

CONTRACTOR GENERAL'S INTRODUCTORY REMARKS

OPENING COMMENTS

In accordance with the requirements that are outlined in Section 28 (2) of the Contractor-General Act, I am deeply honoured to, hereby, submit, to the Honourable Houses of Parliament, the 24th Annual Report of the Commission of the Contractor General of Jamaica for the period commencing on January 1 and ending on December 31, 2010.

As an Independent Anti-Corruption Commission of the Parliament of Jamaica, the Contractor General, by virtue of Section 4 (1) of the Contractor-General Act, is exclusively mandated to monitor the award and implementation of Government of Jamaica contracts to ensure, *inter alia*, that they are awarded impartially and on merit and in circumstances that do not involve impropriety and irregularity.

A Contractor General is also obliged by law to monitor the issuance of prescribed Government licenses and permits to ensure that the *"circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity, and where appropriate, to examine whether such license is used in accordance with the terms and conditions thereof."*

Additionally, a Contractor General is encloded by Sections 15 (1) and 16 of the Contractor General Act with a discretionary power to formally investigate the award of Government contracts, the issuance of Government licences and permits, tender procedures and the registration of Government contractors, and other matters that are associated therewith.

The Office of the Contractor General (OCG) is also mandated to provide the National Contracts Commission (NCC) with the requisite technical and administrative support resources which it requires to enable it to execute its contractor registration and Government contract endorsement functions.

The OCG, which, in 2010, had an average staff complement of 59/60 persons, discharges its mission and core operating functions through four (4) operating divisions. They are the Construction Contracts Inspectorate Division, the Non-Construction Contracts, Licenses and Permits Inspectorate Division, the Special Investigations Unit and the Technical Services Division. The functions of these divisions are supported by the operations of the OCG's two (2) other divisions, the Information Systems Division and the Corporate Services Division.

A Contractor General, in fulfilling his statutory mandates as an Independent Commission of the Parliament, has, by extension, a responsibility to report to the People of Jamaica on the work that he has done. This comprehensive Report fulfills that obligation and will provide a detailed insight into the substantive work that was undertaken by the officers of the OCG throughout calendar year 2010.

As has been the case in previous years, the OCG, while striving to secure probity, transparency, competition and accountability in public contracting in Jamaica, has had to contend with several challenges.

In 2010, these challenges included, but were not limited to, at least one (1) overt threat that was made against the life of a senior member of its staff; misguided and very worrying challenges which emanated from the Administration and others which sought to impose unwarranted jurisdictional boundaries upon the OCG's exercise of its lawful mandates; uninformed positions that were posited which were directed at undermining the integrity of the OCG and the validity of its considered and published positions; and, not surprisingly, and for another year, the recurring decimal of the innumerable remedial Referrals and Recommendations that were made by the OCG to certain State authorities, inclusive of the Executive and the Legislative arms of the State, which were, for the most part, ignored.

However, and despite the said challenges, I am pleased to report that the OCG did, throughout the year, discharge its mandates in a highly satisfactory and commendable manner and will, under my watch, continue to do so fearlessly and dispassionately in its quest to bring transparency, integrity and accountability to the Public Procurement and Contracting Processes in Jamaica.

As was the case during the past five (5) reporting years, the OCG's operating attainments in 2010 were driven primarily by its strategic and operating objectives of (a) transforming itself into a 'best in class' organization, (b) preventing corruption in Government procurement and contracting, (c) ensuring compliance with the Government's Procurement Procedures and Guidelines and (d) significantly enhancing transparency, accountability and probity in the Public Sector Contract Award Process.

In the foregoing regard, it would be remiss of me if I did not highlight the fact of the increasing levels of cooperation that the OCG continues to receive from the heads of entities and the procurement officials of most of the nearly 200 Public Bodies in Jamaica which are subjected to the OCG's contract monitoring jurisdiction.

It is my sincere belief that although Jamaica still has a very far way to go before probity, integrity and public confidence are fully restored in its contract award and licensing issue processes, the continuing efforts of the OCG to vigorously and dispassionately pursue the lawful discharge of its mandates is resulting in substantial inroads being made in the fight to eliminate corruption, waste, fraud, impropriety and irregularity from the Government contracting processes in Jamaica.

As is customary, I have sought to set out, herein below, in my Introductory Remarks, a summary of the OCG's operating accomplishments throughout the year. I have also attempted to bring to the fore a number of concerns, observations and positions of the OCG that are directly related to the discharge of my Statutory mandate to "ensure" probity and propriety in Government contracting and licensing in Jamaica.

CONTRACTS MONITORED AND INVESTIGATIONS COMPLETED

For the year 2010, the OCG monitored a total of nine hundred and seventy-two (972) contracts (382 Construction and 590 Goods and Services contracts) on a sustained basis, and completed ten (10) Special Investigations. This reflects an increase of 22% over the total number of contracts that were monitored in 2009 and a 100% increase over the number of Investigations that were undertaken in 2009.

Let me take this opportunity, however, to highlight the fact that despite having a staff complement of only twelve (12) Inspectors within its two (2) Inspectorate Divisions, and only five (5) Special Investigators within its Investigations Unit, the OCG continues to surpass the number of contracts that were monitored and investigated in previous years and has demonstrated, over the past 5 years, a relentless commitment to the discharge of its Statutory mandates that is both unmatched and unprecedented.

Contracts Monitored 2008 - 2010

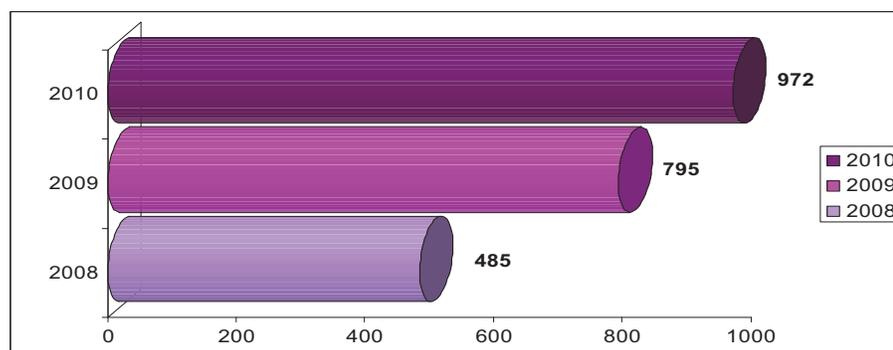


Chart indicating the number of contracts monitored by the Inspectorate Division between 2008 and 2010

The OCG's contract monitoring activities for 2010, particularly those which related to the monitoring of Construction contracts, have revealed, among other things, that procuring entities are awarding contracts to contractors that are not within the permissible work limit which is stipulated in Clause (5) of the Appendix to the National Contracts Commission's Contractor Application Form.

Other issues of concern, that were identified during the course of the OCG's contract monitoring activities, include the relative long time periods which have elapsed between a tender opening and the contract award date; the poor performance of entities in executing their responsibilities during the pre and post contract award phases of construction contracts; the continuing issue of costs and time overruns on Government Works contracts; and the improper application of the Government's Procurement Guidelines.

The OCG's 2010 contract monitoring activities have also revealed that inadequately trained Public Sector procurement personnel have resulted in challenges being experienced and deficiencies being recorded in the proper discharge of the procurement activities of some Public Bodies.

The OCG's contract monitoring activities, which continue to be subjected to significant year over year improvements in reach, effectiveness and efficiency, also encompassed, in 2010, the monitoring of the procurement activities of the five (5) Public Bodies that are exempted from all or a part of the Government's Procurement Procedures, namely Jamaica Vacations Ltd, the Jamaica Tourist Board, the Port Authority of Jamaica, Petrojam Limited and Air Jamaica Ltd.

Also falling within the purview of the OCG's contract monitoring activities, were the 353 consultancy contracts that were reported as being awarded by Public Bodies in 2010, and the six (6) Parliamentary Exemption Motions that were moved and approved in the Parliament in respect of Government contracts which reportedly fell within the purview of Section 41 of the Constitution of Jamaica.

New contract monitoring initiatives, that were undertaken by the OCG throughout the year, included the prosecution of Phase II of the OCG's Quarterly Contracts Award Regime; the implementation of Phase II of the OCG's Licences and Permits Monitoring Regime; the Automation of the Business Processes of the Inspectorate Division; and the establishment of a new Monitoring Portfolio for Government Works projects that are executed via the Government's 'Forced Accounts' procurement methodology.

In addition to the foregoing, the OCG undertook ten (10) comprehensive Procurement Audits of Public Bodies in 2010 and, in its capacity as an observer on the Government's Land Divestment Committee (LDAC), was able to ensure transparency in the divestment of Government-owned lands that were held by the Commissioner of Lands and other Government Entities.

The OCG's Government contract activities, in 2010, were also extended to embrace the Government's intended divestment of over 30 State-owned assets, the overwhelming majority of which involved the proposed sale of going Government-owned business concerns, equity, and/or buildings and lands.

The continued administration of the OCG's Enquiry Management Portfolio also played a major role in the OCG's 2010 contract monitoring activities. An Enquiry will typically emanate from a complaint or representation that is made to the Contractor General which alleges impropriety or irregularity in the procurement process, and/or in respect of the award or grant of a Government Contract or Prescribed Licence.

A Contractor General, pursuant to Sections 4 and/or 15 of the Contractor-General Act, has the discretionary power to conduct what he considers to be a preliminary Enquiry into the matter, prior to his making a decision as to whether or not a full-fledged Special Investigation under Sections 15 (1) and 16 of the Act should be initiated if any at all.

During the 2010 calendar year, a total of seventy-seven (77) allegations were reviewed and/or enquired into by the OCG's Enquiry Management Team. The referenced allegations alluded, *inter alia* to (a) breaches of the Government of Jamaica Procurement Procedures; (b) improper tender processes; (c) irregularities in the award, implementation and execution of Government contracts; (d) Government contract payment discrepancies; (e) questionable grants of prescribed licences; and (f) irregular and improper asset and land divestment procedures.

Further, during the period which is under review, the OCG's Quarterly Contracts Award (QCA) Monitoring Regime captured over 10,000 contracts which fell within the value range of \$275,000 and \$10 million, and which had an aggregated value of some \$14.3 billion.

As is now well known, the OCG's QCA Regime was designed and implemented by me, effective May 2006, with the specific objective of bringing transparency, accountability and full publicity to those Government contract awards which fell beneath the NCC's then \$4 million contract value threshold and which, consequently, was totally hidden from public view. The NCC contract value threshold was elevated to \$10 million effective September 22, 2008.

Since 2009, the OCG has been monitoring the implementation of the operating processes of the Constituency Development Fund (CDF) to ensure that transparency and accountability is at the fore of the programme. For the year 2010, the OCG monitored 60 new CDF projects which were selected from a listing of the Parliamentary Committee Approved Projects for 2010.

Detailed particulars of all of the foregoing matters are fully discussed in the sections of this Report which are entitled **Monitoring of Construction Contracts** and **Monitoring of Non-Construction Contracts, Licences, Permits and Concessions**. Further details of the said contract monitoring activities are also outlined in tabular form in **Appendices II, V, VI and VII to this Report**.

QUARTERLY CONTRACT AWARDS (QCA) REPORT SUBMISSIONS

As was previously stated, during calendar year 2010 the OCG's QCA Report Regime enabled the OCG's Inspectorate Division to monitor in excess of 10,000 Government contracts awards which were valued at more than \$14.3 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.

It is instructive to record that prior to the implementation of the OCG's ground-breaking QCA initiative in May of 2006, the OCG's capacity to monitor Government contract awards was limited to less than 350 contracts per year.

The QCA Report regime, which requires all Procuring Public Bodies to submit QCA Reports, containing brief particulars of contract awards, to the OCG within 30 days of the ending of each calendar year quarter, was conceived and implemented by me as a major plank of my strategic plan to significantly reduce corruption in public procurement in Jamaica, and to secure a marked improvement in probity, competition, accountability and transparency in the Government's contract award process.

The OCG's QCA Report form is designed in a simple spreadsheet format and is specifically structured to force the disclosure of the material particulars of contracts which have been awarded by Public Bodies beneath the NCC's contract endorsement value threshold of \$10 million.

The Report form is also designed to disclose whether and to what extent a Procuring Public Body has breached the Government's Procurement Procedures, or is engaged in 'contract splintering'.

A Zero Tolerance Policy which was first introduced 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 2010, succeeded in producing an unprecedented and record 100% compliance rate for the eighth consecutive quarter running.

At the outset of the OCG's introduction of its Zero Tolerance Policy, the compliance rate was a mere 13%.

The OCG's QCA Zero Tolerance Policy dictates that a failure or refusal, on the part of any Public Body, to comply with the OCG's QCA Requisition, results in the automatic referral of the head of the delinquent Public Body to the Director of Public Prosecutions for criminal prosecution under Section 29 (b) of the Contractor General Act. No exception to the application of the Policy has ever been allowed by me in the four (4) years that the Policy has been in force.

During 2010, 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 2010. An aggregate average of eighty-three (83) Public Bodies attained a Level 1 compliance rate and an average of three (3) Public Bodies attained Level 4 compliance rate. The other Public Bodies attained Level 2 and 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 2010 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**.

SPECIAL INVESTIGATIONS

The Special Investigations Unit of the Office of the Contractor-General has, as its core function, the responsibility for conducting Statutory Investigations into allegations or, in some cases, suspicions of impropriety, corruption or irregularity, in the award of Government contracts, licenses and permits.

The discretionary Statutory power which has been conferred upon me to authorize the conduct of OCG Special Investigations is embodied in Sections 15 (1) and 16 of the Contractor General Act.

In keeping with the provisions that are contained in Sections 17 and 18 of the Act, once an OCG Special Investigation is instigated, extremely wide discretionary powers of subpoena, enquiry, search, and investigation procedure, inclusive of the powers of a Judge of the Supreme Court of Jamaica, are vested in the Contractor General.

Ten (10) Special Investigations were completed by the OCG in calendar year 2010. Nine (9) of the associated Reports of Investigation were submitted by me to Parliament in accordance with the provisions that are embodied in Sections 21 and/or 28 (2) of the Contractor-General Act.

The Special Investigation performance of the OCG, in 2010, continues from the 5 Special Investigations that were completed in 2009, the 11 Special Investigations which were completed by the OCG in both 2008 and 2007, and the record 15 Investigations that were completed in 2006.

These performance numbers contrast strikingly with the three (3) year period of 2003, 2004 and 2005, which preceded the commencement of my tenure as Contractor General, when only two (2) Special Investigations, in totality, were completed by the OCG.

The Special Investigations that were concluded by the OCG in calendar year 2010 were initiated to enquire into the following matters:

1. The Award of Contracts to Taylor and Associates for the Supply of Ammunition.
2. The Air-lift Guarantee Agreements which were entered into between American Airlines (AA) and Jamaica Vacations Limited (JAMVAC) and the Associated Matter Concerning the Retention of Legal Services by the Law Firm, DunnCox, by JAMVAC.
3. The Procurement Practices of the Ministry of Health and Environment and/or its Regional Health Authorities.
4. The Auction Process for Abandoned Motor Vehicles by the Jamaica Customs Department (JCD) on June 30, 2009 and July 1, 2009.
5. The Alleged Conflict of Interest on the Part of Dr. Henry Lowe, Former Chairman of the Bureau of Standards Jamaica (BSJ), in the Procurement of Health Insurance Services for BSJ, whilst he was the Chairman of Blue Cross of Jamaica Limited.
6. The Award of Contracts for the Olympic Athletes Homecoming Week of Celebrations – October 3-10, 2008.
7. The Alleged “*Sweetheart Deals*” Involving the Government of Jamaica and Dehring, Bunting and Golding (DB&G) Limited.
8. The Oil Lifting Contracts between the Petroleum Corporation of Jamaica (PCJ) and Trafigura Beheer.
9. The Award of a Multi-Million Dollar Consultancy Contract to Mr. Aubyn Hill and/or his company, Corporate Strategies Limited.
10. The Complaint by Vehicles and Supplies (Industrial Division) Limited regarding the Procurement of Motor Vehicles by the Ministry of Agriculture (MoA) and the National Works Agency (NWA).

In keeping with those of my responsibilities that are prescribed by Sections 20 and 21 of the Contractor General Act, and/or acting in furtherance of Section 29 of the Act, several formal remedial Recommendations and Referrals were made by me, to the relevant Ministers of Government, State Agencies and Law Enforcement and Prosecutorial Authorities, following the completion of the said OCG Special Investigations.

For ease of reference, the Executive Summaries of the foregoing Special Investigations have been reproduced, verbatim, in **Appendix I to this Report**.

At the end of the 2010 calendar year, there were fourteen (14) other Special OCG Investigations which were being undertaken by the OCG.

Among the more than 50 major Special Investigations which have been conducted and completed by the OCG since I assumed office as Contractor General on December 1, 2005, and in respect of which formal written Reports of Investigations have been submitted by me to the relevant Sate Authorities, are the following:

1. Kingston and St. Andrew Corporation (KSAC) (April 2006)
2. Social Development Commission (SDC) (April 2006)
3. Portmore Municipality (April 2006)
4. Social Development Foundation (SDF) (April 2006)
5. Sandals Whitehouse Hotel (June 2006)
6. Petroleum Company of Jamaica (PETCOM) (December 2006)
7. National Solid Waste Management Authority (NSWMA) (January 2007)
8. Government Employees Administrative Services Only (GEASO) Insurance Scheme (October 2007)
9. Jamaica Tourist Board (December 2007)
10. Jamaica Fire Brigade (December 2007)
11. Highway 2000 Concession Agreement (December 2007)
12. University Hospital of the West Indies (December 2007)
13. 4M Light Bulb (Cuban Light Bulb) Project (February 2008)
14. Petrojam Divestment (June 2008)
15. Betting, Gaming & Lotteries Commission (September 2008)
16. Air Jamaica Limited (September 2008)
17. Universal Access Fund (September 2008)
18. Development Bank of Jamaica (October 2008)
19. Jamaica Urban Transit Company (JUTC) (November 2008)
20. Caymanas Track Limited (CTL) (January 2009)
21. GOTEL (March 2009)
22. Air Jamaica London Heathrow Slots (March 2009)
23. N.E. St. Catherine Constituency (July 2009)
24. Mabey and Johnson Bridge Building Corruption Allegations (October 2009)
25. American Airlines Airlift Agreements (February 2010)
26. Ammunition Supply Agreements (February 2010)
27. Ministry of Health (March 2010)

28. Bureau of Standards Jamaica (May 2010)
29. Olympic Athletes Homecoming Celebrations (June 2010)
30. Trafigura Beheer Oil-Lifting Contracts (August 2010)
31. Dehring, Bunting and Golding Ltd. Alleged "Sweetheart Deals" (August 2010)
32. Ministry of Agriculture/Aubyn Hill Contracts (September 2010)

Copies of all of the foregoing Special Reports of Investigation can be freely perused on, or downloaded from, the OCG's official website at www.ocg.gov.jm.

AUDIT OF GOVERNMENT ENTITIES' PROCUREMENT PRACTICES

The OCG initiated ten (10) new Procurement Audits for the year 2010. An additional six (6) were brought forward from 2009. As at the time of the initial writing of this Report, seven (7) of the referenced Audit Reports had been completed, and the respective Public Bodies were advised of the Findings and related Recommendations that were advanced by the OCG in connection therewith. The remaining Audit Reports were at varying stages of completion and are scheduled to be completed in 2011.

The OCG intends to conduct Audits of all 190+ Procuring Public Bodies by the end of the year 2015. The Audits are being conducted in an effort to assess the internal procurement methodologies and procedures of Public Bodies, and their levels of compliance with the prescribed Government of Jamaica Procurement Procedures.

The Findings of the Audits are usually communicated to the respective Public Bodies, along with remedial Recommendations that are designed, among other things, to improve their levels of compliance.

The responsibility, therefore, rests with each Public Body to implement the Recommendations that have been offered by the OCG. I would, therefore, respectfully encourage the country's Public Body Heads to make every good effort to take same on board for, in the final analysis, it is by this route that irregularity, impropriety, waste, corruption and fraud will be excised from the Government's Procurement and Contract Award Processes.

As a part of the OCG's Strategic Objectives for 2011, the OCG will also be commencing a comprehensive Audit of the Contract Award and Procurement Processes of all of the country's Parish Councils.

Full particulars of the results of the above-referenced Audits of Public Bodies are discussed in the section of this Report which is entitled **Monitoring of Non-Construction Contracts, Licences, Permits and Concessions**.

OCG'S FACILITATION AND SUPPORT OF THE NCC, ITS MEETINGS, ITS CONTRACT ENDORSEMENTS AND ITS CONTRACTOR REGISTRATIONS

The Technical Services Department (TSD) of the OCG, which partly serves as the NCC's Secretariat, continued, in 2010, to fully support the NCC in its efforts by providing it with the requisite administrative and technical resources to facilitate its registration of Government contractors, as well as its weekly review and endorsement of the recommendations for the award of Government contracts which emanate from the country's more than 190 Procuring Public Bodies.

In providing the referenced support and resources to the NCC in 2010, the OCG's TSD assisted the NCC to register 1,829 Contractors and to conduct a total of 49 weekly meetings. Additionally, TSD representatives attended 122 meetings of the NCC's seven (7) Sector Committees in 2010.

The referenced meetings enabled the NCC to review and to endorse 348 recommended contract awards having an aggregated value of \$19.98 Billion.¹

The foregoing compares with 49 and 138 meetings, respectively, which were convened by the NCC and the NCC Sector Committee meetings in 2009. During the referenced meetings, in 2009, an aggregated total of 630 contract award recommendations, valuing \$73.68 Billion, were reviewed, evaluated and endorsed by the NCC, and 2,335 contractors were registered with the NCC.

The full particulars of the TSD's activities throughout 2010 are comprehensively presented in the section of this Report which is entitled **Technical Services Division**. Additionally, the 2010 particulars of the NCC's 348 contract endorsements are outlined in **Appendix IV to this Report**.

THE OCG'S DISSEMINATION OF INFORMATION TO ITS STAKEHOLDERS AND ITS UTILIZATION OF MEDIA RELEASES

The OCG's official website, which can be accessed at www.ocg.gov.jm, is the primary portal through which a wide variety of information regarding the operations of the OCG and the NCC can be accessed by the OCG's stakeholders at any time.

The OCG, in 2010, issued 5 Letters to the Editors of the Print Media, and 67 official OCG Media Releases, exclusive of the OCG's monthly Press Releases of NCC contract endorsements. This compares with 4 Letters to the Editors of the Print Media and 37 Media Releases, which were issued by the OCG in 2009. Once they are issued, OCG Media Releases are typically published on the OCG's website within minutes.

The timely, uniform and regular dissemination of information to the Media, via written OCG Media Releases, is a strategic and deliberate initiative of the OCG. The initiative was specially designed by me to educate, update and/or to inform the Nation about certain OCG issues, initiatives, positions and concerns – inclusive of matters that are related to OCG Special Investigations and Public Sector procurement related issues – which the OCG has deemed to be of sufficient public interest to warrant immediate publication to its stakeholders.

The Media has a critical, if not indispensable, role to play in ensuring that the operations and work of the OCG, it being an Independent Anti-Corruption Commission of Parliament, is subjected to constant public scrutiny. I not only welcome, but must also openly encourage this scrutiny in the public interest.

Again, I am obliged to utilize this medium to publicly thank the members of the Jamaica Media Fraternity for their continued and invaluable support in making public the matters that are the subject of the OCG's Media Releases. I must also thank them for the heightened interest that they have displayed in the fight against the scourge of corruption in Jamaica in 2010.

For ease of reference, and to provide an insight into the extent to which the OCG has gone to keep its stakeholders constantly apprised and updated on its work, its concerns and its positions on a variety of pertinent issues, I have set out, hereunder, the titles of the 67 Media Releases and the 5 Letters to the Editors of the Print Media that were published by the OCG in 2010.

¹ The OCG's records indicate that the referenced numbers are the lowest that have been recorded since 2005. Based upon the empirical data which the OCG has before it, I am, however, of the view that the relatively low overall number of contracts that were endorsed by the NCC, and the subsequent dollar value which was produced, in 2010, were partly as a result of the down-turn in the economy during the year, as well as the omission from the subject NCC data of the Government of Jamaica's Jamaica Development Infrastructure Programme (JDIP) contract, which was valued at approximately US\$400 million dollars or J\$35.6 Billion. The contract in question was awarded by the National Works Agency (NWA), via the Sole Source Procurement Methodology, to the Chinese contractor, China Harbour Engineering Company Limited (CHEC). The NCC, at its meeting of January 13, 2010, 'NOTED' that the contract was a Government to Government Agreement, between the Government of China and the Government of Jamaica, in the amount of US\$400 million, and expressed its concern that a contract of that size and value was not subjected to competitive tender process, to secure value for money.

The content of all of the referenced documents can be viewed or downloaded from the OCG's official website at www.ocg.gov.jm.

Media Releases

1. OCG Senior Director Receives Death Threat In Wake Of Discovery Of Evidence Of Sham Contractors Who Have Been Awarded Millions Of Dollars In Contracts From The National Housing Trust (January 6, 2010)
2. OCG Writes To Editor Of The Sunday Herald To Clarify Statements Made In Article Entitled "Chin's Construction Gets Millions In Contracts" (January 11, 2010)
3. OCG Hands Over Seventy-Four Exhibits Of Evidence To Fraud Squad In Ongoing Investigation Into National Housing Trust Contractors (January 12, 2010)
4. Contractor General Selected To Represent Jamaica In Corruption Control Programme In Singapore (January 26, 2010)
5. OCG Formally Responds To Letter Received From "Air Jamaica Staff" (February 2, 2010)
6. Office Of The Contractor General Launches Special Audit Of The Procurement, Contract Award And Asset Divestment Practices Of The Ministry Of Finance And The Public Service (February 4, 2010)
7. Office Of The Contractor General Registers Unprecedented 100% QCA Report Compliance Rate For The Fourth Consecutive Quarter - Important Lessons To Be Learned Says Contractor General (February 8, 2010)
8. OCG Advises Lawyers For JALPA That Any Abandonment Of The Competitive Tendering Process For The Sale Of Air Jamaica Would Be Unlawful (February 16, 2010)
9. OCG Submits Anti-Corruption Proposal For Mandatory Disclosure Of Beneficial Owners Of Private Entities Who Are Desirous Of Bidding On Government Contracts (February 19, 2010)
10. Office Of The Contractor General Concludes Special Investigation Into American Airlines Airlift Guarantee Agreements And Retention Of Legal Services By Jamaica Vacations Limited (February 24, 2010)
11. OCG Concludes Special Investigation Into Award Of Contracts By The Security Forces To Taylor And Associates For The Supply Of Ammunition (February 25, 2010)
12. Office Of The Contractor General Concludes Special Investigation Into The Procurement Practices Of The Ministry Of Health (March 3, 2010)
13. Contractor General Responds To Comments Made By Minister Edmund Bartlett Regarding The American Airlines Airlift Guarantee Agreements (March 4, 2010)
14. Contractor General Submits Panel Of Three Nominees To The Governor General To Facilitate Appointment Of Replacement To Former Chair Of The National Contracts Commission, The Hon. Shirley Tyndall (March 10, 2010)
15. Important Media Notification From The Contractor General Regarding A Matter Of Public Interest (March 11, 2010)
16. Office Of The Contractor General Commences Special Investigation Into Telephone System Supply And Installation Contract Awarded By The Accountant General's Department (March 15, 2010)

17. Office Of The Contractor General Concludes Special Investigation Into Auction For Abandoned Motor Vehicles Conducted By The Jamaica Customs Department On June 30 And July 1, 2009 (March 17, 2010)
18. Contractor General Makes Recommendations For The Establishment Of An Independent National Anti-Corruption State Agency (March 22, 2010)
19. Office Of The Contractor General (OCG) Welcomes Prime Minister's Statement Regarding OCG's Investigation Report On The American Airlines Airlift Guarantee Agreements (March 26, 2010)
20. Cabinet Authorizes Contractor General To Table Report Of Special Investigation Into Award Of Contracts By The Security Forces To Taylor And Associates For The Supply Of Ammunition (March 30, 2010)
21. Response To Media Enquires - Retention Of Legal Services By The Office Of The Contractor General - Referral Arising From The OCG's Investigation Into The Air Jamaica Heathrow Slots Divestment (April 14, 2010)
22. Letter To The Editor Of The Sunday Herald Newspaper, Distributed To The Media - Re Article Entitled - "Discord Increases Between OCG And DPP" (April 18, 2010)
23. Office Of The Contractor General Commences Heightened Investigation Into Suspected Sham Contractors Who Were Awarded Millions Of Dollars Of Contracts By The National Housing Trust (April 20, 2010)
24. Architect Raymond McIntyre Appointed As New Chair Of The National Contracts Commission (April 20, 2010)
25. OCG Invited To Be A Member Of A World Bank Group Of Experts To Discuss 'The Misuse Of Corporate Vehicles In Grand Corruption Cases' - Joseph Hibbert Case One Of 180 Selected From Around The World For Study (April 23, 2010)
26. Contractor General Recommends Immediate Submission Of Issues Regarding US Airways Airlift Agreements To Cabinet And Parliament Following Meeting With Senior Tourism Officials (April 27, 2010)
27. Court Actions Brought By Former Office Of The Contractor General Employees Struck Out By Supreme Court On Procedural Grounds (May 1, 2010)
28. Office Of The Contractor General Concludes Investigation Into Allegations Of A Conflict Of Interest On The Part Of Dr. Henry Lowe, Former Chairman Of The Bureau Of Standards Jamaica (May 4, 2010)
29. Office Of The Contractor General Registers Unprecedented 100% QCA Report Compliance Rate For The Fifth Consecutive Quarter (May 4, 2010)
30. Office Of The Contractor General Takes Decision To Launch Special Investigation Into Security Contract At Norman Manley International Airport (May 6, 2010)
31. OCG Senior Director Selected To Represent Jamaica At Commonwealth Secretariat Conference On Public Procurement (May 11, 2010)
32. Statement Of The Office Of The Contractor General Regarding The Manatt, Phelps And Phillips Matter (May 16, 2010)
33. OCG Has Grave Concerns About Deal To Divest GOJ's 45% Stake In Jamalco To Hongfan - Demands Critical Information Failing Which It Recommends Deal Should Be Shelved - Possibility Of Major OCG Investigation (May 17, 2010)

34. Open Statement Of The Contractor General, Greg Christie, Regarding Prime Minister's Commitment To Fight Corruption (May 19, 2010)
35. Contractor General Writes To Ministry Of Energy And Mining To Challenge Its Media Release On The Divestment Of GOJ's 45% Stake In Jamalco (May 26, 2010)
36. Contractor General Launches Special Investigation Into Government's Divestment Of Its 45% Stake In Jamalco (June 1, 2010)
37. Contractor General Proposes Introduction Of 'Anti-Corruption Clause' To Stem Corruption In The Award Of Government Contracts (June 3, 2010)
38. Contractor General Invites Attorney General To Reconsider Positions On OCG's Jurisdiction In Light Of Legal Opinion Of Queen's Counsel (June 4, 2010)
39. Permanent Secretary And Prime Minister To Be Among The First To Receive Statutory Requisitions As OCG Probe Of Jamalco Sale Gets Underway (June 7, 2010)
40. OCG Makes Public Issues, Concerns And Findings Regarding Arrangements Between Government And Us Airways (June 10, 2010)
41. Contractor General Cautions Minister Bartlett And Permanent Secretary About Denying Representations Made By Them To The OCG (June 11, 2010)
42. OCG Concludes Investigation Into Government Contract Awards For The Olympic Athletes Homecoming Week Of Celebrations (June 17, 2010)
43. Contractor General's Letter To Gleaner Editor In Response To Editorial Entitled: The Controversial Cap Shares (June 19, 2010)
44. OCG Conducts Unannounced Audits At The Petroleum Corporation Of Jamaica And The Ministry Of Energy To Sequester LNG Contract Records (June 22, 2010)
45. OCG Expresses Concern Regarding Statements Made By Former Permanent Secretary In The Ministry Of Information, Culture, Youth And Sports (June 28, 2010)
46. Statement Of The Contractor General In Response To Media Report (July 12, 2010)
47. OCG Registers Record 100% QCA Report Compliance Rate For The Sixth Consecutive Quarter - Contractor General Challenges Public Officers (August 9, 2010)
48. Office Of The Contractor General Launches Major Investigation Into Contract Award Irregularities At The St. Catherine Parish Council (August 16, 2010)
49. OCG Expands Ambit Of Investigation Into Government Contracts Awarded To Strathairn Construction - Accepts Apology Of MP Warmington (August 19, 2010)
50. Office Of The Contractor General Concludes Special Investigation Into Oil-Lifting Contracts Between PCJ And Trafigura Beheer (August 23, 2010)
51. OCG Concludes Investigation Into Alleged "Sweetheart Deals" Involving The Government And The Former Dehring, Bunting And Golding (DB&G) Ltd (August 26, 2010)
52. Office Of The Contractor General Concludes Special Investigation Into Award Of Multi-Million Dollar Consultancy Contract To Aubyn Hill (September 13, 2010)

53. OCG Cautions Public About Statement Of The Ministry Of Agriculture And Fisheries - Expresses Alarm At Ministry's Willingness To Ignore The Law (September 15, 2010)
54. Contractor General Submits 2009 Annual Report To Parliament (September 21, 2010)
55. Media Inference That DPP Did Not Acknowledge Receipt Of OCG Statutory Referrals Is Inaccurate (September 24, 2010)
56. OCG Issues Preliminary Response To Rulings Of The Director Of Public Prosecutions In The OCG's JUTC Investigation (September 27, 2010)
57. Statement Of The Office Of The Contractor General (OCG) To The Parliament Of Jamaica Regarding The OCG's September 2010 Statutory Investigation Into The Ministry Of Agriculture's Award Of Two Consultancy Contracts To Aubyn Hill (October 5, 2010)
58. Transparency International's Jamaica 2010 CPI Standing To Be Welcomed With Caution As There Is Much Work To Be Done (November 2, 2010)
59. Office Of The Contractor General Registers Unprecedented 100% QCA Report Compliance Rate For The Seventh Consecutive Quarter (November 3, 2010)
60. Contractor General To Attend 14th International Anti-Corruption Conference (IACC) In Bangkok, Thailand (November 3, 2010)
61. OCG's Response To Gleaner Column Entitled "Calamity At Caymanas Track - OCG Lured Into Unauthorized Probe" Written By Gordon Robinson (November 15, 2010)
62. Contractor General Denies News Report Carried By Nationwide News Network (November 17, 2010)
63. OCG Raises Alarm About Propriety And Legality Of Cabinet Directive - Unable To Support Contractor Registration Moratorium (December 1, 2010)
64. Keynote Presentation By The Contractor General On "Key Leadership Qualities" - UWI Mona School Of Business 2010 Graduate Awards Ceremony (December 8, 2010)
65. Public Statement Of The Office Of The Contractor General On International Anti-Corruption Day (December 9, 2010)
66. OCG Writes To Government To Query Veracity Of Newspaper Article Alleging Secret Negotiations For Sale Of Sandals Whitehouse Hotel (December 13, 2010)
67. Director Of Public Prosecutions Concedes That Her Ruling In The OCG's JUTC Investigation Regarding Susan Simes Was Factually Flawed (December 23, 2010)

Letters to the Editor of the Print Media

1. Letter to the Editor Of The Sunday Herald Newspaper - Re Article Entitled - "Chin's Construction Gets Millions In Contracts" (January 11, 2010).
2. Letter to the Editor Of The Sunday Herald Newspaper - Re Article Entitled - "Discord Increases Between OCG And DPP" (April 18, 2010).
3. Letter to the Editor Of The Gleaner Newspaper - Re Editorial Entitled - "The Controversial Cap Shares" (June 19, 2010).

4. Letter to the Editor Of The Observer Newspaper - Re Column "Heart To Heart" - A High Price To Pay For Integrity (August 24, 2010).
5. Letter to the Editor Of The Gleaner Newspaper - Re Column Entitled "Calamity At Caymanas Track - OCG Lured Into Unauthorized Probe" Written By Gordon Robinson (November 15, 2010)

THE PERCEPTION OF CORRUPTION IN JAMAICA THROUGH THE EYES OF TRANSPARENCY INTERNATIONAL AND WHAT IT PORTENDS FOR JAMAICA

In October 2010, the global anti-corruption watchdog, Transparency International (TI), released its 2010 Corruption Perception Index (CPI) Standings in which Jamaica was singled out as having received a CPI score of 3.3 and a country ranking of 87 out of 178 countries. The country's 2010 performance represented an improvement over its 2009 standing of a CPI score of 3.0 and a country ranking of 99 out of 180 countries.

It is instructive to note that no reasons were given by TI for the improved standing. Consequently, no one knows for certain to what specific anti-corruption efforts, if any, was the perceived improvement attributable or what are the areas in which major improvement is now perceived to be required.

More significantly, however, although Jamaica's 2010 CPI performance has temporarily halted the three (3) year decline in the negative CPI standings which have plagued the country since 2007, in the grand scheme of things the 2010 CPI score of 3.3 and the 87th country ranking is really a meagre and modest gain.

Indeed, in the past nine (9) years, Jamaica has never scored higher than 4.0 on the CPI where 10 is perceived to be least corrupt and 1 as most corrupt.

Transparency International Annual Corruption Perceptions Index

Year	CPI Score	Country Rank	Total Countries Ranked	Independent Surveys Used
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

Table showing Jamaica's Corruption Perception Index (CPI) ranking over a 9 year period

To put things in another perspective, Barbados, one of Jamaica's regional counterparts, in 2010, achieved a CPI score of 7.8 and a world ranking of 17 out of 178 countries, and thus stands as a vivid reminder of how deep the relative perception of corruption is in Jamaica.

The OCG, from its unique vantage point, is of the considered view that corruption is very much alive and kicking in Jamaica today. It follows, therefore, that we should not allow the 2010 TI ranking, although promising, to deflect our attention away from the magnitude of the task that lies ahead.

With Jamaica's current and historical rankings on the Transparency International Corruption Index, one wonders whether the Parliament and the Executive are fully understanding of the adverse implications of this continued plague on the nation's image, and the negative prospects that it poses for any chance that the country might have otherwise had for achieving an acceptable level of sustained economic development, and for attracting much needed foreign direct investment to our shores.

Indeed, the OCG continues to question the depth and the sincerity of the Government's stated commitment and Political Will to dealing with the problem of corruption in Jamaica and in 'cleaning-up', in particular, the Government of Jamaica Public Sector Procurement, Contract Award and Contractor Registration processes.

To be candid, the OCG is frustrated with the Administration's seeming indifference to its pleas for the referenced matters to be addressed. In keeping with its Statutory mandates under the Contractor General Act, countless remedial and corrective Recommendations have been made, time and time again, by the OCG, under my watch, and under that of my predecessors in office, to the Executive and the Legislative arms of the State, but, to date, very little has been accomplished.

The truth is that there is much work to be done by the Executive and the Legislature to effectively fight the scourge of corruption in Jamaica which, by its very nature, is a cancer which becomes increasingly pervasive if it is not surgically checked and excised in an aggressive and expeditious manner.

I have, for example, also sought to bring to the public fore the fact of the arrest, prosecution and/or conviction, in other jurisdictions, of senior public officials for acts of corruption – acts of corruption which, by our own shockingly low standards in Jamaica, would either be classified as an acceptable business practice, or otherwise to be apparently too insignificant or *de-minimis* to warrant either the implicated public official stepping down from office², or the attention of our criminal law enforcement or prosecutorial authorities.

The referenced matters represent clear examples of countries that are truly committed to (a) the eradication of corruption in any shape or form from within their borders, (b) good governance practices, transparency and accountability in Government and (c) a firm, unswerving and dispassionate adherence to the Rule of Law.

Regrettably, however, the efforts of the OCG to highlight these best practice examples have apparently gone unnoticed by our duly elected and appointed officials who, so far, have failed to take the required decisive and aggressive steps to eradicate corruption from our shores once and for all.

Urgent and decisive action needs to be taken to review and to strengthen the efficiency and the effectiveness of the country's anti-corruption institutional and legislative frameworks, and to significantly increase the sanctions which currently exist for breaches of the anti-corruption laws, inclusive of breaches of the Corruption Prevention Act, the Parliament (Integrity of Members) Act, the Contractor General Act and the Government's Procurement Regulations.

We must urgently get to the point where breaches of the country's anti-corruption laws are efficiently detected, promptly and comprehensively investigated, and expeditiously and effectively prosecuted before the courts, without fear and without favour. Criminal convictions must be secured and examples must be set so that an environment of fear and deterrence is established. A clear signal must be sent that absolutely no one, irrespective of his colour, his economic standing, his social status, his political connections, his address or his station in life, is above the law.

² During the final editing of my Remarks, I came across an Associated Press (AP) story, dated September 14, 2011, that was entitled '**Brazil's tourism minister resigns amid scandal**'. The story read thus: "*Brazil's tourism minister has resigned amid allegations of misusing public funds. Pedro Novais is the fifth minister to resign since June. No replacement has been named. The newspaper Folha de S. Paulo ran articles accusing the minister of allowing his wife to use a government driver for errands. He's also accused of using congressional funds to pay for a maid. The president's chief of staff resigned in June amid questions about a spike in his wealth. The minister of transportation was removed in July because of corruption allegations. The minister of defense was removed from office early in August after he openly criticized President Dilma Rousseff's government. And the minister of agriculture quit that month amid corruption allegations.*"

Without prejudice to my proposal for the establishment of a Single Independent Anti-Corruption State Agency for Jamaica, it is my considered belief that until these remedial actions, amongst others, are demonstrably realized for all to patently see, no meaningful progress will be made in the long and tough battle which must be fought to overcome the monster of corruption which continues to stalk Jamaica and which is currently obstructing the majority of the Jamaican People from attaining their full socio-economic potential.

PROPOSAL FOR A SINGLE INDEPENDENT ANTI-CORRUPTION STATE AGENCY IN JAMAICA

On March 22, 2010, I wrote an open letter to the Hon. Prime Minister, the Most Hon. Leader of the Opposition, the Hon. Speaker of the House of Representatives and the Hon. President of the Senate, recommending the establishment of a Single National Independent Anti-Corruption State Agency for Jamaica.

It was proposed that, at a minimum, the Agency would embrace the functions and mandates of the Integrity Commission, the Corruption Prevention Commission and the Office of the Contractor General, and would be vested with the power, under the Constitution, to, *inter alia*, “*criminally investigate and to independently prosecute all corruption and corruption related criminal offences.*”

It is my considered view 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 anti-corruption institutional framework – a framework that 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.

While my letter was acknowledged by at least one (1) of the parties, and the proposed concept was the subject of widespread public support, the proposal, as at the time of the writing of this Report, appears to have been ‘shelved’. This is an unfortunate development, since any effort on the part of the Administration, and/or the Opposition, to establish such an Agency, would have demonstrated a clear commitment by the State to come to grips, once and for all, with the grave and ominous threat which corruption now poses for the future socio-economic fortunes of our beloved Jamaica and its People.

Although the OCG believes that 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 is an undeniable and incontrovertible fact that it simply does not go far enough. For although the concept of the Office of the Special Prosecutor, as presently conceived, will have criminal arrest and limited prosecutorial powers, it has curiously sought to merge only the Jamaica Parliamentary Integrity Commission, and the Corruption Prevention Commission, but has excluded, from its purview, the OCG.

The referenced omission is cause for grave concern, for it is a trite and 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-owned assets. How then, in such circumstances, can an Office of the Special Prosecutor be seriously advanced by any Government as the State’s all-embracing National Anti-Corruption Agency when it has not been constructed to deal with corruption in public contracting?

The Administration’s exclusion of the OCG from the purview of the concept of the proposed Special Prosecutor, and its inexplicable failure to otherwise give the OCG real teeth in the form of criminal arrest and prosecutorial jurisdiction, is, in the above-referenced circumstances, not only mind-boggling, but has raised very worrying questions about the depth of the Political Will of the Executive and the Parliament to deal forthrightly, comprehensively and convincingly with the problem of corruption in Jamaica.

The OCG is of the strong belief that, given Jamaica's unique corruption challenges, any single National Independent 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 Jamaican 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.³

ANTI-CORRUPTION PROPOSAL FOR MANDATORY DISCLOSURE OF BENEFICIAL OWNERS OF PRIVATE ENTITIES DESIROUS OF BIDDING ON GOVERNMENT CONTRACTS

My mandate under Section 4 (1) of the Contractor General Act, requires me to “ensure” that Government contracts are awarded impartially and on merit, and in circumstances that do not involve impropriety or irregularity. I, along with every officer of the Office of the Contractor General, have subscribed to a solemn oath to do this.

As a certified ISO 9002 International Quality Systems Implementer and Lead Auditor, I am of the firm belief that my mandate, under the Contractor General Act can be easily discharged if whenever I identify breaches, deficiencies, loop-holes, gaps, or lacunas in the application of the Government's Procurement Procedures, or in the laws which govern public contracting, my response is to undertake a root-cause analysis of the issue and, thereafter, develop and propose a suitable remedial or corrective action which will ensure that the subject mischief is effectively cured.

The OCG has, during my tenure, developed and presented to the Executive and Legislative arms of the Jamaican State, innumerable Recommendations and proposals in the foregoing regard.

One such proposal was advanced by me on February 19, 2010, when I wrote to the Government to outline a detailed proposal for the mandatory disclosure of particulars of the beneficial owners of all Private Entities that are desirous of bidding or tendering on Government contracts which exceed \$275,000 in value.

I was prompted to do this as the OCG has been observing a very worrying and growing trend of on-shore and off-shore incorporated private companies that are receiving Government of Jamaica contracts but whose human shareholders, and/or beneficial owners, are substantially unknown.

No one knows, for example, whether these persons are politicians, Parliamentarians, senior public officials, their nominees, their relatives, or simply persons who are being ‘paid back’, via the award of Government contracts, for favours done or political campaign contributions made.

³ The case for a Single Independent Anti-Corruption State Agency for Jamaica was comprehensively documented in a Keynote Presentation that was delivered by me, on March 23, 2011, at the First Regional Law Enforcement Anti-Corruption Conference that was convened in Kingston between March 21 and 23, 2011. The title of the Presentation was: “*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*”. The full text of the Presentation is available for download from the OCG's official website at www.ocg.gov.jm.

The anti-corruption proposal that was advanced by the OCG was, therefore, designed to combat what the OCG viewed as a corruption-enabling facility which was, and is still, enjoying the colour of law. Simply put, the measure was designed to significantly improve transparency in Government contracting by revealing the true identities of the true owners of companies and other private business entities that are receiving Government of Jamaica contracts.

In an OCG Media Release which was issued regarding the matter, the following observation was also made:

“Once the appropriate election campaign financing laws are enacted to, among other things, force the disclosure of the identity of political campaign donors and financiers, the OCG and other State anti-corruption agencies will have the ability to cross-check these names against an electronic database of persons who are the beneficial recipients of Government contracts. The OCG has already discussed the matter with the leadership of the Citizens Action for Free and Fair Elections (CAFFE) and will commit to the development of that electronic database”.

Full particulars of the proposal, inclusive of a specimen of the Disclosure Form, were formally conveyed by me to the Financial Secretary. My letter was also copied to the Prime Minister, the Minister of Finance and the Cabinet Secretary. In addition, the proposal was formally tabled, by the OCG, before the Committee which was established by the Prime Minister to review the Government's Procurement Policy, Procedures and Regulations.

However, and despite the OCG's efforts, it is worthy of note that the Cabinet of the Government of Jamaica failed to include the proposed provision in the approved Revised Handbook of Government Procurement Procedures. The new handbook was brought into force effective January 2, 2011, via a Ministry of Finance and Public Service Circular, No. 34, which was dated December 10, 2010.

PROPOSALS FOR (A) AN ANTI-CORRUPTION CLAUSE IN THE BODY OF GOVERNMENT CONTRACTS, (B) THE IMPOSITION OF A 'FIT AND PROPER' TEST FOR CONTRACTORS AND (C) THE REGULATION OF SUB-CONTRACTORS

Another very important anti-corruption measure that was formally proposed by me, to the Administration, in 2010, was the introduction of what is called an 'Anti-Corruption Clause' to be inserted in the body of Government contracts.

The concept, as proposed, was designed to create a powerful disincentive for Private Sector contractors who may otherwise be inclined to illegally collude with corrupt politicians and Public Sector officials to obtain Government of Jamaica contract awards.

In essence, the proposed Anti-Corruption Clause is a written warranty which every contractor, who tenders on a Government contracting opportunity, would be required to give warranting that no one has received or will receive a commission, fee, or benefit of any kind in order to influence the award of the contract.

The warranty, which would be embodied in both the tender and the contract documents, would be underpinned by a further contractual undertaking, given by the bidder or contractor, to pay to the Government a fixed penalty of say 15% of the contract value in the event that the warranty is later discovered to have been breached.

The Clause, which has been successfully used in a number of other jurisdictions, would also render the contract null and void.

I also called for legislation to be urgently enacted to allow the Jamaica Constabulary Force (JCF) to determine who is a 'Fit and Proper Person' to be awarded a Government contract and to subject such certifications to re-evaluation and renewal each year. If a contractor is not in possession of a valid JCF 'Fit and Proper Person' certificate at the time of tendering, then his tender would be deemed null and void.

Finally, it was also proposed to the Government that sub-contractors who are engaged on high value Government Works projects should be subjected to the same 'checks and balance' regime to which Government contractors are subjected.

Under law, a Government contractor is the contractor who is directly awarded a Government contract by a Public Body. Such a contractor must not only be tax compliant but must also be assessed, graded and registered each year by the National Contracts Commission (NCC) in respect of its resource and performance capabilities. Additionally, the award of a Government contract to a Government contractor is also subjected to a plethora of regulatory laws, inclusive of the Government's Procurement Regulations and the Contractor General Act.

A sub-contractor, however, to whom a Government contractor can now freely issue a substantial portion of a Government contract award, is exempted from all of the foregoing checks and balances. At the time, the following observation was made by me:

"We believe that the situation is untenable and is inimical to the public interest. Not only does it provide a loophole through which Government contracts can be legitimately directed to unqualified, under-resourced and unregulated persons, but it also constitutes a perfectly legal conduit through which corrupt politicians and public officials can direct substantial portions of State contracts to their cronies and supporters".

STATEMENT ISSUED BY THE CONTRACTOR GENERAL ON INTERNATIONAL ANTI-CORRUPTION DAY, DECEMBER 9, 2010

Below, is a full transcript of the Statement that was issued by me to the Media on International Anti-corruption Day, December 9, 2010.

"As the global community celebrates International Anti-Corruption Day today by focusing upon how to overcome the challenges which continue to plague nation States in their respective fights against the scourge of corruption, Jamaicans may have very little to celebrate and much to be concerned about.

The United Nations has said that corruption is a global concern not only because it is found in both rich and poor countries, but because there is abundant evidence that it hurts poor people disproportionately, contributes to instability and poverty, and is a dominant factor which, if not checked, will drive fragile countries towards State capture or State failure.

The United Nations has also opined that corruption is a major international and national problem which has the capacity to undermine democracy and the Rule of Law.

Defined generally as the abuse of public office for private gain, corruption, which is often driven by individual greed, will manifest itself in ways which are inimical to the national security and political and socio-economic interests of the world community of countries, of which Jamaica is a part. Its impact is incredibly wide.

Corruption erodes the quality of life, leads to human rights violations, steals political elections, distorts financial markets, reduces investor confidence, increases the price of goods and services, undermines or destroys confidence in critical public institutions, and enables organized crime, terrorism and other threats to human security to flourish.

For developing countries such as Jamaica, the magnitude of the potential for the adverse socio-economic consequences which corruption portends can be substantial.

When unscrupulous business-men agree to pay corrupt public officials kick-backs for the award of lucrative State contracts, when public assets are sold below value to connected parties, when Government contracts or licences are awarded to politically connected persons or to corporate entities in return for political campaign donations, or when foreign financial aid is illegally diverted into the private bank accounts of public officials, it simply means that there will be less public funds 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.

In consequence, and although everyone in the society will suffer because of corruption, the most vulnerable – the poor – will suffer first and suffer the worst. Ultimately, the prospects for improving the socio-economic plight of an entire country are, at one and the same time, summarily impeded, compromised and undermined.

In an attempt to monetize the massive costs that corruption in procurement can exact from a People, Transparency International (TI), the International Anti-Corruption Watchdog, has 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, is an average of 10-25% and, in the worst cases, as much as 50%. In the case of Jamaica, it is instructive to note that more than \$90 billion was expended in 2009 alone in the procurement of Government works, goods and services contracts.

Corruption in public procurement also kills. According to TI, this happens, for example, when the execution of construction contracts are flawed, leading to the collapse of public buildings, or when substandard or counterfeit medicines fail to attend to People's health. Studies, which have been published by TI, have partly blamed the high death tolls of the devastating earthquakes in Turkey (1998), India (2001), China (2008) and Haiti (2010), on alleged corruption in the construction of public buildings, including schools and hospitals.

If corruption is to be effectively fought, it is also extremely critical that the environment in which it thrives is clearly delineated and understood. Corruption will almost, invariably, flourish in any or all of the following circumstances:

1. Where institutional checks and balances on governmental power are missing;
2. Where good governance and regulatory structures exist on paper only or do not exist at all;
3. Where there is an absence of transparency in governmental decision-making;
4. Where the rule of law is not fully enforced or respected;
5. When politicians, ministers of government or public servants are not held accountable for their actions;
6. Where civil society is thin on the ground;
7. Where the media is not independent, or is influenced or controlled by special interests;
8. Where there are no independent anti-corruption institutions;
9. Where anti-corruption institutions are inadequately resourced, are ineffective, are capable of being influenced or controlled by the political directorate, or are led by men and women who fail to understand what is the true import of their mandate;
10. When citizens become indifferent, lose courage, become fearful or fail to speak out despite the clear evils which they see; and
11. Where there is a failure to rigidly prosecute and to enforce national anti-corruption laws.

Today, as we review the issue of corruption in Jamaica, it is arguable that we may have already arrived at a critical cross-roads – a cross-roads at which the political will and the courage of the leadership of the State’s key organs to decisively fight the scourge of corruption should be openly questioned, and quite rightly so. For it is no secret that a majority of Jamaicans may have already resigned themselves to the painful realization that corruption has probably become irrevocably and irretrievably ingrained in most, if not all, of Jamaica’s political and socio-economic spheres.

It is against this background, therefore, and as the world focuses upon the debilitating consequences of corruption, and considers the measures which can be implemented to defeat it, that the Office of the Contractor General (OCG) feels obliged to respectfully call upon the Leadership of our Government, Her Majesty’s Loyal Opposition, our Parliament, our Private Sector Associations, the Media, Civil Society Groups, and all right-thinking Jamaicans, to ensure that a defined and aggressive National Agenda is urgently set in place, and implemented, to effectively fight the perceived and rising levels of corruption which, from all indications, are presently casting a dark and long shadow over Jamaica.

Paramount among our key objectives must be a national anti-corruption institutional framework which should assure integrity, transparency and accountability in Government, and the strict enforcement of the rule of law.

A comprehensive National Anti-Corruption Agenda must also, of necessity, include, as one of its major planks, a substantially resourced single National Anti-Corruption Agency. Such an 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 over all corruption offences, as well as over offences which are associated with the award of Government contracts and the filing of declarations of incomes, assets and liabilities of public officers; and (c) possess special police powers of arrest.

The idea of a single National Anti-Corruption Agency for Jamaica, as outlined above, is not new and was first formally proposed by the OCG to the Hon. Prime Minister and the Most Hon. Leader of the Opposition by way of an open letter which was dated March 22, 2010. The proposal was also discussed and rationalized in the OCG’s 2009 Annual Report that was tabled in Parliament in September 2010.

It is also the OCG’s respectful and considered view that special provision should be made, as a matter of course, for the expedited adjudication of corruption offences through our national courts system, and for the imposition of significantly tougher criminal sanctions, inclusive of mandatory custodial and economic based penalties, for all corruption related offences.

If we are truly resolved to eradicating the cancer of corruption from our fair Isle, anything less is likely to prove ineffective, and will only lead to a further questioning of the State’s continuing failure, or refusal, to abandon expediency in favour of bringing to book the corrupt among us who, because of their insatiable greed, have already placed the collective security and socio-economic future of an entire nation at risk.”

RULINGS MADE BY THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS IN RESPECT OF REFERRALS MADE BY THE OFFICE OF THE CONTRACTOR-GENERAL

Pursuant to Sections 21 and 29 of the Contractor-General Act, a Contractor-General may make or may become obliged to make certain formal Referrals to the Office of the Director of Public Prosecutions (ODPP) for the appropriate action to be taken.

In this regard, and in relation to those of its Findings that were arrived at during or upon the completion of its Special Investigations, the OCG, in 2010, made a number of Referrals to the Director of Public Prosecutions (DPP) for her determination.

To be specific, the DPP ruled on the matters that were presented to her in 2010 regarding the OCG's Findings in its Trafigura Beheer Oil Lifting Contracts and the Ministry of Agriculture/Aubyn Hill Consultancy Contracts Investigations. The Learned DPP, Ms. Paula Llewellyn, QC, CD, also issued her Ruling in respect of certain Findings which had been previously referred to her upon the submission, in 2008, of the OCG's Report of Investigation into the Jamaica Urban Transit Company (JUTC) matter.

The OCG, although it was pleased that the Learned DPP had ruled on the matters that were properly referred to her, was, nevertheless, concerned about certain specific elements of the Rulings. The OCG was also extremely concerned about those of the DPP's Rulings that were curiously made in respect of matters that had not been referred to her by the OCG and, more importantly, in respect of which she had no lawful authority or basis upon which to issue a Ruling.

The latter matter, in particular, was of very grave concern to the OCG as it casted doubt upon, and discredited, the Findings of the subject Investigation Report in its entirety. All of the referenced matters were addressed, in detail, in a letter which was written by me to the Learned DPP on October 14, 2010, and in which clarification, regarding the said matters, was respectfully sought by the OCG from the Learned DPP.

At a formal sitting of a **Joint Select Committee of the Parliament**, which was convened on February 17, 2011 to review the Reports of the OCG, I responded to a 'question' which had been previously posed to me by Member Gregory Mair of the ruling Jamaica Labour Party (JLP). Mr. Mair's 'question' was raised in the following terms: "*Challenging the Director of Public Prosecutions (DPP)*".

My considered and written response to Member Mair's 'question', which was embodied in a formal OCG document that was tabled before the Committee, and in which I addressed, among other things, the above-referenced Rulings of the Learned DPP, is now reproduced hereunder, with very minor edits, as follows:

"The OCG would have preferred not to publicly comment on this matter any further than it has in the past. However, the OCG feels obliged to respond to the specific questions and issues which have been raised by the Committee and to do so in a forthright and candid manner.

The OCG's positions, as regards matters which it has referred, to date, to the Office of the Director of Public Prosecutions (ODPP), have been concerned with either (a) the OCG's formal submission of its Annual Reports to the Parliament of Jamaica regarding the execution of its functions as is prescribed by Section 28 (2) of the Contractor General Act, (b) efforts on the part of the OCG to point out, for the benefit of the ODPP, certain erroneous misstatements of fact, and of law, upon which the ODPP had publicly premised its formal Rulings in relation to the Investigation Reports of the OCG and/or (c) attempts by the OCG to seek from the ODPP clarification as regards certain very important elements of its public Rulings which, if they are not addressed or satisfactorily resolved, will portend serious and grave implications for the integrity and effectiveness of the work of the OCG going forward.

Before addressing any of the said positions, however, it is important that the OCG records, up front, the fact that it fully recognizes and accepts the lawful authority of the ODPP, under the Constitution, to commence or to stop any criminal proceeding in any matter as it alone shall deem fit.

As the ODPP will itself confirm, the OCG, in all of its formal Referral communications to that Office, has never failed to unequivocally acknowledge, in writing, that it "*recognizes, respects and fully accepts the constitutional authority of the Office of the Director of Public Prosecutions to proceed in this matter as it alone, in its discretion, shall deem fit.*"

However, and without prejudice to the foregoing, it must also be understood, on the other hand, that the Commission of the Contractor General is an Independent and Quasi-Judicial Authority which has been expressly established under the Laws of Jamaica with the powers of a Judge of the Supreme Court of Jamaica.

Included among the OCG's powers, is the expressed statutory authority, under the law, to arrive at a Quasi-Judicial Finding of Fact that *"there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body"* (Ref. Section 21 of the Contractor General Act).

In light of the foregoing, it is, therefore, evident that although the ODPP, in its sole discretion, may choose not to proceed with the prosecution of a matter because of what it might deem to be insufficient evidence, this does not, and cannot, by itself, nullify the lawful legitimacy of the Statutory and Quasi-Judicial Findings of the OCG.

With that being said, the OCG's primary positions, to date, regarding matters which have been referred by the OCG to the ODPP, are outlined hereunder as follows:

- A. **Annual Report of the OCG for 2009** – This is the means by which the OCG has formally reported, to the Parliament of Jamaica, on, among other things, the status of the various matters which were pursued by it throughout the referenced calendar year in the discharge of its functions under the Contractor General Act.

Having made certain Referrals to the ODPP, pursuant to Section 21 and Section 29 of the Contractor General Act, as well as to other designated State Authorities, such as the Auditor General, the Attorney General, the Commissioner of Police and the Corruption Prevention Commission, the OCG was obliged to report to Parliament on the progress and status of the said Referrals.

It should also be noted that information which was presented to the Parliament, by the OCG, in the foregoing regard, formed a critical part of the bases upon which the OCG has made its considered Recommendations for the urgent establishment of a Single National Anti-Corruption Agency in Jamaica having independent criminal investigative and prosecutorial powers under the law.

In the foregoing regard, please refer to the OCG's 2009 Annual Report for further details of the said matters as follows:

- (i) Pages 11 to 12 - *"Formal Statutory Recommendations and Referrals Made By The OCG"*;
- (ii) Pages 12 to 15 – *"Formal OCG Referrals Made To The Office Of The Director of Public Prosecutions (ODPP) – Issues Regarding The Enforcement Of The Laws Of Jamaica"*;
- (iii) Pages 15 to 17 – *"The Consequences Of The Failure Of The Jamaican State To Deal Decisively With Corruption – The Perception Of The International Community"*;
- (iv) Pages 17 to 19 – *"A Proposed New Approach In The Fight Against Corruption In Jamaica"*.
- (v) Pages 153 to 174 – *"Summary of Special Investigation Referrals"*.

- B. **JUTC Investigation Report** – The Learned DPP, in her public Ruling, regarding the issue of the criminal culpability of Ms. Susan Simes, made a critical and material misstatement of fact with respect to the date on which Mr. Douglas Chambers, the deceased Chairman of the JUTC, was murdered.

The DPP's Ruling had erroneously suggested that Mr. Chambers was murdered during the first or second week of August 2008, a date which was in point of fact several weeks after he was brutally killed on June 27, 2008, in what was a highly publicized event.

In delivering her Ruling, which was published on September 27, 2010, the DPP held that the OCG's Finding, that Mr. Chambers was murdered on June 27, 2008, was inaccurate and, on that basis, she ruled that there was no criminal culpability on the part of Ms. Susan Simes.

Because of the implications that the DPP's flawed public Ruling had for the credibility of the OCG's Report of Investigation, as well as for Ms. Susan Simes, whose culpability in the matter was implicitly deemed by the DPP to hinge upon whether she had acted before or after the date of Mr. Chambers' death, the OCG wrote to the DPP on September 27, 2010, and again on October 14, 2010, to advise her of her grave misstatement of fact regarding the matter.

Not receiving a response, the OCG wrote to the DPP again on December 16, 2010, to express its strong concerns about her failure to publicly revise her Ruling, whereupon the DPP conceded her error to the OCG in a letter that was dated December 22, 2010. The DPP's admission of her error in the matter was, however, publicly disclosed not by her, but by the OCG on December 23, 2010, via the issue of an official OCG Media Release.

Secondly, in her public Ruling, the Learned DPP purported to adversely "rule" on matters, and on persons, which were never referred to her by the OCG.

In particular, with respect to two (2) members of the then JUTC Board of Directors, Mr. Dennis Chung and Mr. Rae Barrett, the Learned DPP ruled that *"there was no material to suggest that there was any conspiracy on the part of persons to commit any criminal act"*. By so doing, the Learned DPP publicly inferred that the OCG had conveyed a criminal Referral to her, regarding the two (2) men, that was unsubstantiated.

However, neither of these men was in fact referred by the OCG, to the Learned DPP, for any criminal conduct whatsoever. The matters in respect of which they were referred were **civil law matters** which had to do with clear breaches of their fiduciary and statutory duties, as JUTC Board Directors, under the common law and the provisions of the Public Bodies Management and Accountability Act.

Indeed, the matters in question were properly and formally referred, by the OCG, to the Office of the Attorney General for its consideration. They were not referred to the ODPP for the simple reason that the Learned DPP has no authority or power to make a lawful ruling with respect to civil law matters.

The OCG's concerns regarding the matter were heightened by the fact that this was not the first time that the Learned DPP had misguided the public on matters which were referred to her by the OCG. Indeed, in a letter to the Learned DPP, which was dated October 14, 2010, regarding the matter, the OCG expressed its concerns in the following terms:

"It is without doubt that in instances where the ODPP proceeds to rule on matters which were neither Referred by the OCG and/or contemplated in the OCG's Report of Investigation, it creates an indelible aura regarding the legitimacy, substance and form of the OCG's considered Findings, Referrals and Conclusion, when, in fact, no such Findings were reported by the OCG.

The seeming expansive divergence between that which is referred to the ODPP by the OCG and certain of those Rulings by the ODPP has served to fuel unfair and unwarranted criticisms of the OCG regarding its diligence, professionalism and the veracity of those of its documented Findings which are informed by sworn statements. In point of fact, the belief has been publicly inferred that the OCG has overreached, opined on de minimis matters and/or recklessly discharged its statutory mandate – matters which cannot be credibly supported by the documented facts which exist.

The compounded effects of the ODPP's Rulings on matters which have not been referred to it, and their consequential exponential implications for Jamaica's systems of governance, have warranted the OCG's concerns, not only as it pertains to the implications for the credibility of the Commission of the Contractor General, but also as regards the principles of accountability and the wider rule and appreciation of the written law."

(NB. A copy of the OCG's letter of October 14, 2010, which was directed to the DPP in the foregoing regard, was produced to the Committee as an exhibit).

- C. Ministry of Agriculture & Fisheries (MAF)/Aubyn Hill Consultancy Contract Investigation Report** – Subsequent to (a) the OCG's formal submission of its Report of Investigation in the captioned matter, (b) the publication of the DPP's Rulings thereon, (c) the making of certain public statements by the MAF and the three (3) MAF officials who were implicated in the matter, and (d) the raising of a number of adverse questions in the public domain, regarding the OCG's Report, which were premised upon erroneous information and widely published misstatements of fact, the OCG felt constrained to issue a formal Statement to the Parliament of Jamaica in its efforts to address the issue and to publicly clarify its positions regarding the said questions. The referenced Statement of the OCG was dated October 5, 2010.

The OCG, in issuing its Statement, believed that the public interest would be best served if its positions, in respect of the above-referenced questions, were lucidly, forthrightly and dispassionately articulated.

In issuing its Statement, the OCG was careful to acknowledge the constitutional authority of the ODPP when it clearly commented as follows:

"After considering the OCG's Report, the ODPP determined that there was no basis for commencing criminal proceedings against any of the three (3) men. That is the right of the ODPP. Indeed, in referring the said matters to the ODPP, the OCG in no way directed or attempted to direct the ODPP or made any recommendation whatsoever to the ODPP but clearly expressed that the matter was being referred "to the Learned Director of Public Prosecutions for such further action as she may deem to be appropriate".

One of the questions which had been raised in the public domain, regarding the OCG's Report of Investigation, was whether the OCG had "over-reached" in the discharge of its statutory mandates, or had acted unlawfully or with indiscretion.

The OCG responded by stating that it was firmly fortified in its view that it had faithfully and lawfully discharged its mandate under the Contractor General Act and that it had dispassionately arrived at its positions after having conducted a thorough Investigation into the matter, inclusive of an objective assessment of the sworn evidence and all of the circumstances of the case as was presented to it.

The OCG also stated that it was acutely aware that it was likely to be criticized and ridiculed for taking a stand which some may have regarded as a stand which was not in keeping with the popular grain of public opinion. However, the OCG emphasized that taking a popular stand was not what the OCG was supposed to be about, nor was it what the OCG was about.

The OCG stated that its sole objective was about discharging its mandate, faithfully and dispassionately, and fairly but fearlessly, in accordance with the law and in the interests of the People of Jamaica. The OCG also stated that, in the final analysis, its job must be about the search for the truth.

A copy of the OCG's Statement of October 5, 2010 has already been made available to every Member of both Houses of Parliament. Consequently, the OCG will submit only one (1) copy of its Statement to the Committee for its record.

(NB. The above-referenced Statement can be found on the OCG's website at www.ocg.gov.jm in the form an OCG Media Release, which was issued on October 5, 2010. The Release is entitled: "*Statement of the Office of the Contractor General (OCG) to the Parliament of Jamaica Regarding the OCG's September 2010 Statutory Investigation into the Ministry of Agriculture's Award of Two Consultancy Contracts to Aubyn Hill*").

- D. **Trafigura Beheer Investigation Report** – In the instant matter, the OCG, by way of a letter, which was dated October 14, 2010, sought clarification from the Learned DPP with respect to several aspects of her Ruling.

In her public Ruling, which was dated October 8, 2010, the DPP provided reasons as to why she felt that she could not commence criminal prosecution proceedings against Mr. Colin Campbell, despite conceding that she had established the presence of the fundamental elements of the *mens rea* and the *actus reus* of the crime in question.

Four (4) of the six (6) reasons which the DPP gave in her public Ruling, for not proceeding, related to the lapse of time (*viz.* four years) between the commission of the alleged offence/offences and the date upon which same was referred by the OCG to the ODPP.

The OCG was concerned about the matter since **it is a trite principle of Jamaican law that there is no statute of limitations regarding the prosecution of criminal offences.** Consequently, the OCG wrote to the ODPP on October 14, 2010 to seek its clarifications regarding the matter, particularly in light of the implications that the Ruling could have on the future work of the OCG.

Further, the DPP had also relied upon what was a patent misstatement of the applicable law as one of her reasons for not proceeding to prosecution. She ruled that the offence in question, which is prescribed by Section 29 of the Contractor General Act, "*... is a summary offence and one for which **the maximum penalty is \$5,000.00***".

In actuality, however, and contrary to the Ruling of the DPP, Section 29 of the Contractor General Act provides for a penalty of "*... a fine not exceeding five thousand dollars **or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.***"

The OCG was also very concerned, and continues to remain very concerned, regarding the matter, as the Ruling of the DPP inferred that because the prescribed sanctions for the offences were, in her view, *de minimis*, she could not proceed to prosecution despite the fact that the said offences are matters which have been legislated by the Parliament as criminal offences.

To put the implications of the DPP's Ruling into their full perspective, it is instructive to note that the foregoing penalty is the only one which is specified under Section 29 of the Contractor General Act, by the Parliament of Jamaica, for (a) wilfully making a false statement to mislead or attempting to mislead a Contractor General, (b) obstructing, hindering or resisting a Contractor General and/or (c) failure to comply with a lawful requirement of a Contractor General.

It must also be emphasized that the said prescribed sanctions form a critical and indispensable plank of the substratum of the OCG's compliance mechanisms.

Consequently, if, as the Learned DPP has inferred, the '*de minimis*' nature of the offences are such that she is not likely to prosecute them, then the obvious question which remains to be answered is what will this portend for the work of the OCG going forward, and its ability to effectively enforce compliance with the provisions of the Contractor General Act in its quest to stamp out corruption, impropriety and irregularity from the Government of Jamaica contract and licence award processes?

It is important to record that, despite the gravity of the issues which the OCG has raised with the DPP, the passage of 9 months (as at mid-2011), and two (2) further OCG letters, dated March 25 and April 1, 2011, that were written to the ODPP regarding the matter, the DPP is yet to formally respond to the OCG's requests for clarification as regards the referenced issues of concern.

Special Note

The OCG's stated concerns, regarding the patently flawed and questionable Rulings of the DPP, of October 8, 2010 in the Trafigura Beheer matter, as regards not prosecuting Mr. Campbell, were given credence by at least three (3) germane events – all having to do with the ODPP – which took place subsequent to the said October 8, 2010 Rulings. They are as follows:

- (1) In direct contradiction to the DPP's Ruling of October 8, 2010, that she could not proceed against Mr. Colin Campbell because of, among other things, the long passage of time that had elapsed between the time of the alleged commission of the offence and the date that the report was made (viz. 4 years), the ODPP did, however, proceed to prosecute and secure the conviction on July 21, 2011, of a 71 year-old man who some 40-odd years before had allegedly sexually molested his 50 year-old stepdaughter when she was 4 years old.

A Jamaica Gleaner news story of July 15, 2011, that is entitled: '**Stepdad to pay for sex crime decades later**', quoted DPP Paula Llewellyn as saying: "*This case is a positive reinforcement of the fact **that notwithstanding the lapse of time, the justice system still works***".

The news report also stated that '**Llewellyn said although the complainant waited for a long time before making the report, she renewed her focus because she felt she had to get justice. Llewellyn said there is no time limit in the law in which to report criminal matters**'. (My emphases).

- (2) What is even more contradictory, however, is that despite the DPP's Ruling of October 8, 2010 that she could not proceed against Mr. Colin Campbell because of, among other things, the long passage of time that had elapsed between the time of the alleged commission of the offence and the date that the Report was made by the OCG (viz. 4 years), the OCG was astounded to discover (by way of a Media publication of November 23, 2010, in the Daily Gleaner Newspaper, which was headlined '**Dutch want truth**') that the ODPP, under the direct leadership of DPP Paula Llewellyn, had proceeded to make an Application in November 2010, under the Mutual Assistance (Criminal Matters) Act, for the issue of a Court Order.

Quite alarmingly, the objective of the Court Order was to facilitate the conduct, in Jamaica, of criminal investigations by the Dutch Authorities into the very same matter in respect of which the OCG had investigated Mr. Colin Campbell four (4) years before, but in respect of which the DPP had just, one (1) month earlier, ruled that she could not proceed because of 'the lapse of time'.

(3) Further, and in direct contradiction to the DPP's Ruling of October 8, 2010 that she would not prosecute Mr. Colin Campbell because, among other things, the offence under Section 29 of the Contractor General Act ***"is a summary offence and one for which the maximum penalty is \$5,000.00"***, Mr. Harold Brady, a prominent Attorney at Law, was, however, within less than five (5) months thereafter, in February 2011, criminally prosecuted under Section 11 of the Commissions of Enquiry Act for his refusal to testify before the then ongoing Manatt Commission of Enquiry. The offence, in question, carries a ***"a fine not exceeding \$500"*** – a fine which is 10 times smaller than the ***"\$5,000"*** that the DPP had found was too low to warrant a criminal prosecution in the case of Mr. Campbell.

To compound the issue even further, it is also of vital importance to record that the offence for which Mr. Brady was prosecuted under Section 11 of the Commissions of Enquiry Act was almost identical to that for which Mr. Campbell was referred for prosecution, by the OCG, under Section 29 of the Contractor General Act.

E. The Effect of a Ruling of the ODDP on a Finding or Referral of the OCG - As was previously stated, the OCG is a Quasi-Judicial authority, having the powers of a Judge of the Supreme Court of Jamaica. It is expressly empowered by law to come to a Quasi-Judicial Finding of Fact that ***"there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body."*** (Ref. Section 21 of the Contractor General Act).

Consequently, the fact that the ODPP may choose not to proceed with the prosecution of a matter, that has been referred to it by the OCG, because of what the ODPP might deem to be 'insufficient evidence', does not, and cannot, by itself, nullify the lawful legitimacy of a Statutory and Quasi-Judicial Finding of the OCG.

Further, and contrary to what has been publicly inferred, it is worth noting that the ODPP is not a Court of Law, nor is it a Judicial Tribunal. The ODPP is simply the criminal **prosecutorial** arm of the State.

Accordingly, while the ODPP is entitled to constitutionally rule that the evidence with which it is seized does not, in its view, reach the 'threshold' for it to commence a criminal prosecution into a given matter, the ODPP, however, has no lawful authority under the law to ***"exonerate"*** any one from possible criminal culpability, contrary to the claims that were for example made on behalf of the Minister of Agriculture, the Hon. Christopher Tufton, following the Ruling of the ODPP in the OCG's Investigation of the Ministry of Agriculture & Fisheries (MAF)/Aubyn Hill Consultancy Contract matter.

Only a Court of Law has the power to ***"exonerate"*** someone from a criminal charge or accusation, or to find a person 'not guilty' of a criminal offence.

The claim about a DPP 'exonerating' someone is not only one which has no foundation in law, it is also one which has no basis in practice, for there is always the possibility, for example, that a matter which was previously classified as 'closed' by a sitting DPP, could very well be reopened and prosecuted by the same DPP, or by a succeeding DPP, should fresh evidence, which tips the scale in favour of a prosecution going forward, is subsequently un-earthed.

Further, and has been recently and vividly seen in Jamaica, there is also always the possibility that a Foreign Jurisdiction may very well succeed in criminally investigating, prosecuting and convicting a Jamaican national, using the same evidence that is available to local Jamaican law enforcement and prosecutorial authorities, even in instances where the said local authorities have not seen it fit, for whatever reason, to criminally investigate or prosecute that person in Jamaica.

Finally, it must also be recognized that in referring matters to the ODP, or to any other State Authority, such as the Auditor General, the Attorney General, or the Commissioner of Police, all that the OCG would have done is to simply fulfill those of its Statutory responsibilities and obligations that are mandated by Parliament.

Section 21 of the Contractor General Act expressly provides that ***“If a Contractor General finds, during the course of his investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member, and in all such cases shall lay a special report before Parliament”***. (My emphasis).

Accordingly, in such circumstances, it would be ludicrous to suggest culpability on the part of the OCG for doing what Parliament has expressly directed it to do.

It is for this very reason, among others, that the Contractor General Act expressly provides, at Section 23 (1) of the Act, that *“...no proceedings whatsoever shall lie against a Contractor General or any person concerned with the administration of the Act, for anything he may do or report or say in the performance of his functions under this Act”*.

OCG’S JURISDICTION QUESTIONED IN RELATION TO DIVESTMENT OF STATE-OWNED ASSETS

Once again, and quite regrettably, the OCG’s jurisdiction, in relation to the divestment of State-owned Assets, was questioned and publicly challenged by the incumbent Administration in 2010.

Specifically, challenges were launched, against the OCG, during the course of the reporting year, in relation to the OCG’s considered and expressed concerns as regards the Government’s then proposed divestment of its 45% stake in the jointly-owned GOJ/Alcoa JAMALCO Alumina Refinery, to the Chinese company, Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Limited (Hongfan).

Among the OCG’s concerns, was the fact that, despite the magnitude of the value of the asset that was the subject of the divestment, it was not put to competitive tender. Instead, the deal was directly negotiated by the Government with an entity, Port Reliant Limited, which is a little known off-shore British Virgin Islands registered entity that was held out as being Hongfan’s exclusive agent.

The issues concerning the ‘arrangement’, which raised very serious questions for the OCG regarding the public interest, transparency, value for money, competition, conflicts of interest, propriety and the merit and impartiality of the prospective contract award to Hongfan, were outlined in detail in an OCG Media Release which was issued on May 17, 2010.

The Permanent Secretary in the Ministry of Energy and Mining, despite the persistent urgings of the OCG, went to apparent great lengths to stymie the OCG’s scrutiny of the process. Indeed, it eventually came to the OCG’s attention that the Attorney General had given an Opinion that the OCG had no jurisdiction to investigate the sale of the referenced shares.

Upon learning of the referenced development, via an article which had appeared in the June 4, 2010 edition of the Financial Gleaner, I wrote to the Office of the Attorney General on the same day and (a) challenged the Opinion of the Learned Attorney General; (b) forwarded a courtesy copy of a Legal Opinion, dated January 25, 2000, that had been secured by the OCG from eminent Senior Counsel Dr. the Honourable Lloyd Barnett, OJ, and which had ruled contrary to the Attorney General’s Opinion; and (c) served formal notice upon the Office of the Attorney General that the OCG had every intention of continuing with its Special Investigation into the matter unimpeded.

In my letter to the Learned Attorney General and Solicitor General, I stated, *inter alia*, thus:

"In light of the above, and in an effort to avoid unnecessary civil litigation in this matter, I would respectfully invite you, in the public interest, to reconsider your Opinion and to let me know if you are prepared to be persuaded to a view which concurs with the Learned Queen's Counsel.

To facilitate your re-consideration of the matter, I am enclosing, herewith, for your perusal, a courtesy copy of the referenced Legal Opinion of Queens Counsel.

I would ask that you treat the issue with utmost urgency as it is my intention to issue the first Statutory Requisitions in this matter no later than Wednesday, June 9, 2010, in keeping with my mandate under the Contractor General Act and in the exercise of the quasi-judicial powers of investigation that are vested in me thereby.

I have taken the liberty of copying my letter, to you, to Dr. Barnett and the OCG's current Attorney of Record, Mrs. Jacqueline Samuels-Brown, QC.

I have also copied my letter to the Director Public Prosecutions in light of the fact that the Contractor General Act imposes, inter alia, certain criminal sanctions in respect of a refusal on the part of any person, without lawful justification or excuse, to comply with the lawful requirements of a Contractor General."

An OCG Media Release, dated the same day, June 4, 2010, was also promptly issued by me in an effort to ensure that the positions which had been advanced by the OCG, regarding the matter, and the reasons and justifications therefor, were made public.

To date, no response has been forthcoming from the Office of the Attorney General, or from the Government, to the positions that I had raised in my letter.

Subsequently, during the reporting year, the jurisdiction of the OCG was again, and not surprisingly, challenged by the Administration when the OCG sought to enquire into the sale of two (2) A320 aircraft by Air Jamaica Limited. The matter is addressed in further detail by me in another section of this Report which is entitled **Monitoring of Non-Construction Contracts, Licences, Permits and Concessions**.

I will, again, for the record, state without reservation, that it is the OCG's considered view that it does in fact have lawful jurisdiction to investigate the divestment of all Government Asset transactions.

Section 2 of the Contractor-General Act, which grants a Contractor General monitoring and investigative jurisdiction over 'Government contracts', states, quite unequivocally, that a "government contract **includes** any... agreement entered into by a public body for the carrying out of building or other works or for the supply of goods and services" (my emphasis).

There is, therefore, in the OCG's respectful opinion, no credible, logical, legal or sustainable basis upon which a contention can be properly founded that the term "government contract" was intended by the Parliament to exclude Government asset divestment contracts, particularly when there is no provision, anywhere, in the Contractor General Act, which states so, and particularly when one considers that the clear mischief that the Act was designed to cure was impropriety and irregularity in the award of Government contracts.

In any event, the question will inevitably arise as to why would anyone wish to seek to exclude, from the purview of the law, lucrative State asset divestment contracts which are ripe game for corruption addicts.

Further, the continuing posture of the Office of the Attorney General to seek credence for its positions in the case of *Wright v. Telecommunications of Jamaica Limited (1989) 26 JLR 411*, is not only flawed, but is wholly misguided, for, among other things, the case has nothing to do with the divestment of a State asset but, rather, the **acquisition**, by a Public Body, of private property.

As I have previously stated, in writing, to the Government, the OCG, under my watch, is prepared, in protection of the interests of the Taxpayers of Jamaica, to vigorously defend those of its positions, as are stated above, in the courts.

A separate and additional issue, regarding this matter, which must again be put squarely in the public domain, is that the OCG is concerned that an Administration which has spoken repeatedly about securing transparency in the affairs of Government, 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 same OCG to investigate matters in relation to the divestment of Government Assets.

The matter, which is a source of great dismay and disappointment for the OCG, was previously commented upon by me at pages 8 to 10 of my Annual Report to the Parliament for calendar year 2008.

At the time, I drew specific attention to the fact that less than three (3) months after the then Minister of Agriculture, Dr. 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 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 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, during his closing speech in the Budget Debates, 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 then no word 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 incumbent Administration, therefore, needs to be publicly reminded of its postures of April 2008, when it called upon the OCG to launch an Investigation, under the Contractor General Act, into a matter which involved the divestment of a State-owned asset by the Opposition People's National Party (PNP). I say this with the deepest of respect, but with the hope that when the OCG seeks, in the future, to exercise its lawful jurisdiction to investigate the divestment of even more valuable State assets, no objection will be forthcoming from the State.

In concluding my comments on this matter, I wish also to be very clear about the positions of the OCG. The OCG is an Independent Anti-Corruption Commission of the Parliament of Jamaica, and must be respected as such. It is not a 'political football'.

Consequently, and until the Contractor-General Act is amended to conclusively address the issue of the Contractor General's jurisdiction in relation to the divestment and acquisition of State-owned Assets, the OCG, under my watch, will continue to monitor and to investigate, at will, and at its sole discretion, any transaction which involves the divestment of publicly owned assets. It will do so without fear and without favour, and it will do so solely in the interest of the People and Taxpayers of Jamaica.

A further discussion regarding some of the foregoing issues is set out in the section of this Report that is entitled **Monitoring of Non-Construction Contracts, Licences, Permits and Concessions**.

OPPOSITION TO THE OFFICE OF THE CONTRACTOR GENERAL'S DISCHARGE OF ITS MANDATE

As has become customary on a yearly basis, the OCG, in 2010, attracted its fair share of detractors with politicians and one or two misguided Media commentators being the main antagonists.

The criticisms and objections that were directed at the OCG, in 2010, were, for the most part, concerned with the OCG's publication of its intention to initiate Investigations into questionable Government-related contracting matters, or the publication, in the Parliament, of the OCG's Reports of Investigations, as is required by Sections 21 and 28 of the Contractor General Act.

I was publicly criticized, on more than one occasion, by the Minister of Information, The Hon. Daryl Vaz, for the manner in which I discharged my Statutory mandates as Contractor General. To be specific, I was accused by Mr. Vaz of being 'overzealous' and 'scaring off public servants'. A similar criticism was reported as having emanated from Mr. Peter Bunting, the General Secretary of the Opposition People's National Party (PNP).

However, Mr. Bunting promptly issued a Media Release in which he stated, among other things, that the subject Media report had misrepresented the PNP's position on the OCG, that the PNP's support for the OCG has been unconditional, and that the Contractor General has contributed to improving the level of probity and transparency in the contract award and procurement processes in Jamaica. (See Gleaner/Power 106 News Story, dated July 13, 2010, and entitled: '**Comrades reaffirm support for Christie**').

I will make no further comment on the issue at this juncture except to reproduce, hereunder, the entire transcript of the Media Release that was issued by me, on July 12, 2010, in response to the referenced criticisms.

"The Office of the Contractor General (OCG) and myself have taken very careful note of certain comments which have been attributed to the Information Minister, the Hon. Daryl Vaz and Mr. Peter Bunting, the General Secretary of the Peoples National Party, regarding the alleged manner in which I have been discharging my statutory mandate and responsibilities as the Contractor General of Jamaica.

The referenced comments are published in today's edition of the Jamaica Daily Observer in a front page article which is entitled "Should Christie be kept? Contractor General overzealous, scaring off public servants, say political parties".

It is imperative that it is publicly understood that the primary mandate of a Contractor General, as is dictated by the Parliament of Jamaica in Sections 4 (1) and 15 of the Contractor General Act, is to monitor and to investigate the award of Government contracts to ensure that such contracts are awarded impartially and on merit and in circumstances that do not involve impropriety or irregularity.

It is also critical for it to be understood that, for good reason, a Contractor General is not a part of the Executive arm of the State who reports to or who is subject to the directives of the Executive since his job, in essence, is to monitor the conduct of the Government itself in its award of contracts and its issue of licences.

A Contractor General is an Independent Anti-Corruption Commission of the Parliament of Jamaica who is sworn to discharge his mandate under the Contractor General Act solely "on behalf of Parliament". By extension, this means that a Contractor General is mandated by law to discharge his mandate solely on behalf of and solely in the interests of the People and Taxpayers of Jamaica.

It is also instructive to publicly record that a Contractor General and every single employee of the OCG, are bound by a STATUTORY OATH, on the pain of criminal prosecution, to solemnly and faithfully discharge the said mandate in the manner that is prescribed by the law – a Law which the OCG did not write.

So powerful and unyielding is this constraint that Section 5 (1) of the Contractor General Act mandates, in very lucid and expressed terms, that "In the exercise of the powers conferred upon him by this Act, a Contractor General shall not be subject to the direction or control of any other person or authority".

As Contractor General, I have always discharged my statutory mandate and responsibilities lawfully, independently, faithfully, fairly and fearlessly, for and on behalf of the People of Jamaica. All of my decisions and pronouncements, as Contractor General, over the past four and one-half years, are considered positions which have been measured solely by this standard. For good reason, they have all been articulated in written form and have been adequately substantiated by documented evidence and I will not resile from any of them.

Having read the comments which have been attributed by the Daily Observer to the referenced public officials, 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.

Were I to do so, I would be acting not only contrary to the provisions of the Law and the solemn OATH to which I have subscribed to serve only the collective interests of the Jamaican People, but, above all, I would be acting contrary to the dictates of my own conscience – a conscience which is immune to breach.

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 except a Court of Law.”

THE OCG’S ISSUING OF MEDIA RELEASES ANNOUNCING THE COMMENCEMENT OF AN INVESTIGATION

As I have indicated in the previous section, the OCG was criticised, in 2010, by certain members of the Administration for its publication of its intention to initiate Investigations into questionable Government-related contracting matters.

With the greatest of respect, the OCG is obliged to state, and has already formally stated to a Joint-Select Committee of the Parliament of Jamaica, on February 17, 2011, that it has absolutely no intention whatsoever of discontinuing the above-referenced practice of issuing Media Releases, announcing its intention to commence an Investigation, and will view any attempt, by any person or authority, to direct it in this regard to be an unlawful and unwarranted incursion upon the discretionary authority and independent powers which are reserved to the Commission of the Contractor General by the expressed provisions of the Contractor General Act.

Section 5 (1) of the Contractor General Act is particularly instructive on this matter. It lucidly provides as follows:

“In the exercise of the powers conferred upon him by this Act, a Contractor-General shall not be subject to the direction or control of any other person or authority”.

Section 17 (1) of the Contractor General Act also makes it clear that “A Contractor General may adopt whatever procedure he considers appropriate to the circumstances of a particular case”, which is the subject of an Investigation under Sections 15 (1) and 16 of the Act.

Further, Section 24 (1) (b) of the Act vests in a Contractor General the exclusive discretionary authority to make any “disclosure which a Contractor General thinks necessary to make in the discharge of his functions...”.

It is also vitally important to recognize that the Parliament of Jamaica, via its recent promulgation of the **Independent Commission of Investigations (Indecom) Act of 2010**, has reproduced, in that Act, several of the provisions that are currently outlined in the Contractor General Act as regards (a) the independence of the Contractor General and (b) his discretionary powers to make public any matter which, in his discretion, he deems to be appropriate for publication, inclusive of Media Release disclosures announcing the commencement of his formal Investigations and his reasons therefor.

Indeed, it may come as a surprise to some Parliamentarians, Senior Administration Officials and at least one local Media House, all of whom have frowned upon the OCG's issue of its Media Releases in which the commencement of OCG Investigations have been announced, that the Parliament of Jamaica has already gone one step further to expressly authorize **Indecom**, at its exclusive discretion, to issue Media Releases regarding its Criminal Investigations.

For the avoidance of doubt, Section 17 (3) (a) of the Indecom Act provides, verbatim, as follows:

"During the course of the investigation the Commission shall- (a)unless it is satisfied as to the necessity for confidentiality, issue a press release at the commencement of the investigation and at intervals thereafter as it considers appropriate;"

The matter, the OCG would respectfully submit, speaks eloquently for itself by reflecting what will certainly become a glaring and curious double standard should the unwarranted and misguided objections regarding the OCG's issue of Media Releases be pressed any further.

Be that as it may, and although the OCG is not obliged to provide any reasons for the exercise of any of its discretionary powers, the OCG wishes to state that, as a matter of course, and in the interest of public transparency, it has always advised the People and Taxpayers of Jamaica of the commencement of most of its major Special Investigations and the conclusion of all of its major Special Investigations. This has been routinely done via the issue of a standard OCG Media Release, a practice which can be traced as far back as to October 10, 2006.

It should also be noted that although the Government awards as much as 11,000 contracts each year with values which exceed \$275,000 per contract, the OCG, under my watch, only investigates an average of 10 to 20 of the said 11,000 contracts annually. The OCG believes that transparency is promoted by the issue of its Media Releases, particularly as they provide the public, whose interests the OCG was established to serve, with the reasons why the said 10 to 20 matters have been singled out for investigation as opposed to the other referenced 10,990/10,980 contracts.

The critical question which must be asked, however, is exactly whose interest is being served when a lucrative Government contract award, which exhibits patent or suspected signs of irregularity, impropriety or corruption, is kept under the blanket of darkness, away from the knowledge of the OCG and the Taxpayers of the country, but whilst being known only to (a) the public officials who are involved in the award and (b) the persons who stand to benefit from the award.

Indeed, the OCG had reason to issue a public statement regarding this very matter when a January 31, 2011 **Editorial of the Observer Newspaper** sought to instruct and direct it on the exercise of its discretionary Statutory powers to publicly announce its intention to commence a Special Statutory Investigation.

Not surprisingly, the Observer's seeming self-serving comments – comments which were further elevated by it in a subsequent Editorial which it issued on February 2, 2011 – came on the heels of the OCG's Media Release of January 19, 2011, in which the OCG had dared to advise the Taxpayers and People of Jamaica of (a) its intention to investigate the Government's proposed sale of the Sandals Whitehouse Hotel to Gorstew Limited (a company which was and is still owned and controlled by the Hon. Gordon 'Butch' Stewart – the very owner of the Observer Newspaper itself); and (b) the OCG's considered reasons for doing so.

It is instructive to note that the Observer's misplaced and patently conflicted admonishment of the OCG's actions, was brazenly 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, the OCG had also already established the veracity of the subject allegation as an incontrovertible fact, prior to the issue of its public announcement on the matter.

It was also established by the OCG, as an undisputed fact, that the referenced “*secret negotiations*” had indeed been taking place, without the knowledge of the OCG, and literally behind its back, 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 – a Requisition that was curiously never complied with in respect of the proposed Sandals Whitehouse divestment.

In responding to the comments of the Observer, the OCG, in its Media Release of January 31, 2011, stated, *inter alia*, as follows:

“The Observer Newspaper, and other observers, should come to understand that the OCG is an independent and quasi-judicial anti-corruption commission of the Parliament of Jamaica, which was established by law with one primary mandate only – namely “to ensure”, “on behalf of Parliament”, that Government contracts are awarded “impartially and on merit” and in “circumstances that do not involve impropriety or irregularity”.

It stands to reason, therefore, that in fighting dishonesty, unethical behaviour, irregularity and outright fraud and corruption in government contracting, the OCG is expressly required by the provisions of the Contractor General Act to give pride of place to the interests of the public over that of the individual.

The Inspectorate and Investigative staff of the OCG, some of whom have received specialized training in anti-corruption and corruption detection and prevention methods, are only too aware that the most effective weapon that exists against the formidable scourges which are called corruption and irregularity in the award of government contracts, is transparency, for neither can thrive where there is light or public scrutiny.

It must also be made clear that information regarding prospective or actual government contract awards are not the exclusive province of the persons who stand to benefit from them, nor are they the sole prerogative of the politicians or the public officials in whom the Taxpayer has reposed its trust to act in such matters on its behalf.

The award of Government of Jamaica contracts, which in 2009 exceeded more than JA\$90 billion in value, is the People’s business and, consequently, the Jamaican Taxpayer has an inalienable right to know when the OCG, in the lawful exercise of its quasi-judicial authority, has come to the considered view that it possesses credible evidence which warrants that a particular Government contract should be investigated for possible irregularity or impropriety.

The OCG, from its unique vantage point as Jamaica’s primary anti-corruption commission, seized with the information that it alone has, is only too well aware that there are many elements and special interests in Jamaica today who would prefer if the OCG conducted absolutely no investigations at all, much less announce that it intends to conduct an investigation into a specified government contract award matter, especially knowing full well that the OCG does not have the power, under the law, to stop a government contract award that is suspected to be tainted with impropriety and/or irregularity.

Consequently, and with respect, should the Observer Newspaper and others who share its views be allowed to have their way, there is absolutely no question that we will, as a country, fall back to the status quo which has prevailed for decades in Jamaica where corruption and irregular conduct in the award of government contracts were permitted to run rampant under the cover of darkness, away from the glare of public light and scrutiny, and immune to the disinfectant of transparency, never to be brought to light, or only to be brought to light after the horse had bolted from the gate and when it was too late to do anything about it.”

Finally, it is instructive to note that the OCG had previously communicated, to the Speaker of the House of Representatives, its positions regarding the issue of OCG Media Releases. This was done via a formal letter, which was dated September 16, 2010. The letter was copied to the President of the Senate, the Clerk to the Houses and the Leaders of both Government and Opposition Business in the House of Representatives.

THE MISGUIDED CHARGE THAT THE OCG IMPUGNS THE REPUTATION AND INTEGRITY OF PERSONS

One of the implicit and expressed criticisms that has been launched at the OCG by the above-referenced critics and, in particular, by the Hon. Daryl Vaz, the incumbent Minister of Information, Dr. the Hon. Christopher Tufton, the then Minister of Agriculture, and by the Observer Newspaper, is that the OCG, despite the fact that it is discharging its lawful mandates, 'damages' the 'reputation' and 'integrity' of persons when it publicly announces its intention to commence its Special Investigations, or when it submits its Reports of Investigations to the Parliament as it is required to do.

Any such criticism, however, is either borne out of ignorance or is driven by a special or suspect conflicting interest. It is a misguided and flawed posture which cannot be credibly or logically substantiated.

A dispassionate examination of the pertinent facts and, more importantly, the law and the very mandate that has been imposed upon a Contractor General by the Parliament itself, and which a Contractor General is sworn, under oath, to faithfully discharge, will disclose the fallacy of the criticism.

What is particularly instructive is that the OCG has noted that the referenced criticism has been only directed against the OCG when certain individuals who are regarded to be of 'high' standing in the Jamaican society are directly or indirectly implicated by the OCG's Special Investigations.

The clear concern which appears to lie at the root of the criticism is, therefore, not about the substantive issues, but rather about the fact that the Office has dared to publicise matters in which prominent Jamaicans may have become involved.

The preservation of the seeming pristine character of the individuals who are concerned, appears to be more important than the public interest and the inherent issues of national importance that are involved, particularly the need to ensure probity, propriety, regularity and, above all, transparency and accountability in matters that are associated with the expenditure of the Taxpayers' money.

The bone of contention is, therefore, about the perceived effect of the OCG's pronouncements upon the integrity and character of these 'prominent' persons, many of whom are apparently deemed in certain quarters to be 'untouchables' or above the law.

In discussing the issue before a Joint-Select Committee of the Parliament of Jamaica on February 17, 2011, which was convened to review the Reports of the OCG, I made a number of observations.

The question that had been posed by a Member or certain Members of the Committee for the OCG's response was:

“Should the law be amended to require public vindication of a person's integrity by the OCG where the OCG does not find evidence of dishonest conduct (as opposed to finding that procedural guidelines were not adhered to) on the part of that person?”

My edited response to the Committee's question was as follows:

First, it is very important to recall that the primary function of a Contractor General, as is expressly mandated by Sections 4 (1) and 15 of the Contractor General Act, is to monitor and to investigate the award of Government contracts and licences “to ensure” that they are awarded ‘*impartially and on merit*’ and in ‘*circumstances which do not involve impropriety or irregularity*’.

Having said that, it is, therefore, self-evident that it is the statutory responsibility of the OCG, as mandated by Parliament itself, to investigate allegations of impropriety or irregularity in the award of Government contracts, for that is precisely what the OCG was established to do.

Public allegations which prompt OCG Investigations are not allegations that are made by the OCG

The OCG does not make allegations against persons or entities. Rather, the OCG, as a Quasi-Judicial Anti-Corruption Commission, seeks to unearth or to determine, via its Investigations, the veracity of the inferences or allegations of impropriety or irregularity, in the issue of Government contracts or licences, which have come to its attention.

In point of fact, and not surprisingly, in the overwhelming majority of instances, the OCG's Special Investigations are actually either prompted by adverse allegations which have already been publicly made by Members of Parliament and politicians themselves, or by disclosures which have been previously brought into the public domain via the Media.

Indeed, a Matrix of twenty-one (21) major OCG Investigations which have been initiated and/or completed over the past 4 ½ years (as at February 2011), and which was formally submitted to a Joint Select Parliamentary Committee, by the OCG, on February 17, 2011, clearly establishes what is a glaring double-standard regarding this issue of the making of the said allegations and what has been deemed by some to be damage done to the integrity of the persons who are implicated therein.

The Matrix, a portion of which is reproduced hereunder, clearly discloses that it was Parliamentarians and politicians, and not the OCG, that had made the allegations that had prompted eight (8) of the referenced OCG Special Investigations. The Hon. Bruce Golding of the Jamaica Labour Party (JLP) had made four (4) of the subject allegations, the Hon. Audley Shaw of the JLP had made two (2), the Hon. Clive Mullings of the JLP had made one (1), and Mrs. Angela Brown-Burke of the People's National Party (PNP) had made the other.

In all of the eight (8) cases excepting two (2), the allegations, although damning, were **publicly** made by their authors. Further, it is worthy of note that seven (7) of the eight (8) sets of allegations, which gave rise to the referenced OCG Investigations, were made by persons who are currently Ministers in the ruling JLP Administration – the very Administration which has now sought to publicly malign the OCG for announcing that it intends to commence Investigations which emanate from allegations which have been similarly made.

It is also worthy of note that in eight (8) of the remaining 13 instances, the allegations which prompted the OCG Investigations were allegations that were publicly made in the Print and Electronic Media. It was in this way that the matters were brought to the attention of the OCG – that is, after the public had already become aware of them. In the remaining five (5) instances, the allegations which prompted the OCG's Investigations were made directly to the OCG by certain persons under the pain of criminal prosecution.

In order that the facts of this extensively misaligned matter are publicly known, a compacted version of the referenced Matrix, of the subject 21 OCG Special Investigations, is reproduced hereunder.

OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Matrix of Third Party Allegations Prompting Commencement of the Office of the Contractor General's (OCG's) Special Investigations

NO	Name of OCG Investigation	Date Investigation Initiated	Person Making Allegations &/or Source of Allegations	Place Allegations Made & Outline of the Nature of Allegations
ALLEGATIONS MADE BY MEMBERS OF PARLIAMENT &/OR POLITICIANS				
1	Petroleum Corporation of Jamaica (PCJ) and Trafigura Beheer	Oct. 9, 2006	The Hon. Bruce Golding, Prime Minister (then Opposition Leader)	<p>Outside of Parliament.</p> <p>On October 3, 2006, the Hon. Bruce Golding accused the then ruling People's National Party (PNP) of financing its annual conference with a J\$31 Million largesse, which was provided by an overseas oil trader, and had called for the immediate resignation of the entire governing administration.</p>
2	Universal Access Fund Company Limited	Jan. 5, 2007	The Hon. Bruce Golding, Prime Minister (then Opposition Leader)	<p>On December 1, 2006, the then Leader of the Opposition, Mr. Bruce Golding, made representations to the Contractor General via a telephone conversation, in which he adverted to the possibility of a conflict of interest involving Ms. Minett Palmer, a Board Director at the Universal Assess Fund (UAF), who had also provided legal services to the UAF at a cost of JA\$25Million.</p>
3	Divestment of the Shares of Petrojam Limited	May 24, 2007	The Hon. Bruce Golding, Prime Minister (then Opposition Leader)	<p>Outside of Parliament.</p> <p>The Hon. Bruce Golding alleged, via the Media, that the Petrojam Ltd. shares were sold below market value and that the market value for the shares was in the region of US\$300 Million.</p>
4	4M Energy Saving and Light Bulb Distribution Project	Oct. 24, 2007	The Hon. Clive Mullings (then Minister of Energy, Mining and Telecommunications)	<p>In Parliament.</p> <p>On October 23, 2007, under cover of letter of even date, the Prime Minister, the Hon. Orrett Bruce Golding, provided the Contractor General with an advance copy of a report which the then Minister of Energy, Mining and Telecommunications, the Hon. Clive Mullings, had prepared on the 4M Energy Saving Project. The Hon. Clive Mullings tabled the referenced report in his presentation to Parliament later that same day.</p> <p>In his presentation to Parliament the Hon. Clive Mullings, invited the OCG to investigate, <i>inter alia</i>, the contract award process which was utilized for the procurement of contractors for the 4M Energy Saving and Light Bulb Distribution Project.</p> <p>The allegations in his presentation to Parliament alluded to impropriety, lack of fairness & transparency in the award of contracts.</p>
5	Sale/Divestment of Air Jamaica Ltd.'s London Heathrow Slots	April 23, 2008	The Hon. Audley Shaw, Minister of Finance & the Public Service	<p>On April 8, 2008 under cover of a letter of even date, Senator the Hon. Don Wehby, the then Minister without portfolio in the Ministry of Finance and the Public Service (MOFPS), provided the Contractor General with a brief on the facts which surrounded the sale of Air Jamaica Ltd.'s slots at the London Heathrow Airport.</p> <p>In his letter to the Contractor General, the then Minister Wehby stated that <i>"In keeping with the need for transparency and accountability in the disposal of public assets I am referring the matter to your offices such that any appropriate review and action may be taken."</i></p> <p>On April 23, 2008, in his closing speech of the Budget Debates, the Hon. Audley Shaw, the Minister of Finance and the Public Service, reiterated the concerns which had been raised by then Minister Don Wehby regarding the sale of the AJLHS.</p> <p>In Parliament, Mr. Shaw made several allegations about the sale of the AJLHS & the propriety of the actions taken by senior Public Officials with regard to the divestment.</p>

NO	Name of OCG Investigation	Date Investigation Initiated	Person Making Allegations &/or Source of Allegations	Place Allegations Made & Outline of the Nature of Allegations
6	Issuance of Licences to Index Communications Network Limited Trading as 'GOTEL'	April 22, 2008	The Hon. Bruce Golding, Prime Minister & Mr. George Neil, Chairman of GOTEL, via the Media	April 14, 2008 letter to the OCG from the Prime Minister, the Hon. Orette Bruce Golding, where the Prime Minister provided the Contractor General with copies of documents relating to telecommunications licences that were issued to GOTEL. April 11, 2008 letter signed by George Neil alleging impropriety and bribery, which was published in the media.
7	Alleged "Sweetheart Deals" Involving the GOJ and Dehring, Bunting and Golding (DB&G) Ltd.	May 22, 2008	The Hon. Audley Shaw, Minister of Finance & the Public Service	In Parliament. On April 23, 2008, Mr. Shaw alleged that the GOJ & DB&G entered into "Sweetheart Deals" which were executed by the MOFP under circumstances which may have been irregular, improper or lacking in transparency and fairness.
8	Contracts to be Performed in the North East St. Catherine Constituency by the National Works Agency (NWA) and Rural Agricultural Development Authority (RADA)	June 15, 2009	Angela Brown-Burke & the Peoples National Party (PNP)	Outside Parliament. Issue of Media Release and Letter to the OCG dated June 12, 2009, from the PNP. Alleged breaches of the procurement guidelines.
ALLEGATIONS MADE IN THE MEDIA				
9	Award of Contracts by the Jamaica Urban Transit Company (JUTC)	July 8, 2008	Media	Article in the July 6, 2008 edition of the Sunday Herald Newspaper, raising questions of irregularity & impropriety in the award of contracts. The article also raised questions of a possible conflict of interest.
10	Proposal by SportsMax Limited to Supply Satellite Services for Simulcast Racing from South Africa and the United Kingdom to Caymanas Track Limited (CTL)	July 18, 2008	Media	Article in the July 6, 2008 <i>Sunday Herald</i> which was entitled "Rousseau in powwow: SportsMax deal shrouds CTL Chairman in 'conflict of interest' rap"
11	Air-lift Guarantee Agreements which were entered into between American Airlines (AA) and Jamaica Vacations Limited (JAMVAC) and Supplemental Report of Investigation into the Retention of the Legal Services of the Law Firm DunnCox, by JAMVAC	Sep. 5, 2008	Media & Letter from Concerned Citizen	On August 12, 2008 the OCG received a letter from a concerned citizen raising questions of irregularity in the award of certain contracts. On September 5, 2008 the Daily Gleaner published an article, which was entitled "Air Jamaica livid- Pennicook criticizes Government-Tourism minister defends American Airlines deal."
12	Award of Contracts to Taylor and Associates for the Supply of Ammunition	Oct. 21, 2008	Media	September 7, 2008 article which was entitled "Arms broker violated US law", published in the <i>Jamaica Gleaner</i> newspaper. The article raised questions of irregularity & impropriety in the award of contracts.

NO	Name of OCG Investigation	Date Investigation Initiated	Person Making Allegations &/or Source of Allegations	Place Allegations Made & Outline of the Nature of Allegations
13	Award of Contracts for the Olympic Athletes Homecoming Week of Celebrations – 2008 October 3-10	Oct. 22, 2008	Media Articles	<p>Articles published in the Media, including an article published by the Jamaica Information Service (JIS) which was entitled “<i>Olympic Homecoming Celebration Fund Launched</i>” on September 18, 2008.</p> <p>The OCG’s decision to commence the Investigation was taken against the background of a Cabinet Decision, which was dated August 25, 2008 that exempted “<i>Artistic and cultural products and services – works of art, performance services and other cultural and creative products/services</i>” from the GPPH.</p>
14	Auction Process for Abandoned Motor Vehicles by the Jamaica Customs Department (JCD) on 2009 June 30 and 2009 July 1	July 2, 2009	Media & Complaints made to the OCG from several members of the public	<p>The Investigation was initiated following, <i>inter alia</i>, the publication of several electronic media reports, newspaper articles and complaints which were made, to the OCG, by concerned citizens, regarding the conduct of the Public Auction for Abandoned Vehicles, which was conducted by the JCD, on June 30 2009 and July 1, 2009 respectively.</p>
15	Award of a Multi-Million Dollar Consultancy Contract to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd.	Oct. 16, 2009	Media	<p>The OCG’s decision to commence the formal Investigation followed upon certain allegations, which were initially aired over the electronic media on October 15, 2009.</p> <p>Subsequently, on October 16, 2009 another article, which was entitled “<i>\$27M for Aubyn Hill</i>”, was posted on the website of the <i>Sunday Herald</i> newspaper. The article alleged that Mr. Aubyn Hill’s company, Corporate Strategies Ltd., had been paid \$27 million for consultancy services.</p> <p>The October 16, 2009 article raised critical questions and concerns for the OCG, because of the reports that approximately \$27 Million had already been paid out under the contract since July 2008 & the fact that Mr. Aubyn Hill was also the Chairman of the Board of Directors of the SCJ Holdings Ltd., which then held the GOJ’s assets which were being divested.</p>
16	Sandals Whitehouse Divestment	Jan. 19, 2011	Media	<p>Article was published in the December 12, 2010 edition of the <i>Sunday Herald</i> Newspaper, which was entitled “<i>Secret Talks – Butch goes after Sandals Whitehouse</i>”, and which stated, <i>inter alia</i>, that “<i>Government is having secret talks with the Sandals chain for the sale of the controversial Sandals Whitehouse hotel in Westmoreland. Businessman R Danny Williams is leading the negotiations between the parties.</i>”</p>
ALLEGATIONS MADE BY OTHER THIRD PARTIES				
17	Government of Jamaica Bridge Building Contracts that were Awarded to the British Firm of Mabey & Johnson Ltd.	Jan. 7, 2009	Request from Jamaica Constabulary Force (JCF) & Media	<p>On November 26, 2008, certain oral representations were made to the OCG by the Jamaica Constabulary Force (JCF), the U.K. Serious Fraud Office (SFO), & representatives of the British High Commission in Jamaica.</p> <p>Representations included alleged bribery of a GOJ Public Official in the award of certain GOJ bridge building contracts.</p> <p>On January 6, 2009, ACP Les Green wrote to the OCG & sent certain documentation for its consideration.</p>
18	Award of Security Contracts at the Norman Manley International Airport Ltd. (NMIA)	May 6, 2010	Guardsman Limited	<p>A Letter of Complaint, dated May 4, 2010, was sent to the OCG, from Guardsman Limited, one of the tenderers for the referenced Government contract. In its letter, Guardsman alleged, among other things, (a) that “<i>the Shareholder and Chief Executive Officer of Protection and Security Limited is a member of the Board of Directors for NMIA</i>”, (b) “<i>that Protection & Security, having a member on the Board of NMIA, would have privileged information about the tender process which would not be available to outsiders and, as such, presents a conflict of interest</i>”, and (c) that “<i>the awarding of Government contracts to serving (Public Body) Board members violates the edict of the Prime Minister</i>”.</p>

NO	Name of OCG Investigation	Date Investigation Initiated	Person Making Allegations &/or Source of Allegations	Place Allegations Made & Outline of the Nature of Allegations
19	Sale/Divestment of the GOJ's 45% Stake in JAMALCO	June 1, 2010	Representations made by Public Officials of Ministry of Mining and Energy (MEM)	Indicative representations made to the OCG by the then Permanent Secretary in the MEM, Mrs. Marcia Forbes and by prominent public official, Mr. Howard Mitchell, in a meeting which was convened at their request, and purportedly at the Prime Minister's direction, at the OCG, on April 24, 2009, regarding the GoJ's then prospective business arrangements with both Hongfan and Port Reliant.
20	Proposal for the Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System	June 22, 2010	Anonymous complaint received by the OCG, against the background of other information and documentation, which were in the possession of the OCG. In addition, the OCG received multiple complaints, reports & allegations from highly credible sources & members of the public.	The OCG's decision to commence the Investigation was taken against the background of other information and documentation, which were in its possession. The Anonymous complaint received on June 16, 2010, in which it was asserted that <i>"So who are the local player [sic] in Exmar, who the government announced as the preferred bidder for LNG. What is their personal and professional relationship with the current energy minister. how much did they donate to him in the last campaign. How much support did he provide to their bid. Have they been in business with him before in providing international bypass facilities. You are worried about the bauxite deal. This one is worse"</i> .
21	Alleged Contract Award Irregularities at the St. Catherine Parish Council	Aug. 16, 2010	Concerned Citizen-Sworn statement given to the OCG	Statement given to the OCG in December 2008 & formally executed in writing in March 2009, under oath, which alleged impropriety in the award of contracts.

It is also instructive to note that in many of the referenced instances, regarding the public announcement of its Special Investigations, the OCG will first conduct a preliminary enquiry into the matter, as was the case in the Sandals Whitehouse matter, away from the public's view, before it decides whether or not it should proceed to the level of a full blown Special Investigation.

In light of all of the foregoing, it is, therefore, simply ludicrous to suggest that the OCG imputes motive and/or tarnishes the *"integrity"* of individuals, or that the OCG should be held responsible for the *"public vindication of a person's integrity..."*, when it publicly announces that it has launched an Investigation into certain Government contract award matters, particularly those matters in respect of which public allegations of impropriety, irregularity or corruption have already been made by the very group of politicians some of whose members now see it fit to muzzle the Contractor General.

All OCG Investigation Findings under Section 21 of the Contractor General Act must be made public

As regards the OCG's Findings, Recommendations and Referrals that are formally reported at the end of its Investigations, it must also be made explicitly clear that Section 21 of the Contractor General Act mandates that once there is a Finding, by a Contractor General, of *"evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of public body"*, he *"shall lay a special report before Parliament"*.

There is, therefore, no 'ifs' or 'buts' about the matter. The law is unequivocally clear. In all such instances, the matter must be made public and, consequently, unless a critic has a specific or questionable agenda, it is, therefore, preposterous and senseless to suggest that the OCG must be berated and censured for what Parliament has ordered and mandated that it must do.

The Double-Standard – What about Parliamentarians who make spurious or adverse allegations from the Floor of the House of Representatives?

It must also be recognized that those of the OCG's Findings, Conclusions, Recommendations and Referrals that are set out in its Reports of Investigation, are based upon sworn statements and documentary evidence which are formally conveyed to it by witnesses who do so under the pain of criminal prosecution, under the Contractor General Act and/or the Perjury Act, should their testimony prove to be false or misleading.

Accordingly, when an individual makes an allegation or representation directly to the OCG, that individual exposes himself to criminal prosecution in the event that his allegation or testimony is subsequently proven to be unfounded.

When, however, on the other hand, a Parliamentarian makes a similar allegation, from the floor of the House of Representatives, which imputes improper conduct to another person (as was the case with certain matters that are disclosed in the Matrix), that Parliamentarian is shielded by his Parliamentary Cloak of Privilege from criminal prosecution and civil suit.

Where then are the concerns of the Administration, the Observer Newspaper and the Joint Select Committee of Parliament, or its proposals, for "*amending*" the law to address this obvious and inexplicable double standard and to require Parliamentarians to "*publicly vindicate*" those persons whose integrity they tarnish when the allegations that they make are subsequently proven to be unfounded?

The OCG is, in fact, empowered, under the law, to conduct its Special Investigations in the full glare of the public light – just like Commissions of Enquiry

On a separate point, it is also critically instructive to note that Section 18 (3) of the Contractor General Act stipulates that "*For the purposes of an Investigation under this Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents*".

Further, Section 17 (1) of the Contractor General Act empowers a Contractor General "*to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit*".

Additionally, Section 24 (1) (b) of the Act vests in a Contractor General the exclusive discretionary authority to make any "*disclosure which a Contractor General thinks necessary to make in the discharge of his functions*".

I have specifically alluded to the foregoing provisions of the Contractor General Act, as it is critically important for the unknowing and misguided to recognize that the OCG is in fact empowered by law to conduct its Investigations in public, and before the full glare of the Media, in much the same way that the **Manatt Commission of Enquiry** was being conducted, pursuant to the provisions of the Commissions of Enquiry Act, at the time of my appearance before the Joint Select Committee of Parliament in February 2011.

Notwithstanding, and so as not to invite pre-mature speculation or judgment about the testimony of the witnesses who are called upon to give sworn testimony during the course of an OCG Investigation, the OCG has, however, consistently conducted its Investigations in absolute secrecy, away from the glare of the public and the Media.

Indeed, the OCG will not, as a general rule, even comment upon any of its Investigations, or provide any information to the public, or to the Media, once an OCG Investigation has been commenced. Nothing of substance is said or disclosed until the Investigation has been completed and the Report thereon is formally laid in both Houses of Parliament.

These are critical considerations and distinctions which appear to have been overlooked, or deliberately side-stepped, by those members of the Administration, and the Observer Newspaper, among others, who have criticized the OCG for 'jumping to conclusions' by simply announcing that it intends to commence a Special Investigation.

The point must be further emphasized, particularly since at the time of my appearance before the Joint Select Committee of Parliament, there was no public outcry or expression of concern, from the usual sources, about the public 'damage' which was being inflicted upon the *"integrity"* of some of the individuals who had been 'implicated' by the public testimony which was being given before the Manatt Commission, although the Commission was yet to deliver its formal findings and recommendations in the matter.

More instructively, the question was posed to the Committee, by me, as to whether the Manatt Commissioners, at the end of the day, would be asked by the Committee to *"publicly vindicate"* any person who claimed that his or her integrity had been tarnished, in the event that the Commission did *"not find evidence of dishonest conduct"* on the part of such a person. After all, this was the very question that was being raised by the Committee, to the OCG, with respect to the outcomes of the Statutory Investigations of the Commission of the Contractor General.

The double standards that are inherent in the two (2) approaches are glaring and disturbing, and should not be ignored. They must be highlighted in this Report.

Finally, it must be made explicitly clear that in instances in which an allegation is made against a person, and the OCG finds that there is no evidence of the truth of the allegation, a Finding to that effect will be either expressly or implicitly outlined in the relevant OCG Report of Investigation.

A further follow-up, but very curious, question was posed, to the OCG, by a Member or certain Members of the Joint Select Parliamentary Committee of Parliament. The question posed was as follows:

"If not, should the OCG nevertheless adopt an explicit policy of public vindication in such cases, given that the mere fact of an investigation by the OCG may be misused by some politicians as a means to besmirch the integrity of an opponent or a person perceived to be sympathetic to the "other side?"

The question was answered by me in the following way:

"The OCG cannot be swayed or guided by what politicians do or are likely to do with the information which is presented in the OCG's Investigation Reports. The OCG is an Independent and Quasi-Judicial Anti-Corruption Commission of the Parliament of Jamaica and would obviously be obliged to vigorously resist any veiled or other attempt which is made to politicize its activities, or the manner in which it discharges its statutory mandates.

The OCG's Investigation Reports present the facts of the matter, based upon the sworn statements and documentary evidence that it receives from witnesses and respondents. The OCG's Findings in any of its Investigations – Findings which the OCG is empowered by law, in its Quasi-Judicial capacity, to determine – will either dispassionately disprove or prove the allegations which have been levied.

The onus, therefore, cannot obviously be placed upon the OCG to *'vindicate'* individuals, since (a) the OCG is not the maker of the allegations which it investigates, and (b) the OCG is in point of fact empowered under law to make a Quasi-Judicial Finding as to whether *"there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body"* and, if and when such a Finding is made, to publicly report same to the Parliament of Jamaica. (Ref. Section 21 of the Contractor General Act)."

In concluding my written response to the Joint Select Committee of Parliament, 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.”

THE ‘SEPARATION’ OF THE NATIONAL CONTRACTS COMMISSION FROM THE OFFICE OF THE CONTRACTOR GENERAL

As was stated in the OCG’s 2009 Annual Report, the National Contracts Commission (NCC), in late 2009, formally resurrected an earlier proposal that it had made that it should operate independently of the OCG. The NCC’s campaign was carried over into 2010 and, after several meetings with the respective parties, and despite the strong, unrelenting and documented positions of the OCG against the ‘separation’, given the reasons which had been advanced by the NCC and the Government for same, the decision was taken by the Government to ‘separate’ the two entities.

The NCC, in reality and in law, is a distinct and separate Commission from the OCG. However, its administrative and technical support services have, for the past 12 years, been provided by the OCG’s Technical Services Department (TSD).

Despite suggestions which have been made to the contrary, the OCG, by law, cannot and does not make decisions for the NCC. The Government contract endorsement and contractor registration decisions of the NCC can only be lawfully made by a majority of a quorum of the NCC’s eight (8) appointed Commissioners sitting in the NCC’s duly convened weekly meetings.

Notwithstanding the OCG’s acknowledgement that it is the inherent right of the Executive arm of the State, and not that of the OCG, to decide on the matter, the OCG has consistently objected to the proposed ‘separation’ of the OCG and the NCC on the primary grounds that (a) the proposed ‘separation’ will not be a cost-effective one as it is likely to cost the Taxpayers as much as an additional \$80 million annually – this at a time when the Government itself has argued that it has no money; (b) the ‘separation’ would result in a duplicity of administrative and technical functions between the OCG and the NCC and; (3) the reasons that have been advanced, from the very outset, for the ‘separation’, are, in the considered view of the OCG, questionable.

The OCG’s positions, in the foregoing regard, are amply documented going back to a detailed nine (9) page letter, dated October 31, 2007, which was directed by me to a number of pertinent State authorities.

In its ensuing proposals, that were made in late 2009 and early in 2010, the NCC’s posture was that it should, in essence, (a) retain the OCG’s Technical Services Division staffing positions to the detriment of the OCG, (b) share other OCG staffing positions to provide continuing administrative support to the proposed new NCC; and (c) share the same secure and restricted physical space and facilities as the staff of the OCG, while at the same time insisting that it must be fully autonomous and independent of the OCG.

The NCC's propositions were strongly resisted by the OCG. The OCG also insisted that once the proposed 'separation' took place, the OCG's technical and human resource capacity to continue to monitor the activities of the new NCC should in no way be reduced, diminished, undermined or compromised.

Consequently, at a meeting of all stakeholders which was convened on July 22, 2010, by the Prime Minister, the Hon. Bruce Golding, to resolve the matter, the following undertakings and assurances were given by the Prime Minister.

1. That the institutional and resource capacity of the OCG must in no way be weakened and/or undermined by the 'separation';
2. That the 'separation', whenever implemented and prosecuted, must be complete with no sharing of physical office space, staff, assets or other resources as between the OCG and the new NCC;
3. That the OCG's existing staffing organization, inclusive of its Technical Services Department, would remain intact and undisturbed by the 'separation';
4. That nothing would be done to make the OCG's monitoring of the NCC less easy;
5. That a fundamental pre-condition for the proposed 'separation' is that adequate measures, inclusive of the requisite institutional arrangements and legislation, must be first set in place **to ensure the complete independence of the NCC, under the law, including the insulation of its support staff from any undesirable external or political interference** (My emphasis).

The Decision by the Cabinet to legally 'separate' the two entities was reportedly approved on November 8, 2010 and was subsequently publicized, on November 18, 2010, via an official Media Release which was issued by the Office of the Prime Minister.

As at the time of the final editing of this Report, the NCC had secured office space for its new and intended operations on the ground floor of the PIOJ Building. The OCG currently occupies the 1st Floor of the PIOJ Building.

However, and as far as the OCG is aware, the requisite institutional arrangements and legislation to facilitate the lawful 'separation' of the NCC, from the OCG, in the manner that was contemplated by the assurances that were given by the Prime Minister, have not yet been realized. Consequently, this is a matter which should be of major concern to all Jamaican Taxpayers.

The OCG, which, upon completion of the 'separation' of the two (2) Commissions, intends to vigorously monitor the Government contract endorsement and contractor registration functions of the new NCC – since both are critical components of the country's public contracting and procurement processes, will also continue to closely observe the ensuing OCG/NCC 'separation' process and report to the public any serious concerns that it may have regarding same.

POOR PERFORMANCE OF CONTRACTORS

There are several NCC registered Contractors who have been found culpable of performing poorly on Government works projects, but who, notwithstanding, continue to legitimately receive Government contracts. This has occurred widely as a result of the failure of Public Bodies to document and to report the offending contractors' under-performance to the NCC.

While the NCC possesses the lawful authority, under the Contractor General Act, to de-list contractors for poor work quality or Government contract breaches, and thus prevent them from bidding on future Government contracting opportunities, it cannot do so without the requisite supporting documentation and information which it must have to enable it to make an informed and legally defensible decision.

Public Bodies have a responsibility to ensure that where a Government contractor fails to faithfully perform its obligations in accordance with its contractual arrangements with the Government, the matter is carefully documented and reported to the NCC.

When contractual procedures, terms and conditions are not adhered to by the contractor, Public Bodies should be forthright and dispassionate in imposing the sanctions that are dictated or allowed by the contract, bearing in mind that the matter is one which concerns the Taxpayers money.

Additionally, as a part of the effective monitoring of construction projects, proper safety procedures must, at all times, be stringently enforced. Negligence on the part of either the contractor or a Public Body cannot be excused. There should be absolutely no room for the negotiation of issues of safety and, ultimately, of the lives of site workers and the members of the general public.

Public Bodies must, themselves, also dutifully discharge their own obligations, under the contract, to the contractors and also to the People and Taxpayers of Jamaica.

On a separate but very critical point, it is also the OCG's view that it is desirable for Public Bodies to ensure that all Works contractors, once contracted, only engage sub-contractors who are approved and registered by the NCC.

Contractual agreements should, therefore, explicitly speak to whether sub-contractors may be engaged by the contractor and, if so, the capacity in which they will operate. The contractor should also be required to provide proof of the sub-contractor's registration with the NCC, in the appropriate category and at the appropriate grade level.

The foregoing approach, it is submitted, will aid in ensuring that the hard-earned money of the Jamaican Taxpayer is not wasted away owing to poor and sub-standard work quality on Government Works projects. This will inevitably lead to unavoidable costs and time overruns, or the need for corrective work to be done at additional and unnecessary cost to the Taxpayer.

I also have grave concerns about the massive workload of some contractors and the fact that they continue to receive additional Government contract awards, despite the obvious impossible work load that they already have, and the fact that their human, technical, financial and equipment resources are already stretched thin.

It is critical that Public Bodies conduct the necessary due diligence to ensure that contracts are not awarded to contractors who have exceeded the permissible workload limit, as is specified by the NCC's rules.

It is also of vital importance that contracts are not awarded to contractors who are not registered with the NCC in the appropriate work category and/or at the appropriate grade level.

The necessary due diligence, if systematically undertaken by each Public Body, will safeguard the Government and, by extension, the Taxpayer, against (a) poor quality of work, (b) delays in the implementation and execution of the works, (c) the unavailability of the required resources, whether financial, technical and/or human, by the contractor, and (d) will ensure value for money for the Taxpayer.

Once again, and in closing, I am, therefore, obliged to call upon the Government to urgently take the requisite steps to formally institutionalise the 'blacklisting' of under-performing Government contractors. This is a best practice of the World Bank and other major Development Banks world-wide who continuously strive to ensure that the developmental projects which they finance are administered and executed at the most optimum cost-effective and cost-efficient levels possible.

If accepted, this Recommendation, I strongly believe, will dramatically increase the levels of efficiency and effective performance of Government contractors in Jamaica, particularly those who are recipients of contracts in the Construction Sector.

The foregoing matters are further discussed in the section of this Report which is entitled **Monitoring of Construction Contracts**.

UNACCEPTABLE PERFORMANCE OF CONSULTANTS AND PROJECT MANAGERS

The aforementioned concerns are not only confined to contractors. Consultants and Project Managers, who are routinely engaged on Government contracts, have also been found to be wanting.

The performance of consultants and Project Managers need to be closely monitored by Public Bodies, for too often the OCG has found that these professionals have abandoned or have failed to perform their duties satisfactorily.

As is the case with contractors, whose performance is found not to be in compliance with the conditions of the contract, Public Bodies should not hesitate to apply the prescribed sanctions or penalties in any instance in which the work of a Government engaged consultant or project manager falls beneath the required standard.

It is not enough to verbally indicate the shortcomings to the offending party, as there is no guarantee that the improvement will be realised. The importance of documentation cannot be over-emphasised, particularly where there is a deviation from the terms and conditions of the contractual agreement.

That said, Public Bodies are strongly advised to ensure that consultants and project managers are suitably qualified to perform the works or services in respect of which they are to be engaged.

Similarly, Public Bodies should also be vigilant in their oversight of these persons, ensuring not only optimum delivery of service, but that all possible debilitating 'situations' are anticipated and spoken for in the contractual agreement which is to be executed between the Government and the consultant or project manager.

The foregoing matters are further discussed in the section of this Report which is entitled **Monitoring of Non-Construction Contracts, Licences, Permits and Concessions**.

IGNORANCE OF THE GOVERNMENT PROCUREMENT PROCEDURES

The year 2010 saw several procurement processes being terminated for a number of reasons, chief among them being budget-related issues.

The OCG, in monitoring the procurement processes that are administered by the country's 190+ Procuring Public Bodies, upon identifying deviations, would have communicated same to the offending Public Body.

Unfortunately, however, in some instances, the extent of the deviations did result in the OCG recommending the termination and re-tendering of the procurement opportunity. Re-tendering usually requires the revision of the Tender Document and re-advertising, both of which are costly undertakings.

In an effort to prevent this occurrence, it is recommended that all Public Bodies familiarise themselves with the Handbook of Public Sector Procurement Procedures and the Standard Bidding Document, along with the accompanying Annexes. These may be found on the OCG's website at www.ocg.gov.jm or on the website of the Ministry of Finance and the Public Service at www.mof.gov.jm.

Another breach that has been identified by the OCG, is the continuing failure of Public Bodies to secure the appropriate approvals for contract award recommendations. There were many instances, throughout the year, in which either the required Procurement Committee or Head of Entity/Accounting Officer approval was not received prior to the award of contract. Deviations such as these clearly demonstrate ignorance or indifference, on the part of the offending Public Bodies, to the relevant Procurement Procedures which are detailed in the aforementioned Handbook.

Public Bodies that have been identified for this breach have been routinely advised of the deviation and warned against a recurrence of same. In all instances, the relevant Permanent Secretary (or in the case of the Ministry of Finance and the Public Service, the Financial Secretary) has been copied on the pertinent OCG correspondence.

Public Bodies are reminded that the required approvals are guided by the value of the contract to be awarded, and the procurement methodology which is to be utilised by the Public Body in any given case. In all instances, the approval of the Head of Entity/Accounting Officer is required.

With the limited funds that are available to Public Bodies for procurement purposes, it is of vital importance that proper due diligence is consistently conducted to ensure that internal budgetary, planning and procurement practices are being executed at the appropriate levels and are, at all times, in full compliance with applicable Government of Jamaica laws, regulations, policies and procedures.

CORRUPT DISCLOSURE OF THE 'COMPARABLE ESTIMATE'

The OCG continues to maintain that the non-disclosure of the Comparable Estimate, to **all** potential bidders, prior to the tender-opening ceremony, creates an opportunity for the undermining of the legitimate procurement process, and is, in point of fact, a corruption enabling facility.

Corrupt contractors will attempt to ascertain the amount that is earmarked by the Public Body for expenditure on a contract (otherwise called 'The Comparable Estimate'), in collusion with corrupt employees of the awarding Public Body, and, in so doing, will ensure that their bids so closely correspond with the Comparable Estimate that, all things being equal, they will win the contract. Consequently, if they are successful in their corrupt endeavours, these Contractors would have had a competitive, though corrupt, advantage over other bidders.

Indeed, the OCG has received information that the trend of strategically disclosing the Comparable Estimate to a tendering contractor, is a deeply entrenched practice in the Public Sector Procurement Process in Jamaica, and has been criminally utilized as a latent device to direct lucrative state contracts to specified contractors.

It is also my understanding that some agents of Public Bodies have been allegedly approached and offered bribes to disclose the Comparable Estimates to certain contractors.

As an anti-corruption measure, one significant benefit that is to be derived from disclosing the Comparable Estimate to all bidders is the full transparency of the measured or market value of the contracting opportunity. This will obviously engender a greater level of competition, as contractors will seek to bid as close to the amount that has been budgeted and stipulated as the real value of the works that are to be undertaken or the goods that are to be procured.

In light of the foregoing, the OCG, in 2010, submitted a formal Recommendation to the Government in which it was proposed that there should be a full disclosure of the Comparable Estimate, to all bidders, as a part of the Invitation to Tender process. However, the proposal was not considered for inclusion in the Revised Handbook which was brought into force by the Government on January 2, 2011.

I am, therefore, again, calling upon the Government to dispassionately re-consider the Recommendation.

Quite apart from the foregoing, the OCG has also taken note of the fact that several Public Bodies have been initiating procurements without first establishing a value baseline for the procurements that are to be undertaken. It has also been noted that many Public Bodies have failed to reveal the Comparable Estimates at their Tender Opening Ceremonies. This is a practice which violates the Government of Jamaica (GOJ) Procurement Procedures. It is also one which flies in the face of the principle of *'transparency'* in the procurement process.

Comparable or Comparative Estimates are absolutely necessary for all procurement activities, as they enable the Public Body to determine whether they will get value for money. Having a Comparable Estimate also allows for proper planning, as it enables the Public Body to estimate the duration of the pre-contract phase of the procurement, allocate appropriate funding, and identify the required grade level for Works Contractors.

It is, therefore, imperative that a fully informed Comparable Estimate is prepared prior to Tendering, as it will ultimately serve to guide the process which is to be undertaken, including the procurement methodology that is to be utilised.

The OCG obviously cannot attend all Tender Opening Ceremonies to ensure compliance by the country's 190+ Public Bodies in revealing their Comparable Estimates. Consequently, I am obliged to use this medium to respectfully remind the Accounting Officers of the country's Procuring Public Bodies that Public Bodies do have an obligation to disclose the Comparable Estimate at Tender Opening Ceremonies. A failure to comply with this requirement will constitute a breach of the Government of Jamaica Procurement Procedures.

The foregoing matters are further discussed in the section of this Report that is entitled **Monitoring of Construction Contracts**.

REVIEW OF THE PUBLIC SECTOR PROCUREMENT PROCEDURES HANDBOOK

A Multi-Agency and Multi-Disciplinary Committee was established by the Prime Minister, the Hon. Bruce Golding, to revise the Government of Jamaica Revised Handbook of Public Sector Procurement Procedures (November 2008). The Committee met throughout the year which is under review and painstakingly reviewed the Handbook.

The OCG was ably represented on the Committee by Mr. Craig Beresford, its Senior Director of Monitoring Operations, Corporate Communications and Special Projects, and was routinely issued with drafts of the proposed Handbook for its review and comments. The drafts were reviewed and written Recommendations were promptly posited by the OCG's review team for amendments to be effected to the respective drafts, prior to final approval.

As the State's sole Anti-Corruption Commission, which is vested under the law with the exclusive mandate to ensure compliance by Public Bodies, with the Government's Procurement Procedures and Laws, the Recommendations of the OCG that were proffered were guided not only by its vantage point knowledge of, and experience in, procurement practices in Jamaica, but also by its peculiar knowledge of the challenges, difficulties and issues that are faced, on a daily basis, by Public Bodies and Procurement Practitioners, in their interpretation and application of the Government's Procurement Procedures.

For example, the need for lucidity in the new Handbook could not be over-emphasised, as the misinterpretation of the Guidelines as were set out in the previous Handbook (November 2008), had resulted in many instances of inadvertent deviations by Public Bodies.

Additionally, there were numerous instances of inferences having to be made, as there were significant and far-reaching substantive omissions and oversights in the old Handbook. Furthermore, the general layout of the old Handbook was not user-friendly. Consequently, some of the Recommendations that were made by the OCG were directed at addressing these matters.

In so far as the substance of the Handbook is concerned, surprisingly, several of the significant anti-corruption measures that were proposed by the OCG, and which had found favour with the Multi-Agency and Multi-Disciplinary Committee, were not included in the ensuing Cabinet approved Revised Handbook which resulted from the deliberation process. The new Handbook was brought into force effective January 2, 2011, via a Ministry of Finance and Public Service Circular, No. 34, which was dated December 10, 2010.

The foregoing matters are further discussed in the section of this Report that is entitled **Monitoring of Non-Construction Contracts, Licences, Permits and Concessions**.

CORRUPTION IN THE GOVERNMENT CONTRACTOR REGISTRATION PROCESS

In the Introductory Remarks that I made last year in the OCG's 2009 Annual Report to the Parliament, I reported, *inter alia*, as follows:

"In April 2009, the OCG uncovered attempts by unscrupulous contractor applicants and other persons to corrupt the National Contracts Commission (NCC) Government contractor registration process.

The matter was promptly made public by me, via the issue of an official OCG Media Release which was dated May 6, 2009. The Release was issued after the police had conducted preliminary investigations and immediately after clearance was received by me, from them, to proceed with my public statement.

To qualify to bid on Government contracts, a prospective contractor must first secure registration with the NCC as a works, goods or services contractor, after filing the appropriate application with the OCG. Existing registered NCC contractors must also seek re-registration with the NCC every year.

Once an application for registration is filed with the OCG, the OCG, on behalf of the NCC, undertakes a due-diligence evaluation of the application form and verifies the contractor's particulars in accordance with the NCC's prescribed procedures. This, in turn, forms the basis for the classification, grading and registration of the contractor by the NCC. A contractor is classified or graded depending upon its resources, experience and competence levels.

If the NCC's contractor registration or re-registration process is in any way corrupted or compromised, contractors could potentially receive Government contract awards for which they are not qualified, competent or adequately resourced to execute. This, in turn, could result in additional costs being borne by the tax-payer arising from poor or defective work on construction projects, costs and time over-runs on works contracts, or the supply of goods or services which do not meet contract specifications.

In late April 2009, a semi-completed contractor re-registration application form was received by the OCG for preliminary due-diligence evaluation and processing, prior to submission to the NCC.

Included among the application supporting documents, was what appeared to be a forged sworn Voluntary Declaration which had purportedly been executed before a Justice of the Peace by the contractor, attesting to the truth of the particulars which were embodied in the application form.

Preliminary investigations, which were carried out by the OCG, found that the application had been allegedly prepared and submitted, on behalf of the contractor, by a former long-serving member of the OCG staff, for a fee of \$10,000. The former OCG staff-member was asked by me to resign from the OCG in April, 2008, on suspicion of her involvement in corrupt activities. The allegations, at the time, were reported, in writing, by me to the Police High Command.

The OCG has, since April 23, 2009, intercepted several other contractor registration and re-registration application forms which appeared to be irregular or contain misleading, forged or fraudulent information. Many of the applications seemed to have been completed by the same person and/or attested to before the same Justice of the Peace.

In many instances, interviews were conducted by the OCG with representatives of the implicated contractors and statements were taken. In all cases, the OCG has handed over the affected contractor application forms and files to the Fraud Squad in consequence of which the applications will not be processed by the NCC.

Section 15 of the NCC's Works Contractor Application Form provides as follows: "IF THE INFORMATION PROVIDED BY THE APPLICANT ON WHICH EVALUATION AND AWARD(S) WERE BASED IS FOUND TO BE ERRONEOUS THEN THE CONTRACTOR(S) SHALL NOT BE REGISTERED, OR IF ALREADY REGISTERED, THE REGISTRATION WILL BE REVOKED."

Since its calling in of the Fraud Squad in April, 2009, the OCG has taken several decisive and deliberate steps in its continuing effort to root out the scourge of corruption from its midst and from the Government contractor registration process. These have included:

- (1) The re-organization of the staffing structure of the OCG's Technical Services Department (TSD), the interim revision of the critical operating and process functions of the Department, and the re-assignment of the said functions to new staff members.*
- (2) The conduct of an exhaustive and comprehensive evaluation of the OCG's TSD functions and processes to re-assess its strengths and weaknesses and to develop recommendations for the revamping of the said processes – all in an effort to enhance efficiency and effectiveness in the processes, whilst insulating same from criminal acts of corruption and impropriety. The Report was completed and handed over to the NCC.*
- (3) The handing over of suspicious information, together with tainted contractor files, to the Fraud Squad.*
- (4) The implementation of more stringent security measures to protect the OCG's official documentation and information from unlawful use or disclosure, inclusive of the re-organization and re-staffing of the OCG's Registry.*
- (5) The formal issue of Anti-Corruption and Associated Disciplinary Warnings to all existing OCG staff members and the erection of no less than six (6) laminated Anti-Corruption Warning and Prosecution Signs throughout the public areas of the OCG's offices.*

The referenced heightened anti-corruption mechanisms and procedures which were implemented by the OCG, did in fact bear fruit as several other irregular, forged and fraudulent contractor re-registration applications have been identified and pulled from the system during the year.

Some of the irregularities which have been identified by the OCG, and particularly those which were associated with works contractors' applications, are indicative of the magnitude of fraud and corruption that has permeated Government contracting in Jamaica. They include:

- (1) Forged contractor re-registration applications, supporting documentation and certification;*
- (2) Falsified information regarding the human, physical, financial and technical resources of contractors;*
- (3) Falsified information about construction projects which contractors allege that they have executed;*
- (4) Irregular and forged Voluntary Declarations attesting to the veracity of application forms; and*
- (5) Contractor representatives who are unable to accurately verbalize to the OCG the information which is stated on the application forms which they themselves have submitted to the OCG".*

In furtherance of the OCG's efforts to clean up the Government's Contractor Registration system, the Technical Services Division (TSD) of the OCG, upon my instructions, in September 2010, implemented a 100% Zero Tolerance compliance audit of all applications for registration and re-registration for all Grades 1 to 4 Works contractors that are submitted to the NCC.

The exercise was structured to secure the detailed verification of all of the information that is entered upon the contractor application forms, particularly as it relates to information that is represented about the human, financial and technical resources of the applicant.

The OCG's implementation of its 100% due diligence initiative resulted in delays in the NCC contractor registration and re-registration processes that were not unexpected. This, in turn, led to a heightened displeasure amongst contractors who, not surprisingly, complained of the varying inconveniences which they were facing.

The delays also prompted the intervention of the Hon. Prime Minister, who convened a meeting with himself, the Chair of the NCC, the President of the Jamaica Master Builders Association, the Senior Director of the OCG, and me, on November 17, 2010.

The need for additional staff within the OCG's TSD had been previously communicated to the authorities so that the delays that were anticipated from the OCG's heightened scrutiny of the Works contractors' application forms would have been minimized. These requests, however, were ignored. At the meeting with the Hon. Prime Minister, a further request was made by me for three (3) additional personnel, but all to nought.

The OCG was, however, not prepared to compromise the need to obliterate the pervasive corrupt and unscrupulous elements that it had identified in the Government Contractor Registration Process merely to preserve the pre-existing 4 week NCC contractor application registration time frame. This position was firmly, but respectfully, communicated by me to the Hon. Prime Minister.

The Hon. Prime Minister discussed with the meeting what appeared to be the Government's temporary solution to the registration and re-registration delay problem.

Rather than explore the possibility of granting the OCG's request for three (3) additional members of staff, what was instead raised was a Government proposal to have the NCC impose a Moratorium to enable Government Works contractors, whose registration certifications had already expired, to be deemed to be registered in their pre-existing categories and grades through to February 28, 2011. Excepted from the ambit of the proposed Moratorium would be those contractors whose registrations had expired, and whose applications were the subject of OCG reports to the police for investigation for fraud.

In essence, the Moratorium was intended by the Government to 'validate' the registration of contractors whose registrations had already lapsed by operation of law. It would also 'validate' the registration of contractors whose grading and categorization *bona fides* would have not yet been legitimately established in keeping with the NCC's own existing rules and procedures.

I respectfully advised the Prime Minister that, as the Contractor General, and as a registered Attorney-at-Law, I could not support the proposed Moratorium for a number of considered reasons, chief among them being:

(a) that to do so would be unlawful, having particular regard to the provisions of the Contractor General Act which require the NCC to register contractor applicants only if it was "*satisfied that an applicant meets the prescribed requirements*";

(b) that the Moratorium would undermine and compromise the integrity of the processes that had been established, under the law, to ensure that Works contractors who are permitted to bid on Government contracts, have been properly graded and certified as having the requisite physical assets, financial resources, professional expertise, and prior Works experience to execute the contracts that were likely to be awarded to them; and

(c) that the Moratorium would have introduced a grave element of irregularity and impropriety into the Government Contractor registration process, in clear violation of my mandate as Contractor General, under Section 4 (1) of the Contractor General Act, by which I am circumscribed, and which requires me to “ensure” that Government contracts are “... awarded impartially and on merit and in circumstances which do not involve impropriety or irregularity”.

Notwithstanding the objections of the OCG, the issue of a Policy Directive of the Cabinet of the Government of Jamaica was publicly reported by way of a Jamaica Information Service (JIS) Release, which was dated November 29, 2010. The JIS Release alluded to a Statement which was made on November 24, 2010, at a Post-Cabinet Press Briefing, by the Minister of Information, the Hon. Daryl Vaz.

The JIS Release stated quite unequivocally that “**except for contractors ... whose registration has expired and whose applications were the subject of reports to the police for investigation for fraud ... the eligibility period for the award of Government of Jamaica contracts to all contractors registered with the National Contracts Commission (NCC) has been extended to February 28, 2011**”. (My emphasis).

The public Statement that was made by Minister Vaz also seemed to have usurped and over-ruled a private letter from the Cabinet Secretary, dated November 25, 2010, that was directed to the Chair of the NCC, and copied to me, in which the matter had been purportedly submitted for decision of the NCC. Minister Vaz’s Statement had suggested to the public that the matter was already a ‘done deal’.

The Cabinet Secretary’s letter, in part, stated that “... Cabinet agreed that a number of policy considerations (regarding the matter) should be placed before the National Contracts Commission (NCC) in relation to its statutory responsibility for the registration and classification of contractors”.

On November 30, 2010, I wrote to the Chair of the NCC, advising him that “in light of the OCG’s concerns about the impropriety and illegality of the Moratorium under the provisions of the Contractor General Act, the OCG wishes to use this opportunity to formally disassociate itself from any decisions of the NCC and the Government of Jamaica which may be taken which are in keeping with the terms of the said Moratorium”.

I further advised the NCC’s Chair that the OCG, which is an Independent Commission of Parliament, would “continue to lawfully discharge its statutory mandate, under the Contractor General Act, to provide to the NCC such technical and administrative support as the NCC may require to enable it to **lawfully** discharge its own mandates under the said Contractor General Act”.

My letter was copied to the Speaker of the House of Representatives, the President of the Senate, the Chair of the Joint Select Committee of Parliament which was then examining the Reports of the Contractor General, the Hon. Prime Minister, the Cabinet Secretary, the Financial Secretary, the Solicitor General and the President of the Jamaica Master Builders Association. A full transcript of my letter was also appended to an OCG Media Release which was issued, regarding the matter, on December 1, 2010.

In the Media Release, the OCG expressed its alarm that “the Cabinet, despite being warned, has chosen the route of this highly irregular and apparently unlawful ‘Moratorium’ as the way for resolving the subject crisis. The Cabinet’s Directive will, as a matter of certainty, (a) expose the Government Contractor registration process to corruption, irregularity and impropriety – the very mischief that the OCG has been working assiduously to cauterize, (b) unleash uncertified, incompetent and under-resourced contractors upon the Jamaican Taxpayer and (c) pose significant threats to property, life and limb, since the integrity of the work which the referenced Contractors will carry out in their execution of public works contracts cannot, in any circumstances, be assured”.

It is instructive to report that, as at the time of the editing of this Report in mid-2011, no steps had been taken by the NCC, or by the Government, to actually implement or to proceed with the subject Moratorium – thus suggesting that the OCG’s objections to the Moratorium had some bearing on the Government’s and/or the NCC’s final decisions.

DELISTING OF NCC REGISTERED WORKS CONTRACTORS DUE TO FRAUD

It is also important to record that the OCG's revamping of the NCC's contractor registration process, though tedious and challenging, resulted in at least sixty (60) contractors being investigated by the OCG for NCC registration and re-registration irregularities, and at least twenty-five (25) of that number being forwarded to the NCC for removal or de-listing from its list of NCC Registered Government Contractors.

For example, by way of letter, which was dated March 31, 2010, the particulars of 19 named Works contractors were formally conveyed by the OCG, to the Chair of the NCC, with a formal Recommendation that their applications for registration or re-registration with the NCC should not be approved by the NCC.

The OCG's Recommendation was based on the fact that its internal investigations, all of which involved formal and recorded OCG interviews with representatives of the subject contractors, had revealed documented evidence that the applicants had submitted incorrect, erroneous and/or misleading information on their NCC registration and/or re-registration application forms, in contravention of Provision #15 of the NCC's own Terms of Application.

Provision #15 of the NCC's Works Application Form provides as follows:

IF THE INFORMATION PROVIDED BY THE APPLICANT ON WHICH EVALUATION AND AWARD(S) WERE BASED IS FOUND TO BE ERRONEOUS THEN THE CONTRACTOR(S) SHALL NOT BE REGISTERED, OR IF ALREADY REGISTERED, THE REGISTRATION WILL BE REVOKED."

By way of letters that were dated June 9 and July 7, 2010, a further Recommendation was made, by the OCG, to the NCC, for the immediate revocation of the registration of a then registered Works contractor, **Incomparable Enterprises Limited**. Incomparable Enterprises Limited is a contracting entity that, at the time, was being featured prominently in the news in Jamaica, and was alleged to be closely associated with one **Mr. Christopher 'Dudus' Coke**.

In the referenced case of Incomparable Enterprises Limited, the OCG, after being approached by the Jamaica Constabulary Force for a copy of the company's NCC file, conducted a forensic investigation of the file and found evidence which suggested that, at a minimum, the company's annual re-registrations, as a NCC Works contractor, going back to 2005, had been irregularly and/or fraudulently acquired.

Full particulars regarding the OCG's Findings were formally conveyed to the Chair of the NCC, in writing, under cover of the above-referenced OCG letters of June 9 and July 7, 2010.

Despite the OCG's Recommendation however, the NCC, instead of taking decisive action regarding the matter, referred same to the Solicitor General, Mr. Douglas Leys, by way of letter, from the Chair of the NCC, which was dated July 20, 2010.

As at the date of the editing of this Report, in mid-2011, the OCG had not been advised as to whether the Solicitor General had responded to the Chair of the NCC and, if so, what advice had been rendered by him to the NCC.

The OCG also wishes to record that copies of the identical documents, regarding Incomparable Enterprises Limited, that were forwarded by the OCG to the NCC, were also formally conveyed by the OCG to Senior Superintendent Fitz Bailey, the Head of the Organized Crime Investigations Division of the Jamaica Constabulary Force (JCF), under cover of letters which were respectively dated June 9 and July 7, 2010.

Additionally, at the request of Senior Superintendent Fitz Bailey, following a meeting which was convened at his instance with OCG officials on June 2, 2010, complete copies of (a) the official NCC files for Incomparable Enterprise Limited, containing 114 listed documents and, (b) the official NCC files for Bulls Eye Security Services Limited, containing 16 listed documents, were formally conveyed to the Senior Superintendent, under cover of letter that was dated June 4, 2010.

Incomparable Enterprises Limited ceased to be a NCC registered contractor, effective November 10, 2010, not by any overt or decisive act on the part of the NCC, but, rather, by the effluxion of time. (NB. November 10, 2010 was the date that the company's then subsisting annual registration, as an NCC Works contractor, naturally expired).

Based upon the OCG's documented Government contract award records, all of which for some time have been freely available for scrutiny on the OCG's website at www.ocg.gov.jm, Incomparable Enterprises Limited (a) has been awarded a grand total of 55 contracts which fall under the NCC's value thresholds (of \$4 million prior to September 22, 2008, and \$10 million thereafter), and which bear an aggregated value of \$77.3 million; and (b) has had endorsed in its favour, by the NCC, nine (9) contract award recommendations totalling \$144.86 million.

The 55 contracts in category (a) were awarded during the period of September 2006 to February 2010, while the nine (9) NCC contract endorsements, that are referenced in category (b), were recorded during the period of May 2008 to August 2009.

As is the case with all Government contractors, inclusive of Incomparable Enterprises Limited, which the OCG's internal Investigations have revealed have secured their NCC contractor registrations and/or re-registrations fraudulently or corruptly, the critical questions which now arise for answer by the Learned Attorney and Solicitor Generals is what of the legitimacy and legal validity of the Government contracts that have been awarded to such contractors, and whether and to what extent does the State has a right to trace and to lawfully reclaim the Taxpayer monies that have been paid out under the said contracts.

The unrelenting and bold steps that the OCG has initiated and prosecuted to eradicate corruption from the Government's Contractor Registration Process, have resulted in a significant reduction in the false, misleading and fraudulent information that was previously being presented in the Works contractor application forms that were being submitted to the NCC.

Corrupt and unscrupulous contractor applicants are now thinking twice about 'testing' the integrity of the OCG's 100% Zero Tolerance due-diligence system, and that is precisely how it should be.

The OCG's Zero-Tolerance approach to fraud, in any shape or form, will not be relaxed at any time, as the OCG continues on its mission to diligently impose and to uphold the foundation principles of integrity, accountability, transparency, competition and value for money in the Government of Jamaica Procurement and Contract Award Processes.

To the extent that delays in the NCC contractor registration and re-registration time-frames are persisting, the OCG would, once again, respectfully call upon the powers that be to do the right thing by providing no more than three (3) additional members of staff to the OCG's TSD – this, as opposed to doing what is, in essence, tantamount to forcing the OCG to turn a blind eye to corruption by relaxing its scrutiny of the referenced Works contractors' registration and re-registration application forms.

Of course, one of the most valid and pre-eminent concerns that the OCG now has is that once the Government 'separates' the NCC from the OCG, the administration of the NCC's contractor registration functions is likely to become so lax, or susceptible to corrupt external influences, that it could very well encourage the return of the same elements of fraud, as well as the bogus, corrupt and criminal contractors, that the OCG, for the past two (2) years, has been working assiduously to expunge from the system.

Consequently, the process that the Government pursues to 'separate' the NCC from the OCG, and the extent to which the structure that embodies the new NCC will be immune to the influence and dictates of the political directorate and other external influences, must, therefore, be closely observed and scrutinized, for in absolutely no circumstances whatsoever should the days of rank thievery and corruption in Government contracting in Jamaica be allowed to return to rear its ugly head.

CLOSING COMMENTS

In closing, I wish to thank all Jamaicans, both here in Jamaica and overseas, who continue to support the efforts and the work of the OCG.

Although the OCG has had its fair share of detractors and critics, the support for the organization and what it represents, appears to far outweigh any unfounded aspersions that may have been levelled at it. Some of these persons have even gone as far as to attempt to politicize the work of the office, but to no avail.

Each commendation and expression of support, whether orally made or in writing, has reinforced and strengthened my unbridled commitment to the faithful discharge of my mandate. I must assure you that your support continues to re-energize the OCG team and me, as we continue to perform our daily duties, with passion, on behalf of the People and Taxpayers of Jamaica.

Once again, I am obliged to call upon every right-thinking Jamaican to take a strong, aggressive, vocal and unrelenting stand against corruption. As Jamaicans, we should make a concerted effort to recognise and report corruption whenever and wherever we see it. We also need, as a nation, to ensure that the younger generation does not adopt the mentality of gain by dishonest means, nor to come to accept this as a norm, or as a way of life.

Make no mistake about it, corruption inhibits economic prosperity and propagates poverty. Consequently, combating corruption has to be made a national priority if we are to stand any chance whatsoever of rescuing our beloved Nation from the jaws of the socio-economic despair which currently awaits it, should our collective inaction and apathy persist.

I must also use this opportunity to publicly thank the hardworking and dedicated staff of the OCG, the great majority of whom have selflessly, and time and time again, gone beyond the call of duty to ensure that the mandates of the OCG are faithfully and fully discharged and satisfied.

It is with a sense of great pride and satisfaction that I can truly say that I am indeed honoured and privileged to lead a team of mainly young Jamaican individuals who are apolitical, and who are determined to do whatever is professionally and lawfully necessary to get the job done, without fear or without favour, despite the many and arduous challenges that they face.

The Contractor General Act, by which I am guided, stresses, *inter alia*, independence and the requirement that I must act, at all times, on behalf of the Parliament of Jamaica. I, therefore, fully appreciate, understand and accept that my responsibilities and functions are to be discharged, by extension, on behalf of the People and Taxpayers of Jamaica.

Having regard to the requirements of my mandates, I can unreservedly assure the Parliament and the People of Jamaica, that, during 2010, the year which is under review, I performed my functions, as Contractor General, in good faith, in the manner which is prescribed by the Contractor General Act.

For the future, I pledge that for as long as I shall hold the Commission of the Contractor General of Jamaica, I will, to the best of my ability, continue to fearlessly serve the collective interests of the People of Jamaica, whilst faithfully discharging my functions as Contractor General.

I will do so forthrightly, fairly and impartially, and I will do so responsibly and in a manner which is in keeping with the highest standards of integrity and ethical conduct.

Greg Christie
Contractor General