed, elected, selected or otherwise engaged to perform a public function.*”

<sup>28</sup> According to Jamaica’s Interpretation Act, the term “person” includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons.

*“(b) enabling cash which is, or represents, property obtained through unlawful conduct or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a Resident Magistrate's Court.*

*“(2) The powers conferred by this Part are exercisable in relation to any property (including cash), whether or not any proceedings have been brought for an offence in connection with the property.*

*“(3) The court mentioned in subsection (1)(a) or (b) shall decide on a balance of probabilities whether it is proved that:*

*“(a) any matters alleged to constitute unlawful conduct have occurred; or*

*“(b) any person intended to use any cash in unlawful conduct”*

- Section 92 of the Proceeds of Crime Act, which states:

*“(1) Subject to subsection (4), a person commits an offence if that person:*

*“(a) engages in a transaction that involves criminal property;*

*“(b) conceals, disguises, disposes of or brings into Jamaica any such property; or*

*“(c) converts, transfers or removes any such property from Jamaica, and the person knows or has reasonable grounds to believe, at the time he does any act referred to in paragraph (a),(b) or (c), that the property is criminal property.*

*“(2) Subject to subsection (4), a person commits an offence if that person enters into or becomes concerned in an arrangement that the person knows or has reasonable grounds to believe facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.*

*“(3) For the purposes of this section, concealing or disguising property includes concealing or disguising the nature of the property, its source, location, disposition, movement or ownership or any rights with respect to the property.*

*“(4) A person does not commit an offence under subsection (1) or (2) if:*

*“(a) before doing any act described in subsection(1), the person makes an authorised disclosure and has the appropriate consent to act;*

*“(b) the person-*

*“(i) intended to make such a disclosure before doing the act and has a reasonable excuse for not doing so; and*

*“(ii) does make such a disclosure on his own initiative as soon as is reasonably practicable after doing the act; or*

*“(c) the person acts in good faith in the exercise of a function relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.”*

e. With respect to paragraph (e) of Article VI(1):

- Section 14(3) of the Corruption Prevention Act, states that a person commits an act of corruption if “*he instigates, aids, abets or is an accessory after the fact or participates in whatsoever manner in the commission or attempted commission of or conspires to commit any act of corruption referred to in subsection (1) or (2).*”

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

With respect to provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention that have been examined by the Committee, based on the information made available to it, they constitute, as a whole, a set of provisions relevant for promoting the purposes of the Convention.

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

Jamaica includes in its response to the Questionnaire, a comparative table that reflects the number of files submitted to the Office of the Director of Public Prosecutions for a decision to be taken on whether or not a law enforcement officer is to be held accountable for a violation or violations of the Corruption Prevention Act.

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

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

Additionally, in its response to the Questionnaire<sup>29</sup>, Jamaica states in regard to this table that: “*The information captured focuses on a span of four and a half (4½) years from January 2003 to July 2007. An examination of the table over the four fully completed calendar years of 2003 to 2006, reveals that there seems to be a continuing increasing trend in the number of persons who are actually criminally charged for acts of corruption and subsequently placed before the court. In 2003, of the twenty-six files submitted, only six (6) of these resulted in persons being charged for any such offences, this number moved to fourteen (14) in 2004, then to twenty-one (21) in 2005 and in 2006 increased to a total of thirty (30). While this information outlines that the provisions of the Act are in fact being enforced and that judicial proceedings are being undertaken in relation to the Act, it is unfortunate that there is no database at present, which records the outcome of these various proceedings and as such, we are unable to tabulate the number of convictions and/or acquittals in these matters.*”

<sup>29</sup> Response of Jamaica to the Questionnaire, p.p. 16-17.

In that regard, Jamaicans for Justice state in their Comments to Jamaica's Response to the Questionnaire<sup>30</sup> that:

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

The Committee notices that the information provided by Jamaica refers solely to files submitted to the Office of the Director of Public Prosecutions for a decision to be taken on whether or not a law enforcement officer is to be held accountable for a violation or violations of the Corruption Prevention Act, and it does not shed light on what was the outcome of those cases. In addition, no other information is offered regarding acts of corruption committed by other people or by other public servants. 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 the criminal investigations referred to, it will formulate a recommendation to the Judicial Branch in this regard (See Recommendation 4.2 in Chapter III of this Report).

On the other hand, Jamaicans for Justice point out the following as well<sup>31</sup>:

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

(...)

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

The Committee considers that the State under review could benefit from providing the Commission for the Prevention of Corruption with the necessary resources in terms of budgetary and investigative resources in order to ensure that said institution can carry out its work in the most effective and timely manner, thus strengthening Jamaica's anti-corruption mechanisms. In this regard, the Committee will formulate a recommendation. (See Recommendation in Section 3 of Chapter III of this Report)

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<sup>30</sup> Jamaicans for Justice Comments to the Response of Jamaica to the Questionnaire, p. 2.

<sup>31</sup> *Ibid.*

### **III. CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO THE IMPLEMENTATION OF THE PROVISIONS SELECTED IN THE FRAMEWORK OF THE SECOND ROUND**

#### **1.1. Systems of Government Hiring**

**Jamaica has considered and adopted certain measures intended to establish, maintain and strengthen the systems of government hiring, as discussed in Section 1.1 of Chapter II of this Report.**

In light of the comments made in the above-noted section, the Committee suggests that Jamaica consider the following 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.

In meeting this recommendation, Jamaica could take into account the following measures:

- 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. (See Section 1.1.2. of Chapter II of this Report)
- 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. (See Section 1.1.2. of Chapter II of this Report)
- 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. (See section 1.1.2 of Chapter II of this Report)
- 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. (See section 1.1.2 of Chapter II of this Report)
- 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. (See Section 1.1.2. of Chapter II of this Report)
- 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. (See Section 1.1.2. of Chapter II of this Report)
- 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. (See Section 1.1.2. of Chapter II of this Report)

## **1.2. Government Systems for the Procurement of Goods and Services**

**Jamaica has considered and adopted measures intended to establish, maintain and strengthen the systems for government procurement of goods and services, as discussed in Section 1.2 of Chapter II of this Report.**

In light of the comments made in the above-noted section, the Committee suggests that Jamaica considers the following recommendation:

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

In meeting this recommendation, Jamaica could take into account the following measures:

- a) Set up appropriate deadlines, where possible, in which the steps of the procurement process will take place. (See Section 1.2.2. of Chapter II of this Report)
- 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. (See Section 1.2.2. of Chapter II of this Report)
- 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. (See Section 1.2.2. of Chapter II of this Report)
- 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. (See Section 1.2.2. of Chapter II of this Report)
- e) Strengthen the electronic procurement system, to continue to facilitate the acquisition of goods and services through those means. (See Section 1.2.2. of Chapter II of this Report)
- f) Publicize to bidders that they are able to request from the contracting agency an explanation in those cases where their bid is unsuccessful. (See Section 1.2.2. of Chapter II of this Report)
- 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. (See Section 1.2.2. of Chapter II of this Report)
- 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. (See Section 1.2.2. of Chapter II of this Report)

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

**Jamaica has considered and adopted certain measures that are intended to establish, maintain and strengthen systems for protecting public servants and private citizens who in good faith report acts of corruption, as discussed in Section 3 of Chapter II of this Report.**

In light of the comments made in the above-noted section, the Committee suggests that Jamaica considers the following 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.

In meeting this recommendation, Jamaica could take into account the following measures:

- 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. (See Section 2.2 of Chapter II of this report)
- 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. (See Section 2.2 of Chapter II of this report)
- 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. (See Section 2.2 of Chapter II of this report)
- 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. (See Section 2.2 of Chapter II of this report)
- e) Stronger witness protection mechanisms that provide the same guarantees to both public servants and private citizens; (See Section 2.2 of Chapter II of this report)
- 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. (See Section 2.2 of Chapter II of this report)
- g) A simple whistleblower protection application process. (See Section 2.2 of Chapter II of this report)
- 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. (See Section 2.2 of Chapter II of this report)

- i) The respective competence of judicial and administrative authorities with respect to whistleblower protection, clearly distinguishing one from the other. (See Section 2.2 of Chapter II of this report)

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

**Jamaica has adopted measures that criminalize the acts of corruption provided for by Article VI (1) of the Convention, as discussed in Section 3 of Chapter II of this Report.**

In light of the comments made in the above-noted section, the Committee suggests that Jamaica considers the following 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. (See section 3.2, chapter II of this report).

### **4. GENERAL RECOMMENDATIONS**

Based on the review and contributions made throughout this Report, the Committee suggests that Jamaica consider the following recommendations:

- 4.1 Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented. (See Section 1.1.2. of Chapter II of this Report)
- 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. (see Sections 1.1.3, 1.2.3, 2.3 and 3.3 of Chapter II of this Report)

### **5. FOLLOW-UP**

The Committee will consider the periodic update Reports submitted by Jamaica concerning progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with the provisions of Article 31 of the Rules of Procedure and Other Provisions.

Similarly, the Committee will review the progress in implementing the recommendations made in this Report, in accordance with the provisions of Article 29 of the Rules of Procedure.

## **IV. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN THE FIRST ROUND**

Regarding the progress made with the implementation of the recommendations issued in the report adopted during the first round of analysis, the text of which is annexed hereto,<sup>32/</sup> Jamaica says that “the recommendations are under consideration,” without adding any other information using the

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32. See annex to this Report, containing the recommendations extended to Jamaica in the report of the first round of analysis.

standard format adopted by the Committee for submissions of such information, as provided for in Article 29 of its Rules of Procedure.

In connection with this, the Committee notes its concern at not having received any specific information from the State undergoing analysis in the terms set out in Article 29 of the Rules of Procedure and elaborated upon in the questionnaire and methodology adopted by the Committee for the second round. The Committee consequently offers the following remarks:

1. The Committee believes it should note the following background details regarding what the MESICIC State Parties agreed on for following up on implementation of recommendations:

- a. The Document of Buenos Aires – which created the MESICIC and was signed by all of the Mechanism’s member states – establishes that one of its goals is “to follow up on the commitments made by the States Parties to the Convention and to study how they are being implemented.” It also states that its characteristics include ensuring “equal treatment among States Parties” and being “conducted on the basis of consensus and on the basis of the principle of cooperation among States Parties.”
- b. Article 29 of the Rules of Procedure, adopted through the consensus of all the members of the Committee at its Eighth Regular Meeting (September 2005) provides that:

*“Article 29. Follow-up within the framework of future rounds. At the start of a new round, there shall be included within the questionnaire a section on “Follow-up on Recommendations” to enable the review of progress made in implementing the recommendations included in its country report adopted in previous rounds. To that end, each State Party shall submit the appropriate information in the standard format that the Committee shall provide as an Annex to the Questionnaire.”*

*“With respect to the implementation of recommendations, the State Party shall refer to any difficulties that may have arisen in the process. Should it deem it to be appropriate, the State Party may also identify the domestic agencies that have participated in implementing the recommendations, as well as identify specific technical assistance or other needs connected with the implementation of the recommendations.”*

*“During the second and subsequent rounds, the country report of each State Party shall address the steps taken to implement the recommendation adopted by the Committee in previous country reports. The country report shall note those recommendations that have been satisfactorily considered and those that need additional attention by the country under review.”*

- c. In accordance with the terms of Article 29 of the Rules of Procedure, the Committee adopted, by consensus and as a part of the second round questionnaire,<sup>33/</sup> the standard form to be used by the states to present information on the progress made with the recommendations extended during the first round. Similarly, the Committee adopted by consensus the methodology for analyses in the second round,<sup>34/</sup> which establishes all provisions and considerations regarding the scope of the follow-up that the Committee is

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33. See “Questionnaire” at: [http://www.oas.org/juridico/english/mesicic\\_quest\\_IIround.doc](http://www.oas.org/juridico/english/mesicic_quest_IIround.doc)

34. See “Methodology” at: [http://www.oas.org/juridico/english/mesicic\\_method\\_IIround.pdf](http://www.oas.org/juridico/english/mesicic_method_IIround.pdf)

to conduct with respect to the recommendations extended to each country in the first-round country reports.

2. The report adopted in connection with Jamaica as a part of the first round of analysis, including the recommendations formulated for that State therein, was adopted with the consensus of Jamaica as the State under review and in accordance with the procedure established in the Document of Buenos Aires and the Rules of Procedure.
3. Related to each of the recommendations set out in the country reports, the Committee includes, in each case and in accordance with the analysis carried out, a series of measures that it believes the State undergoing review could take into account in order to make progress with the implementation of those recommendations.

In accordance with the consideration given to the recommendations, the State undergoing review can always make progress with their implementation by adopting the measures suggested by the Committee or other alternative measures that it deems appropriate.

Consequently, the standard form adopted by the Committee for States to report on their progress with implementing the first-round recommendations allows the State to indicate the measure or measures suggested by the Committee or the measure or measures taken by the State to implement the corresponding recommendation and to briefly describe the specific steps it has taken in connection with those measures.

4. In accordance with the provisions of Article 29 of the Rules of Procedure, this standard form allows the State undergoing review to set out the possible difficulties it sees in the implementation of the various recommendations and, in addition, to identify which of its domestic agencies have participated in the implementation of the corresponding recommendation and to identify specific needs (such as technical assistance or help in other areas) associated with its implementation.
5. The Committee would like to stress that in accordance with the decisions taken by the MESICIC States Parties, the information sought on each State's progress with implementing the recommendations and the standard form in which it is to be provided is intended, as one of its basic aims, to facilitate, promote, and strengthen cooperation among the States Parties, in compliance with the terms of the Convention, the Document of Buenos Aires, and the Rules of Procedure.

Thus, Article 29 of the Rules of Procedure establishes that: "During the second and subsequent rounds, the country report of each State Party shall address the steps taken to implement the recommendation adopted by the Committee in previous country reports. The country report shall note those recommendations that have been satisfactorily considered and those that need additional attention by the country under review."

6. All the above underscores the importance of the reviewed State's supplying adequate, detailed information in the fashion agreed on by the Committee.

Clearly, without that information, the Committee cannot address any measure taken or difficulty encountered by the State, nor can it note any recommendation that has been satisfactorily implemented or that requires additional attention. Without that information, the

Committee is essentially unable to perform any analysis or to comply with the mandate imposed by Article 29 of the Rules of Procedure.

7. The lack of information on the implementation of the recommendations has the more serious implication of making it impossible to pursue the basic goal of facilitating, promoting, and strengthening cooperation among the States Parties, in accordance with the terms of the Convention, the Document of Buenos Aires, and the Rules of Procedure. Thus, in the absence of relevant information, it is impossible to identify those areas where progress has been made or to share them with other States to which those experiences could be of use. Furthermore, it prevents the sharing of any difficulties detected by the State undergoing review and the facilitation of international cooperation for the State in overcoming those problems.

Bearing in mind the considerations set out above, the Committee urges Jamaica to report on its progress with implementing the recommendations extended to it in the first-round report at the forthcoming meetings of the Committee, in compliance with Article 31 of the Rules of Procedure.

The Committee will continue to duly monitor the implementation of the recommendations it extended to Jamaica, in accordance with the terms of its Rules of Procedure.

**ANNEX**

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

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

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

Recommendation 1.1:

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

Measures suggested by the Committee:

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

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

Recommendation 1.2.1:

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

Recommendation 1.2.2:

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

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

Recommendation 1.3:

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

Measures suggested by the Committee:

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

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

Recommendation:

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

Measures suggested by the Committee:

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

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

#### **Recommendation 3.1:**

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

#### **Recommendation 3.2:**

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

#### **Recommendation 3.3:**

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

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

#### **4.1 General participation mechanisms**

*No recommendations were made to Jamaica in this section.*

#### **4.2 Mechanisms for access to information**

#### **Recommendation 4.2:**

*Strengthen the mechanisms for ensuring public access to information.*

Measures suggested by the Committee:

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

**4.3 Mechanisms for consultation**

Recommendation 4.3:

*Strengthen the existing mechanisms of consultation.*

Measure suggested by the Committee:

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

**4.4 Mechanisms to encourage participation in public administration**

Recommendation 4.4:

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

Measures suggested by the Committee:

- a. *Establish additional mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption.*
- b. *Promote public awareness of available corruption prevention mechanisms.*

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

Recommendation 4.5:

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

Measures suggested by the Committee:

- a. *Promote additional methods, where appropriate, to allow, facilitate, and assist civil society and nongovernmental organizations in developing activities in the follow up of public administration and the prevention of corruption.*
- b. *Design and implement specific programs to publicize the mechanisms for encouraging participation in the follow up of public administration.*

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

Recommendation 5.1:

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

Recommendation 5.2:

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

**6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)**

Recommendation:

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

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

**7. GENERAL RECOMMENDATIONS**

Recommendation 7.1:

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

Recommendation 7.2:

*Select and develop procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into account the list of more general indicators applicable within the inter-American system that were*

*available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.*

Recommendation 7.3:

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

## ENDNOTES

<sup>i</sup> Section 19(1) of the Contractor General Act states that:

*“Where the Secretary to the Cabinet at the direction of Cabinet-*

*“a) gives notice that the disclosure by a Contractor-General of any document or information specified in the notice, or any class of document or information so specified, would-*

*“i) involve the disclosure of the deliberations or proceedings of the Cabinet, or any committee thereof, relating to matters of a secret or confidential nature and is likely to ;be injurious to the public interest; or*

*“ii) prejudice the relations of Jamaica with the government of any other country or with any international organization; or*

*“iii) prejudice the detection of offences,*

*a Contractor-General or any member of his staff shall not communicate to any person for any purpose any document or information specified in the notice or any document or information of a class so specified;*

*“(b) certifies that the giving of any information or the answering of any question or production of any document or thing would prejudice the security or defence of Jamaica, a Contractor-General shall not further require such information or answer to be given or such document or thing to be produced.”*

<sup>ii</sup> Section 29 of the Act states that:

*“Every person who:*

*a) willfully makes any false statement to mislead or misleads or attempts to misleads a Contractor-General or any other person in the execution of his functions under this Act; or*

*(b) without lawful justification or excuse*

*(i) obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or*

*(ii) fails to comply with any lawful requirement of a Contractor-General or any other person under this Act; or*

*(c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection,*

*shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.*

Section 24 (1) of the Act states that: *“A Contractor-General and every person concerned with the administration of this Act shall regard as secret and confidential all documents, information and things disclosed to them in the execution of any of the provisions of this Act, except that no disclosure-*

*(a) made by a Contractor-General or any person aforesaid in proceedings for an offence under section 29 of this Act or under the Perjury Act, by virtue of section 18 (2) of this Act; or*

*(b) which a Contractor-General thinks necessary to make in the discharge of his functions or for the purpose of executing any of the provisions of sections 20, 21 and 28, shall be deemed inconsistent with any duty imposed by this subsection.*

*(3) Nothing in this section shall prevent disclosure by any person of information furnished to him pursuant to section 20.*

<sup>iii</sup> Section 2 of the Witnesses (Public Enquiries) Protection Act defines the meaning of enquiry, as any proceedings in the Senate, or the House of Representatives, or a joint committee of both Houses of Parliament, or a committee of either House; or before any Commission appointed under the Commissions of Enquiry Act; or before any statutory body or authority having power to summon and examine witnesses, whether the evidence in such proceedings is or is not given on oath, but shall not include any proceedings before any court. Section 3 of the Act penalizes with a fine not exceeding two hundred dollars and in default of payment thereof to imprisonment with or without hard labor, for a term not exceeding six months, any person who threatens or in any way obstruction punishes, injures, or causes any damage to, any other person for having given evidence in any enquiry, or on account of the evidence which such other person has given in any enquiry, except where such evidence was given in bad faith.

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Section 3 (2) of the Act penalizes with a fine not exceeding two hundred dollars and in default of payment thereof to imprisonment with or without hard labor for a term not exceeding six months, any person who dissuades, intimidates, prevents, or tries to dissuade, intimidate, or prevent, any other person who has been summoned to give evidence in any enquiry from giving such evidence.