



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

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MEDIA RELEASE

Contractor General Submits OCG Anti-Corruption Recommendations to Prime Minister and Requests Meeting to Secure Assurance for Implementation of Recommendations

Kingston; January 9, 2012 – Contractor General, Greg Christie, has written to newly appointed Prime Minister of Jamaica, the Most Hon. Portia Simpson-Miller, to convey more than 25 Office of the Contractor General (OCG) Anti-Corruption Recommendations for urgent consideration and implementation by the incoming People’s National Party (PNP) Administration.

In his letter, which was despatched to the Prime Minister on the morning of January 6, her first day in office, the Contractor General also advised the Prime Minister that he “... stands ready to meet with you and/or your nominees at your earliest convenience to discuss the said matters, to answer any questions that you may have, and to understand the direction that your Administration is prepared to take, regarding the said Recommendations, in keeping with the specific public commitments that you have already given to strengthen the OCG and to fight corruption in Jamaica.”

The OCG Recommendations are identical to the ones that were previously submitted by the Contractor General to former Prime Minister, Andrew Holness, under cover of letter that was dated October 31, 2011 – a few days after he had assumed office as Prime Minister on October 23, 2011.

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

The Recommendations are among the many corrective and remedial Anti-Corruption Recommendations that the OCG has repeatedly made under the stewardship of the incumbent Contractor General, Greg Christie. However, no satisfactory action, to date, has been forthcoming from the Executive or Legislative arms of the State to effectively implement any of them.

In the December 20, 2011 National Leadership Debate, Mrs. Simpson-Miller, in her then capacity as the Leader of the Opposition, had given the public assurance that “... in terms of fighting corruption, I will not tolerate any form of corruption in a People’s National Party Government and that’s why when



I'm returned to power, as Prime Minister, I will ensure the strengthening of these institutions, like the Office of the Contractor General”.

In his letter, Mr. Christie, in responding to Mrs. Simpson-Miller’s statements, told the Prime Minister that “the OCG welcomes your stance Madame Prime Minister and, in furtherance thereof, as the Independent Anti-Corruption Commission of the Parliament of Jamaica which is vested with the exclusive statutory mandate to ensure probity, impartiality, merit, propriety and regularity in the Government of Jamaica contracting and licensing processes, I would now wish to respectfully re-submit for your considered attention the referenced OCG concerns and Recommendations”.

Chief among the 25-plus OCG Recommendations is the Recommendation which was first made by the OCG on March 22, 2010, to revamp the Special Prosecutor Bill and to establish, in its stead, a National Independent Anti-Corruption State Agency for Jamaica which would merge the functions of the Parliament Integrity Commission, the Corruption Prevention Commission and the OCG, and in which would be vested the exclusive mandate, among other things, to criminally investigate and prosecute all corruption and related criminal offences.

The OCG has long contended that the Special Prosecutor Bill, which is currently before the Parliament, falls way short of the mark and will do very little to halt the scourge of corruption in Jamaica which, from all indications, is perceived by many as having reached systemic proportions.

The Bill, which gives the Special Prosecutor arrest and limited criminal prosecutorial powers, has sought only to merge the Integrity Commission and the Corruption Prevention Commission, thus raising the very curious question as to how could, or why would any well-thinking Administration conceptualize an Office of the Special Prosecutor to be Jamaica’s all-embracing National Anti-Corruption Agency, but yet deliberately exclude the OCG from its ambit.

The question, which, in turn, raises very serious concerns, is, in the OCG’s view, an extremely pivotal one for two (2) very germane and critical reasons.

First, although the OCG has extensive quasi-judicial powers of search, discovery, enquiry and subpoena, it is well known throughout Jamaica that it has no criminal investigation, arrest or prosecutorial powers and capabilities, nor does it have the 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 former Administration had alarmingly side-stepped the universally recognized fact that the largest opportunity that exists, in monetary terms, for corruption in any country, inclusive of Jamaica, lies in the illicit manipulation of the award of Government contracts and licenses, and the divestment of State assets.



The former Administration's continued exclusion of the OCG from the purview of the concept of the Special Prosecutor, despite the several protestations that had been lodged by the OCG, and its inexplicable failure to give the OCG real teeth, was, therefore, in the above-referenced circumstances, not only mind-boggling, but, in the OCG's considered view, had raised very worrying questions about the depth of the Administration's Political Will 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 Office of the Director of Public Prosecutions (ODPP).

This is, in the OCG's considered and respectful view, a step in the wrong direction, for if Jamaicans are prepared to call a spade a spade they 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.

The OCG's Recommendation for a single State Anti-Corruption State Agency, having independent criminal investigative and prosecutorial powers, makes provision for the Agency to be technically and professionally resourced to effectively discharge its specialized mandates.

More importantly, however, it makes provision for the Agency and its leadership, unlike the current ODPP constitutional law construct, to be subjected to certain institutional checks and balances, inclusive of the provision for performance appraisals, as well as appropriate reporting and recall mechanisms for the leadership of the Agency. These will, among other things, ensure the Agency's operational probity, accountability, efficiency and effectiveness.

The OCG's proposal for a National Independent Anti-Corruption State Agency for Jamaica, encompassing the Parliamentary Integrity Commission, the Corruption Prevention Commission and the OCG, is fully supported by the National Integrity Action Forum (NIAF). This support was recently re-affirmed by Professor Trevor Munroe, the Executive Director of the National Integrity Action Limited (NIAL), on the occasion of the launch of the NIAL, on December 9, 2011.

It is also critical to note that support, in principle, for the OCG's proposal, as afore-stated, was also publicly affirmed by the then Opposition Spokesman on Finance, Dr. Peter Phillips, at the NIAL's launch, on December 9, 2011, during the formal speech which he gave on behalf of the then Leader of the Opposition, and current Prime Minister, Mrs. Portia Simpson-Miller.

In his letter, the Contractor General also seized the opportunity to high-light, for the Prime Minister's attention, a number of matters which the OCG feels require the immediate attention and intervention of the incoming Administration, from a "good-governance policy stand-point". Among the issues are OCG concerns that are related to:



- (a) the ongoing separation of the National Contracts Commission from the OCG;
- (b) certain draft policy positions of the former Administration which have signaled an intent to terminate the OCG's jurisdiction to monitor and to investigate the sale of state-owned assets;
- (c) the OCG's strong objections to the apparent intent of the Government to award, without international competitive tender, a sole-source contract, to China Harbour Engineering Company (CHEC), to, among other things, complete the construction of the approx. US\$600 million Spanish Town to Ocho Rios North-South Link of Highway 2000; and
- (d) the Jamaica Development Infrastructure Programme (JDIP).

The full text of the Contractor General's letter to Prime Minister Simpson-Miller is appended herewith. The letter was copied to Opposition Leader, Mr. Andrew Holness, the incoming Speaker of the House of Representatives, the incoming President of the Senate, and Professor Trevor Munroe, the Executive Director of the NIAL.

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January 6, 2012

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

Dear Madame Prime Minister:

I am privileged to write directly to you to formally congratulate you upon your appointment to the High Office of the Prime Minister of our beloved country, Jamaica. I wish for you God's guidance and his richest blessings as you prepare to face the enormous challenges that will now fall to you in the discharge of your responsibilities of Office.

As you are aware, the Office of the Contractor General (OCG) has publicly expressed, and formally documented, on innumerable occasions, its many concerns regarding the pervasive perception of corruption in public contracting (and licensing) in Jamaica.

In the same vein, the OCG has also, in the discharge of its statutory mandates under the Contractor General Act, formally advanced several corrective Recommendations to address the problem.

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

However, although most of the referenced Recommendations have been repeatedly made, no satisfactory action, to date, has been forthcoming from either the Government, or from the Legislature, to effectively implement any of them.

That said, I have noted the public commitments that you have given, during the lead-up to the recent General Political Elections, to, among other things, fight corruption in Jamaica and to strengthen the institution of the OCG. In particular, I have been guided by the following statements which were made by you during the National Leadership Debate which was held on December 20, 2011:



“I am very strong ... in terms of fighting corruption and will not tolerate any form of corruption in a People’s National Party Government and that’s why when I’m returned to power, as Prime Minister, I will ensure the strengthening of these institutions, like the Office of the Contractor General and all the institutions having to investigate corruption and deal with corruption when they are reported... I will be very firm and strong on corruption, I do not believe that we should allow anyone to corrupt the system of government, and that’s why consultation is so important and bring people into the heart of government and governance in this country so that they can feel comfortable to communicate with their government and their leaders thereby we will get more information.”

The OCG welcomes your stance Madame Prime Minister and, in furtherance thereof, as the Independent Anti-Corruption Commission of the Parliament of Jamaica which is vested with the exclusive statutory mandate to ensure probity, impartiality, merit, propriety and regularity in the Government of Jamaica contracting and licensing processes, I would now wish to respectfully re-submit for your considered attention the referenced OCG concerns and Recommendations.

Paramount among the referenced concerns and Recommendations are those which were outlined in two (2) documents that were recently directed by me to the former Prime Minister of Jamaica, the Hon. Andrew Holness, and copied to you, under cover of letter that was dated October 31, 2011. These documents are again being submitted, herewith, for your ease of reference. They are as follows:

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

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

Most importantly, however, the Presentation goes further to substantiate and to renew the public proposal which was first made by me to former Prime Minister Bruce Golding, your good-self (in your then capacity as the Leader of the Opposition), the Speaker of the House of Representatives and the President of the Senate, from as early as March 22, 2010, for the establishment of a Single National Independent Anti-Corruption Agency for Jamaica, merging the Parliamentary Integrity Commission, the Corruption Prevention Commission and the OCG, and vesting in same, full criminal investigation, arrest and prosecutorial jurisdictional powers over all corruption related matters.



As you might be aware, the OCG's considered positions, in the foregoing regard, are fully supported by the National Integrity Action Forum (NIAF). This support was recently re-affirmed by Professor Trevor Munroe, the Executive Director of the National Integrity Action Limited (NIAL), on the occasion of the launch of the NIAL, on December 9, 2011.

It is also critical to note that support for the OCG's proposal, as afore-stated, was also publicly affirmed by the then Opposition Spokesman on Finance, Dr. Peter Phillips, at the NIAL's launch, on December 9, 2011, during the formal speech which he gave on your behalf in your then capacity as the Leader of the Opposition.

The second Presentation, among other things, has itemized, in summary form, twenty-six (26) of the above-referenced corrective Recommendations that have been formally submitted by the OCG, under my watch, to the Executive and Legislative arms of the State, over the past few years. These are the said Recommendations, amongst others, in respect of which no remedial action has so far been forthcoming from the State.

I stand ready to meet with you and/or your nominees at your earliest convenience to discuss the said matters, to answer any questions that you may have, and to understand the direction that your Administration is prepared to take, regarding the said Recommendations, in keeping with the specific public commitments that you have already given to strengthen the OCG and to fight corruption in Jamaica.

In closing, I must also briefly advise that there are a number of critical matters which are currently being pursued at the direction of the former Administration which the OCG believes are of such significant national import that they should warrant immediate review and intervention by your Administration from a good governance policy standpoint. Among them are the following:

- (a) **The Separation of the National Contracts Commission (NCC) from the OCG.** The separation has been proceeding in a manner which has raised significant concerns for the OCG. The OCG fears that the separated NCC, and its support staff, will not be independent and will not be insulated from interference from external and political forces, since the requisite enabling institutional and legislative safeguards have not been established as was agreed. The OCG has forcefully documented its strong objections regarding the issue, but to no avail. The OCG continues to regard the rationale and objectives of the separation as being highly questionable, and remains very concerned that its zero-tolerance efforts, over the past two (2) years to, among other things, remove the dark stains of corruption from the NCC's Contractor Registration Process, are likely to be reversed once the separation takes place.
- (b) **The OCG's Jurisdiction to Monitor and to Investigate the Sale of State-Owned Assets.** The OCG has had sight of a confidential draft of a Government of Jamaica Policy Framework and Procedures Manual for the Privatization of Government Assets, dated July 2011. The document makes it clear that the previous Jamaica Labour Party (JLP) Administration was, in effect, by way of the introduction of a revised Government of Jamaica Policy, signaling its intent to terminate the OCG's current independent monitoring and investigating jurisdiction of the privatization of Government of Jamaica State-Owned Assets.



The OCG's position on the matter is well known. Any Government or Administration which seeks to inhibit or curtail the OCG's independent scrutiny of the sale of State-Owned assets – assets which are owned by the Jamaican People – must be prepared to be subjected to a fierce confrontation with the OCG, as well as to unrelenting questions about its Political Will and the integrity and sincerity of its stated commitment to fight the scourge of the endemic corruption which has now literally infected the very life-blood of our cherished Nation.

- (c) **North-South Link of Highway 2000 – Spanish Town to Ocho Rios.** The OCG has formally documented its strong objections, by way of several letters to the National Road Operating and Constructing Company Limited (NROCC), to the negotiating process which is currently being pursued, at the direction of the outgoing JLP Administration, for the completion of the construction of the US\$600 million North-South Link Highway 2000 by the China Harbour Engineering Company (CHEC), and for the consequential granting of a Fifty (50) Year Toll Concession to the said company.

The OCG continues to maintain that the current negotiations between NROCC and CHEC should be terminated forthwith, and that the said transaction, irrespective of its structure, should be subjected to a transparent and international competitive bidding process whereby Value for Money can be secured for the benefit of the People and Taxpayers of Jamaica.

The OCG is not only amazed, but alarmed, that the former JLP Administration was seemingly bent on persisting in what would be another controversial sole-source contract award to CHEC, despite the fact of the ongoing public controversies, audits and OCG Investigations which have arisen in consequence of a similar sole-source award of the US\$400 million Jamaica Development Infrastructure Programme (JDIP) Government of Jamaica contract, to the same company.

- (d) **Jamaica Development Infrastructure Programme (JDIP).** The JDIP has been embroiled in major controversies, particularly as it relates to the circumstances which surround the Government's sole-source award of the contract to CHEC, the transparency of the programme and the propriety of CHEC's award of sub-contracts to local Jamaican works contractors. There are also aspects of the JDIP which are currently the subject of formal ongoing Investigations by the OCG.

Pending the outcome of the OCG's Investigations, and in an effort to strengthen the oversight of the execution of the JDIP and to promote transparency, competition, fairness and Value for Money in matters that are associated therewith, the OCG would respectfully propose the immediate implementation of the following measures:

- (1) The Government of Jamaica, through its Implementing Agencies, should ensure that the selection of JDIP sub-contractors is subjected to an OCG supervised competitive tender processes. Implicit in this recommendation, will be the OCG's ability to better scrutinize the particulars of all such sub-contracts, in real-time, and to make the appropriate disclosures, or issue the requisite recommendations, to secure competition, transparency and Value for Money in the contracts award process.



- (2) Further, it should be a fundamental condition of the Programme that **all** tributary contracts, that are awarded by JDIP sub-contractors, must be awarded to only NCC Registered Contractors.
- (3) The Implementing Agencies, in all instances, must ensure that as part of its evaluation process, and particularly prior to the award of each sub-contract, a determination is made as to each contractor's capacity to undertake the works. In the foregoing regard, the said determination should be guided by the NCC's Workload Limit, so that no contractor's capacity is overextended. The strict enforcement of the referenced regime will insulate the JDIP against the potential for poor quality of works, cost-overruns and time-overruns – all of which will otherwise arise, as a certainty, in consequence of diluted on-site supervision and/or diminished capacity.
- (4) In an effort to secure Value for Money, the Implementing Agencies, in all instances where sub-contracts are slated for competitive tendering, must develop a fully informed Comparable Estimate that is based upon existing market rates, for all contracting opportunities. The foregoing will form the basis upon which qualified bidders' Financial Proposals will be evaluated.
- (5) Consistent with the previous Prime Ministers' announced recommendation, an Independent Consultant, with significant expertise in, *inter alia*, Construction Management and Quantity Surveying, should be immediately engaged to discharge the key Monitoring, Auditing and Reporting functions that should be associated with a Programme of the magnitude of the JDIP. The Independent Consultant's primary objective should be to secure and ensure Value for Money on every Project that is implemented under the JDIP.

The Independent Consultant should not be subjected to the control or direction of the Executive, and should be fully guided by its Terms of Reference. Further, the said Independent Consultant should be required to produce Monthly Reports. These Reports should detail, among other things, the Consultant's observations as regards its monitoring activities, and those of its recommendations to the Public Administration & Appropriations Committee (PAAC) and other relevant State Institutions, to improve the overall management and oversight, by the Implementing Agencies, of the Programme.

- (6) In an effort to ensure equity in the award of sub-contracts, certain minor roads, such as Parochial Roads, should be packaged accordingly, so that NCC Registered Contractors, in the Grades 2 - 4 classifications, can tender for said contracts.

As regards all of the foregoing matters, Prime Minister, the OCG stands ready and willing to meet with the respective functionaries of your incoming Administration to provide further details and particulars of its concerns, as well as to substantiate the proposals that it has made.



I trust that my letter to you, Madame Prime Minister, and the requests, concerns, proposals and Recommendations that I have conveyed herein, will meet with the urgent and favourable response of your good-self, your newly formed Cabinet and your Government.

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

Very respectfully yours,

Greg Christie (Signed)

Greg Christie
Contractor General

Copy: Speaker of the House of Representatives and President of the Senate
Mr. Andrew Holness, MP, Leader of the Opposition
Ambassador the Hon. Douglas Saunders, CD, OJ, Cabinet Secretary
Ms. Onika Miller, Permanent Secretary, Office of the Prime Minister
Professor Trevor Munroe, Executive Director, National Integrity Action Limited

Enclosures