



OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

KEYNOTE PRESENTATION BY

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*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*

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

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

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

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

Corruption:

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

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

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

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

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

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

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

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

2. INSTITUTIONALIZED AND SYSTEMIC CORRUPTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. POLITICAL WILL TO FIGHT CORRUPTION DEFINED

What, then, is Political Will?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. EFFECTIVE ENFORCEMENT OF ANTI-CORRUPTION LAWS

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

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

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

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

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

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

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

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

- (2) There must also be effective adjudication.

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

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

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

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

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

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

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

An environment of deterrence will only be effectively created where anti-corruption laws with powerful custodial sanctions are first promulgated and then forthrightly, swiftly and dispassionately enforced, to deter acts of corruption, and to

aggressively force into conformance those deviant members of the society who are either unwilling to submit to the State's voluntary compliance systems, or who believe that they are above the law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the case of the JCF, on December 9, 2010, on International Anti-Corruption Day, the Assistant Commissioner of Police, Mr. Justin Felice, who oversees the JCF's Anti-Corruption Branch, while publicly acknowledging the JCF's outstanding successes in laying corruption charges against several low-ranking police officers, raised concerns,

during a press conference, about referrals regarding senior police officers of the JCF which had been conveyed to the ODPP, but which had not resulted in criminal prosecutions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) At a minimum, the Parliamentary Integrity Commission, the Corruption Prevention Commission, and the OCG, should be merged into a single entity which should become Jamaica’s National Independent Anti-Corruption State Agency. The Agency should then be vested with the exclusive constitutional law authority to criminally investigate and prosecute all corruption related offences, and to otherwise perform all of the other functions that are now being discharged by the three (3) commissions.
- (2) The appointment procedure for the head of the Agency should be removed entirely from the influence and control of the political directorate, and must be such that, at a minimum, the person who is appointed should possess the following key attributes:
 - (a) be professionally and academically qualified for the job;
 - (b) possess a proven track record of superior leadership, management and business organizational skill-sets;
 - (c) be apolitical and highly ethical in his or her professional outlook;
 - (d) be fearless, forthright, dispassionate and disciplined, but fair, in his or her approach;
 - (e) be prepared to boldly confront those who will need confronting; and;
 - (f) be able, at all times, and irrespective of the cost, to hold true to his or her oath to discharge his or her mandate and responsibilities solely in the interest of the State.

- (3) The Agency and its leadership should be subjected to certain institutional checks and balances, inclusive of appropriate recall mechanisms for the leadership of the Agency, to ensure the Agency's operational probity, accountability, efficiency and effectiveness.
- (4) The Agency should be adequately resourced with the requisite *specialist* assets, skill-sets and independent criminal investigatory and prosecutorial resources, to enable it to deal with all corruption offences in a novel, focused, professional and significantly more efficient and effective way, to that which currently obtains.
- (5) The proposed Agency should be comprehensively staffed with a highly trained cadre of specialist anti-corruption criminal investigators, intelligence gathering officers, investigating attorneys and special operations team members, who should bear arms and be accorded special police powers of arrest.

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

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

- (b) the three (3) offences that are currently specified under Section 29 of the Contractor General Act; and
- (c) The offence which is established under Section 40 of the Public Sector Procurement Regulations that criminalizes breaches of the rules which govern the award of government contracts and licenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. CLOSING REMARKS

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

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

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

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

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

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

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

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

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

But that still will not be enough.

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

Thank you.

Greg Christie was appointed Contractor General of Jamaica on November 30, 2005 by former Jamaica Governor General, Sir Howard Cooke. His seven (7) year term in office will end in 2012.

As the Independent Anti-Corruption Commission of the Contractor General of Jamaica, Mr. Christie is entrusted with the exclusive statutory authority, on behalf of the Parliament of Jamaica, to monitor and to investigate the award and termination of all government contracts, licenses and permits, and to ensure regularity, propriety, accountability, competition and transparency in the Jamaica public sector procurement, contract award and licensing processes.

He is vested with the powers of a Judge of the Supreme Court of Jamaica and has extensive statutory powers of investigation, enquiry, search, discovery and subpoena.

A Caribbean and British trained lawyer, Mr. Christie, before he was appointed Contractor General, spent 13 years as a senior legal, government, regulatory, fiscal, commercial and public affairs executive with the United States based Kaiser Aluminum and Chemical Corporation which, at the time, was Jamaica's largest foreign private investor. His last position with Kaiser was as its Global Commodities Business Unit Vice President for Government affairs and Assistant General Counsel.

Mr. Christie, who holds the LL.M. Degree in Corporate, Insurance and International Law from the University of London, and the LL.B. Degree from the University of the West Indies (UWI), is also a former Caribbean based commercial and international law consultant, as well as a former UWI law programme director and lecturer, an appointment which he first assumed when he was only age 24, making him the UWI Faculty of Law's then youngest law director.

He has lectured for 10 years, 9 of which were on a full time basis, on the 3 main campuses of the UWI, in Barbados, Trinidad and Jamaica, in a variety of disciplines, including criminal law, corporate law, public international law, insurance law, aviation law, law of the sea, and the law and legal systems of the Commonwealth Caribbean. Mr. Christie has also worked for three (3)

years, at the Hugh Wooding Law School in Trinidad, as a tutor in insurance, banking, credit and securities law.

He has completed several business executive development programmes, mostly within the United States, and has attended the Darden Business School, University of Virginia and the Haas Business School, University of California at Berkeley. Mr. Christie is also a United States certified ISO 9002 International Quality Programme Implementer and Lead Auditor.

He has resided and worked professionally in Jamaica for 14 years, the USA for 8 years (in 2 separate stints with Kaiser), Trinidad, 5 years, and Barbados, 4 years. He has also worked on several short-term professional assignments in Ghana, Jamaica, Trinidad, Barbados, Antigua, the Cayman Islands, Dominica, Grenada and St. Lucia.

Mr. Christie is a Government of Jamaica national law scholar and a UWI postgraduate law scholar. He has been admitted as a barrister-at-law in Trinidad and Tobago and as an attorney-at-law in Jamaica, and is qualified to practice law in all Commonwealth Caribbean jurisdictions.
