

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

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

General Comments

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

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

Specific Comments

Government hiring systems

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

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

Government systems for procurement of goods and services

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

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

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

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

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

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

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

Conclusion

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