



Any reply or subsequent reference to this communication should be addressed to the Contractor-General and the following reference quoted:-

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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 13<sup>th</sup> 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)

- (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:



(3)

- (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.



(4)

- (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.



(5)

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.



(6)

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)

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Greg Christie  
Contractor General

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