

CONTRACTOR GENERAL'S INTRODUCTORY REMARKS

1. OPENING COMMENTS

In keeping with the requirements of Section 28 (2) of the Contractor General Act, I am privileged to formally submit to the Honourable Houses of the Parliament of Jamaica, the 25th Annual Report of the Commission of the Contractor General for calendar year 2011 – the penultimate year of my seven (7) year term as the Contractor General of Jamaica.

As the holder of the Independent Parliamentary Anti-Corruption Commission of the Contractor General of Jamaica, I am mandated by Section 4 (1) (a) of the Contractor General Act to monitor the award and the implementation of Government of Jamaica contracts to ensure, among other things, that they are awarded impartially and on merit and in circumstances which do not involve impropriety or irregularity.

A similar obligation, with respect to the issue of prescribed Government licences, is also imposed upon me by Section 4 (1) (b) of the Act.

In addition to the foregoing, a Contractor General is also empowered by Sections 15 (1) and 16 of the Contractor General Act, at his discretion, to conduct formal Investigations into matters that are associated with the award of Government contracts, the issue of Government licences, tender procedures, the registration of Government contractors, and the like.

In consequence of an amendment that was effected to the Contractor General Act in 1999, the Office of the Contractor General (OCG) is also mandated to provide the National Contracts Commission (NCC) with the requisite technical and administration support resources which it requires, to enable it to execute its contractor registration and Government contract endorsement functions.

The OCG, which, during the year that is under review, had a combined staff complement of 59, discharges its mission and core operating functions through four (4) operating Divisions.

They are the Construction Contracts Division, the Non-Construction Contracts, Licenses and Permits Division, the Special Investigations Division and the Technical Services Division. The functions of these Divisions receive critical administrative and other support through the operations of the OCG's two (2) other divisions, the Information Systems Division and the Corporate Services Division.

2. REFLECTIONS

The year 2011 marks a significant milestone for the OCG. The Commission has now served the People and Taxpayers of Jamaica for (25) years, having been operationalized in 1986 by way of the Contractor-General Act of 1983.

Having taken, and formally communicated to the Governor General, my decision not to seek or to accept an extension to my seven (7) year contract term as the Contractor General of Jamaica, 2011 is also a significant year for me as this, my Annual Report for the year 2011, will stand as the final one that will be published and submitted to the Houses of Parliament by me.

As I write these remarks, I, therefore, feel obliged to place upon the record some of my reflections, particularly recognizing that I have just a few more weeks in office before my contract comes to an end on November 30, 2012.

Background – The Office of the Contractor General

The OCG, as it is commonly known in Jamaica today, was established 28 years ago, in 1983, amid widespread public outcries that were prompted by allegations of corruption in the award and implementation of Government of Jamaica contracts.

The Contractor General was mandated by Section 4 of the Contractor General Act to monitor the award of Government of Jamaica contracts, to “*ensure*” that they were awarded ‘impartially and on merit, and in circumstances which did not involve impropriety or irregularity’. The issue of Government licences and permits was also cascaded under his jurisdiction.

In addition, the Contractor General was also vested with a discretionary power to conduct formal investigations into a range of associated matters.

To facilitate the effective discharge of his functions, the Contractor General was, among other things, accorded the powers of a Judge of the Supreme Court of Jamaica, with wide quasi-judicial powers of enquiry, search, discovery and subpoena.

However, and in spite of the foregoing, and after 25 years of its operational existence, the OCG has been unable to effectively attain its stated objectives. Today, primarily because of its structural deficiencies, it is viewed by many, and quite correctly so, as a paper tiger.

Despite its inadequacies, the OCG has nevertheless carried on with its work. Today, the OCG's jurisdiction, with a staff complement of 59, covers the activities of roughly 200 ministries, agencies, departments and statutory corporations of Government.

Together, these Public Bodies issue more than 600 different categories of licences and permits, and award in excess of 11,000 high-value construction, goods, services and asset divestment Government contracts, each year, valuing as much as an estimated \$110 billion, or an amount which is equivalent to roughly one-fifth of the overall annual expenditure budget of the Government of Jamaica.

OCG Accomplishments – General Overview

As the country's fourth Contractor General, I believe that my time with the OCG, over the past seven (7) years, has been productively and energetically spent.

The OCG's operating and organizational attainments, during my tenure, have been driven by the four (4) strategic and operating objectives that I had set for the OCG, and for myself, from the very outset.

These were – transforming the Commission into a ‘best in class’ anti-corruption institution; reducing corruption in Government contracting; ensuring compliance with the Government's Procurement Procedures; and significantly enhancing transparency, accountability and probity in Jamaica's contract award and license issue processes.

It is my considered view that, despite the OCG's legislative and operating constraints, we have succeeded, in great measure, to prosecute the attainment of all of our stated strategic objectives. We believe that we have also made substantial inroads in the fight to eliminate corruption, fraud, impropriety, irregularity, waste and inefficiency from Government contracting and licensing in Jamaica.

With a substantially new work force, a new work ethic, and a new cutting-edge work environment, we have rebuilt the OCG from the ground up, and we have transformed it into what is today recognized as a ‘best in class’ institution, and one which we believe is among the most respected organizations in the country's anti-corruption and law-enforcement institutional framework.

In part support of our beliefs, we can proudly point to the results of a national Don Anderson-Market Research Services Poll, which was conducted, in November 2011, in 180 communities island-wide.

The Poll, which was commissioned by the independent National Integrity Action Limited (NIAL), ranked the OCG, from among Jamaica's seven (7) leading law-enforcement and anti-corruption agencies, as having earned the highest level of public satisfaction in the fight against corruption in the island.

The other six (6) national agencies, which were ranked, were the Anti-Corruption Branch of the Jamaica Constabulary Force, the Corruption Prevention Commission, the Office of the Auditor General, the Office of the Director of Public Prosecutions, the Parliamentary Integrity Commission and the Office of the Commissioner of Customs.

The revamped Commission of the Contractor General, which I have been privileged to lead, is today constructed upon a number of key foundation pillars.

These include a new institutional culture which places professional work ethics and values at its forefront; the commitment and support of a specially recruited cadre of highly qualified and dedicated staff who fully understand the sanctity of the OCG's mandate, and that the interest of Jamaica must at all times be served; rigidly enforced workplace policies, procedures, processes and disciplinary codes; and, of course, the utilization of technology as a cutting-edge cost reduction platform to optimize the Commission's attainment of its statutory mandates, as well as its strategic and business operating objectives.

I can assure you that my staff and I have worked assiduously to elevate the profile of the OCG to what it should be, which is a highly visible, active, independent, professional and apolitical anti-corruption organization, and we have successfully developed and deployed a plethora of organizational, strategic and operating initiatives.

These have enabled us to increase, in exponential terms, our levels of productivity and efficiency, our contract monitoring and investigative capabilities, as well as transparency and accountability in a broad range of government commercial transactions.

There is also no question that we have heightened the level of public awareness about the OCG's work activities, its interventions, its considered remedial recommendations, its concerns, and the innumerable challenges that we have faced in our faithful discharge of our statutory mandates.

Additionally, we take immense pride in the fact that we have been dispassionate in the discharge of our mandates, and that we have never hesitated to call a spade a spade, or to bring to the fore the incidence of corruption, irregularity or impropriety in public contracting in Jamaica, wherever and whenever we have seen it.

Finally, in our quest to uphold the Rule of Law, we have held all Public Officers equal before the law, and, in so doing, we have substantially increased the levels of compliance, on the part of Public Officers, with the provisions of the Contractor General Act and the Government Procurement Procedures.

OCG Accomplishments – Some Empirical Operating Benchmarks and Metrics

In empirical terms, however, the operating accomplishments of the OCG, under my watch, have been many. While I cannot address all of them in my Introductory Remarks, I will, however, outline some of the principal ones.

In terms of our Government contracts monitoring mandate, the OCG currently monitors more than 11,000 Government contracts each year, with 1,092 of these having been monitored on a sustained basis during 2011. This contrasts with a maximum of 350 contracts that were monitored, on an annual basis, for the years which preceded my appointment.

With respect of our Investigations mandate, our accomplishments have been equally impressive. In the past seven (7) years, the OCG has completed 58 Special Investigations, 40 Enquiries and 24 Audits. This contrasts with only two (2) Investigations that were conducted during the three (3) year period which preceded my appointment.

To facilitate our monitoring and investigation of the Government's licensing activities, in 2009 we successfully developed a comprehensive on-line database portal. The database, which is the only one of its kind in the country, contains continuously updated information about the country's 200 Public Bodies, and the more than 600 different classifications of Prescribed Licences that are routinely issued by 75 of them. Prior to this, the OCG was unable to comprehensively discharge its license monitoring mandate.

Over the past three (3) years, we have also significantly reduced the high incidence of fraud that we have detected in the Government Works Contractor Registration Process. Since 2010, as many as 80 works contractors have been removed from the National Contracts Commission's (NCC's) Register of Approved Contractors for falsely representing their resources and technical competencies, with some having been referred, by us, to the Fraud Squad for criminal investigation and prosecution.

Regrettably, however, associated with our work, in the foregoing regard, have been threats of violence to our staff, inclusive of at least two (2) death threats, and an alleged thwarted execution attempt at one of our staff members. Additionally, we have faced significant opposition from one (1) local contractor grouping.

Quite surprisingly, the OCG, in its efforts to root out irregularity, fraud and corruption from the Government contracting and contractor registration processes, has also become the target of misguided public criticism from the newly elected President of the Jamaica Chamber of Commerce (JCC), Mr. Francis Kennedy, who, in a Jamaica Gleaner Newspaper article of October 9, 2012, reportedly branded the approach of the OCG as one that *'was not conducive to growth and development'*.

Although clearly ill-conceived and confounding, Mr. Kennedy's statement nevertheless raises the very serious question of whether the JCC is, for example, now supportive of the preservation of fraud and corruption in the award of lucrative Government contracts, to private sector contractors, who, by reason of their fraudulent representations, have been graded and registered as Government contractors despite the fact that they are neither adequately qualified, competent nor resourced, based upon the National Contracts Commission's own contractor registration criteria, to effectively execute the contracts that they are 'registered' to tender upon.

The fact that Mr. Kennedy has also failed to grasp the basic principle that the very growth and development which he seeks for the country will never be realized unless and until the perception of corruption in Jamaica is excised from the minds of the foreign private investment community, should also be cause for concern, if only because he is now the head of one of Jamaica's pre-eminent private sector groups.

One of the OCG's other outstanding operating accomplishments has to do with its development and implementation, in May 2006, of what is called the OCG's Quarterly Contracts Award (QCA) Report Regime.

The Regime, which requires the country's 200 Procuring Public Bodies to file quarterly electronic reports of their contract awards with the OCG, has now succeeded in registering a 100% compliance filing rate for the past 14 consecutive quarters, save one (as at the time of the final editing of this Report in October 2012). At the outset, the highest compliance rate that was ever recorded by the OCG was a mere 13%.

This dramatic shift in Public Body compliance culture was due, in great measure, to the inflexible enforcement, by me, over the past five (5) years, of a Zero Tolerance Policy which calls for the automatic referral, for criminal prosecution, of any non-compliant Public Body or Accountable Officer.

In terms of our many information technology breakthroughs, we have now made it possible for the contract award particulars of all Government contracts, above \$275,000 in value, which have been awarded since May 2006, to be freely scrutinized in spreadsheet format on the OCG's revamped website at www.ocg.gov.jm. Currently, these contracts number in excess of 70,000.

To facilitate the cultural transformation that was required to prosecute the strategic objectives that I had set for the OCG, and to ensure that the OCG possessed the requisite professional and technical skill-sets to enable it to more effectively discharge its mandates under the law, we developed and implemented, in 2006, a comprehensive personnel recruitment policy to facilitate the OCG's objective and transparent recruitment of the best available talent in the Jamaican job market.

Since then, 45, or more than 75%, of the OCG's current 59 staff member complement, have been recruited through the utility of the referenced policy.

The policy requires, among other things, the public invitation of job applications for vacant OCG positions which cannot be filled internally. Additionally, every prospective OCG employee must successfully undergo an average of two (2) to three (3) documented OCG interview assessments, that are administered by different OCG multi-disciplinary panels, before being cleared to be interviewed by the Contractor General himself.

Today, the OCG's contract monitoring and investigation staff includes five (5) engineers, two (2) construction managers, three (3) architects, three (3) lawyers, two (2) accountants/auditors at the masters degree level, two (2) MBAs in finance, three (3) MScs in Governance and Public Policy, and one (1) MSc in Sociology.

All told, the OCG's current 59 staff member complement, which has an average age of 36, has, in its tool-box, 37 bachelors degrees, 14 masters degrees (inclusive of 5 MBAs), and 72 other professional and technical certifications.

These assets have been routinely supplemented, enhanced and built upon by varied programmes of managerial, administrative, professional and technical training which the OCG, during the past six (6) years, and despite its limited annual budgetary resources, has proactively identified and provided for its employees.

	OCG ORGANIZATION OVERVIEW							Total /Average
	The Contractor General's Office	Special Investigations Unit	Inspectorate		Technical Services Department	Corporate Services Department	Information Systems Department	
			Construction	Non-Construction				
Number of staff	4	3	8	8	11	20	5	59
Average Age	40	29	37	31	41	40	35	36
Average Work Experience (Years)	15	8	14	9	17	15	12	13
Total Bachelors Degrees	3	3	8	8	6	6	3	37
Total Masters Degrees	2	2	1	3	4	2	0	14 (Includes 5 MBAs)
Total other Professional Certifications	5	2	8	12	9	23	13	72
Total Number of Staff/Total Number of Degrees and Professional Qualifications	4/10	3/7	8/17	8/23	11/19	20/31	5/16	59/123*

**There are currently five (5) staff vacancies in the established 64 person OCG Organization*

Office of the Contractor General

Employee Training Summary 2006-2011

	2006	2007	2008	2009	2010	2011	Total
Management	3	4	1	15	14	8	45
Administrative	4	4	9		4	11	32
Anti-Corruption	3	1	2	6	5	1	18
Procurement	1	6	3	2	46	5	63
Information Technology	2	3	2	3		3	13
	13	18	17	26	*69	28	171

** Special training initiative for the OCG's 12-member Inspectorate Team*

Local	12	18	14	24	65	26	159
Overseas	1	0	3	2	4	2	12

Finally, in our efforts to keep our stakeholders fully informed about those of our initiatives, positions and concerns, which were of sufficient public interest to warrant their immediate publication, we have so far issued as many as 267 Media Releases, and written 25 Letters to the Editors of the Print Media, during my tenure.

In the foregoing context, it is also worthy of note that, each year, since my appointment in 2005, the OCG has substantially increased the volume and the quality of the information which is presented in its Annual Reports to Parliament.

Previously, the OCG's Annual Reports typically ranged between 10 and 160 pages. By contrast, however, the OCG's Annual Reports for 2011, 2010 and 2009 have each provided more than 1,000 pages of content, while the Reports for 2005 to 2008 have ranged between 380 and 570 pages.

The Problem of Corruption in Jamaica and the Lack of 'Political Will'

But despite all of these accomplishments, I must hasten to caution that the reality is that both the OCG, and Jamaica, still have a considerable way to go before the battle against the scourge of corruption in Jamaica can be won.

The point that I wish to make is incapable of being overemphasized, for despite the persistent governance challenges that continue to plague Jamaica, and the pervasive corruption that the country is perceived to be mired in, successive Administrations have paid little more than lip service to the issue of corruption in Jamaica.

Time and time again, seemingly sincere statements of commitment, about strengthening the country's anti-corruption institutional framework, are made by our Prime Ministers. However, the expected corrective actions, and the promised bold new leadership, to decisively and forthrightly tackle the issue, have just not emerged.

In the interim, while political expedience and obfuscation take center stage, the perception of corruption continues to exact its heavy toll upon our beloved country, at the expense of the many, and at the expense of the country's socio-economic development.

Today, as a country, and in spite of all that we have achieved on the international stage with our music, our athletes, our food, and our hospitality, we have somehow managed to earn the indecorous label of being one of the world's most corrupt countries.

Indeed, and as the table below will show, for the past five (5) years, we have consistently scored no higher than 3.3 on Transparency International's Corruption Perception Index (CPI), where '1' is considered to be 'most corrupt' and '10' as 'clean'. But what have we done about it?

Transparency International Annual Corruption Perception Index – Jamaica Rankings				
Year	CPI Score	Country Rank	Total Countries Ranked	Independent Surveys Used
2011	3.3	86	182	7
2010	3.3	87	178	5
2009	3.0	99	180	5
2008	3.1	96	180	5
2007	3.3	84	180	5
2006	3.7	61	163	5
2005	3.6	64	159	6
2004	3.3	74	145	6
2003	3.8	57	133	5
2002	4.0	45	102	3

As I have warned before, corruption is considered today by many to be the largest single impediment to our country's attainment of sustained economic growth and development. Many are also of the belief that there are substantial links in Jamaica between politics, corruption, Government contracting, political campaign financing, political tribalism and organized crime.

Corruption erodes the quality of life of the society. It denies the poor access to basic entitlements, such as water, electricity, roads, health care, housing and education. Corruption leads to human rights violations, hijacks political elections and reduces investor confidence in the country. And corruption also undermines critical public institutions and enables organized crime and other threats to human security to flourish.

Given the magnitude of its potential impact, and its alarming and corrosive effects, the issue of corruption, is, therefore, something which should not be treated lightly.

As Contractor General, I must confess that I have become extremely despondent about the deafening silence of our leaders, both within and without the political divide, and the vacuous absence of the 'political will' that is now desperately required to decisively combat corruption in Jamaica, and to empower and support the OCG in its efforts to ensure that its mandates are effectively discharged.

'Political will', of the type that I speak, requires that the State, led by the incumbent Administration, must take the requisite steps to ensure that good governance structures that are compliant with international best-practices, as well as a comprehensive and independent anti-corruption institutional framework, are firmly set in place.

These, in turn, must be reinforced by adequate resources; effective laws which are lucid and unambiguous, and which are continuously reviewed to close emerging loop-holes; tough criminal custodial and pecuniary sanctions for breaches of those laws; and, of course, anti-corruption institutional leaders who are prepared to dispassionately discharge their respective mandates and to forthrightly enforce the said laws, and who are fully supported by the political directorate of the State.

Imperatives for Continuing the OCG's Fight Against Corruption in Jamaica

And it is against this back-drop, that the question about the imperatives for continuing the fight against corruption in Jamaica, need to be urgently and decisively examined, and addressed.

While the approach must be a multi-dimensional one, with critical roles being played by the State, the private sector, civil society, the media, and the individual, absolutely nothing of substance will, however, come to fruition until and unless a bold, new, forthright and honest political dispensation, which is prepared to do right by Jamaica, rises to the fore.

As it relates to the OCG, and the operational and structural obstacles which it continues to face, the imperatives for going forward are precisely the same. Without 'political will', the OCG will remain the toothless bulldog that every Jamaican knows that it is.

But there is no question, however, that the OCG has pushed, and is still pushing the envelope in terms of the effective and efficient discharge of its statutory mandates – at least to the extent that the laws by which it is circumscribed have allowed.

We have been forthright, aggressive and dispassionate in the execution of our mandates, for this is the only way that corruption, particularly in a corrupt, politically tribal and polarized country, can be effectively fought. Those of the OCG's critics, who have, therefore, characterized my approach as being overzealous, or over-reaching, have, unfortunately, been misguided, or are unenlightened.

Some of them, I am sure, would have absolutely no idea of the dimensions of what we were up against and what we are still up against. Indeed, the majority of them might never know.

Others, on the other hand, have shamelessly and disingenuously attacked the OCG for the simple reason that their own questionable or non-compliant conduct has warranted the Statutory Investigative intervention of the OCG.

Among these are both public officials, as well as private sector individuals, who have had their boats rocked by an OCG which has dared to disturb the tranquil bliss of their status quo, or which has interfered with that which was previously perceived by some to be the inviolable preserve of Jamaica's 'untouchables'.

Right throughout, however, the OCG was never moved or intimidated, nor was it perturbed. We consistently refused to be bullied, for we knew that we were on the side of right, honesty and the truth.

We have also taken full comfort in the fact that our considered positions, findings, recommendations and/or referrals are amply substantiated and documented for posterity, and will withstand the rigours of any objective, dispassionate or informed analysis.

It must also be appreciated that the fight against corruption is just that. It is a fight. It is not a ballroom dance. It is a battle, and battles cannot be fought by the weak or by the faint of heart. Likewise, the battle against corruption cannot be effectively led by leaders who are fearful or submissive, or who are reluctant to offend or to confront those who must be confronted; or who wish to be popular or to become friends with everyone.

But the truth is that there are inherent and fundamental flaws in the Contractor General Act, as well as long-standing loop-holes and deficiencies in the Government Procurement Procedures, and other associated laws. These must be repaired, if the OCG is to become more effective in the discharge of its prescribed mandates.

One of the referenced flaws which readily comes to mind has to do with the efficacy of Section 4 (1) of the Act. Section 4 (1) binds a Contractor General to a solemn oath to “**ensure**” that Government contracts and licences are issued ‘impartially, and on merit, and in circumstances that do not involve impropriety or irregularity’.

However, and in spite of this obligation, Parliament has failed to grant to the Contractor General the corresponding power to enable him to halt a Government contracting process that is exhibiting signs of impropriety, irregularity or corruption, or to give to him the power to prosecute or to hold to account an offending Public Officer.

In a deliberate effort to fix these and several other structural impediments which have prevented the OCG from effectively discharging its statutory mandates, scores of remedial recommendations have been tabled by me before the Executive and the Legislative arms of the State.

These recommendations were crafted by the OCG, among other things, (a) to significantly enhance transparency, competition, accountability and probity in public contracting in Jamaica; (b) to ensure compliance with the Government’s Procurement Procedures; (c) to eliminate waste and inefficiency in the award and implementation of contracts; (d) to prevent fraud and corruption in Government contracting, (e) to strengthen the OCG; and (f) to generally win the battle against corruption in Jamaica.

Regrettably, however, the overwhelming majority of them, although repeatedly made, have so far been ignored.

In the circumstances, the destiny of the OCG, and whether and to what extent Jamaica will succeed, in the fight to secure probity, transparency, accountability and value for money in the award of its public contracts, and to root out the scourge of corruption from its midst, is a destiny which now lies firmly, not within the hands of the OCG, but within the hands of the Government, our Parliament and, ultimately, in your hands – the hands of the Jamaican People.

In more ways than one, the OCG’s challenges can be likened to that of an athlete in a 4X100 metres relay race. No matter how vigourously and aggressively he runs his leg of the relay, there will come a point at which he must pass the baton to another participant in the race. If that participant, however, fails to run his leg of the race with equal vigour or passion or, for that matter, fails to run at all, then the race can never be won. This is the reality of the OCG.

These challenges and the problems that I have outlined will, therefore, remain for the OCG, and for my successor-in-office, as long as the OCG’s many remedial recommendations to the State continue to be ignored. At a minimum, they will remain with us until and unless the following are accomplished:

- (1) The OCG is significantly strengthened, whether as a stand-alone institution, or as a major component of the single independent national anti-corruption agency that I had first formally proposed in March 2010.
- (2) The OCG is granted criminal investigation powers, criminal prosecutorial powers, police powers of arrest, and the power to halt or to regularize a Government contracting or licensing process which it believes is exhibiting the signs of corruption, impropriety or irregularity.
- (3) The Contractor General Act is revised to lucidly and unequivocally articulate the jurisdictional boundaries of the OCG and its mandates, so that there is no ambiguity about what they are.
- (4) Tough criminal sanctions, inclusive of stiff custodial sentences, for breaches of the Contractor General Act and corruption related offences, are imposed.
- (5) The OCG is entrenched in the Constitution to protect it from arbitrary political interference.
- (6) Decisions regarding the OCG’s budgetary and resource allocations are removed from the purview of the Ministry of Finance, and vested in a Special Bi-Partisan Committee of Parliament to be chaired by the Parliamentary Opposition; and

(7) A Special Corruption Court is established, or, failing that, corruption related offences are given precedence, in the existing Jamaican court system, over all other offences, save and except for capital offences.

And now, a final observation.

At least two (2) senior politicians that I am aware of, each from either side of the political divide, have, tongue in cheek, disingenuously questioned why is it that Jamaica's Corruption Perception Index (CPI) has not improved over the years, despite the aggressive and highly publicized anti-corruption work of the OCG.

The answer is quite simple, and the two (2) politicians are well aware of it.

To begin with, fighting corruption in Jamaica is not the exclusive province of the OCG – far from it. There is a Corruption Prevention Commission, there is a Parliamentary Integrity Commission, there is the Director of Public Prosecutions, there is a Police Force, there is the Judiciary, there is the Ministry of Finance's Financial Investigations Division (FID), there is the Ministry of National Security's Major Organized Crime and Anti-Corruption Task Force (MOCA), there is the Jamaica Constabulary Force's Anti-Corruption Division, there is an Auditor General, there is a Commissioner of Customs, there is a Public Defender, there is the Electoral Commission, there is a Political Ombudsman, there is the Media, there is Civil Society and finally, and above all, there is the Government and the Parliament of Jamaica at whose feet the buck stops!

Jamaica's CPI rankings have not improved because despite the efforts of the OCG and that of a number of other institutions, the perception and the reality is that absolutely nothing is being done by the Government, the Parliament and some of the other elements of the country's anti-corruption institutional framework, to implement the fundamental institutional reforms that are necessary, and to take the bold and dispassionate steps that must be taken, to decisively, effectively and forthrightly combat the scourge of corruption that has now infiltrated the very life blood veins of the country.

It is, for example, an indisputable fact that the OCG's many remedial recommendations have, for the most part, been consistently ignored by successive Administrations and by successive Parliaments. Likewise, the innumerable criminal prosecutorial and other referrals that the OCG has made to a variety of State authorities to get them to hold offending Public Officials and others accountable for their irregular, improper or corrupt conduct, have also been summarily and consistently sidestepped.

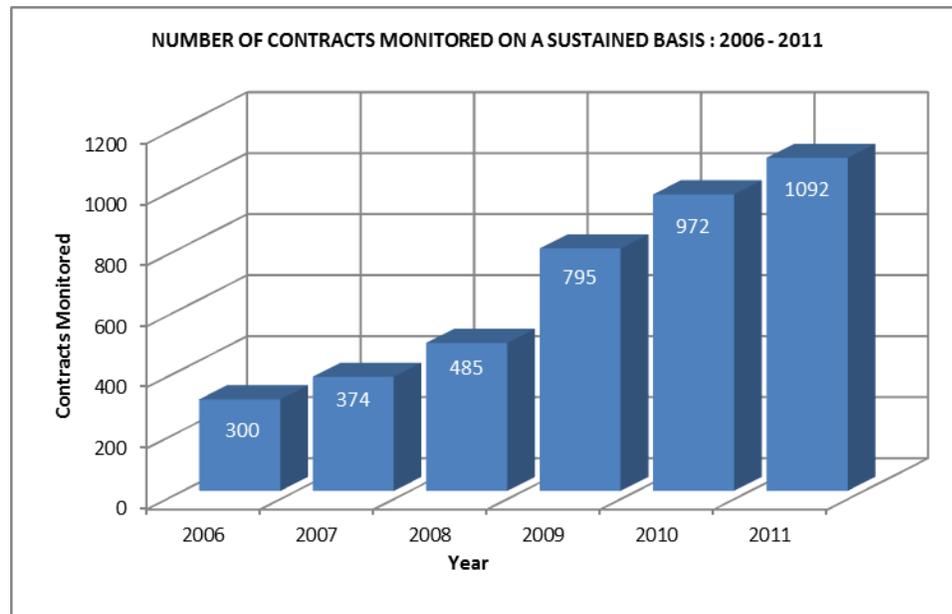
Since we live in a global village in which information reaches everyone instantly, this, therefore, is what Transparency International is seeing. It is also what the international commercial and foreign direct investment community is seeing. And it is also what Jamaica's multi-lateral and bi-lateral partners are seeing.

Nothing further, therefore, needs to be said about the issue since, barring fundamental changes to the way in which we are currently dealing with the problem of corruption in Jamaica, 50 years from now we will not only be still here talking about the same things, but we will also be here doing the same things as we are now.

3. OVERVIEW OF YEAR 2011 - CONTRACTS MONITORING AND PORTFOLIO MANAGEMENT

As was mentioned earlier, the OCG, in year 2011, monitored a total of one thousand and ninety-two (1,092) procurement undertakings on a sustained basis. Of this number, six hundred and eighty-two (682) were non-construction projects, while the remaining four hundred and ten (410) were construction projects.

While it would be ideal to monitor all Government of Jamaica procurement opportunities, on a sustained basis, such an undertaking is obviously neither realistic nor possible and, as such, the OCG undertakes strategic monitoring within the confines of its available resources, as well as general monitoring of an additional 10,000 to 11,000 contracts each year, using computerized technology, via the utility of its Quarterly Contract Awards (QCA) electronic system.



Quarterly Contract Awards (QCA) Report Submissions

During calendar year 2011, the OCG's QCA Report Regime enabled the OCG's Inspectorate Division to monitor in excess of 11,000 Government contracts awards which were valued at more than \$16.1 billion.

These contracts fell beneath the National Contracts Commission's \$10 million contract value threshold, but above the \$275,000 value floor at which all tendering contractors are required to possess a valid Tax Compliance Certificate, as well as to seek registration with the NCC – both as a pre-qualification to the tendering on Government of Jamaica contracting opportunities.

A Zero Tolerance Policy which was first introduced by me in October 2006 to combat Public Body Heads who were refusing to comply with the lawful Requisitions of the OCG, to submit QCA Reports within the prescribed time-line, has, as at the end of calendar year 2011, succeeded in producing an unprecedented and record 100% compliance rate for the twelfth consecutive quarter running.

During 2011, all 190-plus Public Bodies, that were being monitored by the OCG throughout the year, submitted their QCA Reports within the required timelines and, consequently, must be commended for their timely responses as well as for their disciplined efforts to comply with the lawful Requisitions of the OCG.

Since 2009, the OCG has been assessing QCA Reports based upon the level of compliance, on the part of the relevant Public Bodies, with the Government's Procurement Procedures, that the Reports disclose.

Public Bodies are placed in one of four levels, with Level 1 being the highest, covering a compliance rate of between 96% and 100%, and Level 4, the lowest, which addresses a compliance rate below 60%. A compliance rate below 60% indicates evidence of a fundamental, critical and/or substantial failure, on the part of the relevant Public Body, to comply with the Government of Jamaica Procurement Procedures.

QCA Reports were assessed by the OCG for the first three (3) quarters of 2011. An aggregate average of ninety-one (91) Public Bodies attained a Level 1 compliance rate, and an average of one (1) Public Body attained a Level 4 compliance rate. The other Public Bodies attained either Level 2 or 3 compliance rates.

It is instructive to record that since the OCG has commenced its QCA ratings of Public Bodies, there has been greater vigilance, on the part of Public Bodies, with respect to their completion of the QCA Reports as well as with respect to the accuracy of the information that they represent to the OCG.

Particulars of the QCA reported contract awards for 2011 are discussed in the section of this Report which is entitled **Monitoring of Non-Construction Contracts, Licences, Permits and Concessions**. Further details regarding same are also outlined in **Appendix VIII to the Report**.

4. OVERVIEW OF YEAR 2011 - OCG'S INSPECTORATE DIVISION

The monitoring of procurement opportunities is carried out by the OCG's Inspectorate Division, which also has the responsibility for the management of multiple Portfolios; namely, the QCA Portfolio, the Constituency Development Fund (CDF) Portfolio, the Licences and Permits Portfolio, the Asset Divestment Portfolio, the Land Divestment Portfolio, the Enquiry Management Portfolio, the Procurement Audit Portfolio, the Force Account Portfolio and the Jamaica Development Infrastructure Programme (JDIP) Portfolio.

Each Portfolio is assigned to one (1) of the OCG's Inspectors, who is primarily responsible for same and receives support from at least one (1) other Inspector. In all instances, therefore, each Inspector has the responsibility for more than one Portfolio, along with other multiple monitoring projects.

Of significant note, is that the OCG's Inspectorate Division has a staff complement of only sixteen (16). The Division is divided into two units, namely the Construction Unit, and the Non-Construction Contracts, Licences and Permits Unit.

The Inspectorate Division's sixteen (16) staff member complement is broken out into: Ten (10) Inspectors - broken out into five (5) Construction and five (5) Non-Construction Inspectors; two (2) Senior Inspectors – one (1) Construction and one (1) Non-Construction, who are essentially Supervisors; a Director of Construction Projects; and the Senior Director of Monitoring Operations, Corporate Communications and Special Projects.

The Team is ably supported by two (2) Administrative Assistants – one (1) Construction and one (1) Non-Construction. All Monitoring and Portfolio Management activities are undertaken by the ten (10) Inspectors.

Issues Arising Out of Monitoring

The OCG has noted that there has been some amount of improvement among Public Bodies in relation to compliance levels, relative to their procurement activities. While Public Bodies should be commended for their efforts in meeting the Government of Jamaica (GOJ) Procurement standards, there is, however, still room for improvement, as some Public Bodies continue to deviate from standard procurement procedures, as outlined in the Government of Jamaica Handbook of Public Sector Procurement Procedures.

Some noted deviations, were the failure by some Public Bodies to comply with the requirement to:

- i. Utilize the Standard Bidding Document;
- ii. Obtain documented approval from the Head of Entity;
- iii. Obtain documented approval from the Procurement Committee, where applicable;
- iv. Utilize the Bid Receipt Form or to ensure that same is properly completed;
- v. Prepare Contract Documents;
- vi. Prepare Comparable Estimates or, where prepared in some instances, failure to conduct the necessary due diligence to prepare a realistic Comparable Estimate; or to disclose Comparable Estimates at Tender Opening Ceremonies;
- vii. Ensure sufficient time is given for submission of Tenders;
- viii. Provide sufficient information in the Tender Notice;
- ix. Prepare Evaluation Criteria for procurement opportunities or, in some instances, prepare detailed Evaluation Criteria; and
- x. Conduct evaluation of Tenders in accordance with established Evaluation Criteria.

In all instances where the stated deviations were identified, the OCG communicated same to the offending Public Body and made appropriate recommendations in keeping with the GOJ's Procurement standards.

Further, in an effort to eliminate such occurrences, the OCG has prepared a procurement-related presentation to be delivered, in 2012, to the roughly 200 Public Bodies that fall within the jurisdiction of the OCG.

It should be noted that, as at December 31, 2011, one (1) presentation had already been made to a Public Body upon its request, and preparation was being made for all other Public Bodies to be notified of the OCG's intention to present to them in 2012.

Notwithstanding the OCG's decision to make the referenced presentation to Public Bodies, it is being recommended that all Public Bodies take advantage of the 'GOJ Procurement Policies and Procedures' training programme which is offered by the Management Institute for National Development (MIND), in an effort to reinforce their adherence to the GOJ's prescribed procurement standards.

There are other matters of concern to the OCG, specifically as they pertain to construction-related contracts.

Time and Cost Overruns

Among these concerns, are the continued occurrences of time and cost overruns. Where the Evaluation process is protracted, the end result is that Bidders are asked to extend their Tender Validity Period, in which case a Bidder may not agree.

The effect may very well be that the Public Body may have to abort the Tender process, which clearly would result in the procurement opportunity being re-tendered.

Other noted issues which occurred during the Pre-Contract Stage of various construction projects, during 2011, had to do with the failure of Public Bodies to properly review the project site or to conduct Soil Tests, which resulted in Bills of Quantities and Drawings having to be revised or extensive time delays being experienced, as remedial works had to be performed owing to unfavourable results of Soil Tests. There were also delays owing to the requisite approvals or permits not being obtained prior to the works being carried out.

The OCG also identified instances where delays occurred during the project implementation stage. Ideally, it is recommended that projects are implemented as soon as possible after the contract is signed, as failure to do so, more often than not, results in increased costs on the part of the Contractor, thus costing the Public Body more than the agreed amount, as the Public Body would be the party that is faulted for the delay.

Post-Contract issues of concern to the OCG included poor project management and/or poor performance on the part of Contractors or Consultants, which ultimately resulted in increased costs to the respective Public Bodies. There were also instances where Contractors experienced delays in receiving payment from Public Bodies, owing to the unavailability of funds.

Of the four hundred and ten (410) Construction projects that were monitored by the OCG on a sustained basis throughout the reporting year, it was noted that fifteen (15) were affected by cost overruns, which amounted to J\$1.2 billion – an exorbitant amount by any standard.

Bearing in mind that the number of construction projects that were monitored by the OCG was minimal, when compared to the number of projects that were undertaken by Public Bodies, overruns on projects generally should be cause for great concern. If the total for overruns on all Government projects were to be captured and added, the resulting amount may be very frightening, to say the least.

Stringent measures need to be, therefore, set in place to guard against such occurrences. Where these overruns could have been avoided, the culpable parties should be held accountable and, the appropriate penalties imposed. The same should also apply to instances of Variations on projects.

Misuse and Abuse of 'Emergency Contracting' Procurement Methodology

Section 1.1.5 of the Government of Jamaica Handbook of Public Sector Procurement Procedures (October 2010), states that for the Emergency Contracting methodology to be utilized, *"the need for such procurement must be sudden, unexpected and a pressing necessity or exigency."*

The OCG remains concerned that Public Bodies continue to award contracts utilising the Emergency Contracting facility, when the respective projects could have been awarded utilising a more appropriate methodology.

In awarding contracts using this methodology, the Public Body by-passes the proper procurement procedure and thus may not get value for money, or may otherwise engage an entity which is not registered with the NCC, or which is registered to perform projects of a lower grade and, as such, is incapable of carrying out the job to the best possible standards.

It is not lost on the OCG that this methodology can also be deliberately used by Public Bodies to avoid the scrutiny of the respective regulatory agencies, inclusive of the OCG, and also to award contracts to 'preferred' or 'connected' Contractors.

Reported contracts that were awarded by Public Bodies in 2011, using the Emergency Contracting Methodology, amounted to J\$4.1 billion.

Jamaica Development Infrastructure Programme (JDIP)

JDIP was a programme that was entered into between the Government of Jamaica (GOJ) and China Harbour Engineering Company Limited (CHEC), to enhance/rehabilitate and/or upgrade the land-based transport infrastructure across Jamaica, and was implemented in 2010. The then Ministry of Transport and Works was the implementing agency, and the National Works Agency (NWA) acted as Project Managers for JDIP.

The programme was to be carried out over a five (5) year period, at a cost of US\$400M. Funding is provided by the China Exim Bank and the GOJ, and the Loan Agreement between the GOJ and China Exim Bank, which financed US\$340 million of the contract sum, was signed in February 2010.

The original contract between the GOJ and CHEC, however, was signed in August 2009. CHEC was awarded the US\$400M contract, on a Sole-Source basis by the GOJ. The OCG's monitoring of JDIP projects commenced in 2010 and continued into 2011.

In February of 2011, the OCG convened a meeting with representatives from the National Works Agency (NWA). This meeting was deemed necessary, as the OCG sought to get a clear understanding of JDIP, in an effort to properly monitor the project.

Following the meeting, the OCG requisitioned information regarding the programme from the NWA, under cover of letter dated February 18, 2011. It should be here noted, that some of the items were previously requested in November of 2010, but were not received. After much 'back and forth', the request for all items was finally satisfied in June 2011.

I will end any further reference to JDIP at this point, as detailed information which surrounds the developments that are relative to the OCG's monitoring of JDIP can be found under the heading: "Major Projects", which falls under the "**Monitoring of Construction Contracts**" section of this Report.

Unsolicited Proposals and the Sole Source Procurement Methodology

I have long argued that the utilisation of Unsolicited Proposals is a corruption-enabling tool, as the competitive tender process is 'ignored' in favour of a system which, when scrutinised, enables parties to 'award' contracts to 'selected' parties without the market being 'tested' in order for value for money to be assured.

The reality is that when a proposal is submitted by a party who wishes to be contracted by the GOJ, to provide to the GOJ the said deliverables proposed, unless the opportunity is opened up to other interested parties, the GOJ will have no way of knowing whether it is receiving the best possible value, or whether it will obtain the best possible quality.

Further, under such circumstances, the general *'modus operandi'* is that no studies are carried out to determine even the estimated value of the proposed deliverables, in order to make an informed decision regarding the award of the contract.

Inasmuch as the OCG is concerned about the use of 'Unsolicited Proposals' to award Government contracts, of equal concern is the utilisation of the 'Sole-Source' procurement methodology in instances in which the contracted party is not the sole provider of the goods, service or Works.

As with 'Unsolicited Proposals', where entities are contracted utilising this methodology, there can be no guarantee that 'value for money' will be obtained, as there will be no competitive process to determine same.

While the OCG appreciates that expedition should be a factor in the procurement process, this cannot be prioritised over and above ensuring that value for money and quality deliverables are obtained. Further, proper procurement planning, in most cases, will eliminate the need for immediacy in securing deliverables.

The OCG is aware that the 'Sole Source' procurement methodology has been subsumed under the 'Direct Contracting' procurement methodology, as is indicated in the GOJ Handbook of Public Sector Procurement Procedures (October 2010).

However, this does not nullify the reality that existing contracts have been awarded using this methodology. Moreover, in much the same way that the 'Sole Source' procurement methodology is being misused, the same could obtain with the use of the 'Direct Contracting' procurement methodology.

In the circumstances, Government procuring entities should make every effort to set in place the requisite checks and balances to ensure that these methods of awarding contracts are not misused or abused.

Constituency Development Fund (CDF)

As in previous years, the OCG monitored several approved projects that were awarded under the Constituency Development Fund (CDF) programme. The CDF is a fund which provides Members of Parliament with monies to fund approved social and economic programmes within their respective Constituencies.

Projects are undertaken on a yearly basis and the Office of the Prime Minister (OPM) is responsible for the management and disbursement of funds. As such, the projects are managed/monitored by the Constituency Development Fund Programme Management Unit (CDFPMU), which is the office established in the OPM for coordinating the operations of the CDF.

Projects are approved by the CDF Parliamentary Committee, which is a Sub-Committee of the House of Representatives, that is tasked with granting final approval for CDF projects and Constituency Plans.

Section 1.4 of the Revised Constituency Development Fund Operational Procedures (January 2011), states that *"The Fund shall for each F/Y (Financial Year) amounts (sic) to no more than 2.5% of gross Estimates of Expenditure after debt amortisation and interest."* Section 1.5 of said publication states, *"The Fund shall be divided equally for each constituency and shall be provided under the Capital 'A' budget of the Office of the Prime Minister (OPM)."*

For the 2010/2011 financial year, the CDFPMU advised that a total of seven hundred and ninety-three (793) projects were approved, the combined value of which amounted to J\$1,157,839,201.29. Of this number, the OCG monitored a total of one hundred and three (103) projects at an aggregated value of J\$236,164,031.68.

The section of the Report, that is entitled “**Monitoring of the Constituency Development Fund**”, details the CDF monitoring activities of the OCG over the reporting period, and the associated challenges that were identified relative to the CDF.

In spite of the limited number of its personnel, the Inspectorate Division of the OCG continues to do a tremendous job in the monitoring of the procurement opportunities that are undertaken by the country's 200 Procuring Public Bodies.

Further details that are relative to the monitoring activities of the Division in 2011, can be found in the sections of this Report that are entitled “**Monitoring of Non-Construction Contracts, Licences, Permits and Concessions**” and “**Monitoring of Construction Contracts**” respectively.

5. OVERVIEW OF YEAR 2011 - OCG SPECIAL INVESTIGATIONS

The OCG, through its Special Investigations Division (SID), completed four (4) Special Investigations in 2011. The Special Investigations that were completed were as follows:

- i. Special Report of Investigation Conducted into Allegations of Improper Procurement Practices at the Sugar Company of Jamaica (SCJ).
- ii. Special Report of Investigation Conducted into the Circumstances Surrounding the Alleged Contractual Agreements between the Petroleum Corporation of Jamaica (PCJ) and Caribbean Protective Security Management and Services Company Limited.
- iii. Special Report of Investigation Conducted into the Allegations Regarding the Proposal for the Financing, Development, Ownership and Operation of a FSRU LNG Re-Gasification Terminal and Natural Gas Transportation System.
- iv. Special Report of Investigation Conducted into Allegations of Impropriety and/or Irregularity in the Award of Certain Contracts to Strathairn Construction Company Limited by the St. Catherine Parish Council, the National Works Agency and the Ministry of Transport & Works.

Coming out of the Investigations that were conducted, the OCG identified, among other things, varying deviations from the standard procurement procedures and, as such, made several recommendations to the relevant State authorities to address same. Further, formal referrals were also made to the relevant authorities regarding the offending Public Officers, for the appropriate action to be taken.

A complete overview of the referenced Investigations that were conducted by the SID, the common issues that were identified, and a summary of the key recommendations made, may be found in the section that is entitled “**Special Investigations Division**”.

Also, the complete Reports, copies of which have been formally tabled in the House of Representative and in the Senate, may be viewed on or downloaded from the OCG website at <http://www.ocg.gov.jm>.

6. OVERVIEW OF YEAR 2011 - OCG'S TECHNICAL SERVICES DIVISION

The Technical Services Division (TSD) of the OCG performs dual roles. As the Secretariat to the National Contracts Commission (NCC), it provides the NCC with secretarial, administrative and technical support services. On the other hand, the Division also monitors the operations of the NCC, for and on behalf of the OCG.

The TSD's core functions include:

1. The verification of registration information that is submitted by Contractor applicants who are desirous of being awarded Government contracts, in the appropriate categories and at the appropriate grade levels;

2. The provision of administrative and technical support to the NCC, inclusive of the management of associated correspondence; and
3. Being the NCC's and the OCG's representative on NCC Sector Committees.

The NCC is an independent, anti-corruption Commission, whose primary objective is to ensure transparency and equity in the awarding of Government contracts. This objective is generally satisfied by the NCC through its review and endorsement of recommendations for the award of Government contracts which value above J\$10M.

The NCC is also the body that is responsible for registering and classifying Contractors who are desirous of tendering on Government contracts.

The Commission is comprised of a panel of eight (8) members, all of whom are appointed by the Governor General of Jamaica. Each panel of the Commission serves for a term of seven (7) years. OCG representatives sit in on all NCC meetings as resource personnel and also as observers to ensure that the Commission's endorsement and Contractor registration processes are free from impropriety and irregularity.

All recommendations for the award of Government contracts are vetted by NCC Sector Committees prior to being reviewed by the NCC. Sector Committees are subsets of the NCC and were established to assist the NCC in evaluating recommendations for the award of government contracts in a timely manner.

There are seven (7) Sector Committees, to which all Procuring Public Bodies are assigned, for the preliminary review of their respective contract award recommendations. The NCC is notionally represented on each Sector Committee by a member of the staff of the Technical Services Division of the OCG.

In 2011, the TSD's staff complement was eleven (11) persons.

As was reported by the OCG in its 2010 Annual Report, a decision was taken, by the OCG, in September 2010, to implement a 100% due diligence assessment of all registration and re-registration applications that are submitted by Contractor applicants to the NCC.

The decision arose from the OCG's discovery, in 2008, of the high incidence of fraud, forgery and false information that was detected in Contractor application documentation. The referenced OCG due diligence efforts, which continued into 2011, not unexpectedly, resulted in an extended registration process for all Contractor applicants, many of whom were obviously dissatisfied with the process, and lodged complaints with the NCC.

While the OCG is cognisant of the fact that the NCC's Contractor registration and re-registration processes are currently somewhat protracted, the reality is that with the OCG's limited TSD staff, and the failure of the Government to assign additional staff to the OCG, despite innumerable requests having been made over the past three (3) years, the issue will continue to be of concern to the OCG, Contractors, and the OCG's other stakeholders alike.

The bald fact, however, is that the OCG has been doing its best under extremely trying and difficult circumstances and has received absolutely no assistance whatsoever from the Government, or support from the NCC, in its quest to secure additional staffing resources to effectively address the problem.

Indeed, the situation has become so grave that often times the OCG has had to remove staff from other function-critical OCG Divisions, and temporarily assign them to the OCG's TSD, so as to satisfy the overwhelming work demands of the NCC.

But be that as it may, during 2011, and with the invaluable support and assistance of the OCG's TSD, there was a total of one thousand three hundred and ninety-six (1,396) Contractors who were registered with the NCC for the provision of Goods and Services; two hundred and nineteen (219) Contractors who were registered in the Works Contractor 1 – 4 Grade categories; and nineteen (19) Contractors who were registered as Grade 5 Works Contractors.

The combined total for registered Contractors in 2011 was one thousand, six hundred and thirty-four (1,634), of which two hundred and fifty-two (252) were newly-registered Contractors.

Likewise, with the indispensable support and technical assistance of the OCG, the number of recommendations for contract awards that were endorsed by the NCC, during the reporting year, was five hundred and fifty-five (555), with a cumulative value of thirty billion, eleven million, one hundred and seventy-eight thousand, one hundred and three dollars (J\$30,011,178,103.00).

In its Annual Report of 2010, the OCG reported that plans were afoot, by the Government, to separate the NCC from the OCG. As at the time of the writing of this Report, however, the operations of the OCG and the NCC have remained undisturbed. Whether there will be any significant change in the matter in 2012 is left to be seen.

More detailed information on the operations of the OCG's TSD, in its provision of support services to the NCC, during 2011, can be viewed in the section of this Report that is entitled "**Technical Services Division**".

7. OVERVIEW OF YEAR 2011 – ISSUE OF OCG MEDIA RELEASES AND LETTERS TO THE EDITOR

In 2011, the OCG issued fifty-two (52) official Media Releases and one (1) Letter to the Editor of a daily newspaper, the Jamaica Observer. Once issued, all OCG Media Releases and Letters to the Editor are generally published, within the hour, on the OCG's official website at <http://www.ocg.gov.jm>.

The regular dissemination of information, via the medium of OCG Media Releases, is the OCG's preferred method of communicating its activities, in real time, to the members of the Jamaican public to whom the OCG is ultimately accountable.

Once again, I would, therefore, like to use this opportunity to publicly thank both the print and the electronic Media for their continued invaluable assistance and support to the OCG.

As it has been said, transparency is the antithesis of corruption. Consequently, without the assistance of the Media in exposing matters that fall within the jurisdiction of the OCG, the battle against impropriety, irregularity and corruption in public contracting, in Jamaica, would have already been half-way lost.

As an aside, the OCG is not unmindful of the fact that there are those in its midst who are opposed to the OCG's issue of Media Releases which announce the commencement of its Special Investigations into certain specified matters that are related to the award of Government contracts, or the divestment of lucrative State assets.

For those who are so disposed in their thinking, I would like to take this opportunity to respectfully remind them that, as an Independent Parliamentary Anti-Corruption Commission, the OCG is duty-bound to keep the People and Taxpayers of Jamaica, to whom the OCG's obligations alone are owed, fully informed of matters that are of concern to them in respect of the expenditure of their tax dollars by the Government of the day.

And it is solely in this context that I am particularly obliged to mention the Jamaica Observer Newspaper. The Observer has taken issue with the OCG's publication of Media Releases, particularly those in which the OCG has sought to inform the public about the commencement of its Special Investigations and its reasons therefor.

Quite instructively, however, the Observer's attacks upon the OCG have occurred, and have occurred with uncharacteristic venom, only whenever the matter of the construction and the divestment of the Sandals Whitehouse Hotel have come under the public scrutiny of the OCG.

The hotel, which was previously majority-owned by the Government, and which was constructed at a cost of approx. US\$110 million in 2005, was, in 2011, divested by the Government, under highly questionable circumstances, to a company, Gorstew Ltd., that is owned and controlled by the very owner of the Jamaica Observer Newspaper itself, the Hon. Gordon 'Butch' Stewart, OJ.

The hotel was divested to Gorstew at a sales price of only US\$40 million – some US\$70 million below its initial construction cost value – with an associated proviso for \$32.5 million of the sales price to be financed by a Government provided mortgage, which is to be repaid by Gorstew in 30 equal quarterly instalments, over 7 ½ years, at an annual interest rate of only 6%.

The circumstances surrounding the divestment, have been under investigation by the OCG since January 2011, but has now become the subject of a law-suit which was filed on September 7, 2012, by Gorstew, in which Gorstew is seeking to block the OCG's investigation into the matter.

In the circumstances, the obvious self-serving and conflicted motives of the Observer, in attacking the OCG on the propriety of its issue of Media Releases regarding the matter, must, therefore, be called into question and should be seen for what it is.

There is no place on the OCG's agenda for the concealment or withholding of information which pertains to the lawful discharge of the OCG's Statutory mandates. Further, one of the fundamental pillars on which the OCG stands, is that of 'Transparency'.

As such, inasmuch as the OCG expects all Public Bodies to be transparent in their daily operations, particularly as it relates to matters which concern their procurements and their divestment of State assets, the expectation must also be the same for the OCG as it seeks to faithfully, fearlessly and dispassionately discharge its mandates under the Contractor General Act.

The misguided, double-standard and unfounded nature of the criticisms that have been levelled against the OCG, in the foregoing regard, have been extensively addressed by me at pages 33 to 44 of my 2010 Annual Report to the Parliament. A copy of that Report can be perused on the OCG's website at <http://www.ocg.gov.jm>. I have also already fully ventilated the matter, and have comprehensively defended my postures regarding same, in person, on February 17, 2011, before a Joint Select Committee of the Parliament of Jamaica.

I must, therefore, reiterate that the OCG has absolutely no apologies whatsoever to make to any person, authority or entity, regarding the issue. Indeed, I would, instead, wish to use this medium to reassure all well-thinking Jamaicans that, so long as I shall remain the Contractor General of Jamaica, the OCG will continue, at its sole discretion, to lawfully issue, without fear or without favour, Media Releases in its quest to keep the Jamaican public informed of its work and its anti-corruption activities.

For ease of reference, and to provide an insight into the extent to which the OCG has gone, in 2011, to keep its stakeholders apprised of its work, its concerns and its positions on a variety of pertinent issues, I have set out, hereunder, the titles of the OCG Media Releases and the Letter to the Editor that were issued during the year.

Please also note that the content of all of the referenced documents can be viewed or downloaded from the OCG's official website at <http://www.ocg.gov.jm>.

Media Releases

1. Government Fails To Comply With OCG Requisition Regarding Allegations Of Secret Talks For Sale Of Sandals Whitehouse Hotel (January 7, 2011)
2. Government Complies In Part With OCG's Requisition Regarding Sale Of Sandals Whitehouse Hotel - Formal OCG Investigation To Be Launched - Immediate Steps To Be Taken To Submit Interim Report To Parliament (January 7, 2011)
3. Office Of The Contractor General Writes To Prime Minister To Recommend Halt Of Sale Of Sandals Whitehouse Hotel To Gorstew Limited (January 19, 2011)
4. OCG Challenges Statement Made By Minister Of Information Regarding Sandals Whitehouse Issue (January 26, 2011)

5. OCG Launches Searchable Internet Database Covering All NCC Government Contract Endorsements Going Back To June 2000 (January 29, 2011)
6. Statement Of The Office Of The Contractor General Regarding Editorial Of The Observer Newspaper (January 31, 2011)
7. OCG Registers Unprecedented 100% QCA Report Compliance Rate For The Eighth Consecutive Quarter - Contractor General Thanks Public Bodies (February 1, 2011)
8. OCG's Chief Investigator Selected As Jamaica's Sole Representative To Attend Major Corruption Control Programme In Singapore (February 2, 2011)
9. Inaccurate Statements Made By The Minister Of Information At Post Cabinet Press Briefings Regarding Documentation Furnished To Office Of The Contractor General By The Government In The Sandals Whitehouse Hotel Matter (February 3, 2011)
10. Office Of The Contractor General To Audit All Parish Councils (March 3, 2011)
11. Keynote Presentation By The Contractor General On "The Need For Political Will And Effective Law Enforcement In The Fight Against Corruption In Regional Jurisdictions - Jamaica Case Study: Proposal For A Single Independent National Anti-Corruption Agency" - First Regional Law Enforcement Anti-Corruption Conference In Kingston (March 23, 2011)
12. Office Of The Contractor General Concludes Investigation Into Allegations Of Improper Procurement Practices At The Sugar Company Of Jamaica (March 29, 2011)
13. OCG Succeeds Substantially In Removing Corruption From The Government Works Contractor Registration Process And Clears Backlog Of Applications (April 5, 2011)
14. OCG Renews Call For More Aggressive Action In The Fight Against Corruption In Jamaica - Points To Arrest Of Chief Organizer Of 2010 Delhi Commonwealth Games Following Corruption Probe (April 25, 2011)
15. Office Of The Contractor General Concludes Special Investigation Into Questionable Security Contract Entered Into By The PCI (May 3, 2011)
16. Office Of The Contractor General Registers Unprecedented 100% QCA Report Compliance Rate For The Ninth Consecutive Quarter (May 3, 2011)
17. Contractor General Responds To Chairmen Of Pac And Infrastructure Committees Of Parliament Regarding Questions And Concerns Raised About Jamaica Development Infrastructure Programme (JDIP) (May 6, 2011)
18. OCG Writes To NWA Outlining Particulars Of Its Failure To Comply With OCG Requisitions For The Provision Of Information On JDIP Project (May 16, 2011)
19. OCG Concludes Investigation Into Circumstances Surrounding The Selection Of The Exmar Consortium As The Preferred Bidder For Jamaica's FSRU LNG Project (May 17, 2011)
20. Keynote Presentation Of The Contractor General Delivered At The 68th Annual Joint Central Conferences Of The Jamaica Police Federation At Breezes Trelawny Hotel, Falmouth, Jamaica (May 25, 2011)
21. OCG Uncovers Evidence Of Corruption And Another Major Fraud In The Award Of Government Contracts (May 30, 2011)
22. OCG Extends Probe To All Contractors Who Have Received Contracts From Parish Councils - Sends Additional Information To Police Commissioner (May 31, 2011)

23. OCG Issues Statutory Demand For The Provision Of Project Particulars Regarding \$800 Million One (1) Km Christiana Roadway (June 3, 2011)
24. OCG Disassociates Itself From False Claim Made By The Observer Newspaper On The LNG Matter - Reiterates Positions Outlined In Investigation Report (June 8, 2011)
25. Statement Of The OCG Regarding Mr. Stephen Wedderburn, The Government Of Jamaica's LNG Project Coordinator (June 14, 2011)
26. OCG Moves To Correct False Inferences Made In Sunday Observer About Disappearance Of Witness In KSAC Matter And To Clarify Its Positions (June 20, 2011)
27. OCG Responds To Call For Investigation Into Alleged 'Financial Relationship' Between The Prime Minister And Contractor Y.P. Seaton And Associates (June 22, 2011)
28. OCG Publishes Particulars Of JDIP Sub-Contractors And Contract Awards (June 27, 2011)
29. US State Department Invites Contractor General To Attend High Level International Meeting On Open Government Partnership To Speak On 'Fighting Corruption' (June 30, 2011)
30. OCG To Launch Special Investigation Into Award Of Us\$400 Million JDIP Contract To CHEC After Works Permanent Secretary Fails To Substantiate Public Statements Made By Works Minister Mike Henry (July 22, 2011)
31. OCG Secures Dramatic Culture Shift In Public Body Compliance And Discipline In Jamaica - Registers 100% Report Compliance Rate For The Tenth Consecutive Quarter (August 3, 2011)
32. Court Actions Brought By Three Former Office Of The Contractor General Employees Dismissed By Court Of Appeal (August 24, 2011)
33. OCG Makes Disclosure Regarding Its LNG Investigation Following Issue Of DPP's Opinion In The Matter (September 22, 2011)
34. Contractor General Writes To The Jamaica Observer Newspaper To Express Concerns Regarding False And Libellous Claims Made By It Against The OCG (September 25, 2011)
35. OCG Concludes Investigation Into Government Contract Awards To Company Allegedly Owned By MP Everaldo Warmington, Strathairn Construction Company Limited (SCCL) (September 28, 2011)
36. Contractor General Selected To Deliver The Seventh Annual Caribbean International Network (CIN) Lecture At New York's Schomburg Center (September 30, 2011)
37. Contractor General Submits 2010 Annual Report To Parliament - Accepts Invitation To Appear Before PAAC To Review Status Of OCG's Accounts (October 11, 2011)
38. Contractor General Writes To Prime Minister To Express Increasing Concerns About Divestment Of State Assets Without Transparency And Competition (October 18, 2011)
39. UDC To Request Termination Of Bashco Contract - OCG Commends UDC (October 20, 2011)
40. Contractor General Argues That There Is No Political Will To Fight The Scourge Of Corruption In Public Contracting In Jamaica (October 27, 2011)
41. Contractor General Initiates Discussions With Prime Minister About Perception Of Corruption In Jamaica And OCG's Remedial Recommendations (October 31, 2011)
42. OCG Registers Unprecedented 100% QCA Report Submission Compliance Rate For The Eleventh Consecutive Quarter (November 1, 2011)

43. OCG Expands Ambit Of Investigation Into UDC's Attempted Divestment Of 35 West Parade - Another Tenant Alleges That It Made Offers To Purchase Property (November 2, 2011)
44. OCG Launches Investigation Into Alleged Scrap Metal Export Breaches (November 4, 2011)
45. OCG Makes Unannounced Visit At Jamaica Customs To Secure Scrap Metal Documents (November 7, 2011)
46. Statement Of The OCG Regarding The UDC's Decision To Complete The Sale Of Its Property To Bashco Trading Co. Ltd. (November 10, 2011)
47. OCG Believes That Political Parties Should Publicly Debate Corruption And Governance Deficits And Commit To Corrective Actions To Deal With The Problem (November 21, 2011)
48. Landmark Decision And Convictions Handed Down In The Criminal Courts For Failure To Comply With A Lawful Requisition Of A Contractor General (November 24, 2011)
49. OCG Expresses Alarm At DPP's Responses To Its Media Release And Produces Documentary Proof Of The Veracity Of Its Assertions (November 25, 2011)
50. OCG Commences Enquiry Into Procurement By The NWA Of J\$62 Million Worth Of Office Furniture Utilizing Palisadoes Shoreline Protection Project Contract Funds (November 29, 2011)
51. The Perception Of Corruption In Jamaica Remains Unchanged - Transparency International Scores Jamaica At 3.3 Out Of 10 In Its 2011 CPI Rankings (December 1, 2011)
52. OCG Refers Danville Walker For Criminal Prosecution For Obstructing The OCG's Scrap Metal Investigation And For Failing To Provide Requisitioned Information (December 15, 2011)

Letter to the Editor

1. Letter to the Editor Of The Observer Newspaper - Re Article Entitled "No Evidence Linking Moore, Wedderburn to Corruption, DPP tells Christie" (September 25, 2011)

8. OVERVIEW OF YEAR 2011 - COURT ACTIONS BROUGHT BY THREE FORMER OFFICE OF THE CONTRACTOR GENERAL EMPLOYEES

The appeals that were brought by three (3) former Office of the Contractor General (OCG) employees, against an April 2010 Ruling of the Supreme Court which struck down their actions to have their "*dismissals*" from the OCG quashed, were, in turn, dismissed by the Court of Appeal on July 29, 2011.

Costs, to be taxed or agreed, were also awarded against the three (3) employees, in favour of the Contractor General.

The three (3) former employees, two of whom were represented by former Contractor General, Mr. Derrick McKoy, and the third, who was represented by Mr. Carlton Williams, instructed by McKoy's Law Firm, Williams, McKoy & Palmer, had, in June 2009, instituted *ex parte* civil proceedings in the Supreme Court against the Contractor General, in which they claimed that they were unlawfully dismissed.

However, in an April 30, 2010 Ruling, Mr. Justice Andrew Rattray found that the procedural failure of the Attorneys for the Applicants to file the required Claim for Judicial Review within 14 days of the receipt, on July 3, 2009, of Leave to Apply for Judicial Review, had violated Rule 56.4 (12) of the Civil Procedure Rules and had, accordingly, struck a fatal blow for the claims of the Applicants.

In relying upon the Jamaica Court of Appeal's April 2008 decision in the case of **Orette Bruce Golding and the Attorney General of Jamaica v. Portia Simpson Miller**, Justice Rattray emphasized that *"There is no shortcut to obtain access to the corridors of Justice. The procedural rules must be obeyed"*.

In patent contradiction to the allegations which they had made, the three (3) employees' contracts of engagement with the OCG were terminated on April 30, 2009, by the Contractor General, in strict compliance with Clause 9 thereof. Clause 9 provided, verbatim, as follows: *"TERMINATION – The Contractor General may at any time, terminate the engagement of the employee by giving three (3) months' notice in writing or by giving three (3) months' salary in lieu of notice"*.

The contracts of the three (3) – two (2) Managers and one (1) Technical Services Officer – were terminated after a brief internal OCG Investigation was conducted into allegations that they had received, but had failed to further communicate, a report that an attempt was made by a Government Contractor to bribe a subordinate OCG employee.

The Government Contractor had allegedly offered the subordinate OCG employee \$75,000 to assist him to register his company with the National Contracts Commission (NCC). The subordinate OCG employee had, in turn, claimed to have reported the matter to the three (3) referenced staff members, who took the matter no further.

Contrary to the claims that have been made by a Jamaica Observer Newspaper Editorial of September 2012, in which the Observer falsely contended that *"Mr. Christie (the Contractor General) had to fire three members of staff of the OCG for corruption"*, the contracts of the three (3) members of staff were terminated, not for *"corruption"*, but primarily for their failure to further report, to the Contractor General, the matter that was brought to their attention. These are matters that are unequivocally substantiated by the OCG's court filings in the case.

As I have indicated previously, the OCG, since 2009, has instituted aggressive measures in a proactive effort to root out corruption from the NCC's Government Contractor registration and re-registration processes, after a former long-serving OCG employee was asked to resign in April 2008 on suspicion of involvement in a massive Contractor registration corruption conspiracy.

The employee was subsequently arrested by the Fraud Squad on multiple criminal charges of corruption, forgery, conspiracy, and obtaining money by means of false pretences – all of which were related to several irregular NCC Government Contractor registration applications.

Scores of Government Works Contractor files have since been internally scrutinized by the OCG, on a 'Zero Tolerance' basis, to determine if the applicants are scam or fraudulent Contractors. Additionally, certain covert OCG systems and procedures have been developed and activated to isolate any forged, fraudulent or otherwise irregular Contractor registration applications that are likely to be submitted to the NCC through the OCG.

9. OVERVIEW OF YEAR 2011 - LANDMARK DECISION HANDED DOWN IN THE LOCAL CRIMINAL COURTS FOR BREACHING CONTRACTOR-GENERAL ACT

The year 2011 saw a landmark decision, in favour of the OCG, being handed down in the Corporate Area Criminal Courts in November. The Presiding Judge ruled that a failure by the then Chief Executive Officer of the National Works Agency (NWA), to comply with a lawful requisition of a Contractor General, without lawful justification or excuse, was a *"strict liability"* offence under the Contractor-General Act.

The defendant was found guilty on two (2) counts under Section 29 (b) of the Contractor-General Act, and the relevant sanctions were applied accordingly. Though the sanctions, under the Law, were paltry (viz. a mere J\$5,000.00 or 30 days in prison for each count), the Ruling, nevertheless, was significant, since the OCG, over the previous three (3) year period, had formally conveyed several similar referrals to the incumbent Director of Public Prosecutions, but without any success.

The OCG had always insisted that such prosecutions should be pursued with vigour, notwithstanding the *de-minimis* nature of the penalty, for the simple reason that the conduct in question had been outlawed by the Criminal Code and, as such, the Rule of Law should be upheld.

The Ruling was welcomed by the OCG, particularly since it has presumably sent a clear signal to Public Officials, and to private citizens alike, who might have previously held the misguided view that OCG Referrals of like nature, although well grounded, would never be acted upon by the State's criminal prosecutorial authorities.

Notwithstanding the referenced conviction, the OCG, however, continues to maintain that much more needs to be done to deter those who are bent on breaching the State's procurement laws for their personal gain.

Until and unless significantly increased custodial and pecuniary sanctions are promulgated into law, and enforced, would-be perpetrators will not be sufficiently deterred. The urgency for such legislation, cannot, therefore, be over-emphasized.

10. PROPOSAL FOR A SINGLE INDEPENDENT ANTI-CORRUPTION AGENCY FOR JAMAICA

On May 10, 2012, during the Governor General's Throne Speech to the Parliament, the Government announced its intention to pass legislation in the current Legislative Year to "*rationalize Jamaica's institutional arrangements for fighting corruption, by consolidating them under a single anti-corruption agency having strong powers*".

The proposal for the establishment of a single Anti-Corruption Commission (ACC), for Jamaica, was one that was first formally advanced by me, in my capacity as Contractor General, from as early as March 22, 2010.

Following the Governor General's pronouncements, by way of letter that was dated May 24, 2012, the Minister of Justice, Senator the Hon. Mark Golding, wrote to me to advise that he had established an Advisory Committee, chaired by retired Supreme Court Judge, Mr. Justice Karl Harrison, to formulate legislative proposals for the aforementioned purpose.

The Minister further advised that the Committee would contact me in due course "*so that they can benefit from your views and recommendations in relation to the proposed reform*".

I subsequently received a letter that was dated June 18, 2012, from the Chair of the Advisory Committee, in which my comments on the above-referenced proposal were invited. I now set out, hereunder, for the record, a verbatim transcript of my letter of response, dated June 18, 2012, to the Chair of the Minister's Advisory Committee.

"June 18, 2012

Mr. Justice Karl Harrison
Chairman
Advisory Committee – Proposed Single Independent Anti-Corruption Commission
Ministry of Justice
NCB (South) Tower, 2 Oxford Road
Kingston 5

Dear Chairman Harrison:

Re: Proposed Establishment of Single Independent Anti-Corruption Commission (ACC)

I am, indeed, privileged to write to you, in the captioned regard, to convey my gratitude for your letter of the 13th instant in which you have, among other things, invited my comments or views on the proposals which are embodied in your letter "or on any other area/matter which (I) might consider relevant", to the subject at hand.

The proposal for the establishment of a single Anti-Corruption Commission (ACC) for Jamaica was one that was first formally advanced by me, in my capacity as Contractor General, from as early as March 22, 2010.

The proposal was then embodied in an open letter, dated March 22, 2010, which was directed by me to the then Prime Minister of Jamaica, the Hon. Bruce Golding, with copy to the then Leader of the Opposition, the Speaker of the House and the President of the Senate.

My expressed intention to advance the referenced proposal, and the reasons for so doing, are also extensively documented at pages 15-19 of the Office of the Contractor General's (OCG's) 2009 Annual Report to the Parliament of Jamaica. A copy of this Report is enclosed herewith.

The referenced proposal has since been repeated and substantiated by me in several subsequent publications, inclusive of the OCG's 2010 Annual Report to Parliament at pages 14 through 21 (copy also enclosed), as well as in the following two (2) Presentation documents:

- (1) Key-Note Presentation entitled '**The Need for Political Will and Effective Law Enforcement in the Fight Against Corruption in Regional Jurisdictions – Jamaica Case Study: Proposal for a Single Independent National Anti-Corruption Agency**', delivered by me at the First Regional Law Enforcement Anti-Corruption Conference, on March 23, 2011, at the Pegasus Hotel, Kingston.
- (2) Lecture Presentation entitled '**The Fight to Secure Integrity, Transparency and Accountability in the Award of Government Contracts in Jamaica**', delivered by me as the Seventh Annual Lecture in The Caribbean International Network (CIN) Lecture Series, on October 26, 2011, at The Schomburg Center, New York City, New York.

The first Presentation above examines, among other things, the problem of corruption generally, why and how it must be relentlessly fought, the failings of Jamaica's present anti-corruption institutional system, and the reasons why the OCG is of the considered view that the Government's proposal, for the establishment of an **Office of the Special Prosecutor**, as presently conceptualized, is not one which will effectively or efficiently resolve Jamaica's challenging corruption problems.

Most importantly, however, the Presentation goes further to substantiate and to renew the earlier proposal that I had made for the establishment of single independent ACC for Jamaica, merging, at a minimum, the functions of the Parliamentary Integrity Commission, the Corruption Prevention Commission and the OCG, and vesting in same, full criminal investigation, arrest, detention and prosecutorial jurisdictional powers in respect of all corruption related matters.

The second Presentation, among other things, has itemized, in summary form, some twenty-six (26) remedial Recommendations that have been formally submitted by the OCG, throughout my tenure as Contractor General, to the Executive and Legislative arms of the State, over the past few years, but in respect of which little or no satisfactory actions have yet been taken.

The Recommendations have been made, in a concerted and diligent effort on the part of the OCG (a) to significantly enhance transparency, competition, accountability and probity in public contracting in Jamaica, (b) to ensure compliance with the Government's Procurement Procedures and Guidelines, (c) to eliminate waste and inefficiency in the award and implementation of contracts, (d) to prevent fraud and corruption in Government contracting, (e) to strengthen the independence of the OCG, and (f) to generally win the battle against corruption in Jamaica.

It is my considered and respectful view that any reform of the current legislative regime, which involves the Commission of the Contractor General, inclusive of the proposed ACC, should, as a matter of course, also address the referenced recommendations.

In a proactive move to ensure that your Committee was duly apprised, at the earliest possible opportunity, of the OCG's views on the subject of the proposed single independent ACC for Jamaica, I have already proactively made copies of the above-referenced two (2) Presentation documents, together with a copy of the **Sierra Leone Anti-Corruption Act (2008)**, available to the Hon. Minister of Justice, Senator Mark Golding. The Minister has advised me in writing that he has since conveyed the said documents to you.

In keeping with your request, in summary, and in addition to what has already been outlined by me in the foregoing documents, I would now, therefore, like to emphasize and highlight the following **minimum** considered OCG recommendations, to assist your Committee in its deliberations:

- (1) At a minimum, the OCG would respectfully recommend that the Parliamentary Integrity Commission, the Corruption Prevention Commission, and the OCG, should be merged into a single entity which should become Jamaica's National **Independent** Anti-Corruption State Agency or, otherwise, what your Committee has referred to as the ACC.
- (2) Subject to Section 94 of the Constitution, the proposed ACC should then be vested with the **exclusive** statutory authority to criminally investigate and prosecute all corruption related offences, and to otherwise perform all of the other functions that are now being discharged by the referenced three (3) Commissions. The ACC should also be vested with police powers of arrest and detention.
- (3) Since one of the primary objectives of the subject proposal is to bring all of the State's corruption related criminal investigatory and prosecutorial authorities **under a single authority that is wholly independent of the Executive Arm of the State**, it follows that agencies such as the Ministry of Finance's Financial Investigations Division (FID), the Ministry of National Security's Major Organized Crime and Anti-Corruption Task Force (MOCA), and the Jamaica Constabulary Force's Anti-Corruption Division – to the extent that some or all of their current functions involve the investigation and/or prosecution of corruption related offences – should be re-structured to divest the said functions to the proposed ACC.
- (4) Since another primary objective of the proposal is also to bring the current core functions of the OCG, the Integrity Commission and the Corruption Prevention Commission under the umbrella of a single independent State authority, it is respectfully recommended that the proposed ACC should also be so structured, organized and resourced to ensure that the referenced functions can be cost-effectively and efficiently administered by the new single independent ACC.

The functions of the proposed ACC, should, therefore, necessarily include the monitoring and investigation of the award of Government contracts and licences, and the receipt, review, and investigation of the annual statutory declarations of income, liabilities and assets that are currently required to be filed by public officials, inclusive of parliamentarians.

- (5) In recognition of the fact that certain societal considerations, such as culture, values, attitudes, ethics and principles, do play a significant role in the fight against the scourge of corruption, the proposed ACC must also be so organized to ensure that one of its primary functions is the development and deployment of community-based corruption prevention and education programmes that are aimed at not only enlisting the assistance of the wider society in changing the culture that promotes corruption, but also of educating the society about the debilitating and destructive effects of corruption.

- (6) It is further recommended that the proposed ACC should be established as an independent Commission of Parliament. In the exercise of its powers and functions, the proposed ACC should not be subject to the direction or control of any other person or authority. The appointment procedure for the head of the ACC, and its staff, should necessarily be removed entirely from the influence and control of the political directorate.
- (7) It is also further recommended that the ACC, its staff, their compensation, their tenure, the ACC's resources, its functions, etc., are fully insulated from interference by the Executive arm of the State. If not at the outset, then as soon as is reasonably possible, the establishment of the proposed ACC should be entrenched in the Constitution, as opposed to Statute, so as to protect the ACC, its staff, its organization, its resources and the discharge of its functions from arbitrary interference by the Executive arm of the State or by the Government of the day.
- (8) The proposed ACC and its leadership should be subjected to certain institutional checks and balances, inclusive of appropriate recall mechanisms for the leadership of the ACC to ensure the ACC's operational probity, accountability, efficiency and effectiveness.
- (9) The proposed ACC should be adequately resourced with the requisite specialist assets, skill-sets and independent criminal investigatory and prosecutorial resources, to enable it to deal independently with all corruption offences in a novel, focused, professional and significantly more efficient and effective way, to that which currently obtains.
- (10) The proposed ACC should be comprehensively staffed with a highly trained cadre of specialist anti-corruption criminal investigators, intelligence gathering officers, investigating attorneys and special operations team members, who should be entitled, under the law, to bear arms and to detain and effect criminal arrests of persons who are suspected to have committed acts of corruption.
- (11) Of critical importance is that provision must also be made for a cadre of highly trained specialist anti-corruption criminal prosecutors.
- (12) Additionally, provision must also be made for a full complement of technical, administrative and back-office support personnel. This should include forensic auditors, accountants, information technology experts, government contract and licence inspectors and investigators, and data analysts and researchers.
- (13) In a deliberate effort to secure optimum economies of scale and to eliminate the overlaps and duplicity of resources which are now a glaring feature of the present anti-corruption institutional framework – an institutional framework which is not only disjointed and splintered in its constituent elements and approaches, but which has proven to be highly ineffective, inefficient, under-resourced and non-responsive in combating the increasing levels of corruption that are perceived to be present in Jamaica – the proposed ACC should be designed from the ground up to ensure that the most independent, cost effective and efficient organizational structure and solution is secured.

Consequently, it is respectfully recommended that to approach the task by merely vesting “the assets and liabilities of the Integrity Commission, Commission for Prevention of Corruption and the OCG” in the proposed ACC, and *carte blanche* transferring all of the employees of the three (3) Commissions to the proposed ACC, would not only be counter productive to the above-stated objective, but would also be the wrong way of developing a major new organization such as the one that is being proposed.

The organization of the proposed ACC should be first designed, independently of the structures of the pre-existing Commissions and other institutions. Thereafter, the recruitment process could then take advantage, where appropriate, of the best proven skill-sets that the said pre-existing Commissions and institutions would have to offer.

- (14) As I have previously indicated, the establishment of the proposed ACC should not proceed in ignorance of the deficiencies, other than the lack of criminal investigatory and prosecutorial powers, that are currently existing in the legislative and institutional arrangements for the Integrity Commission, the Corruption Prevention Commission and the OCG.

In so far as the OCG is concerned, there are several areas of the Contractor General Act regime which are currently in need of legislative reform to ensure the improved effectiveness of the OCG in the discharge of its core function which is to ensure that Government contracts and licences are awarded impartially and on merit, and in circumstances that do not involve impropriety or irregularity.

- (15) To complement the proposed ACC, and to ensure expedition and seamless efficiency and effectiveness in the fight against corruption – from detection through to investigation, from investigation to prosecution, and from prosecution to judicial adjudication – the OCG would respectfully propose that favourable consideration should also be given to the contemporaneous implementation of one of the following judicial adjudication options:

- (a) the establishment of a special 'Corruption Court' in Jamaica to adjudicate upon all corruption related offences;
- (b) the assignment of special magistrates and judges to deal with the said matters or;
- (c) the giving of precedence, in the current courts' system, to the adjudication of all corruption related matters, save and except for capital and other serious offences.

- (16) The final element to the OCG's proposal, which, it is respectfully recommended, should also be addressed by the State, as a matter of urgency and necessity, is the OCG's oft-repeated call for the imposition of significantly tougher criminal sanctions, inclusive of mandatory custodial and economic based penalties where appropriate, for all corruption related offences, inclusive of the offences which are currently specified under the enabling legislation for the three (3) above-referenced Commissions.

I trust that the foregoing comments and recommendations will be of assistance to you and the members of your Committee and I ask that you accept my assurances that my staff and I, here at the OCG, will stand ready to meet with your Committee at your earliest possible convenience.

I have taken the liberty of enclosing, herewith, a copy of the OCG's' 2009 and 2010 Annual Reports, for your information. I trust that it will place your Committee in a position to be more appropriately advised of the details of not only the work of the OCG, but also the particulars of its concerns and the challenges that it currently faces in the discharge of its mandate and its functions under the Contractor General Act.

I avail myself of this opportunity to renew to you the assurance of my highest considerations.

Very respectfully yours,

Greg Christie (Signed)

Greg Christie
Contractor General

Copy: Senator the Hon. Mark Golding, Minister of Justice.

11. KEYNOTE SPEAKER ADDRESS BY THE CONTRACTOR GENERAL TO THE FIRST REGIONAL CARIBBEAN LAW ENFORCEMENT AND ANTI-CORRUPTION CONFERENCE

On March 23, 2011, I delivered the Key-Note Speaker Presentation at the First Regional Law Enforcement and Anti-Corruption Conference, which was convened at the Jamaica Pegasus Hotel in Kingston.

The full text of my Presentation, which is entitled - '**The Need for Political Will and Effective Law Enforcement in the Fight Against Corruption in Regional Jurisdictions – Jamaica Case Study: Proposal for a Single Independent National Anti-Corruption Agency**', is now reproduced, herein, as follows:

"A. INTRODUCTION - WHY THE BATTLE AGAINST CORRUPTION MUST BE FOUGHT AND WON AT ALL COSTS

By all accounts, corruption is one of the most frightening and ominous threats that we face as a people and as a region today. Indeed, corruption is, without doubt, one of the greatest obstacles which continue to stand, in particular, in Jamaica's path to sustained economic growth and development.

But corruption is not a scourge which is confined to Jamaica, or to our region alone.

It is a global concern if only because there is abundant evidence that it has the capacity to undermine democracy, stability and the rule of law, as well as to drive fragile countries towards State capture or State failure. Indeed, the cancerous and corrosive impact of corruption is alarmingly horrendous and devastating in its reach.

Corruption:

- (a) erodes the general quality of life of the populace;
- (b) widens the division between the privileged and the under-privileged;
- (c) denies the poor access to basic entitlements, such as water, electricity, roads, health care, housing and education;
- (d) leads to human rights violations;
- (e) re-directs lucrative State contracts, licenses and assets into the hands of friends, supporters and financiers of crooked politicians;
- (f) results in the sub-standard execution of government contracts;
- (g) endangers public health and safety;
- (h) steals customs revenues;
- (i) adulterates ethical standards in the society;
- (j) hijacks and expropriates political elections;
- (k) distorts financial markets;
- (l) reduces investor confidence;
- (m) drives up the price of goods and services;
- (n) undermines or destroys confidence in critical public institutions; and
- (o) enables organized crime, terrorism and other threats to human and national security to flourish.

Defined generally as the abuse of public office for private gain, and fuelled primarily by greedy and immoral public officials and politicians, corruption, for the most part, is insidious in its very nature and in the way that it operates.

Bribery, extortion, kickbacks, graft, fraud, blackmail, embezzlement, nepotism, cronyism, links between politicians and organized criminal elements, influence peddling, and the abuse of one's public office for political gain, or to pervert the course of justice, are but a few of its direct and indirect manifestations.

Generally speaking, corruption will typically involve at least two (2) criminally culpable parties – the third party who pays the bribe, and the public officer who receives the bribe.

Although most jurisprudential systems do not distinguish between types of corruption, there are, also, degrees of corruption, such as petty corruption and grand corruption.

The former arises in instances in which relatively small sums of money are paid to corrupt public officials, to either 'grease the wheels', forego police enforcement action for infractions of the criminal law, or simply to cut through bureaucratic red tape.

Grand corruption, on the other hand, is typically exhibited in instances in which huge sums of money are fraudulently paid to politicians, or to top ranking public officials, in order to win high value government contracts, to secure the divestment of lucrative state assets, or to benefit from the grant of priceless government licences and permits.

Irrespective, however, of what form it takes, or irrespective of its magnitude, the cancer of corruption, wherever it is allowed to take root and diffuse, can only spell doom for the socio-economic and political fortunes of a country and its people.

B. INSTITUTIONALIZED AND SYSTEMIC CORRUPTION

When corruption is presumed to have permeated deeply into a country's institutions, and across all of its socio-economic spheres, or is considered to have become a societal way of life, it is no longer considered to be just a matter of a few greedy public officials, or dishonest citizens, feeding upon the system. At this stage, corruption can be likened to an aggressive cancer and is characterized as institutionalized or systemic corruption.

The phenomenon of systemic corruption is significantly related to poor standards of governance, accountability and transparency in government.

It will typically thrive in instances where anti-corruption and law enforcement institutions are either non-existent, weak or ineffective, where institutional checks and balances on entrusted power are missing, where governmental decision-making is obscure, where the rule of law is neither fully enforced nor respected, and where there is an absence of Political Will to do something about it.

From all indications, it appears that Jamaica is today at this place and, indeed, has been at this place for a long time.

In a 2008 ***Don Anderson Poll***, "*Too much corruption*" was ranked by Jamaicans as the "*Main Thing Wrong with Jamaica*". This was second only to "*Too much crime and violence*".

However, and quite alarmingly, in 2010, in a "*Most Negative Thing about Jamaica*" Poll, which was also conducted by ***Don Anderson***, "*Corruption*" shot to the top of the rankings, easily beating other public concerns such as the breakdown in law and order, bad examples set by leaders, dishonesty in general, and violence and crime.

The fact that corruption was viewed, in 2010, as the "*Most Negative Thing about Jamaica*", should be cause for great concern for all Jamaicans.

I say this particularly because the 2010 ***Don Anderson Poll*** came on the heels of the closure of year 2009 when Jamaica recorded 1,682 murders, its highest ever tally of murders in any single year.

Not surprisingly, the clear indications of the ***Don Anderson Polls***, were further corroborated only last week, on March 16, when the highly respected ***Latin American Public Opinion Project (LAPOP) Poll*** ranked Jamaica, in 2010, as the 2nd most perceived corrupt country in the Americas, after Jamaicans scored their own country at 81.7 points on a 100 point scale, where 0 indicates 'no perceived corruption', and 100 means 'perceived widespread corruption'.

But it is also instructive to note that the highly negative perception that Jamaicans have about corruption, in Jamaica, is by no means one that is confined to themselves.

Transparency International (TI), the International Anti-Corruption Watchdog, which currently ranks 178 countries in terms of the degree to which corruption is perceived to exist among their public officials, politicians and public institutions, has, over the years, consistently ranked Jamaica, not only as a "*highly corrupt*" country, but also as the most corrupt country in the English Speaking Caribbean – second only to Guyana.

Indeed, between 2003 and 2010, TI ranked Jamaica at no higher than 3.8, and as low as 3.1, on its annual Global Corruption Perception Indices (CPI), where a score of 10 is considered to be clean and 0, most corrupt.

In particular, in 2010, Jamaica was ranked at a CPI score of 3.3 and 87th out of 178 countries, after suffering a consistent four (4) year decline in the rankings when it scored 3.7 in 2006, 3.3 in 2007, 3.1 in 2008 and 3.0 in 2009.

By comparison, in 2010, Barbados was ranked 17th with a CPI score of 7.8, Dominica 44th with a CPI score of 5.2, Trinidad and Tobago 73rd with a CPI score of 3.6 and Guyana at 116th with a CPI score of 2.7.

But you might ask, exactly how does a country such as Jamaica, or any other country for that matter, overcome the scourge of systemic and institutionalized corruption?

Most, if not all, anti-corruption practitioners will tell you that the last two (2) features which I have enumerated above, in respect of States that are experiencing systemic corruption – namely the inadequate enforcement of anti-corruption laws, and the absence of Political Will – are the two (2) most significant issues which must be effectively tackled in any reformatory effort which seeks to decisively deal with the scourge of corruption.

C. POLITICAL WILL TO FIGHT CORRUPTION DEFINED

What, then, is Political Will?

Political Will is about the demonstrated desire, sincerity and actions of the Government of the Day not only to fight, but also to win, the battle against corruption.

Political Will requires that the State, led by the incumbent Administration, must take all requisite steps to put in place a comprehensive and independent anti-corruption institutional framework which is backed by:

- (a) adequate resources;
- (b) effective laws;
- (c) tough criminal custodial and pecuniary sanctions for breaches of those laws; and
- (d) anti-corruption institutional leaders who are prepared, without fear and without favour, to dispassionately and to forthrightly enforce those laws.

Political Will is, therefore, about walking the talk, not talking the talk. It is about action, not words, not tokenism, not pious rhetoric, or empty sloganeering and electioneering, but real action!

Political Will also means the demonstrated preparedness to take strong, courageous and decisive action against your own people and colleagues.

In particular, it demands that a Prime Minister must hold his Cabinet ministers and senior public officials fully accountable for their deviant conduct, or breach of trust, irrespective of the sacrifices that must be made, and irrespective of whether a penal institution must be their final destination.

Political Will, therefore, is not about a slap on the wrist, nor is it the doing of that which is politically expedient. It is about doing the **right** thing, and ensuring that the interest of the State will always have pride of place.

One of the indispensable and critical subsets of Political Will is what is called Corporate Will. This means ensuring that the right leadership exists at the top levels of each of the State's law enforcement and anti-corruption institutions.

Corporate Will calls for strong, fearless, independent, apolitical and ethical leadership that will not bow to the demands of the political directorate, nor to the dictates or desires of special interest groups, but who will forthrightly, fearlessly and dispassionately discharge his or her mandate at all times in the interest of the State.

Whenever there is a deficiency of Corporate Will in the State's anti-corruption institutional framework, Political Will demands that immediate steps should be taken to remedy the situation by, among other things, recalling or removing the leadership of the Agency from his or her office.

It is also important to recognize that the lack of Political Will can manifest itself in the deliberate creation of State anti-corruption structures, mechanisms and institutions, which are intended by the political directorate to appease the desire of its domestic and international stakeholders, but which are in effect mere facades.

Such structures are easily identifiable. While on paper they may look good, upon closer examination they will be found, either to be ineffective, weak, structurally deficient, lacking in teeth, lacking in critical resources, and/or led by political implants that are there to do the bidding of the political directorate.

Once this happens, the effectiveness of the State's anti-corruption institutional framework will be undermined, and the institution or the mechanism in question will be rendered literally useless.

In the final analysis, therefore, the concept of Political Will demands that the battle against corruption must be a State led initiative and imperative – one that is steered proactively and decisively from the top down.

Lee Kuan Yew, the former Prime Minister of Singapore, a country which has been consistently ranked by Transparency International as one of the least corrupt countries in the world, and which, in 2010, was ranked alongside Denmark and New Zealand as the world's least corrupt country, spoke quite aptly, succinctly and eloquently to the matter of Political Will, and corruption, when he put it this way:

“The moment key leaders are less than incorruptible, less than stern in demanding high standards, from that moment the structure of administrative integrity will weaken, and eventually crumble. Singapore can survive only if ministers and senior officers are incorruptible and efficient”.

D. EFFECTIVE ENFORCEMENT OF ANTI-CORRUPTION LAWS

The other imperative which must be regarded as a mandatory pre-requisite if systemic corruption is to be successfully combated in any regional jurisdiction, is that of the effective enforcement of the anti-corruption laws of the State.

This pre-requisite is, however, inextricably linked to the other imperative which I have just discussed – namely the Political Will of the State to ensure that a comprehensive and independent anti-corruption institutional framework is firmly in place, and is backed by:

- (a) adequate resources;
- (b) effective laws;
- (c) tough criminal custodial and pecuniary sanctions for breaches of those laws, and
- (d) anti-corruption institutional leaders who are prepared, without fear and without favour, to dispassionately and to forthrightly enforce those laws.

If any of the foregoing criteria is missing, then it must be clearly understood that effective enforcement cannot take place.

Effective enforcement will, therefore, and as a matter of course, require the following:

- (1) Anti-corruption laws which are effective, failing which the very laws themselves will hamper or obstruct enforcement.

To begin with, the State's anti-corruption laws must not only clearly define acts of corruption, but they must also be otherwise lucid and unequivocal in their meaning and import.

Anti-corruption laws must also be constantly reviewed in a proactive effort by the State to cauterize any loopholes which are indentified, criminalize any new developments in deviant behaviour which may be detected, and strengthen and impose existing sanctions so as to force conformance in instances in which the levels of compliance are less than that which is desired.

- (2) There must also be effective adjudication.

This means that the judicial process must be, and perceived to be, impartial, efficient and transparent. The rule of law must be enforced against all and respected by all. Put another way, the system must be one which is based on a *'Zero Tolerance'* approach.

Effective adjudication will also require speedy and effective investigation of suspected acts of corruption and, above all, aggressive, dispassionate and fearless prosecution.

Indeed, if the criminal investigative, prosecutorial and judicial arms of the State are not operating in lock-step with the relevant anti-corruption agencies, there will be no effective enforcement.

It stands to reason, therefore, that adequate provision should be made for corrective adjustments to be effected to the anti-corruption and law enforcement institutional framework, and for the recall or removal from office of the leadership of any constituent institution, whenever or wherever minimum standards of probity or accountability, or functional effectiveness and efficiency, are not being met.

- (3) An environment of deterrence must also be deliberately created and maintained.

What this means is that there must be such a high perception of risk, about engaging in corrupt activities, that anyone who contemplates the commission of an act of corruption, irrespective of his station in life or his status in society, must anticipate that in all likelihood he will be promptly detected, investigated, prosecuted and convicted.

However, without the taking of proactive and strategic steps to achieve such an outcome, any such desire will reside solely within the domain of the wishful thinking.

An environment of deterrence will only be effectively created where anti-corruption laws with powerful custodial sanctions are first promulgated and then forthrightly, swiftly and dispassionately enforced, to deter acts of corruption, and to aggressively force into conformance those deviant members of the society who are either unwilling to submit to the State's voluntary compliance systems, or who believe that they are above the law.

It is a fact that whenever a criminal's perception of the attendant risks is too low, he will proceed with his criminal conduct for the simple reason that his *risk/benefit analysis* of the situation will suggest to him that it will be beneficial for him to proceed.

It is also an incontrovertible fact that human beings will persist in a given course of deviant behaviour only if the State allows them to do so.

- (4) Anti-corruption institutions, law enforcement agencies, and the Judiciary must also be adequately resourced.

However, even in a low-resourced environment, some measure of effective law enforcement can still be achieved.

This can be accomplished by employing deliberate operating strategies which are designed to deter corrupt conduct and to drive *'the living fear'* into the hearts of those who would otherwise believe that they can successfully *'test'* the system.

In this regard, there is an old Chinese proverb which is instructive. It states, quite intuitively, *"Kill one and frighten 10,000"*.

E. JAMAICA CASE STUDY – WHY A SINGLE INDEPENDENT NATIONAL ANTI-CORRUPTION AGENCY FOR JAMAICA?

It is against the background of the foregoing principles, about why and how institutionalized corruption must be fought, that I will now turn to the situation in Jamaica, and the reiteration and substantiation of the call that was previously made by me, for the urgent establishment of a single Independent National Anti-Corruption Agency for Jamaica.

First, it is critically important for the Government and Parliament of Jamaica to recognize that their respective efforts, so far, at tackling Jamaica's systemic corruption, have been simply inadequate.

Indeed, and quite apart from the *Don Anderson, LAPOP and Transparency International Surveys*, the evidence that Jamaica's anti-corruption institutional framework has failed miserably to get the job done, is suggestively overwhelming and incontrovertible.

For years, and despite having on paper what some might regard to be a relatively comprehensive anti-corruption institutional framework, corruption in Jamaica, particularly the corruption that is perceived to be taking place in high places, has enjoyed a field day.

One of the reasons for this is that there is credible evidence that Jamaica's law enforcement and anti-corruption institutions, on the whole, have been ineffective in reigning in the *'big fish'* and the so called *'untouchables'* of the Jamaican society.

In my **2009 Contractor General's Report to the Parliament of Jamaica**, which was formally tabled in the **House of Representatives** on September 21, 2010, and in the **Senate** on October 29, 2010, I expanded on this issue by pointing out that, among other things, *"... we must be candid and concede that while much is often heard about the filing of charges against members of the police force for corruption offences, surprisingly very little is heard about the arrest and/or prosecution, on corruption charges, of the so called white-collar criminal ... such as members of the privileged classes of society, politicians, public officials and business-persons"*.

I went further and stated that *"... no one can credibly defend the proposition that police officers are the primary or only category of persons in our society who are involved in (corrupt) practices. But, curiously, the main focus of the fight against corruption in Jamaica, so far, seems to be directed towards members of the police force"*.

In my Annual Report, I also raised the following two (2) questions for reflection and consideration, both of which are still currently relevant and instructive:

- (1) *"How often, has anyone heard of a public official, (in Jamaica), being investigated, charged, arrested or prosecuted for the commission of the corruption offence of Illicit Enrichment which is specified under Section 14 (5) of the Corruption Prevention Act?"*

"Section 14 (5) of the Act provides that 'Where there is a significant increase in the assets of a public servant which cannot be reasonably explained, having regard to his lawful earnings, the significant increase shall be deemed to be an illicit enrichment and that public servant shall be deemed to have committed an act of corruption'; and

- (2) *"Why is it that corruption offences, such as that which is specified under Section 14 (1) (b) of the Corruption Act, are not being more widely employed by the investigative and prosecutorial authorities to aggressively tackle corruption right across the board in the (Jamaica) Public Sector?"*

"Section 14 (1) (b) of the Corruption Prevention Act provides, in overly simple terms, that a public servant commits an act of corruption 'if, in the performance of his public functions, he does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or (for) any other person".

Another primary reason why corruption has been having a free reign in Jamaica is that it has historically competed unsuccessfully for the attention of the Jamaica Constabulary Force (JCF), the Office of the Director of Public Prosecutions (ODPP) and the Judiciary.

In what has become an alarmingly imbalanced arrangement that is now seriously hurting Jamaica, corruption has repeatedly lost out, for attention, to offences against the person and, in particular, to an average national murder rate which now stands at more than 1,500 per annum for the past ten (10) years.

As a matter of fact, Jamaica's per capita murder rate, of 60 per 100,000 for 2009, and 51 per 100,000 for 2010, has now earned for it the indecorous title of *'One of the Leading Murder Capitals of the World'*.

It is also an irrefutable fact that the country's inordinately high rates of crime have literally swamped the already limited resources and assets of the JCF, the 41 attorney staffed ODPP and the local courts system.

Indeed, it was only on Monday last, on March 14, that prosecutors from the ODPP proceeded to initiate industrial action by staying away from work for as much as three (3) days.

In a story, which appeared in the *Gleaner Newspaper* on March 15, which was entitled ***"Sick' prosecutors cause retrial of murder accused"***, it was alleged that the prosecutors had resorted to the "sick-out" action *"because they said they were overburdened with work and the Government has refused to deal with the issue of increased salary and allowances"*. (My emphasis)

The relatively low clear-up rate for serious crimes, as well as the massive backlog of cases which are currently before the Jamaican courts, and which some estimates have placed as high as 400,000, also paint a telling picture of the disturbing and unacceptable inadequacies of Jamaica's anti-corruption, law enforcement and criminal justice systems.

But as if to deepen the problem regarding corruption in Jamaica, it is also arguable that neither the JCF nor the ODPP, was, in the first place, structured, or adequately resourced, to effectively and efficiently investigate and prosecute sophisticated crimes of corruption, or other potentially complex white collar crimes which have now come to the fore.

The situation is perhaps vividly illustrated by a very high-profile corruption case that involves a former Minister of State, which has been proceeding before the Jamaica Resident Magistrate's court for the better part of the last two (2) years, and which has suffered from innumerable adjournments and legal contentions.

Despite the fact that the accused persons were arrested more than three (3) years ago on February 26, 2008, following the submission, on February 4, 2008, of an Office of the Contractor General's Report of Investigation into the matter, and despite the fact that the prosecution of the case is being undertaken by the DPP, to date only three (3) of some 21 witnesses for the Crown have been reportedly called to give evidence.

But this is not all. There is also very persuasive evidence that the issue, in Jamaica, of the relative paucity of criminal prosecutions for offences involving corruption, as well as for other related offences, has now reached disproportionate if not crisis levels.

In the last four (4) months alone, the Anti-Corruption Branch of the JCF, the Office of the Contractor General (OCG), and the Commission for the Prevention of Corruption, have all publicly lamented the fact that several criminal matters which they have separately referred to the ODPP have not been prosecuted.

In the case of the JCF, on December 9, 2010, on International Anti-Corruption Day, the Assistant Commissioner of Police, Mr. Justin Felice, who oversees the JCF's Anti-Corruption Branch, while publicly acknowledging the JCF's outstanding successes in laying corruption charges against several low-ranking police officers, raised concerns, during a press conference, about referrals regarding senior police officers of the JCF which had been conveyed to the ODPP, but which had not resulted in criminal prosecutions.

On February 17, 2011, while appearing before a Joint Select Committee of Parliament, I, myself, tabled before the Committee, a formal written Report of the OCG, in which it was asserted that of the roughly 40 criminal Referrals which had been formally sent by the OCG to the incumbent DPP, in the preceding three (3) year period, not one has to date been brought before the courts to test its judicial efficacy.

Further, in a February 18, 2011 Jamaica *Gleaner Newspaper* story, which was entitled, '**Anti-Corruption Body Dissatisfied With DPP – Wants more public servants charged with statutory breaches**', the Commission for the Prevention of Corruption reportedly expressed concerns about the failure of the ODPP to prosecute literally thousands of matters, involving public officials, which had been referred to it by the Commission.

The following verbatim assertions, which were made in the news story, are instructive:

1. *"The Corruption Prevention Commission was established under the Corruption Prevention Act of 2000 and started operation in 2003. To date, the commission reports that more than 18,000 persons have been referred to the DPP. Of this number, (only) 512 have been acted on by the DPP.*
2. *For the period 2009-2010, the commission reports that 42 per cent of public servants ignored the statutory requirements under law.*
3. *In its annual report to Parliament, the commission raised serious concern about the small number of public-sector workers who had been brought before the court for violating the law.*
4. *During the year under review, the director of public prosecutions (DPP) hauled 51 public servants before the courts for infringing the law. Of this number, 28 have been fined for not submitting their statutory declarations on time whereas the DPP withdrew charges against 23 alleged delinquents.*
5. *In a swipe at the Office of the Director of Public Prosecutions, the commission signaled that it was dissatisfied with the number of matters thrown out by the DPP, noting that this frustrated the oversight body's efforts at reducing corruption".*

The above-referenced Agencies which, together, substantially constitute the vanguard of Jamaica's anti-corruption institutional framework, and which must rely **exclusively** upon the ODPP for the prosecution of all corruption and corruption related offences, do not stand alone in their views on the subject of the relative failings of Jamaica's current anti-corruption, law enforcement and criminal law prosecutorial systems.

The **United States of America (USA)**, which is, among other things, Jamaica's largest strategic ally and trading partner, has also publicly expressed similar concerns in terms of what it perceives to be the unacceptable levels of corruption which have overtaken Jamaica, as well as the inability or unwillingness of the Jamaican State to deal with the problem in a decisive, efficient and effective manner.

In its **2011 Department of State International Narcotics Control Strategy Report**, which was published world-wide on March 3, 2011, the United States Government (USG) stated quite matter-of-factly that "*...corruption (in Jamaica) is entrenched, widespread, and compounded by a judicial system that is poorly equipped to handle complex criminal prosecutions in a timely manner*".

Consequently, and while the JCF may have succeeded substantially in securing corruption charges against several police officers, over the past two (2) years, it should now be crystal clear that the battle against Jamaica's systemic corruption cannot be effectively won, unless and until the anti-corruption institutional framework is **radically and comprehensively** transformed, and the country's anti-corruption gun sights are turned fearlessly, vigourously and dispassionately towards the hallowed recesses of Jamaica's public, private and political institutions.

E. JAMAICA CASE STUDY – THE CONCEPT OF THE SPECIAL PROSECUTOR DOES NOT GO FAR ENOUGH

Consistent with the foregoing positions, and by way of an open letter, which was dated March 22, 2010, I wrote to the Prime Minister, the Leader of the Opposition, the Speaker of the House of Representatives and the President of the Senate, to recommend that urgent consideration should be given to the establishment of a National Independent Anti-Corruption State Agency for Jamaica, encompassing the Parliamentary Integrity Commission, the Corruption Prevention Commission and the OCG, and to vest in that Agency the exclusive constitutional law authority, among other things, to criminally investigate and prosecute all corruption related offences.

My proposal was subsequently substantiated and rationalized in the OCG's 2009 Annual Report to Parliament which was tabled in the House of Representatives on September 21, 2010, and in the Senate on October 29, 2010.

The *USG's March 2011 Department of State International Narcotics Control Strategy Report* has, to some extent, also underscored the proposal of the OCG.

The Report has observed that although *“A bill creating an Anti-Corruption Special Prosecutor (for Jamaica) was drafted in 2009 and remains under review prior to introduction before Parliament, there has not been legislative action to create a National Anti-corruption Agency which is required by the Inter-American Convention against Corruption to which Jamaica is a signatory”*. (My emphasis)

The latter reference in the Report supports, in principle, the positions of the OCG that although the concept of the Office of the Special Prosecutor, which is now very advanced towards becoming law, is a step in the right direction, it simply does not go far enough because, despite the fact that it will have arrest and limited criminal prosecutorial powers, it has sought only to merge the Jamaica Parliamentary Integrity Commission, and the Corruption Prevention Commission, but has excluded, from its purview, the OCG.

But how could, or why would, the Government of Jamaica (GOJ) conceptualize an Office of the Special Prosecutor to be Jamaica's all-embracing National Anti-Corruption Agency, but yet deliberately exclude from its ambit the OCG?

The question, which raises very serious concerns, is an extremely pivotal one for two (2) very germane and critical reasons.

First, the OCG is presently Jamaica's leading anti-corruption Commission. It is vested with the exclusive statutory authority, on behalf of the Parliament of Jamaica, to monitor and to investigate the award of all government contracts, licenses and asset divestments, with a view to ensuring probity, propriety and regularity in the said award processes.

Secondly, and although the OCG has extensive quasi-judicial powers of search, discovery, enquiry, subpoena and investigation, it is, however, well known that the OCG has absolutely no criminal investigation, arrest or prosecutorial powers, nor does it have any lawful authority to bring to a halt a government procurement or asset divestment process which is exhibiting signs of corruption, impropriety or irregularity.

Consequently, by refusing to address the shortcomings of the OCG in the Special Prosecutor anti-corruption institutional framework, the GOJ has curiously, and alarmingly, side-stepped the universally recognized fact that the largest opportunity that exists, in monetary terms, for corruption in any country, lies in the illicit manipulation of the award of government contracts and licenses, and the divestment of State assets.

Indeed, in an attempt to monetize the massive costs that corruption in public procurement can exact from a people, Transparency International, in a May 2010 publication, which is entitled *‘Corruption in Procurement’*, estimated that, based upon surveys at the country level, the cost of corruption in public contracting, expressed as a percentage of the value of the contract, was an average of 10-25% and, in the worst cases, as much as 50%.

Against the background of TI's survey findings, it is instructive to note that, in the case of Jamaica, more than J\$90 billion was expended in 2009 by over 190 public bodies, in their procurement of works, goods and services contracts. What is critically important to highlight, however, is that the referenced sum of J\$90 billion constituted virtually all of the disposable income that was available to the government in that year!

The State's exclusion of the OCG from the purview of the concept of the Special Prosecutor, and its inexplicable failure to give the OCG *real teeth*, is, therefore, in the above-referenced circumstances, not only mind-boggling, but it has raised very worrying questions about the depth of the Political Will of the Administration to deal forthrightly, comprehensively and convincingly with the problem of corruption in Jamaica.

The other primary and critical point which should be brought to the public fore, concerning the inadequacy of the proposed Special Prosecutor as the solution to Jamaica's corruption woes, is that, as currently conceptualized, it will not be an independent Agency but will, instead, be subjected to the prosecutorial directives and control of the ODPP.

This is, in the OCG's considered and respectful view, a step in the wrong direction, for, if we are all to call a spade a spade, we would have already seen that the ODPP, for a variety of reasons, is unable to efficiently and effectively deal with corruption related matters in Jamaica.

Beyond that, it is also now widely known in Jamaica that the referenced ODPP related issues are the identical issues which have led countries, such as *Sierra Leone*, to establish national independent anti-corruption agencies, with *exclusive criminal investigation and prosecutorial jurisdiction* over all corruption related offences.

Other countries, such as *Indonesia*, that are also seeking to wage an all out and relentless battle against endemic corruption, have vested in their national anti-corruption agencies the legal authority to take over corruption related investigations, as well as prosecutions, from the State's traditional police and prosecutorial authorities.

Indonesia's Corruption Eradication Commission, the Komisi Pemberantasan Korupsi (KPK), for example, is expressly authorized by law to step in and to take over criminal investigations and prosecutions in any of the following circumstances:

- (a) where a public corruption report is not being acted upon;
- (b) where there is incompetence or delay in corruption cases without sufficient reason;
- (c) where there is suspected bias in favour of the perpetrator;
- (d) where there are indications of corrupt elements in the conduct of corruption investigations;
- (e) where there are obstructions to the handling of a corruption case due to executive, judicial, or legislative intervention; and
- (f) where there are other circumstances which have hindered the capability of the Police or the Prosecutor's Office to conduct a proper investigation.

However, unlike the above-referenced countries, and despite Jamaica's systemic corruption difficulties, it would seem that the Jamaican Government has decided to adopt an anti-corruption posture that has not only defied logic and reason, but which has moved in a direction that is bound to raise legitimate concerns about its objectives and its commitment to fighting corruption.

The OCG is of the strong belief that, given Jamaica's unique corruption challenges, any single National Anti-Corruption Agency, for the country, should be an autonomous Agency, designed from the ground up, and having absolute independent criminal investigation and prosecutorial powers, subject only to the imposition of certain institutional checks and balances, to ensure its operational probity, accountability, efficiency and effectiveness.

This, it is respectfully submitted, should be the way forward unless the Executive and Legislative arms of the State are of the view that they can arrive at a new and effective anti-corruption dispensation for Jamaica, by essentially doing the same old things substantially the same way.

As has been the case with several other countries around the world, inclusive of *Sierra Leone and Indonesia*, which compelled themselves to take a hard, dispassionate and radical look at how the battle against corruption was being fought, and what they had to do differently to effectively over-come the problem, so too must Jamaica release itself from the chains of its traditional anti-corruption arrangements, for there is no doubt that these arrangements have proven to be abysmally ineffective in fighting the scourge of corruption in Jamaica.

G. JAMAICA CASE STUDY – KEY ELEMENTS OF THE OFFICE OF THE CONTRACTOR GENERAL’S PROPOSAL FOR A SINGLE INDEPENDENT NATIONAL ANTI-CORRUPTION AGENCY FOR JAMAICA

Ladies and gentlemen, it is, therefore, because of the foregoing considerations that the OCG has respectfully proposed that the solution for fighting corruption in Jamaica cannot be the Office of the Special Prosecutor as it is presently conceptualized, but must be an all-embracing, all-encompassing and autonomous National Anti-Corruption Agency, which is wholly unrelated to, and independent of the JCF and the ODPP.

Against this background, the OCG has, therefore, posited the following as the key elements of its proposal:

- (1) At a minimum, the Parliamentary Integrity Commission, the Corruption Prevention Commission, and the OCG, should be merged into a single entity which should become Jamaica’s National Independent Anti-Corruption State Agency. The Agency should then be vested with the exclusive constitutional law authority to criminally investigate and prosecute all corruption related offences, and to otherwise perform all of the other functions that are now being discharged by the three (3) commissions.
- (2) The appointment procedure for the head of the Agency should be removed entirely from the influence and control of the political directorate, and must be such that, at a minimum, the person who is appointed should possess the following key attributes:
 - (a) be professionally and academically qualified for the job;
 - (b) possess a proven track record of superior leadership, management and business organizational skill-sets;
 - (c) be apolitical and highly ethical in his or her professional outlook;
 - (d) be fearless, forthright, dispassionate and disciplined, but fair, in his or her approach;
 - (e) be prepared to boldly confront those who will need confronting; and;
 - (f) be able, at all times, and irrespective of the cost, to hold true to his or her oath to discharge his or her mandate and responsibilities solely in the interest of the State.
- (3) The Agency and its leadership should be subjected to certain institutional checks and balances, inclusive of appropriate recall mechanisms for the leadership of the Agency, to ensure the Agency’s operational probity, accountability, efficiency and effectiveness.
- (4) The Agency should be adequately resourced with the requisite *specialist* assets, skill-sets and independent criminal investigatory and prosecutorial resources, to enable it to deal with all corruption offences in a novel, focused, professional and significantly more efficient and effective way, to that which currently obtains.
- (5) The proposed Agency should be comprehensively staffed with a highly trained cadre of specialist anti-corruption criminal investigators, intelligence gathering officers, investigating attorneys and special operations team members, who should bear arms and be accorded special police powers of arrest.

This is the case with Singapore’s Corrupt Practices Investigation Bureau (CPIB), Indonesia’s Corruption Eradication Commission, the Komisi Pemberantasan Korupsi (KPK), and Hong Kong’s Independent Commission Against Corruption (ICAC).

- (6) Of critical importance is that provision must also be made for a cadre of highly trained specialist anti-corruption criminal prosecutors, and not general criminal prosecutors, such as is presently the case in Jamaica.
- (7) Additionally, provision must also be made for a full complement of technical, administrative and back-office support personnel. This should include forensic auditors, accountants, information technology experts, government contract and licence inspectors and investigators, and data analysts and researchers.
- (8) To complement the proposed Agency, and to ensure expedition and seamless efficiency and effectiveness in the fight against corruption – from detection through to investigation, to prosecution, to adjudication and to conviction – the OCG has proposed that favourable consideration should also be given to one of the following adjudication options:
 - (a) the establishment of a special '*Corruption Court*' to adjudicate upon all corruption related offences;
 - (b) the assignment of special magistrates and judges to deal with the said matters or;
 - (c) the giving of precedence, in the courts, to the adjudication of all corruption related matters, save and except for capital and other serious offences.
- (9) The final element to the OCG's proposal, which must be addressed by the State, as a matter of urgency and necessity, is the OCG's oft-repeated call for the imposition of significantly tougher criminal sanctions, inclusive of mandatory custodial and economic based penalties where appropriate, for:
 - (a) all corruption related offences;
 - (b) the three (3) offences that are currently specified under Section 29 of the Contractor General Act; and
 - (c) The offence which is established under Section 40 of the Public Sector Procurement Regulations that criminalizes breaches of the rules which govern the award of government contracts and licenses.

The three (3) Section 29 offences in question are (a) the failure to comply with a lawful requirement of a Contractor General; (b) obstructing a Contractor General in the lawful execution of his functions; and (c) wilfully making a false statement to mislead a Contractor General.

Despite the innumerable OCG recommendations which have been made to have the situation remedied, the sanctions for these three (3) critical anti-corruption offences, have remained, for the past 25 years, at the inexplicable level of '*J\$5,000, or imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment*'.

The situation with respect to criminal breaches of the Government's Procurement Rules and Procedures is not dissimilar.

On September 11, 2007, on the occasion of his official inauguration into office as the Prime Minister of Jamaica, the Hon. Bruce Golding, gave a solemn public commitment that "*criminal sanctions*" would be imposed for "*breaches of the rules governing the award of government contracts*". The Prime Minister also gave his assurance that "*... We are going to make it more difficult, more hazardous with stiff penalties for violations*". (My emphasis)

However, and notwithstanding the undertakings which were given, the sole sanction which was subsequently promulgated into law by Section 40 of the December 2008 Public Sector Procurement Regulations, for "*breaches of the rules governing the award of government contracts*", was "*... a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both*".

One thousand Jamaican dollars (J\$1,000), at current rates of exchange, is equivalent to less than US\$12, or roughly the price of four (4) loaves of bread.

The OCG believes that if the foregoing route is taken, an unprecedented and formidable institutionalized onslaught will be effectively facilitated, once and for all, to successfully tackle the pervasively corrupt elements in Jamaica who, so far, have been able to pursue their illicit affairs with little or no interference from the authorities.

It is also the considered view of the OCG that the proposed streamlined and consolidated effort of a single Independent National Anti-Corruption Agency for Jamaica, as outlined above, would, among other things, eliminate the overlaps and duplicity of resources which are now a glaring feature of the present framework – an institutional framework which is not only disjointed and splintered in its constituent elements and approaches, but which has proven to be highly ineffective, inefficient, under-resourced and non-responsive in combating the increasing levels of corruption that are perceived to be present in Jamaica.

H. JAMAICA CASE STUDY – SUPPORT FOR THE OCG’S PROPOSAL FOR A SINGLE INDEPENDENT NATIONAL ANTI-CORRUPTION AGENCY

The OCG’s proposal for the urgent establishment of a single Independent National Anti-Corruption Agency, for Jamaica, is not one which stands alone, nor is it one which is being presented without cogent, reasoned and/or independent third-party support.

The *Jamaica National Integrity Action Forum (NIAF)*, which was formally launched in January 2009 by the University of the West Indies’ Centre for Leadership and Governance, with the support of US-AID, and which has already established links with Transparency International (TI) with the objective of becoming TI’s Jamaican Chapter, has publicly pledged its support for the OCG’s proposal for the establishment of a single Independent National Anti-Corruption Agency, as the way forward for Jamaica in its fight against systemic corruption.

The NIAF’s endorsement of the OCG’s proposal was first widely publicized in an article that was published by the NIAF’s Director, Professor Trevor Munroe, in the *Sunday Gleaner and Sunday Observer Newspapers* of January 16, 2011.

Professor Munroe, in his article, which was aptly entitled: **“Catching the ‘big fish’: The need for a single anti-corruption agency”**, fully endorsed the OCG’s proposal and rejected the notion of the concept of the Special Prosecutor, when he opined as follows:

“The Corruption (Special Prosecutor) Act now before the Parliament, ... in effect, merges two of the country’s anti-corruption institutions and their functions into the new Office of the Special Prosecutor.

It, however, omits the Office of the Contractor General, arguably the country’s critical anti-corruption institution to the extent that corruption offences, especially by big fish in the public and private sectors, disproportionately relate to Jamaica’s public procurement system, and to the extent that it incorporates trained specialists in anti-corruption matters.

If we are to come to grips more effectively and urgently with the cancer of corruption eating away at Jamaica’s system of governance, this deficiency must be repaired.

There has been support for a single anti-corruption agency from significant elements in the media, civil society, the private sector, the parliamentary Opposition, and the governing Jamaica Labour Party, through the G2K. Prime Minister Golding himself has indicated that he “has an open mind” on the issue.

The proposed Special Prosecutor Act, in its present form, should not be allowed to close the issue. It should be “put on hold” either to facilitate amendments to approximate the single anti-corruption agency with prosecutorial powers, or to allow for the draft of a new bill to bring about this result.”

On March 7, 2011, at a formal NIAF Breakfast that was hosted under the distinguished patronage of Jamaica’s Governor General, His Excellency Sir Patrick Allen, the NIAF, again, publicly re-affirmed its support for the OCG’s proposal in a formal statement which was issued at the ceremony.

The Breakfast was attended by several State officials, among whom were the Chief Justice, the Auditor General, the Deputy Director of Public Prosecutions, the Secretary Manager of the Commission for the Prevention of Corruption, the Commissioner of the Revenue Protection Division, the Political Ombudsman, the President of the Private Sector Organization of Jamaica, the President of the Jamaica Bar Association, USAID's Jamaica Mission Director, the Local Director for the United Kingdom's International Development Programme, and myself.

In giving its full support to the OCG's proposal, the NIAF, in its written statement, postulated as follows:

"Experience is now demonstrating conclusively that in addition to the NIAF, two innovations are absolutely essential if we are to move more successfully to remove the corruption road-block to Jamaica's development and to respond to public demand to deal more effectively with this scourge which is consigning too many Jamaicans to poverty and hopelessness. One is the single Anti-Corruption Agency, properly staffed, resourced and empowered to conduct criminal investigations and prosecutions – as initially advocated by the OCG – with subsequent support from personages within both the Governing and Opposition parties and endorsements from elements in the media".

I. CLOSING REMARKS

Ladies and gentlemen, corruption is a crippling, corrosive, destructive and evil vice which we can ill afford to take root in any of our regional jurisdictions.

If it is allowed free and unrestricted reign, then ultimately the very foundations of our cherished democracies will be placed on their knees and at its mercy.

Our respective efforts at attaining sustained economic growth, and a better life for our peoples, are also efforts which are likely to be rendered futile and meaningless should we allow corruption to reside within our public institutions, or to walk hand in hand with the politicians and public officials in whom we have reposed our confidence and trust.

We must, therefore, among other things, seize any opportunities that may exist for regional collaboration and cooperation.

This will enable us to better understand what corruption is all about, the environment in which it is likely to thrive, and how it manifests itself, so that we can design the right strategies to effectively deal with the problem.

Where preventative measures can be proactively adopted at the level of our national governments, parliaments, law enforcement agencies and anti-corruption institutions, to ensure that corruption does not gain a foothold in any Caribbean nation State, those steps should be taken with dispatch.

In those jurisdictions in which the damage has already been visibly done, aggressive remedial and root-cause corrective action, along the lines that I have outlined today, will have to be the order of the day.

In so far as Jamaica is concerned, there is no question that the time to act, in unprecedented and decisive terms, in the fight against the country's systemic corruption, has long passed.

The OCG would respectfully encourage the Government and Parliament of Jamaica to seriously rethink their intended reform approaches to the country's existing anti-corruption institutional framework, and its inherent and fundamental deficiencies; for if it proceeds with the Special Prosecutor Bill, in its present form, it would have accomplished nothing but the replacement of one ineffective, inefficient and disjointed anti-corruption institutional regime, with another.

But that still will not be enough.

Without the demonstrated Political Will on the part of the leadership of the Jamaican State, and the Institutional Will on the part of those, who, like myself, are privileged to lead Jamaica's law-enforcement, anti-corruption and prosecutorial agencies – leading by example, and doing that which is right by Jamaica – absolutely nothing will be accomplished in Jamaica's fight to break the back of the monster of corruption which is haunting Jamaica, and which has already condemned the great majority of Jamaicans to a future of relative poverty and dismal hopelessness.

Thank you.”

12. SEVENTH ANNUAL LECTURE IN THE CARIBBEAN INTERNATIONAL NETWORK (CIN) LECTURE SERIES DELIVERED IN NEW YORK CITY BY THE CONTRACTOR GENERAL

On October 26, 2011, I was privileged to deliver the Seventh Annual Lecture in the Caribbean International Network (CIN) Lecture Series, at the famed Harlem Schomburg Centre, in New York City, New York.

The full text of my Lecture Presentation, which is entitled - **'The Fight to Secure Integrity, Transparency and Accountability in the Award of Government Contracts in Jamaica'**, is now reproduced, herein, as follows:

"A. INTRODUCTION

The Office of the Contractor General (OCG), as it is commonly known in Jamaica today, was established in 1983 amid widespread public outcries that were prompted by allegations of corruption in the award and implementation of Government of Jamaica contracts.

There was very little competition and transparency in the award of contracts.

Friends, family members, supporters and cronies of some public officials and politicians, were rewarded with contracts and Taxpayers' money under an obscure regime that was perceived as providing little or no oversight, scrutiny or enforcement powers.

At the same time, many otherwise capable, but politically unaffiliated contractors were left out in the cold. Old-style back-room dealing and corruption thrived. Some of those who did receive contracts were alleged to have paid kick-backs to corrupt public officials. The perception was that this was, indeed, the order of the day.

Local industries suffered generally since the capacity of domestic contractors, who were not part of the system of the political *quid pro quo*, was compromised. Further, many foreign investors were being turned off by the pervasive stigma of corruption that seemed to have become associated with doing business in Jamaica.

The OCG was expected to change much of that.

The Most Hon. Edward Seaga, the former Prime Minister of Jamaica, was the first person who formally raised concerns regarding the lack of probity in the award of Government contracts in Jamaica, and the need for a Commission of the Contractor General to deal with the problem.

In January 1981, three months after his landslide victory at the polls, he appointed a Committee to develop recommendations for the establishment of the OCG.

The Committee, which incidentally was chaired by the then Minister of Construction, and former Prime Minister of Jamaica, the Hon. Orette Bruce Golding, submitted its Report in March 1982. This, in turn, led to the promulgation of the Contractor General Act of 1983.

The Act established the role and functions of the Contractor General as an Independent Commission of Parliament. Its office-holder was insulated, by law, from any political manoeuvrings which could compromise his ability to carry out his functions in a fearless and dispassionate manner. He was granted almost complete independence of office, security of tenure and security of compensation.

The Contractor-General was mandated by Section 4 of the Act to monitor the award of Government of Jamaica contracts to ensure that they were awarded "impartially and on merit", and in circumstances which did not "involve impropriety or irregularity". The issue of Government licences and permits was also cascaded under his jurisdiction.

In addition, he was also vested with a discretionary power to conduct formal investigations into a range of matters.

To facilitate the effective discharge of his functions, the Contractor General was accorded the powers of a Judge of the Supreme Court of Jamaica, with wide quasi-judicial powers of enquiry, search, discovery and subpoena.

Included among his powers were his entitlement to be advised of the particulars of the award of any Government contract or licence, as well as his authority, with few exceptions, to secure unimpeded access to any public office, officer, person, document, record, information or thing which, in his discretion, he might deem vital to the discharge of his functions under the Act.

Finally, to further re-enforce the enquiry powers of the Contractor General, the Act made provision for three (3) specific criminal offences – the failure to comply with a lawful requirement of a Contractor General; obstructing a Contractor General; and making a false statement to mislead or attempting to mislead a Contractor General.

With all of this, a significant change was expected in the manner that lucrative Government contracts were to be awarded. Transparency, competition, fairness, value for money, accountability, merit, impartiality and regularity, were all considered to be the key features that would now characterize Government of Jamaica contract awards going forward.

So then, after 28 years and four (4) different Contractors General, you may be asking yourself why is it that I am here tonight to speak to you about “The Fight to Secure Integrity, Transparency and Accountability in the Award of Government Contracts in Jamaica”.

Is it that nothing has changed in Jamaica? Is it that the Contractor General Act has proven to be ineffective; or is it that the OCG was established to be a mere paper tiger?

An early insight into one person’s perspective on some of these questions might be useful in helping to set the context for my presentation. It is the perspective of Mr. Seaga himself.

Writing in his **February 13 Jamaica Gleaner column** earlier this year, Mr. Seaga identified at least two (2) of the major failings of the Contractor General Act’s regulatory regime. (See Gleaner article entitled ‘**Public Watchdogs are instruments of discipline**’). He suggested that the Act had fallen short of its intended mark and that there is, perhaps, after 28 years, still the absence of a much needed Political Will to do something about it.

One of the deficiencies that Mr. Seaga identified in the Act is that the OCG has no power to prosecute. He remarked that although criminal prosecutions were the responsibility of the Director of Public Prosecutions (DPP), the DPP was now unable to respond to the OCG in a timely manner, and that this had, in turn, diluted the effectiveness of the OCG in suppressing corruption.

Mr. Seaga also intimated that unless the holder of the office was prepared to speak out, to fight, and to be “aggressive”, nothing would come of the Commission. It was for this reason, he said, among others, that the Commission did not live up to its expectations prior to my appointment as Contractor General in December 2005.

B. INSTITUTIONALIZED AND SYSTEMIC CORRUPTION IN JAMAICA

Another broad and useful empirical indication as to whether and to what extent the expectations of the OCG have been fulfilled, is to examine where Jamaica is perceived to be today in terms of corruption.

When corruption is presumed to have permeated deeply into a country’s institutions, and across all of its socio-economic spheres, or is considered to have become a societal way of life, it is no longer considered to be just a matter of a few greedy Public Officials, or dishonest citizens, feeding upon the system. At this stage, corruption can be likened to an aggressive cancer and is characterized as institutionalized or systemic corruption.

The phenomenon of systemic corruption is significantly related to poor standards of governance, accountability and transparency in government.

It will typically thrive in instances where anti-corruption and law enforcement institutions are either non-existent, weak or ineffective, where institutional checks and balances on entrusted power are missing, where governmental decision-making is obscure, where the Rule of Law is neither fully enforced nor respected, and where there is an absence of Political Will to do something about it.

From all indications, it appears that Jamaica is today at this place and, indeed, has been at this place for a long time.

What is my basis for saying this?

In a 2008 **Don Anderson Poll**, “Too much corruption” was ranked by Jamaicans as the “Main Thing Wrong with Jamaica”. This was second only to “Too much crime and violence”.

However, and quite alarmingly, in 2010, in a “Most Negative Thing about Jamaica” Poll, which was also conducted by **Don Anderson**, “Corruption” shot to the top of the rankings, easily surpassing other public concerns such as crime and violence. This was particularly troubling since the poll came on the heels of 2009, the year in which Jamaica recorded 1,682 murders, its highest ever tally of murders in any single year.

Not surprisingly, the clear indications of the **Don Anderson Polls**, were further corroborated in March of this year, when the well respected **Latin American Public Opinion Project (LAPOP) Poll** ranked Jamaica, in 2010, as the 2nd most perceived corrupt country in the Americas.

But it is also instructive to note that the highly negative perception that Jamaicans have about corruption, in Jamaica, is by no means one that is confined to themselves.

Transparency International (TI), the International Anti-Corruption Watchdog, which currently ranks 178 countries in terms of the degree to which corruption is perceived to exist among their public officials, politicians and public institutions, has, over the years, consistently ranked Jamaica, not only as a “highly corrupt” country, but also as the most corrupt country in the English Speaking Caribbean – second only to Guyana.

The fact that Jamaica is perceived to be a highly corrupt place is also exacerbated by the universally accepted fact that the largest opportunity that exists, in monetary terms, for corruption in any country, lies in the illicit manipulation of the award of Government contracts and licences, and the divestment of State assets.

TI, in a May 2010 publication, which is entitled *‘Corruption in Procurement’*, estimated that the cost of corruption in public contracting, at the national level, expressed as a percentage of the value of the contract, was an average of 10-25% and, in the worst cases, as much as 50%.

The magnitude of the issue, for Jamaica, and for the OCG, is evidenced by the fact that the OCG exercises its jurisdiction over the contract award and licence issue activities of roughly 200 ministries, agencies, departments and corporations of Government.

Together, these Public Bodies issue more than 600 different categories of licences and permits, and award in excess of 11,000 construction, goods, services and asset divestment contracts, each year, above \$275,000 in value, aggregating an estimated \$110 billion, or about one-fifth of the annual expenditures of the Government of Jamaica.

Consequently, given the high perception that exists about corruption in Jamaica, it is only reasonable to deduce that Jamaica’s anti-corruption institutional framework, of which the OCG is an integral part, has failed to realize its objectives, such that massive amounts of Taxpayer funds are still being perceived as being stolen through corruption in public contracting.

C. LACK OF POLITICAL WILL

Another critical question that will also arise tonight, as I proceed with my presentation, is that if it is accepted that the Contractor General Act has fallen short of its mark, then why has the State not taken the requisite steps to remedy the Act’s deficiencies so that its purported objectives, of ensuring integrity, transparency and accountability in Government contract awards, can be fulfilled?

Such a question will necessarily invite a discussion on the subject of what is called the lack of “Political Will”. This is something that I have already suggested is lying at the root of several of the problems that I will discuss with you tonight. Consequently, I will, therefore, touch briefly upon it now.

The term “Political Will”, when used in the foregoing context, is about the demonstrated desire, sincerity and actions of the Government of the Day not only to fight, but also to win, the battle against corruption.

Political Will requires that the State, led by the incumbent Administration, must take all requisite steps to put in place a comprehensive and independent anti-corruption institutional framework which is backed by:

- (e) adequate resources;
- (f) effective laws;
- (g) tough criminal custodial and pecuniary sanctions for breaches of those laws; and
- (h) anti-corruption institutional leaders who are prepared to dispassionately discharge their respective mandates and to forthrightly enforce those laws.

Political Will is, therefore, about walking the talk, not talking the talk. It is about action, not words.

In particular, it demands that a Prime Minister must hold his Cabinet ministers and senior public officials fully accountable for their deviant conduct, or breach of trust, irrespective of the sacrifices that must be made, or the penalties that must be paid.

One of the indispensable and critical subsets of Political Will is what is called Corporate Will. This means ensuring that the right leadership exists at the top levels of each of the State's law enforcement and anti-corruption institutions.

In the case of Jamaica, this will, for instance, mean the Corruption Prevention Commission, the Integrity Commission, the Jamaica Constabulary Force, the OCG, the Office of the Director of Public Prosecutions, the Office of the Auditor General, and the Political Ombudsman, among others.

Corporate Will calls for strong, fearless, independent, apolitical and ethical leadership, at the helm of these institutions. Leadership that will not bow to the demands of the political directorate, nor to the dictates or desires of special interest groups, but who will forthrightly, fearlessly and dispassionately discharge his or her mandate at all times in the interest of the State.

Whenever there is a deficiency of Corporate Will in the State's anti-corruption institutional framework, Political Will demands that immediate steps should be taken to remedy the situation by, among other things, recalling or removing the leadership of the Agency from his or her office.

It is also important to recognize that the lack of Political Will can manifest itself in the deliberate creation of State anti-corruption structures, mechanisms and institutions, which are intended by the political directorate to appease the desire of its domestic and international stakeholders, but which are in effect mere facades.

Such structures are easily identifiable. While on paper they may look good, upon closer examination they will be found, either to be ineffective, weak, structurally deficient, lacking in teeth, lacking in critical resources, and/or led by political implants that are there to do the bidding of the political directorate.

Once this happens, the effectiveness of the State's anti-corruption institutional framework will be undermined, and the institution or the mechanism in question will be rendered literally useless.

D. MAJOR SHORTCOMINGS IN THE CONTRACTOR GENERAL ACT REGULATORY REGIME

The background which all of the foregoing has painted, and the suggestions that it has raised are, therefore, crystal clear. Despite the existence of the Contractor General Act, even when it is assessed within the context of what appears to be a robust national anti-corruption legislative and institutional framework, rampant corruption is still perceived to be the order of the day in Jamaica.

Indeed, it has now become evident that there is, as Mr. Seaga has observed, significant shortcomings in the Act, such that a fairly credible question can be raised as to whether the OCG was intended by the Executive and Legislative arms of the Jamaican State to be an anti-corruption institutional facade, or, to put it bluntly, a toothless bulldog.

There are also other germane issues that are operating in Jamaica today which are adversely impacting upon, and undermining, the effectiveness of the country's anti-corruption institutional framework, inclusive of the work of the Contractor General.

One of these, as I have already suggested, is the apparent lack of the much needed Political and Corporate Will to decisively address the problem of corruption in Jamaica.

But in so far as the deficiencies of the Contractor General Act are concerned, they have presented enormous operational challenges for the OCG, as it seeks to diligently and effectively discharge its mandates under the law.

I will now, therefore, examine what some of these deficiencies are.

(a) The Contractor General has no power to halt an irregular procurement

Among the major failings of the Contractor General Act is that it expressly mandates a Contractor General to **“ensure”** impartiality, merit, propriety and the lack of irregularity in the award of Government contracts, yet, curiously, it grants to him no powers whatsoever to bring to a halt a Government contracting or licensing process which he has good reason to believe is exhibiting signs of corruption, impropriety or irregularity.

A recent case in point was the refusal of the Golding Administration to heed the OCG's November 2010 recommendations to terminate the Government's Floating Storage and Regasification Unit-Liquefied Natural Gas (FSRU-LNG) tender process – a process which, upon the conclusion of the OCG's twelve month Investigation, was proven to be mired in irregularity and impropriety.

Despite the OCG's documented concerns that the good governance tenets of public contracting were being violated, a seemingly cavalier and arbitrary decision was taken by the Administration to proceed with the tender process for the Project.

Not surprisingly, when the OCG's Investigation was completed, its Findings of rank irregularity in the tender process were not only conclusively established, but were independently corroborated by two (2) independent Legal Opinions which were, in turn, also supported by the Government's own attorney, the Solicitor General.

The OCG was also confronted with a similar situation in January 2011, in respect of the Government's then proposed sale of the Sandals Whitehouse Hotel to the Gordon 'Butch' Stewart held Sandals Group.

The incident occurred after an OCG Preliminary Enquiry had confirmed the veracity of certain public allegations which had been made that the Government was engaged in ongoing “secret negotiations”, with the Sandals Group, for the sale of the hotel.

Despite a 22 page public appeal that was made by me to the Hon. Prime Minister, to halt the proposed divestment, and to restart same under the direct monitoring supervision of the OCG, the OCG's recommendations were nevertheless summarily set aside by the Administration, which publicly declared that the sale would proceed.

It is also instructive to note that, in July 2010, the OCG was faced with another like challenge regarding its monitoring of the divestment of the Government's 45% stake in the GOJ/Alcoa Jamalco joint-venture alumina refinery operations, to a Chinese firm.

The OCG had publicly detailed at least five (5) major considerations, which, when taken together, raised very serious questions about transparency, value for money, competition and a potential conflict of interest, in respect of the proposed divestment.

However, and despite the OCG's expressed concerns, the then Energy Minister, Mr. James Robertson, publicly insisted that the Government would not halt the negotiations, even though the OCG had commenced an Investigation into the matter.

These occurrences are clearly troubling. Apart from calling into question a Government's publicly stated commitment to probity, transparency, accountability and competition in public contracting, they have also raised the inescapable question as to what good purpose is served by maintaining, in place, a so called Independent Commission of the Contractor General, when its considered concerns, recommendations, injunctions and/or findings can be arbitrarily ignored by the Executive arm of the State, the very authority which the Commission was established to monitor and to investigate.

(b) The Contractor General has no power to prosecute in an environment where no prosecutions are being initiated for major corruption and other white collar offences

Another major failing of the Contractor General Act – one which was highlighted by Mr. Seaga himself – is that a Contractor General has no power to prosecute corruption or other criminal offences which are associated with breaches of the Government's procurement, contracting and licensing laws, whether in his own right, or via a broad fiat which is issued by the Director of Public Prosecutions (DPP).

Instead, a Contractor General is required by law to refer matters to the appropriate State authorities, whether it be the Police, the DPP or the Attorney General, for the appropriate action to be taken against offending Public Officials.

Coupled with the fact that a Contractor General's remedial recommendations can be lawfully ignored by the Government, the inability of a Contractor General to initiate his own prosecutions raises even more worrying questions as to whether the Parliament, in promulgating the Contractor General Act, had intended for it to be truly effective.

But what is the OCG griping about, you might ask, since there exists these other arms of the State to investigate and to prosecute allegations of criminal offences, inclusive of corruption related offences?

The simple answer is that looks are deceiving, for despite the presence of a JCF, and a DPP, the fact is that there is now persuasive evidence that the relative paucity of criminal investigations and prosecutions for offences involving corruption, as well as for other related offences, in Jamaica, has now reached disproportionate if not crisis levels.

One major reason why corruption has been having a free reign in Jamaica is that it has historically competed unsuccessfully for the attention of the JCF, the DPP, and the Judiciary.

In what has become an alarmingly imbalanced arrangement that is now seriously hurting Jamaica, corruption has repeatedly lost out, for attention, to offences against the person and, in particular, to an average national murder rate which now stands at more than 1,500 per annum for the past ten (10) years. No one, it seems, is taking the matter seriously and the perceived reasons for this are as troubling as they are varied.

It is also an irrefutable fact that the country's inordinately high rates of violent crime have literally swamped the already limited resources and assets of the JCF, the 41 attorney staffed Office of the Director of Public Prosecutions, and the local court system.

The relatively low clear-up rate for serious crimes, as well as the massive backlog of cases which are currently before the Jamaican courts, and which some estimates have placed as high as 400,000, also paint a telling picture of the disturbing and unacceptable inadequacies of Jamaica's anti-corruption, law enforcement and criminal justice systems.

But as if to deepen the problem regarding corruption in Jamaica, it is also arguable that neither the JCF nor the Office of the DPP, was, in the first place, structured, or adequately resourced, to effectively and efficiently investigate and prosecute sophisticated crimes of corruption, or other potentially complex white collar crimes which have now come to the fore. Indeed, in the case of the Office of the DPP, even more troubling questions have arisen.

Between December 2010 and February 2011, the Anti-Corruption Branch of the JCF, the OCG and the Jamaica Commission for the Prevention of Corruption, have all publicly lamented the fact that several criminal matters which they have separately referred to the DPP had not been prosecuted.

In the case of the JCF, on December 9, 2010, on International Anti-Corruption Day, the Assistant Commissioner of Police, Mr. Justin Felice, who oversees the JCF's Anti-Corruption Branch, while publicly acknowledging the JCF's outstanding successes in laying corruption charges against several low-ranking police officers, raised concerns about referrals regarding senior police officers of the JCF which had been conveyed to the DPP, but which had not resulted in criminal prosecutions.

On February 17, 2011, while appearing before a Joint Select Committee of Parliament, I, myself, tabled before the Committee, a formal written Report of the OCG, in which it was asserted that of the roughly 40 criminal Referrals which had been formally sent by the OCG to the incumbent DPP, Ms. Paula Llewlyn, in the preceding three (3) year period, not one had to date been brought before the courts to test its judicial efficacy.

Further, in February 2011, the Commission for the Prevention of Corruption publicly expressed concerns about the failure of the DPP to prosecute literally thousands of matters, involving Public Officers, which had been referred to it by the Commission.

In particular, the Commission lamented the fact that since its establishment 11 years ago, although more than 18,000 persons had been referred to the DPP, only 512 of the matters had been acted upon. The commission also signaled that it was dissatisfied with the number of matters that were thrown out by the DPP, noting that this frustrated the oversight body's efforts at reducing corruption.

The above-referenced Agencies which, together, substantially constitute the vanguard of Jamaica's anti-corruption institutional framework, and which must rely **exclusively** upon the DPP for the prosecution of all corruption and corruption related offences, do not stand alone in their views on the subject of the relative failings of Jamaica's current anti-corruption, law enforcement and criminal law prosecutorial systems.

The **United States of America (USA)**, which is, among other things, Jamaica's largest strategic ally and trading partner, has also publicly expressed similar concerns in terms of what it perceives to be the unacceptable levels of corruption which have overtaken Jamaica, as well as the inability or unwillingness of the Jamaican State to deal with the problem in a decisive, efficient and effective manner.

In its **2011 Department of State International Narcotics Control Strategy Report**, which was published world-wide on March 3, 2011, the United States Government (USG) stated quite matter-of-factly that "...corruption (in Jamaica) is entrenched, widespread, and compounded by a judicial system that is poorly equipped to handle complex criminal prosecutions in a timely manner".

To compound the problem even further, on October 12, 2011, representatives of the Parliament Integrity Commission, whilst appearing before the Public Administration and Appropriations Committee (PAAC) of Parliament, conceded that despite several infractions of the Integrity Law by Parliamentarians, the Commission had "not been very prosecutorial", in that it had failed to make the requisite referrals to the DPP.

More worrying, however, is the fact that the incumbent Minister of Justice, the Hon. Delroy Chuck, as recently as October 8, 2011, branded the country's justice system as corrupt. He asserted that "there is corruption within the courts and the justice system, where the police have been paid to say they cannot find a witness, or persons have been paid to have documents destroyed - amongst many other things".

At a minimum, it is, therefore, beyond contention that these revelations are suggesting that some of Jamaica's key anti-corruption institutions are failing miserably in the discharge of their critical mandates. Even more disturbing, however, is that it is evident that there is a glaring absence of the requisite Political and Corporate Will to do something about it.

(c) Criminal sanctions for offences under the Contractor General Act are too low

But even if the commission of corruption and other related offences were today being effectively and efficiently investigated and prosecuted in Jamaica – a situation which, unfortunately, as you have seen, is not the case – the fact of the matter is that the sanctions that are associated with breaches of the said offences are so low that they cannot possibly serve as a deterrent, but yet nothing is being done about it.

A case in point is the innumerable OCG recommendations which have been made to have the situation remedied as regards the prescribed sanctions for the three (3) anti-corruption offences that are specified under the Contractor General Act. The subject sanctions have remained, for the past 28 years, at the inexplicable low level of a fine not exceeding J\$5,000 and/or to imprisonment for a term not exceeding 12 months.

The situation with respect to criminal breaches of the Government's Procurement Rules and Procedures is not dissimilar.

Despite specific public promises that were made by former Prime Minister Golding on September 11, 2007, on the occasion of his official inauguration into office, to impose sanctions for breaches of the rules governing the award of government contracts, and to make it “more difficult, more hazardous with stiff penalties for violations”, the sole sanction that was eventually promulgated into law was “a fine not exceeding one thousand dollars or imprisonment for a term not exceeding three months or both”.

One thousand Jamaican dollars (J\$1,000), at current rates of exchange, is equivalent to less than US\$12. This is roughly the price of four (4) loaves of bread in Jamaica. Obviously, then, this has made a total mockery of the commitment that was given by the Administration that it was genuinely serious about fighting corruption.

As a matter of urgency and necessity, it is, therefore, crystal clear that the situation in Jamaica is in dire need of critical address. Significantly tougher criminal sanctions must be legislated, **and enforced**, if corruption in public contracting is to be effectively tackled. These must include mandatory custodial and economic based penalties, where appropriate.

Should the Jamaican State fail to act accordingly, then we will all be doomed, for it is an incontrovertible fact that a criminal will always proceed with his criminal conduct if his risk/benefit analysis of the situation always suggests to him that it will be beneficial for him to so proceed.

(d) Failure of the State to entrench the OCG in the Constitution of Jamaica

Earlier, I had alluded to the Report of the Bruce Golding Chaired Committee (i.e. the Report of the Committee Appointed to Recommend Legislation for the Establishment of the Office of the Contractor General), which was completed and submitted, in March 1982, to the then Prime Minister, the Most Hon. Edward Seaga.

Paragraph 1.3 (ii) of the Report reads as follows:

“In launching the work of the Committee, the Chairman (Mr. Bruce Golding) indicated that the independence and authority of the Contractor General would be guaranteed in the Constitution and this would be done as part of the process of constitutional reform”.

However, and despite the fact that 29 years have since passed, the Commission of the Contractor General is still, today, governed by an Act of Parliament – an Act whose provisions can be arbitrarily interfered with should the Government of the Day feel, for example, that a sitting Contractor General has become too “*overzealous*” or intrusive.

I should also state that, since taking office on December 1, 2005, I have made several representations, in writing, for the Commission of the Contractor General to be entrenched in the Constitution of Jamaica. However, to date, nothing has happened, in consequence of which the OCG continues to remain under the threat of a clear and present danger of political interference.

The gravity of the situation was vividly brought to light as recently as September 2010 when the former Minister of Agriculture and Fisheries, Dr. the Hon. Christopher Tufton, stridently proposed amendments to the Contractor General Act to dilute the powers of the Contractor General.

Dr. Tufton's overture followed the OCG's conclusion of an Investigation that had been launched into allegations of contract award malpractices at his Ministry of Agriculture. The Minister, his Permanent Secretary and a contractor, Mr. Aubyn Hill, were referred to the DPP in light of the OCG's findings of evidence that all three (3) men had perjured themselves when they provided false testimony, under oath, to the OCG.

The proposals of the Minister were publicly canvassed by him after the DPP ruled that she would not act upon the perjury referrals that had been made by the OCG.

In response, I issued a public Statement, on September 21, 2010, to the country's 81 Parliamentarians, in which I was constrained to respectfully warn them against giving effect to the Minister's misguided protestations.

Among other things, I respectfully recommended that their efforts would be best invested in strengthening the country's anti-corruption institutional and legislative frameworks, and to insulate same from arbitrary interference, as opposed to giving countenance to questionable measures which would, as a matter of certainty, weaken the existing good-governance structures that have been established to protect the Taxpayers' money.

E. OTHER CHALLENGES AND OBSTACLES FACED BY THE OCG

Quite apart from the foregoing, there are several other obstacles that have been routinely thrown into the path of the OCG as it diligently and dispassionately seeks to discharge its lawful mandates, to ensure integrity, transparency and accountability in the award of Government contracts in Jamaica.

These so called obstacles have included, for example, (a) the failure on the part of Public Bodies to comply with the lawful requisitions of the OCG, (b) challenges to the lawful authority of the OCG emanating from very senior Government and Ministerial officials, and (c) in at least one instance, the patently conflicted temerity of one local Print Media House, the Jamaica Observer, to publicly instruct the OCG as to how it should proceed in a Government asset divestment matter which involved an entity that was owned and controlled by the very owner of the Jamaica Observer itself.

Time does not permit me to address all of these obstacles in their entirety, but I will nonetheless share with you at least one or two of them.

(a) Failure on the part of Public Bodies to comply with the lawful requisitions of the OCG

One of the most formidable challenges that I have experienced, in my fight to secure probity in the award of Government contracts in Jamaica, has had to do with overcoming the refusal, on the part of the country's 200 Procuring Public Bodies, to comply with a statutory requisition which was first issued by me in early 2006.

The initiative, which is called the OCG's Quarterly Contracts Award (QCA) Report Regime, was developed as a major limb of my strategic plan to secure a marked improvement in probity, transparency and competition in the Government of Jamaica small contracts award process.

It required Public Bodies to file QCA reports, with the OCG, of the particulars of the contracts which they had awarded during each calendar year quarter, and to do so within one month after the ending of the quarter. The report forms, which were designed in a simple spreadsheet format, were also structured to disclose whether and to what extent a Public Body had breached the Government's Procurement Procedures.

After having had to fight to overcome initial opposition from certain members of the then sitting Parliament, as well as from the sitting Solicitor General himself, the Regime was formally launched by me in mid-2006, but instantly met headlong into a 13% compliance response rate from only 26 of the roughly 200 Public Bodies that were requisitioned.

In an effort to combat the refusal of the offending Public Bodies to comply with the requisition, I immediately met with the then DPP, Mr. Kent Pantry, QC, whose co-operation I sought to assist me to effectively implement, as at October 2006, a Zero Tolerance Policy which I had decided upon to address the issue.

The Policy would dictate that a failure or refusal, on the part of any Public Body, to comply with the OCG's QCA requisition, would result in the automatic referral of the head of the delinquent Public Body, to the DPP, for criminal prosecution under Section 29 of the Contractor General Act.

After it became evident that no exceptions whatsoever would be made by me to the application of the Policy, and that the names of all non-compliant Public Bodies would be routinely published in the Media, Public Officials quickly began to fall into line. DPP Kent Pantry also offered invaluable assistance to my battle, when he sent an unmistakable signal by prosecuting 17 of the offending Public Officials.

The rigidly enforced OCG Zero Tolerance Policy has today succeeded in producing an unprecedented and record 100% compliance rate, on the part of all of the country's 200 Procuring Public Bodies, for ten (10) straight consecutive quarters, ending in June 2011.

The successes that the OCG has achieved in this particular fight, proves that Public Officials will engage in deviant conduct only if the system allows them to do so. It also proves that if a Contractor General is prepared to be aggressive, unrelenting and dispassionate in his enforcement of the law, and is supported by the prosecutorial arm of the State, mountains can be moved, and cultures of defiance, non-compliance and lawlessness can be literally transformed overnight.

On a practical level, the OCG's QCA Regime has also allowed the OCG to utilize computer technology to bring public transparency, via the OCG's official website, to the more than 54,000 small Government contract awards, valuing \$65 billion, which have so far been issued by Public Bodies in Jamaica since May 1, 2006.

The Regime has also facilitated the optimization of the productivity of the OCG's limited human resources, whilst enabling the organization to exponentially expand the effective reach of its contract monitoring and investigation mandates.

(b) Challenge to the OCG's jurisdiction over State asset divestments

Another one of the most problematic and worrying obstacles which the OCG has had to face in discharging its mandates, is what appears to be the inability of the incumbent Administration to make up its mind as to whether or not the OCG has the authority, under the law, to monitor and to investigate the divestment of lucrative State assets.

Suffice it to say that the practices of the OCG over the past 15 years, the expressed provisions of the Contractor General Act, and a formal legal opinion which was secured more than 10 years ago from Dr. the Hon. Lloyd Barnett, OJ, one of Jamaica's leading jurists, say unequivocally that the OCG does in fact have that jurisdiction.

In any event, the question that inevitably arises is why any right-thinking Administration would seek to exclude, from the purview of the law, and from oversight scrutiny, lucrative State asset divestment contracts which are ripe game for corruption addicts. But this is exactly what the incumbent Administration continues to suggest that it wants to do.

Specifically, jurisdictional challenges were launched, against the OCG, as recently as during the course of 2010, when the OCG was forced to make public its concerns regarding apparent irregularities that were evident in the Government's then proposed divestment of its 45% stake in the JAMALCO Alumina Refinery, to a Chinese company.

Subsequently, during the same year, the jurisdiction of the OCG was again, and not surprisingly, questioned, by the Administration, when the OCG sought to enquire into the sale of two (2) A320 Airbus aircraft by Air Jamaica Limited.

The matter, which is a source of continuing disappointment for the OCG, has been aggravated by the fact that the Administration is one that has spoken repeatedly about securing transparency in the affairs of Government.

However, it has boldly demonstrated that it is nevertheless prepared to rule that the divestment of a public asset is a matter which falls outside of the lawful jurisdiction of the OCG, even when it knows full well that it has previously and publicly called upon the OCG to investigate matters in relation to the divestment of Government Assets.

I make specific reference to the fact that less than three (3) months after the then Minister of Agriculture, the Hon. Christopher Tufton, on January 17, 2008, with the support of the Attorney General, challenged, in writing, the OCG's jurisdiction to monitor his Ministry's then ongoing divestment of the country's sugar industry assets, I received a letter, dated April 8, 2008, from the then Minister with portfolio responsibility for Air Jamaica, the Hon. Don Wehby, in which the OCG was requested to review the previous Administration's divestment of Air Jamaica's London Heathrow Slots.

To further compound the issue, on April 23, 2008, the Minister of Finance, the Hon. Audley Shaw, from the floor of the House of Representatives itself, publicly requested the OCG to investigate the said Air Jamaica London Heathrow Slots asset divestment.

Quite curiously, however, there was no word then from the Office of the Attorney General, objecting to the propriety of either Mr. Wehby's or Mr. Shaw's requests, and neither did the OCG reject the requests.

Indeed, it is now a matter of public record that the Ministers' requests were promptly acceded to by me, when a formal OCG Investigation into the matter was commenced on April 23, 2008, and a Report thereon was formally tabled in the House of Representatives on April 7, 2009, and in the Senate on May 8, 2009.

The record of the Administration, regarding this issue, is, therefore, extremely disturbing and disconcerting. It not only points to a glaring double-standard in its approach to the issue of corruption in public contracting, but it also suggests that the Administration is prepared to use the OCG if it is allowed to get away with it.

Such conduct, however, will not be tolerated under my watch. The key functionaries of the State, inclusive of Members of Parliament, Ministers of Government and Senior Opposition officials, whomever they may be, must come to understand that the OCG is not a 'political football'. It was created by them as an Independent Anti-Corruption Commission of the Parliament of Jamaica, and it must, therefore, be respected as such.

(c) Attempts at intimidation of the OCG – Charges that the OCG is over-zealous

Over the past year and a half, the OCG and I have also faced criticism with what appears to have been a covert attempt at intimidation, from at least one senior Minister of Government – the Minister of Information, the Hon. Daryl Vaz, and from Mr. Peter Bunting, the General Secretary of the Opposition People's National Party (PNP).

Both men had reportedly accused my Commission of being overzealous in the discharge of its mandate such that it was having the alleged effect of scaring away public servants.

Immediately after the accusations were first published by the Jamaica Observer Newspaper, Mr. Bunting issued a statement to say that the PNP's comments had been misrepresented, and that the PNP was fully supportive of the work of the OCG and the Contractor General.

To be clear, a Contractor General is required, on the pain of being unceremoniously stripped of his Commission, for "misbehaviour in office", to faithfully discharge his statutory mandates, by ensuring that Government contracts are awarded impartially and on merit, and in circumstances that do not involve impropriety or irregularity.

In light of the highly corrupt, crime-ridden and politically polarized environment that Jamaica has become, it should, therefore, be obvious to even the casual observer that the referenced mandate will be incapable of being effectively discharged if the office-holder is someone who easily shirks away from being aggressive and forthright when he should be; who is fearful or docile; who is reluctant to dispassionately use his powers; or who is scared to offend, challenge or confront those who will need to be confronted.

It is the lack of these very qualities that I presume Mr. Seaga was alluding to, when he pointed to a number of the reasons why the Contractor General's regulatory regime, in his opinion, had failed to fulfil its purpose prior to my appointment into office.

In a public response which was issued by me, on July 12, 2010, to the Minister and to Mr. Bunting, I stated, among other things, as follows:

“I would like to categorically state, without any reservation, that I have absolutely no intention whatsoever of discharging my statutory mandate and responsibilities in a manner which suits the desires or dictates of any other person, official or entity, irrespective of who that person, official or entity may be.

So long as I shall have the good honour and privilege of holding the Commission of the Contractor General of Jamaica, I will faithfully and lawfully serve only what I regard to be the best interests of the People and Taxpayers of Jamaica.

While I will at all times do so fairly, impartially and responsibly, it must also be clearly understood that I will also, at all times, do so forthrightly and vigorously and without fear and without favour, and without being subjected to the countermanding dictates of any other person excepting that of a Court of Law.”

(d) Challenge to the OCG's authority to announce its commencement of Investigations

I have also had to contend with repeated and unlawful attempts by the Administration, and also by the Jamaica Observer Newspaper, to literally muzzle the OCG from exercising its expressed authority, under the law, to announce, to the People and Taxpayers of Jamaica, whose interests I am sworn by oath to serve, the OCG's intention to commence an Investigation into allegations of impropriety, irregularity and/or corruption in Government contracting.

However, in each instance that such obstacles have been thrown into the OCG's path, they have been vigorously resisted.

One such incident occurred on January 31, 2011, and again on February 2, 2011, when the Observer Newspaper, in two (2) of its editorials, scolded me for daring to advise the Taxpayers and People of Jamaica of the OCG's intention to investigate the Government's proposed sale of the Sandals Whitehouse Hotel to Gorstew Limited – a company which, as I have indicated before, is owned and controlled by the Hon. Gordon 'Butch' Stewart, the very owner of the Observer Newspaper itself.

It is instructive to note that the Observer's misplaced and patently conflicted admonishment of the OCG, was advanced, despite the fact that the public allegations which had given rise to the OCG's Investigation had been previously made in another Jamaican newspaper.

The allegations were that “secret negotiations” had been taking place between Government of Jamaica officials and the Gordon 'Butch' Stewart-owned Sandals and Gorstew organizations, regarding the subject divestment.

More significantly, it was established by the OCG, as an undisputed fact, that the referenced “secret negotiations” had not only been taking place as was alleged, but had indeed been taking place, without the knowledge of the OCG, despite the fact that the OCG had earlier requisitioned the Cabinet Secretary to provide to the OCG, in writing, the full particulars of all such proposed State-owned asset divestments.

The former Prime Minister, the Hon. Bruce Golding, has also expressed his displeasure at my insistence at notifying the People and Taxpayers of Jamaica that my office will be commencing an Investigation into allegations of impropriety, irregularity and/or corruption in Government contract awards, and the giving of my reasons therefor. (See Jamaica Observer article – ‘Special Prosecutor to be muzzled; March 20, 2011).

The matter of the Jamaica Observer's and the Administration's criticisms, was comprehensively addressed by me before a Joint Select Committee of Parliament on February 17, 2011. Among the OCG positions, that were placed on the formal record by me, were the following:

- (a) That the OCG has absolutely no intention whatsoever of discontinuing its practice of issuing Media Releases, to announce its intention to commence an Investigation;

- (b) That the criticisms of the Administration and the Jamaica Observer were grounded in, and tainted, by double standards;
- (c) That the said criticisms were directed at intimidating the OCG from making public, its Investigations into allegations of impropriety, irregularity and/or corruption into certain public contracting matters in Jamaica;
- (d) That the criticisms were intended to directly and unlawfully interfere with and/or obstruct the discharge of the statutory mandates of an Independent Anti-Corruption Commission of the Parliament of Jamaica; and
- (e) That the OCG, like Commissions of Enquiry, and like the recent Manatt Commission of Enquiry, is, in fact, empowered, under the Sections 17, 18 and 24 (1) (b) of the Contractor General Act, to conduct the entire proceedings of its Investigations in public, should it so choose to do.

In concluding my written response to the Joint Select Committee of Parliament on the issue, I made the following closing remarks:

“Once again, the OCG feels obliged to respectfully but strongly caution against any untoward tampering with the provisions of the Contractor General Act where same is intended to muzzle the OCG or to otherwise dilute, weaken or undermine the effectiveness and independence of what is in reality a critical foundation component of Jamaica’s National Anti-Corruption Institutional Framework.

Tampering with the Contractor General Act, to reduce the effectiveness and/or to curtail the independence of the Commission of the Contractor General, as opposed to strengthening the Commission, is likely to be viewed as an ill-conceived and ill-advised step in the wrong direction!

Indeed, such a step is likely to inflict a fatal body blow to the clear signals which the Government no doubt wishes to telegraph to the local populace, Taxpayers, foreign investors, the multilateral financial community and Jamaica’s international bilateral partners alike, that it is serious about tackling the scourge of corruption that Jamaica is perceived to be mired in and which has placed significant impediments in the country’s path to sustainable economic growth and development.”

(e) Attempts to politicize the OCG and its work

Although the OCG was established as an Independent Anti-Corruption Commission of Parliament, and is expected to operate as such, there have also been occasional overt and public attempts by persons, inclusive of Parliamentarians, to politicize its work.

One of the ways in which this has been done is for the OCG and me to be ‘directed’ by politicians to go back in time, as far as 10 years, to investigate contracts that were awarded by the previous Administration. This is precisely what occurred, for instance, in two (2) specific instances in which the OCG sought to investigate the circumstances of certain contracts which fell within the ministerial portfolio of a particular Parliamentarian.

Quite apart from the fact that it is unlawful for the OCG to be directed by anyone, it is also important to recognize that the OCG currently has only three (3) substantive staffing positions for Investigators.

Consequently, when one considers that more than 11,000 Government contracts, above \$275,000 in value, are awarded each year, it becomes evident that a sitting Contractor General, in exercising his discretionary powers, would be obliged, as a matter of priority, and given his limited resources, to focus upon what is happening before him, versus what took place 10 years before during the tenure of a predecessor Contractor General.

The OCG and I have also been accused of being supportive of the Jamaica Labour Party (JLP), or the People’s National Party (PNP), depending upon which party holds the seat of State power at any given point in time.

The perception, in some quarters, appears to be that if the JLP Administration is being vigorously investigated by the OCG, then the presumption is that I must be supportive of the PNP. Not surprisingly, the reverse was also true, during my initial years of service, when the PNP held the reigns of State power.

Of course, the ludicrous nature of both claims ignores the trite fact that it is the job of a Contractor General to investigate the award of Government contracts, and that the Opposition, while it is the sitting Opposition, does not, and cannot possibly, award Government contracts.

Unfortunately, however, absurdities such as these, which can only be propagated in an environment that is as politically charged as Jamaica is, do have the potential to undermine and damage the integrity of a strident Contractor General.

F. FAILURE OF THE STATE TO HOLD OFFENDERS ACCOUNTABLE

Despite all of the foregoing, however, the story, unfortunately, does not stop there.

One of the fundamental tenets of the Rule of Law is that when rules, regulations or laws are violated, there must be an associated sanction which, after due process, is promptly and dispassionately enforced. Simply put, every offender should be held accountable for his deviant conduct.

Regrettably, however, and except for the cooperation that I have received from former DPP Kent Pantry, this has not been the experience of the OCG. Despite making scores of referrals, over the past five (5) years, to the Commissioner of Police, the DPP, the Corruption Prevention Commission, the Attorney General, the Auditor General, and the Parliament, very little prosecutorial, enforcement or punitive action has resulted.

As I have stated elsewhere, to win the battle against corruption in any form, whether it is in the form of the illicit award of Government contracts, or otherwise, an environment of deterrence must be deliberately created and maintained. Such an environment will only be effectively established when anti-corruption laws with powerful sanctions are first promulgated, and are then forthrightly, swiftly and dispassionately enforced. To do this, the requisite Political and Corporate Will must be found.

Firm and expeditious examples must be made of Public Officers who violate the rules.

This is the only way to deter acts of corruption, and to aggressively force into conformance those deviant members of the society who are either unwilling to submit to the State's voluntary compliance systems, or who believe that they are above the law.

In the final analysis, however, we must get to the point in Jamaica where Justice is blind – where no one is considered to be above the law, irrespective of his political connections, his social standing, his colour, his economic means or his address. There must be one law for all Jamaicans – not one for the majority of Jamaicans and another, which is never enforced, for the rich, the powerful, the well connected and the privileged.

G. FAILURE OF THE STATE TO IMPLEMENT THE CONSIDERED REMEDIAL RECOMMENDATIONS OF THE OCG

Finally, I could not speak to you about the 'Fight to Secure Integrity, Transparency and Accountability in the Award of Government Contracts in Jamaica', without alluding to the innumerable remedial recommendations that have been made by the OCG, to both the Executive and the Legislative arms of the State, in an effort to fix the system.

These recommendations have been made, in a concerted and diligent effort, on the part of the OCG, (a) to significantly enhance transparency, competition, accountability and probity in public contracting in Jamaica, (b) to ensure compliance with the Government's Procurement Procedures and Guidelines, (c) to eliminate waste and inefficiency in the award and implementation of contracts, (d) to prevent fraud and corruption in Government contracting, (e) to strengthen the independence of the OCG, and (f) to generally win the battle against corruption in Jamaica.

Although a small percentage of the referenced OCG recommendations have been adopted and implemented by the State, the overwhelming majority of them has been essentially ignored.

I daresay that if the said OCG recommendations were, over the years, given priority attention, and speedily and comprehensively implemented by successive Administrations, they would have already radically reshaped the entire landscape of the Jamaican Public Sector contract award and procurement processes.

Additionally, tremendous value would have accrued to the Taxpayers and the People of Jamaica – not only in the reduction of waste and corruption – but also in the form of enhanced transparency, probity, accountability, competition and value for money, in the award of lucrative Government contracts.

Instead, however, the country has suffered, and continues to suffer, from the wages of corruption. The perception, in some quarters, is that the plague of corruption is currently being manifested, among other things, in the form of reduced foreign direct investment inflows into the island, and less public funds becoming available to build schools and hospitals, to fight crime, and to provide for much needed public infrastructure and services, such as housing, roads, water and electricity.

The subject OCG recommendations have been varied and far-reaching. They have been formally and routinely presented (a) as a part of the OCG's routine contract monitoring functions, (b) via the OCG's Investigation Reports, (c) via the OCG's Annual Reports to the Parliament, and/or (d) via formal pleas that have been made by me directly to the Prime Minister, the Leader of the Opposition, the Speaker of the House of Representatives and the President of the Senate.

Having regard to the grave implications of this matter – a matter which speaks clearly to the lack of Political Will to do what is right by the State – I have decided to outline herein, as follows, a number of the referenced remedial recommendations which have been made by the OCG but which, to date, have not been implemented by the State:

- (1) Recommendations to make it mandatory for habitual non-performing, low-performing or non-compliant Government contractors to be barred from being awarded any further Government contracts.
- (2) Recommendations to delist from the register of approved Government contractors, contractors who have made fraudulent or false representations to the NCC, or the OCG, on their contractor registration application forms.
- (3) Recommendations to cauterize the persistent issue of cost and time over-runs on Government works contracts.
- (4) Recommendations for portfolio Permanent Secretaries to take a more proactive and aggressive role in developing, implementing and enforcing effective risk management systems, checks and balances and other appropriate management systems, in an effort to mitigate against any possibility of deviations from the Government Procurement Rules.
- (5) Recommendations to ensure that the award and implementation of Government contracts are made impartially and on merit.
- (6) Recommendations for amendment to the Government's Procurement Regulations, and the Contractor General Act, to require sub-contractors who are engaged on high-value Government works projects, to be subjected, to the same contract award and scrutiny checks and balances to which Government contractors are subjected.
- (7) Recommendations to revise the definition of "Government contract", in Section 2 of the Contractor General Act, to expressly include contracts for the acquisition of private lands, contracts for the divestment of state owned assets, and contracts which are awarded by public/private sector joint-venture entities.
- (8) Recommendations to halt the illegitimate abuse of the 'Government's Emergency Contracting Facility', a facility that is often used to direct lucrative State contracts to a preferred contractor under the guise of same being an emergency contract, albeit that, in some instances, the so-called 'emergency' has operated for as long as a year prior to the award of the contract.

- (9) Recommendations to ensure that appointees to the Board of Directors of any Public Body are made fully aware of their responsibilities and obligations under relevant legislation.
- (10) Recommendations for the implementation of legislation to ensure that Directors of Public Body Boards, who flagrantly abuse their office and/or authority, are effectively barred from serving in any like capacity in the future.
- (11) Recommendations for the strengthening of the 'Government's Conflict of Interest Rules', the enforcement of same, and the imposition of sanctions for their violation.
- (12) Recommendations for all Public Bodies that are to become involved in Public/ Private Partnerships to prepare an internal project plan or policy, in accordance with the applicable Government procurement and accounting procedures, to guide the joint-venture project which is to be undertaken.
- (13) Recommendations for the development and implementation of a comprehensive and overriding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly-owned assets), by a Public Body, to members of their respective Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.
- (14) Recommendations to immediately expunge, from the Government's Procurement Rules, the concept of 'the unsolicited proposal', on the ground that same is a corruption enabling device which can be clandestinely utilized by corrupt politicians and public officials to corruptly direct lucrative State contracts to a preferred or connected contractor in consideration for a "kick-back".
- (15) Recommendations to cease the grant to certain State Agencies of exemptions from the Government's Procurement Rules.
- (16) Recommendations to develop appropriate mechanisms to ensure that members of the Executive and the Political Directorate are prohibited from committing the Government to binding contracts, contrary to applicable laws and Government accounting, and procurement regulations and procedures.
- (17) Recommendations for the Parliament of Jamaica to urgently examine the country's current anti-corruption institutional and legislative framework, with a view to (a) insulating same from any possible interference, obstruction or direction from the Executive arm of the State and, (b) significantly strengthening the capacity and effectiveness of same.
- (18) Recommendations for the establishment of a single and adequately resourced National Independent Anti-Corruption Agency for Jamaica. The agency should be structured to (a) discharge, under one roof, the current functions of the Commission of the Contractor General, the Corruption Prevention Commission and the Parliamentary Integrity Commission, (b) possess independent criminal investigative and prosecutorial jurisdictional powers, under the Constitution, over all corruption offences, as well as over offences which are associated with the award of Government contracts and the filing by public officers of their declarations of incomes, assets and liabilities, and (c) possess special police powers of arrest.
- (19) Recommendations for either (a) the establishment of a Special Corruption Court to adjudicate all of the foregoing offences, (b) the assignment of special magistrates/judges to adjudicate same, or (c) the giving of precedence, in the existing Jamaican court structure, to the adjudication of all such offences, save and except for capital offences and other serious offences such as rape.
- (20) Recommendations for the Parliament to review its anti-corruption legislation to ensure, *inter alia*, that the existing sanctions are adequate, effective, proportionate and dissuasive in nature and, in particular, to substantially increase the criminal sanctions for breaches of the Contractor General Act, the Corruption Prevention Act and the Government Procurement Regulations, as follows:

- (a) Increase the penalty under Section 29 of the Contractor General Act to a mandatory minimum fine of \$3 Million or to imprisonment for a mandatory minimum term of 3 years, or both;
 - (b) Increase the penalty for offences under the Corruption Prevention Act to a mandatory minimum fine of \$10 Million or to imprisonment for a mandatory minimum term of 10 years, or both such fine and imprisonment. In the case of a Public Official, the mandatory minimum fine should be set at \$15 Million or imprisonment for a mandatory minimum term of 15 years, or both; and
 - (c) Increase the penalty for offences involving a criminal breach of the Government's Procurement Rules and Regulations to a fine not exceeding \$10 Million or to imprisonment for a term not exceeding 10 years or to both such fine and imprisonment.
- (21) Recommendations for the Corruption Prevention Commission to take a more proactive and aggressive approach, in the investigation of matters which allege acts of corruption involving Public Officials.
 - (22) Recommendations to prohibit the award of Government contracts, above an established minimum value, to any private entity which fails to disclose sworn and certified particulars of its beneficial shareholders or owners, when tendering. The disclosed information would be collated and stored in an anti-corruption database, and would also be cross-referenced with the names of persons who make political campaign donations.
 - (23) Recommendations for the insertion of an "Anti-Corruption Clause" in all Government of Jamaica procurement and asset divestment contracts, to create a financial disincentive for private-sector contractors to illegally collude with corrupt politicians and public sector officials to obtain Government contract awards.
 - (24) Recommendations to enact legislation to restrict or to prohibit individual contractors, and/or the principals, officers and shareholders of Private Entity Contractors, who are designated by the JCF as not being "fit and proper" persons, from bidding on Government contracts.
 - (25) Recommendations to grant to the OCG the power to halt or to regularize a Government contracting or licensing process that is exhibiting signs of corruption, impropriety or irregularity.
 - (26) Recommendations to better secure the independence of the OCG by:
 - (a) entrenching same in the Constitution of Jamaica to protect it from arbitrary political interference; and
 - (b) removing all decisions regarding the OCG's budgetary, resource and staffing allocations from the purview of the Ministry of Finance, and vesting same in a Special Bi-Partisan Committee of Parliament to be chaired by the Opposition.

H. CLOSING REMARKS

In ending my presentation, I will share with you a number of thoughts that I had shared with a Journalist from the Jamaica Gleaner Newspaper earlier this year when he learnt that I would soon be demitting my Commission as Contractor General.

The initial statutory tenure of the Commission of the Contractor General, as specified by Section 6 (1) of the Contractor General Act, is seven (7) years. Consequently, I will demit office, by way of operation of law, on November 30, 2012.

In looking back, I believe that my time with the OCG, over the past roughly six (6) years, has been productively spent and that at the end of my term it will be time for me to pass the baton to another.

We have long turned the corner in rebuilding the OCG from the ground up and transforming the Commission into “a best in class” organization. There is also no question that we are currently pushing the envelope in terms of the effective and efficient discharge of our statutory mandates – at least to the extent that the laws by which we are circumscribed allow.

We believe that we have achieved and are achieving this in a number of ways, inclusive of the following:

- (1) We have elevated the corporate profile of the Commission to one which is highly respected by the wider community of OCG stakeholders.
- (2) We have elevated the Commission into a professional organization which is built upon the foundation pillars of (a) strong corporate ethical principles and values; (b) the commitment and support of a specially recruited cadre of highly qualified staff who fully understand the importance and sanctity of the OCG’s mandate; (c) rigidly enforced and documented workplace policies, procedures, processes and disciplinary codes; and (d) the utilization of technology as a cutting-edge and cost-reduction platform to enable and to support the attainment of the Commission’s strategic and business operating objectives.
- (3) We have developed and deployed a plethora of strategic and operating initiatives which has enabled us to increase, in exponential terms, the levels of transparency and accountability in government contracting and asset divestment transactions, by extensively monitoring and investigating, on a routine basis, the activities of roughly 200 public bodies, and by making our findings public.
- (4) We have heightened the level of public awareness about (a) the Commission’s work activities, its interventions and its considered recommendations; (b) the innumerable challenges which the OCG faces; (c) the incidence of corruption, irregularity and impropriety in public contracting in Jamaica; and (d) the need to secure due adherence, on the part of Public Officers, to the rule of law, by insisting upon probity and transparency in public contracting and to hold them accountable for their actions.
- (5) And, finally, we have increased the level of compliance and accountability, on the part of Public Officers, with the provisions of the Contractor General Act and the Government Procurement Procedures.

At the same time, I have had many disappointments during my tenure as Contractor General.

If I were to, however, choose only one, it would certainly be the realization that, from all indications, there appears to be the absence of the much needed Political and Corporate Will, on the part of successive Administrations, and certain specified State functionaries, to decisively combat corruption in Jamaica, and to adequately empower or support the OCG in its efforts to excise the cancer of corruption, impropriety and irregularity from the Government contracting process.

The impediments that remain, and the issues which must be resolved to make the OCG more effective, are, therefore, neither of the OCG’s doing, nor are they within the OCG’s realm of control.

Consequently, the destiny of the OCG, and whether and to what extent Jamaica will succeed, in the fight to secure integrity, transparency and accountability in the award of its public contracts, and to root out the scourge of corruption from its midst, is a destiny which remains firmly in the hands of the Government, the Parliament and, ultimately, in the hands of the Jamaican People.

The problems and the challenges that I have sought to overview tonight, which have confronted the OCG and me, will persist as long as the OCG’s many remedial recommendations continue to be ignored.

They will remain with us until and unless the OCG is granted independent criminal investigatory powers, independent prosecutorial powers, police powers of arrest, and the power to halt or to regularize a Government contracting process that is exhibiting the signs of corruption, impropriety or irregularity.

In the interim, grave harm is being caused, and will continue to be caused to Jamaica, by the failure of successive Administrations to act decisively, proactively and aggressively on the afore-stated matters, and to do what is right by Jamaica, versus doing that which is right by the measuring stick of political expedience”.

13. CONTRACTOR GENERAL'S LETTER TO THE PRIME MINISTER AND THE LEADER OF THE OPPOSITION

A series of extremely worrying and unprecedented events, which have seriously undermined the effectiveness of the OCG, and which could herald the very demise of the OCG itself, have taken place while I was preparing this, my final remarks to the Parliament of Jamaica.

The referenced events have prompted me to include the following letter in my Introductory Remarks to my Annual Report.

The letter is an Open Letter that was dated September 12, 2012. It was addressed by me to the Most Hon. Prime Minister and the Leader of the Opposition, and copied to several State authorities. The letter, which was publicly released, will speak for itself. It reads, verbatim, as follows:

“September 12, 2012

The Most Hon. Portia Simpson-Miller, MP, ON
Prime Minister of Jamaica
Office of the Prime Minister
1 Devon Road
Kingston 10

The Hon. Andrew Holness, MP
Leader of the Opposition
Office of the Leader of the Opposition
1 West Kings House Road
Kingston 6

Dear Madame Prime Minister and Leader of the Opposition:

I am privileged to write this open letter to you, in my capacity as the Independent Parliamentary Commission of the Contractor General of Jamaica, regarding an urgent matter which I believe is of fundamental importance to the issues of good governance and political leadership in our beloved country, Jamaica.

It is my considered but respectful belief, Madame Prime Minister and Leader, that the time has come for the Executive and Legislative arms of the Jamaican State to publicly clarify precisely what role, if any at all, the Office of the Contractor General (OCG) should play, within a national system of institutionalized and independent checks and balances, to ensure that Government commercial transactions will withstand the highest levels of scrutiny and probity, and that the Jamaican taxpayer can be guaranteed value for money whenever State assets are divested, whenever State licences are issued, or whenever Government contracts are to be awarded by the State's public bodies.

As you are aware, during the past seven (7) years in which I have been privileged to have held my commission as Jamaica's fourth Contractor General, I have laid before your respective Administrations, as well as before your predecessor Administrations, and the country's Parliament, innumerable remedial Recommendations.

These considered Recommendations were specifically and carefully crafted by the OCG (a) to significantly enhance transparency, competition, accountability and probity in public contracting and licensing in Jamaica, (b) to ensure compliance with the Government's Procurement Procedures and Guidelines, (c) to eliminate waste and inefficiency in the award and implementation of Government contracts, (d) to prevent fraud and corruption in Government contracting, (e) to strengthen the independence of the OCG, and (f) to generally win the battle against corruption in Jamaica.

Regrettably, however, most of the referenced Recommendations have not been effectively acted upon, nor have the overwhelming majority of them been materially implemented. In the interim, and while, as a country, we appear to remain apathetic or unwilling to proceed in a decisive, deliberate and expeditious manner with the requisite reforms to the country's good governance structures, and its anti-corruption institutional framework, Jamaica continues to be perceived, by the international commercial community, as well as by its bilateral and multi-lateral partners, as one of the most corrupt countries in the world.

But while these concerns remain, I regret that I must also respectfully call your attention to another area of great concern which has recently arisen for the OCG. The matter is so grave in import, and fundamental in its current and potential impact upon the OCG, that if it is not immediately addressed, it could literally render the OCG, as a national institution, redundant and herald its very demise.

The matter that I have cause to respectfully bring to your attention is that within the past six (6) months, two (2) different court actions have been instituted against the OCG to challenge two (2) major elements of the Commission's long practiced jurisdictional powers under the Contractor General Act.

The first of the referenced Judicial Review court actions was instituted, against the OCG, by a sitting Minister of Government, the Minister of Transport, Works and Housing, Dr. the Hon. Omar Davies. As you are aware, Dr. Davies has challenged, among other things, the powers of a Contractor General to monitor the pre-contract phases of the award of Government contracts.

The second matter, in respect of which I am writing to you, was recently instituted by a private sector entity which has challenged the authority of a Contractor General, under the Contractor General Act, to monitor and/or to investigate the divestment of State assets.

While, there may be differences of opinion as to whether the OCG, does in fact possess the lawful authority, under the Contractor General Act, to exercise a lawful monitoring or investigative jurisdiction, in respect of any of the above-referenced two (2) areas, there are, however, certain very important associated matters that should nevertheless be immediately brought to the fore for your urgent consideration. They are as follows:

- (1) In both of the aforementioned instances, the OCG has consistently exercised a practiced jurisdiction, over the past 28 years, with the full knowledge and/or outward support of successive Parliaments and Government Administrations. This is a documented fact, which is evidenced, among other things, by the Annual Reports of the OCG, which are required, by law, to be filed each year in both Houses of Parliament.
- (2) In respect of the first of the above-referenced areas, namely the OCG's monitoring of the pre-contract phases of the award of Government contracts, I am also obliged to advise that this is an activity of the OCG which, year over year, for the past 28 years, has accounted for the overwhelming majority of the OCG's current JA\$180 million operating budget, the overwhelming majority of its operating staff, and the overwhelming majority of the OCG's work.

Indeed, the OCG, over the years, has never resiled from the faithful discharge of its mandate in the aforementioned regard, particularly because the Supreme Court of Jamaica, from as long ago as 1991, during the tenure of the country's first Contractor General, had ruled in very clear and unambiguous terms that the OCG, upon a proper interpretation of the Contractor General Act, did in fact possess the referenced jurisdiction.

- (3) With respect to the other challenge that was recently brought against the OCG in the courts, namely on the question of whether or not a Contractor General, upon a proper interpretation of the Contractor General Act, has the power to monitor and/or to investigate the divestment of State assets, the attendant issues are exactly the same.

The monitoring and investigation of the State's divestment of assets has been an extremely critical area of the OCG's work for the past several years, and has been certainly so prior to my own appointment, in December 2005, as the incumbent Contractor General. Indeed, it was during the currency of a previous Contractor General, that the OCG had, in January 2000, secured a written Legal Opinion from one of Jamaica's most respected Attorneys, Dr. the Hon. Lloyd Barnett, which held that the OCG does in fact have the referenced jurisdiction.

The need for the Legal Opinion had arisen, at the time, because the OCG's oversight of the State's then ongoing divestment of the Donald Sangster International Airport, by the National Investment Bank of Jamaica (NIBJ), had been called into question.

- (4) Be that as it may, the immediate issue which I must, however, humbly submit, is currently before the country, and before you, is whether any good purpose is being served, by the Government of the Day, challenging the OCG, in the Courts, as to what the Contractor General Act means or does not mean, when the same Government holds the legislative capacity to forthwith amend the Contractor General Act to state lucidly and unequivocally whether or not it wants a Contractor General to indeed possess the lawful authority to monitor and to investigate the pre-contract phases of Government contracts, and/or to have oversight jurisdiction in matters which relate to the State's divestment of assets.
- (5) A related issue, I would also respectfully submit, Madame Prime Minister and Leader, is whether the Government, through its conduct, in taking the OCG to Court to challenge it on matters which have to do with the interpretation of the Contractor General Act, versus moving with expedition and forthrightness to repair ambiguities in the Act, may not also be sending the wrong signals to other stakeholders who will ultimately come to the view that if the Government is doing it, then they can do it too.

While the Government, and other entities, fight the OCG in court, as to what the Contractor General Act means or does not mean, or should mean, not only is the taxpayer's money being literally thrown away in the OCG's defence of the said court actions, but invaluable human resources, which should be otherwise deployed, in the execution of the critical day-to-day anti-corruption mandates of the OCG, are also being wasted away.

- (6) In placing these matters before you, Madame Prime Minister and Leader, we should also call a spade a spade and accept that, as embarrassing as it is, political as well as other questionable considerations have, from time to time, dictated how the OCG's jurisdictional powers are viewed by the Government of the Day. Two (2) examples readily come to mind.
- (a) The first has to do with one of the two (2) afore-referenced matters which is the subject of my letter to you. In his recent Judicial Review Applications in the Supreme Court, against the OCG, one of the many Declarations that the incumbent Minister of Transport, Works and Housing, Dr. Davies, has sought to secure, as regards the OCG's attempted oversight of the Government's award of the North-South Link of Highway 2000 contract to China Harbour Engineering Company (CHEC) without competitive tender, is "*A Declaration that the Contractor General has no power under the Contractor General Act to monitor and to investigate pre-contractual activities*".

However, it will come as a surprise to many that this very activity of the OCG, which the Ruling Peoples National Party (PNP) Administration has now asked the court to declare to be an illegal activity, and to be *ultra vires* the Contractor General Act, is the identical activity that the PNP, just over a year ago, when it constituted the Parliamentary Opposition, wanted the incumbent Contractor General to pursue with vigour.

In a Gleaner Online article, that is dated June 30, 2011, and entitled: ***PNP calls for toll road contract to be opened to international tender***, there was a report of a meeting of the Public Administration and Appropriations Committee of Parliament that was held on the previous day, June 29, 2011. In the news report, it was stated thus:

"It was revealed in the meeting, that the (Jamaica Labour Party) Government plans to award a concession for the (North/South Link of Highway 2000) contract to China Harbour Engineering Company. However, the PNP has taken issue with that plan, saying the project must be put to international tender under the scrutiny of the Contractor General and the Auditor General".

Similarly, in a Sunday Gleaner Online article, that was dated July 3, 2011, and entitled: ***China Harbour pushes for more road contracts***, there was the following news report:

"China Harbour's interest in constructing the new (North/South Link of Highway 2000) highway has already sparked debate among a parliamentary group, with Opposition Member of Parliament Phillip Paulwell [now a Senior Member of the Cabinet] sounding a note of caution that the project should be open to international tender.... He (Mr. Paulwell) wants the process to go through the National Contracts Commission and be subject to scrutiny from Contractor General Greg Christie".

- (b) The second example that I will bring to your attention has to do with the Jamaica Labour Party (JLP) Administration which held the seat of State power in 2008.

Three (3) months after the then Minister of Agriculture, Dr. the Hon. Christopher Tufton, on January 17, 2008, with the support of the then Attorney General, challenged, in writing, the OCG's jurisdiction to monitor his Ministry's then ongoing divestment of the country's publicly owned sugar industry assets, I received a letter, dated April 8, 2008, from the then Minister with portfolio responsibility for Air Jamaica, the Hon. Don Wehby, in which the OCG was requested to review the previous PNP Administration's divestment of Air Jamaica's London Heathrow Slots.

To further compound the issue, on April 23, 2008, the then JLP Minister of Finance, the Hon. Audley Shaw, during his closing speech in the Budget Debates, from the floor of the House of Representatives, publicly requested the OCG to investigate the said Air Jamaica London Heathrow Slots asset divestment by the PNP.

Quite curiously, however, there was no word from the then Office of the Attorney General objecting to the propriety of either Mr. Wehby's or Mr. Shaw's request, although only three (3) months before, the same Office had ruled that the OCG had no jurisdiction to monitor and/or to investigate State asset divestment contracts.

It is a matter of public record that Minister Wehby's and Minister Shaw's requests were acceded to by me, when a formal OCG State Asset Divestment Investigation into the matter was commenced on April 23, 2008, and a Report thereon was formally tabled by me in the House of Representatives on April 7, 2009, and in the Senate on May 8, 2009.

The bald truth of these two (2) examples, both of which are concerned with the exercise, by the OCG, of the very two (2) jurisdictional powers which the courts are now being asked to declare as illegal, is that they have demonstrated that the country's Governments, and its Parliamentary Oppositions, have previously and publicly supported the OCG in its very exercise of the said jurisdictions.

Indeed, they also stand as proof of the fact that the very same Governments, and Parliamentary Oppositions, have even gone as far as to publicly call upon the OCG to exercise the said jurisdictions.

What is unfortunate, however, is that the same (2) examples have also shown that the same Governments and Parliamentary Oppositions will, notwithstanding, at the drop of a hat, discard their referenced support for the OCG when it is politically expedient for them to do so, by deeming the subject jurisdictions to be illegal and, in so doing, publicly attack and/or knowingly undermine the integrity of the OCG institution and its leadership.

- (7) In your consideration of the foregoing matters, pivotal policy questions and issues will, therefore, necessarily arise. Your decisions, Madame Prime Minister and Leader, will give a clear indication, both within and without the country, as to the direction in which the Government and the Parliamentary Opposition are prepared to take with respect to critical national governance issues such as truth, honesty, leadership, political will, the institutional strengthening of the country's good governance structures, and how aggressively and effectively we are prepared to fight what is now perceived to be the pervasive scourge of corruption that has permeated Government contracting and licensing in Jamaica.
- (8) In terms of the immediate issues, however, that are of concern to the OCG, the over-arching question is whether it is your desire (a) that the OCG should be strengthened or weakened as one of the State's independent, anti-corruption commissions – a Commission that was established 28 years ago to ensure probity, propriety, transparency, accountability and value for money in Government commercial contracting and Government licensing, but which has fallen woefully short in the attainment of its stated objectives – and (b) whether it is your desire that the OCG should possess the lawful authority, under the Contractor General Act, to independently monitor and investigate the pre-contract phases of Government contract awards, and/or the divestment of State assets, without hindrance or obstruction.

Irrespective of what your decision is, I would respectfully submit that the Government and the Parliament should forthwith take the requisite steps to effect the necessary amendments to the Contractor General Act, to lucidly and unequivocally reflect that decision.

If, indeed, it is your wish that the OCG should not have the jurisdictional powers that are currently in question, then that is the lawful prerogative of our Honourable Parliament, and we should forthrightly and publicly say so and do the necessaries, at least to save the tax-payers the monies that are currently being wasted in the OCG's defence of these unnecessary Judicial Review claims.

Once the requisite legislative revisions are effected, there would be no need, thereafter, for Dr. Davis, or any other entity or person, to persist in any Judicial Review court proceedings that they have instituted against the OCG. However, the requisite structural adjustments to the OCG, to either downsize its operational activities, or to disband the institution altogether, would have to be made, since two (2) of the institution's major operating mandates would have been terminated.

Should you fail, Madame Prime Minister and Leader, to act urgently and decisively, in the manner that I have respectfully recommended, I can assure you that the OCG will be left in its current state of organizational ineffectiveness, disillusionment, and uncertainty as to what are its true mandates, under the law. Such a posture, I would, respectfully submit, cannot be healthy for inspiring internal or external confidence in Jamaica's national institutions.

In the premises, the OCG would welcome your urgent indication as to your considered decisions in the matter.

In light of the fact that my seven (7) year Commission as Contractor General will soon come to an end, and having regard to the gravity of the matters that I have raised herein, as well as the bearing that they will undoubtedly have upon the future direction of the Commission, I am also copying my letter, to you, to His Excellency, the Governor General of Jamaica, who is obliged by law to appoint my successor in office after consultation with you.

Additionally, and because I am the holder of a Commission of the Parliament of Jamaica, I have also taken the liberty of copying my letter, to you, to the Hon. Speaker of the House of Representatives, the Hon. President of the Senate, and the Hon. Clerk to the Houses, for distribution to all 84 Members of the said Houses of Parliament.

I avail myself of this opportunity to renew to you the assurances of my highest consideration.

Very respectfully yours,

Greg Christie (Signed)

Greg Christie
Contractor General

Copy: His Excellency The Most Hon. Sir Patrick Allen, ON, GCMG, CD, Governor General
The Hon. Michael Peart, MP, Speaker of the House of Representatives
Rev. Senator the Hon. Stanley Redwood, President of the Senate
Mrs. Heather Cooke, Clerk to the Houses of Parliament
Ambassador the Hon. Douglas Saunders, OJ, CD, Cabinet Secretary”

14. CLOSING COMMENTS AND EXPRESSIONS OF GRATITUDE

Looking back over the past six (6) to seven (7) years, the sense of privilege, honour and gratitude, that I have come to derive from serving my country, cannot be adequately articulated in words.

Despite the many challenges and obstacles that I have faced, I have thoroughly enjoyed my Commission as Contractor General, and the unique opportunity that it has provided to me to transform one of Jamaica's most important national institutions.

I am driven by challenges and, indeed, that is what my job is all about.

There are, of course, many who have provided invaluable and immeasurable support to me. While it is impossible for me to name all of them at this time, there are, nevertheless, a few that I must highlight.

The unwavering support and encouragement that my wife, my family and my leadership team at the OCG have given to me throughout, have kept my head above water when the tides were rough. I am indebted to them and, in particular, to my wife for the personal sacrifices that she has made. We are both aware, however, that, in the grand scheme of things, we have paid but a small price for a priceless opportunity to serve.

I would also like to place upon record, my deep appreciation to His Excellency, Sir Howard Cooke, our former Governor General. It was he who invited me, seven (7) years ago, to accept this noble appointment as Jamaica's fourth Contractor General.

I shall remain grateful to him, and to his successors in office, Sir Kenneth Hall and Sir Patrick Allen, for the confidence that they have reposed in me, and to those of my many fellow country-men who have stood solidly behind the OCG throughout my tenure.

Last but not least, I would wish to publicly thank the dedicated staff of the OCG. I had asked them to share my passion for what we had to do, and their response has been resounding and overwhelming.

Time and time again, they have selflessly gone beyond the call of duty to ensure that the mandates of the OCG were faithfully discharged, and that the interest of the Jamaican taxpayer was always served. It is with a sense of great pride that I can say that I am truly honoured and privileged to have served with such a hardworking and determined team.

The professionalism which they have demonstrated, throughout my tenure, is commendable, and with the right leadership in place, I would fully expect that the performance of the OCG will not diminish in consequence of my departure from office.

Finally, there is no question that I will end my Commission with mixed feelings.

The OCG's embrace of the reality that it serves only the collective interests of the People of Jamaica, was a responsibility which I took very seriously. It was also one that I was extremely passionate about. I am proud of the strides that the Commission has made under my watch, and the high level of respect which it has come to command, owing particularly to the uncompromising standards of integrity, professionalism, probity, impartiality and transparency which it has consistently upheld in the discharge of its Statutory mandates.

On the other hand, the failure of successive Administrations, as well as of certain institutional leaders, to fully support the OCG in its important work, will, by far, remain my principal area of regret. But, alas, I will continue to nurture the hope that our nation's leaders will one day come to do what is right by Jamaica, by taking a decisive, dispassionate and unyielding stand against the scourge of corruption wherever and whenever it rears its ugly head.

Yes, they will lose the support of those who will always want to benefit from the preservation of the status quo. But the fact is that we cannot continue, as a nation, recklessly down this slippery path to socio-economic destruction and degradation, and expect that Jamaica will be a much better place 50 years from now for our children and our grand-children.

Our nation's leaders must urgently come together and find a way to abandon what has been perceived to be their misguided pursuit of the illusory and short-term gains of political expedience.

They must, instead, lead and inspire the critical mass of our society away from a posture that is currently mired in apathy, self-interest and political tribalism, to one that demands that we should, at all times, ask what is best for our country and then act accordingly in a forthright, spirited and decisive manner.

Ultimately, those of our leaders who will courageously choose this noble path will come to gain the respect and the trust of the Jamaican populace in ways that they could have never before imagined.

As I have said elsewhere, should we fail to so act, then we must not be heard to complain about the rapidly deepening and pervasive feature of the Jamaican sociological order that corruption has already become.

In the final analysis, we must also accept that unless we purposefully act, we would have rendered futile, whimsical and fanciful any prospect that we might have otherwise had for extracting Jamaica out of the gaping socio-economic abyss that it is now in.

Greg Christie
Contractor General