

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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JAMAICA

FINAL REPORT

(Adopted in the plenary session held on September 30, 2005)

**COMMITTEE OF EXPERTS OF THE MECHANISM FOR FOLLOW-UP ON
THE IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION**

**REPORT ON IMPLEMENTATION IN JAMAICA
OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW
IN THE FRAMEWORK OF THE FIRST ROUND¹**

INTRODUCTION

1. Legal-institutional framework²

Jamaica is a constitutional monarchy and a parliamentary democracy. The Jamaican Constitution is the supreme law of the land. There are three branches of Government – the Executive, the Parliament and the Judiciary. The functioning of these bodies is governed by the principle of separation of powers.

The Executive Authority is vested in Her Majesty, the Queen of Jamaica who is also the British monarch and head of the Commonwealth. The Executive Branch consists of the Queen as Head of State, the Governor-General (the Queen's representative), the Prime Minister and the Cabinet. The Governor General, in the exercise of his functions, must act in accordance with the advice of the Cabinet except

- where the Constitution provides that a function is to be exercised by him on or in accordance with the recommendation of a person or authority other than Cabinet and
- where the Constitution provides that a function is to be exercised by him in his discretion.

Cabinet, the main instrument of government policy, is responsible for the general direction and control of the Government and is collectively responsible to Parliament. It consists of the Prime Minister and at least eleven (11) other ministers of Government. The Prime Minister must be a member of the House of Representatives. The other Ministers must be members of either the House of Representatives or the Senate.

The Jamaican Parliament makes laws for the peace, order and good government of Jamaica. It consists of two Houses, the Senate, also called the Upper House, and the House of Representatives, also known as the Lower House.

The members of the House of Representatives are elected under universal adult suffrage, with a maximum of five years between elections. There are 60 constituencies, each represented by one Member.

There are 21 members of the Senate who are appointed by the Governor-General; thirteen are appointed on the advice of the Prime Minister; and eight on the advice of the Leader of the Opposition.

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on September 30, 2005, at its eighth meeting, held at OAS Headquarters in Washington D.C., United States, September 26 to October 1, 2005.

² Updated Response of Jamaica to the questionnaire, Introduction.

With the consent of Jamaica, its Response to the questionnaire is published on the following website:
http://www.oas.org/juridico/spanish/corresp_jam.htm

Jamaica's legal and judicial system is based on the English system. All cases (both civil and criminal) are tried in the Supreme Court, the Resident Magistrate's Courts (which are Municipal Courts) or the Petty Session's Courts, depending on the seriousness of the offence or the amount of money involved in a civil matter. Appeals from decisions of those courts go to the Court of Appeal of Jamaica, and appeals from the Court of Appeal are heard by the Judicial Committee of the Privy Council which is Jamaica's highest court and final court of appeal³.

Judges of the Supreme Court and the Court of Appeal are appointed by the Governor General on the advice of the Judicial Services Commission. The Chief Justice and the President of the Court of Appeal are appointed by the Governor General on the advice of the Prime Minister after consultation with the Leader of the Opposition.

2. Ratification of the Convention and adherence to the Mechanism

According to the official register of the OAS General Secretariat, Jamaica ratified the Inter-American Convention against Corruption on March 16, 2001 and deposited the instrument of ratification on March 30, 2001.

In addition, Jamaica signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001, on the occasion of the OAS General Assembly in San Jose, Costa Rica.

I. SUMMARY OF INFORMATION RECEIVED

Response of Jamaica

The Committee wishes to recognize the cooperation it has received from Jamaica throughout the review process, particularly the Attorney-General's Chambers. This cooperation was made evident by, among other things, its response to the questionnaire and the effort put forth to collect and display all available data in that document in a succinct, systematic and orderly manner, as well as the constant willingness to clarify the information submitted. With its response Jamaica sent the relevant provisions and documents, listed in the annex of this report.

For its review, the Committee took into consideration the information provided by Jamaica up to January 31, 2005, and that which was requested by the Secretariat and by the members of the subgroup for analysis, in order to fulfill its functions in keeping with the Rules of Procedure and other Provisions.

No documents or data were received from civil society; however, the Government's updated response included some comments from civil society.

³ The Privy Council is the body which advises the Queen of England, and the Judicial Committee is the section of the Privy Council which advises on appeals. The Queen continues to be the Head of state of Jamaica, and technically, she is the final court of appeal. She always acts on the advice of the Judicial Committee, however, so that body is effectively the final court for Jamaica.

II. REVIEW OF THE IMPLEMENTATION OF THE SELECTED PROVISIONS BY JAMAICA

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1 CONFLICTS OF INTEREST

1.1.1 Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

Jamaica has a set of provisions related to standards of conduct, among which special note should be made of the following:

- Constitutional provisions, such as those found in Sections 40(1) and (2), which provide grounds for disqualification of a person from being elected as a Member of the House of Representatives or from being appointed as a Senator.

- Constitutional provisions, such as those found in Section 41(1), which express that the seat of a member of either House shall become vacant, among other reasons, if a Member or any firm in which he/she is or becomes a partner, or any company of which he/she is or becomes a director or manager becomes a party to any contract with the Government of Jamaica for or on account of the public service, with limited exceptions.⁴

- Constitutional provisions, such as those found in Section 41(2), which additionally state that the seat of a member of the House of Representatives shall become vacant if, a) he is appointed as a Senator;⁵ or b) any circumstances arise that, if he were not a member of the House of Representatives, would cause him to be disqualified for election as such by virtue of paragraph (b) of subsection (1) of section 40 of this Constitution.⁶

- Constitutional provisions prohibiting those who hold or who are acting in any public office other than the office of member of any of the Commissions,⁷ from being appointed as a member of certain bodies, such as the Public Service Commission, the Judicial Service Commission, or the Police Service Commission.⁸

- Constitutional provisions prohibiting the eligibility for appointment to any position in the public service⁹ for members of any of the Commissions mentioned in the preceding paragraph, up to three (3) years after the membership in the respective Commission has ceased.¹⁰

- Constitutional provisions prohibiting the Auditor-General from being eligible for any other public office.¹¹

⁴ *Ibid.*, Section 41(1)(f) and (g).

⁵ *Ibid.*, Section 41(2)(a).

⁶ *Ibid.*, Section 41(2)(b).

⁷ The Public Service Commission, the Judicial Service Commission, and the Police Service Commission.

⁸ The Constitution of Jamaica, Sections 111(3), 124(3) and 129(3).

⁹ This refers to those appointments vested by the Constitution in the Governor-General acting on the advice of the Commission which he/she was a member of.

¹⁰ *Ibid.*, Sections 111(6), 124(4) and 129(4).

¹¹ *Ibid.*, Section 120(3)

Jamaica also has various statutes and regulations consistent with the above-mentioned standards of conduct, notably:

- The Contractor-General Act. This Act establishes a Commission of Parliament known as the Contractor-General. Sections 8 and 9 of the Act govern conflicts of interest as it relates to the Contractor-General. For example, a member of the Senate or House of Representatives; an undischarged bankrupt; and a person who has been convicted of any offence involving dishonesty or moral turpitude are not eligible to be appointed as Contractor-General. The Act also requires a person to disclose any business interests he may have in a company which has a contract with the Government for or on behalf of the Government if he wishes to be appointed as Contractor-General. The Act also prohibits the Contractor-General from accepting any paid employment in any other capacity while holding office as Contractor-General.

- The Staff Orders for the Public Service, which governs the Conditions of Service for public officers (that is, persons employed in the Central Government Service, in accordance with the Public Service Regulation),^{12, 13} and provides an important and comprehensive code of conduct, including, among others, rules that prevent corruption, conflicts of interest and prohibit participation in partisan political activity by public officers. Among those to be highlighted are:

- Provisions limiting engagement in private work, unless conducted under specified conditions and previously permitted by the appropriate authority/Services Commissions, after an assessment of potential for conflict of interest (Section 4.2.8).
- Provisions, such as those found in Section 4.2.9, setting out the circumstances for the existence of a conflict of interest¹⁴ and requiring that officers inform the appropriate authority of any such undertaking, seek clarification and get permission.¹⁵
- Provisions prohibiting public officers from engaging in any type of partisan political activity in any elections at any level (Section 4.2.6(i)) and from denying or providing, in the exercise of official duties, any service or benefit to anyone on the basis of partisan political affiliation (Section 4.2.6(ii)).
- Provisions prohibiting public officers, in their official capacity, from soliciting or accepting gifts or gratuities for the performance or neglect of official duties and responsibilities, with the exception of small tokens of appreciation, subject to the aforementioned conflict of interest provisions. Officers are also advised to act with prudence and, when in doubt, seek advice and approval from the appropriate authority (Section 4.3).

¹² Staff Orders, Introduction, first paragraph.

¹³ The Public Service Regulation definition of Public Officer, provided in Section 2 (2), does not include the following: (a) members of the Public Service Commission, the Judicial Service Commission or the Police Service Commission; (b) the Attorney-General; (c) the Auditor-General; (d) an officer whose appointment is regulated by the Judicial Service Commission or the Police Service Commission.

¹⁴ The circumstances of conflict of interest are: a) Engagement in private activity similar to official functions; b) Using information and/or any material gained from official position for private gain; c) Exploiting the status and privilege of one's position for private gain; d) Soliciting and/or accepting payment and/or any other consideration relating to the performance of or neglect of official duties; e) Conducting private business during work hours and/or on government property; f) Engaging in transactions with relatives or family members, or an organization in which relatives or family members have interest; g) Ownership of investment or shares in any company or undertaking; h) Acting as auditors or directors of companies or societies.

¹⁵ Subject to periodic review, in accordance with Section 4.2.9(ii).

- The Book of Rules for the Guidance and General Direction of the Jamaica Constabulary Force, which governs the Conditions of Service for police officers (that is, members of the Jamaican Constabulary Force), and provides a code of conduct, including, among others, the following rules:

- Provisions prohibiting police officers from making any public expression showing allegiance to any Political Party (Section 3.2).
- Provisions requesting that police officers disclose to the Police Service Commission, the particulars of any investment or share-holding which he may possess in any company, occupation or under-taking, or any other direct or indirect interest in such organization. In the case of a conflict between an officer's private interest and his/her duties, he shall to such extent as may be directed, divest himself/herself of such investment or interest or arrange to have the investment placed in trust (Section 3.6).
- Provisions prohibiting police officers from soliciting or accepting presents (other than the ordinary gifts from personal friends) whether in the form of money, goods, free or reduced passages, or other personal benefits, and from giving such presents (Section 3.17).

- The Jamaica Constabulary Force Act, which provides, under Section 10, that persons appointed to the Constabulary Force cannot hold any other public employment without the consent of the Governor General signified in writing under the hand of the Minister responsible for National Security.

- Additionally, in accordance with the information from the State under review, the Commissioner of Police issues Standing Force Orders which also govern the actions of the police and is similar in nature to the Staff Orders.

- Ministry Paper No. 19 of 2002, "Conduct of Ministers", which contains, among others, a standard of conduct to prevent conflicts of interest to which all Members of the Government¹⁶ are expected to adhere,¹⁷ in order to ensure that Ministers behave according to "the highest standards of constitutional and personal conduct in the performance of their duties".¹⁸ Said document includes the following relevant provisions:

- Ministers must ensure that no conflict arises, or appears to arise,¹⁹ between their public duties and their private interests (Section 1(vi)). They are expected to exercise good judgment on how best to proceed, and, in case of doubt, they are strongly advised to relinquish or dispose of the interest, and to submit appropriate cases to the Prime-Minister for his decision (Section 32).

¹⁶ The first paragraph of the Preamble of Ministry Paper No. 19, 2002 expresses that "under the provisions of the Constitution, the Government of Jamaica comprises Cabinet Ministers, Ministers of State and/or Parliamentary Secretaries".

¹⁷ Ministry Paper No. 19, 2002, first paragraph.

¹⁸ Updated Response to the questionnaire, p. 3.

¹⁹ Section 37 establishes that such a conflict, or the perception of it, can arise: a) from exercise of powers or other influence in a way that does or could be considered to affect the value of interests held; or b) from using special knowledge acquired in the course of their Ministerial activities in ways which bring benefit or avoid loss (or could arouse reasonable suspicion of this) in relation to their private financial interests.

- In case a Minister is allowed to retain his private interest, he or she should declare that interest to Ministerial colleagues if they have to discuss public business in any way affecting it. He or she should remain entirely detached from the consideration of that business. The same rule applies to a Minister's previous private interest (Section 33).
- Upon taking office, Ministers should give up any other public appointment they may hold. Unless authorized by the Prime-Minister and properly notified to Parliament (Section 34).
- On appointment, Ministers who are partners in professional firms or in other businesses should cease to practice or to play any part in the management of the firm's affairs. However, they are not necessarily required to dissolve their partnership or to allow, for example, their practicing certificate to lapse (Section 41(a)).
- Ministers must resign any directorships they hold when they take office, whether in a public or in a private company, whether remunerated or not. Directorships in private companies in connection with private family property are the only exception to the rule (Section 41(b)).
- In case a Minister is unable or unwilling to dispose of a relevant interest, he or she should consider legal or other appropriate external advice in order to sufficiently remove the risk of conflict. Additionally, he or she should draw the case immediately to the attention of the Prime Minister, who will give such instructions as are appropriate to remove the risk of conflict (Section 39). In the case where an actual or perceived conflict of interest cannot be resolved, it may be necessary for the Minister to cease to hold his/her office (Section 40).
- Ministers should avoid accepting any gift, hospitality, or services which might, or might reasonable appear to, compromise their judgment or place them under an improper obligation. This also applies to any dependent member residing in the Minister's family household (Section 1(vii)).

- The Corruption (Prevention) Act, section 14(1), which provides that a public servant²⁰ may not solicit nor accept any article or money or other benefit, being a gift, favor, promise or advantage for himself or another person, for doing any act or omitting to do any act in the performance of his public functions.

- The Corruption (Prevention) Act, section 14(6) which makes it an offence for a public servant to improperly use, for his own benefit or that of a third party: (1) any classified or confidential information that he obtains as a result of or in the course of the performance of his functions; or (2) any property belonging to the Government or any statutory body or authority or any government company or any body providing public services to which he has access as a result of or in the course of the performance of his functions.

²⁰ In its Section 2, the Corruption (Prevention) Act defines as public servant as any person: (a) employed: i) in the public, municipal or parochial service of Jamaica; ii) in the service of a statutory body or authority or a government company; (b) who is an official of the state or any of its agencies (including the provision of electricity, water and communication.); (c) appointed, elected, selected or otherwise engaged to perform a public function. Public function is defined as "any activity performed a single time or continually, whether or not payment is received therefor, which is carried out by: (a) a person for, or on behalf of or under the direction of a Ministry, Department of Government, a statutory body or authority, a Parish Council, the Kingston and St. Andrew Corporation or a government company; (b) a body, whether public or private, providing public services; (c) a Member of the House of Representatives or of the Senate in that capacity

- The Corruption (Prevention) Act, section 14(8) which makes it an offence for a public servant to, for his own benefit or for that of a third person, divert any property belonging to the Government or any other person, which is in his custody for the due administration of his duties.

Jamaica also has mechanisms to enforce the abovementioned standards of conduct, among which the following should be noted:

- The Public Service Commission,²¹ established pursuant to Section 124 of the Constitution, which exercises disciplinary control over acts of misconduct such as those found in the Staff Orders, which should be dealt with as soon as possible after the time of occurrence²² and in a timely manner.²³ The functions of this Commission include advising the Governor-General on appointment and dismissal of these officers and holding disciplinary proceedings for misconduct, pursuant to section 125 of the Constitution and in accordance with the Public Service Regulations (Sections 41 – 47) and Chapter 10 of the Staff Orders. Under Section 10.3, the Staff Orders establish that a breach of discipline or an infraction may be deemed to have occurred if an employee violates any of the behavior expectations established in the code of conduct under its chapter 4, which includes provisions regarding conflict of interest, among others.²⁴

- The Police Service Commission²⁵ established pursuant to Section 129 of the Constitution in relation to the Police Force (also known as the Jamaican Constabulary Force). The primary function of this Commission is to advise the Governor-General with respect to the appointment, removal and exercise of disciplinary control over Members of the Police Force²⁶ pursuant to section 130 of the Constitution. Nevertheless, the Commission has the power to directly institute disciplinary proceedings against members below the rank of Inspector.²⁷ The Commission holds disciplinary proceedings for misconduct in accordance with the Police Service Regulations (sections 45 – 59). The Office of Professional Service (OPR) of the Jamaican Constabulary Force²⁸ and the Police Public Complaints Authority²⁹ also serve to enforce compliance with the standards of conduct set out.³⁰

²¹ The Commission consists of a Chairman and between three and five other members, all appointed by the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

²² Public Service Regulations, Section 29(1).

²³ Staff Orders, Section 10.4(iv)(f).

²⁴ Under section 37(1) of the Public Service Regulations, the following punishments may be ordered: dismissal, reduction in rank, reduction in salary, deferment or withholding of increment, a fine or reprimand. The Staff Orders, under Section 10.6, also provide the imposition of the following penalties, which should be consistent with the nature and gravity of the infraction and should be progressive: verbal warning, written reprimand, a fine, deferment or withholding of increment, suspension without pay for a period not exceeding three (3) months, reduction in rank and dismissal.

²⁵ The Police Service Commission consists of a Chairman and between two and four other members, all appointed by the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

²⁶ Police Service Regulations, section 2.

²⁷ *Ibid.*, Section 31(3).

²⁸ A description of the functions of the OPR can be found at <http://www.jamaicapolice.org.jm/opr.html>

²⁹ A description of its functions can be found under Section 4 of The Police Public Complaints Authority.

³⁰ Updated response to the questionnaire, p. 6.

- The Judicial Service Commission³¹ as established pursuant to Section 111 of the Constitution in relation to judicial officers. This body's main function is to advise the Governor-General on the appointment, removal and exercise of disciplinary control over persons holding or acting in the capacity of judicial office,³² pursuant to section 112 of the Constitution. For these purposes, judicial office does not include a Judge of the Supreme Court or a Judge of the Court of Appeal. Removal of a judge³³ from office can only be done for inability to discharge functions or for misbehavior, subject to section 100(5) and 106(5) of the Constitution, which sets out the procedures for removal.³⁴ Under section 26(1) of the Judicial Service Regulations, the following punishments may be imposed on a judicial officer against whom a disciplinary charge has been established: dismissal, reduction in rank, a fine, a reprimand.

- The Commission for the Prevention of Corruption (hereinafter called the "Corruption (Prevention) Commission") established pursuant to section 3 of the Corruption (Prevention) Act. The functions of the Commission include receiving information regarding acts of corruption as well as investigating any act of corruption, either from information given or of its own initiative.

- The Integrity Commission established pursuant to section 3 of the Parliament (Integrity of Members) Act. The functions of the Commission, like those of the Corruption (Prevention) Commission include receiving information regarding acts of corruption as well as investigating any act of corruption as defined under section 14 of the Corruption (Prevention) Act (in relation to Parliamentarians).

- The Director of Public Prosecutions established under section 94 of the Constitution. The Director of Public Prosecutions has the power to initiate criminal proceedings pursuant to the Corruption (Prevention) Act, and the Parliament (Integrity of Members) Act.

- The Corruption (Prevention) Act, Section 15(1), which provides that a person may be tried in either a Circuit Court (which is a division of the Supreme Court) or a Resident Magistrate's Court for a corruption offence, depending on the seriousness of the offence. A person convicted in a Circuit Court for an act of corruption (such as soliciting or accepting gifts) is liable: i) in case of a first offence to a fine not exceeding five million Jamaican dollars and/or to imprisonment for a term not exceeding five years; ii) in the case of a second or subsequent offence to a fine not exceeding ten million Jamaican dollars and/or to imprisonment for a term not exceeding ten years; A person convicted in a Resident Magistrate's Court for an act of corruption is liable: i) to a fine not exceeding one million Jamaican dollars and/or to imprisonment not to exceed two years (in the case of a first offence) and ii) to a fine not exceeding three million dollars and/or to imprisonment for a term not exceeding three years (in the case of a second or subsequent offence).

³¹ The Judicial Service Commission is composed of the Chief Justice, who is the Chairman; the President of the Court of Appeal; the Chairman of the Public Service Commission; and three other members appointed by the Governor-General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition³¹.

³² It includes: Offices of the Resident Magistrate, Judge of the Traffic Court, Registrar of the Supreme Court, Registrar of the Court of Appeal and such other offices connected with the courts of Jamaica as prescribed by Parliament (the Constitution of Jamaica, Section 112(2)).

³³ For the appointment of Judges of the Supreme Court and of the Court of Appeals, see above, last paragraph under introduction, section 1.

³⁴ Updated response to the questionnaire, p. 4.

1.1.2 Adequacy of the legal framework and/or other measures and enforcement mechanisms

The constitutional and legal provisions on standards of conduct aimed at preventing conflicts of interest and on enforcement mechanisms are relevant for promoting of the purposes of the Convention. However, the Committee believes that it is appropriate to express some comments with regard to some aspects of these standards and mechanisms.

The Committee notes that provision is made within Jamaica's legal framework, via the Constitution, for a system of incompatibilities, disqualifications and prohibitions in the public service. The Constitution contains a number of general and specific provisions for the correct, honorable and proper fulfillment of public functions that encompass the principles established in the Convention. The Committee believes that this indicates progress in promoting the purposes of the Convention.

In particular, it should be noted that the Staff Orders offer an important set of rules that address and prevent conflicts of interest for the Public Service. In addition, Ministry Paper No. 19 of 2002, "Conduct of Ministers" provides a solid foundation in meeting the objects and purposes of the Convention. The Book of Rules for the Guidance and General Direction of the Jamaica Constabulary Force as well as the Standing Force Orders also provide a an important set of rules that seek to prevent conflicts of interest in the Police Service.

Nevertheless, the Committee notes that the Staff Orders do not apply to all personnel employed by the Government. In accordance with the interpretation of the term "Public Officer" established at the introduction section of the Staff Orders, these exceptions are: the members of the Public Service Commission, the Judicial Service Commission and the Police Service Commission; the Attorney-General; the Auditor-General; and officers whose appointment is regulated by the Judicial Service Commission or the Police Service Commission.³⁵ These are not the only offices that do not form part of the Public Service and that therefore do not fall under the Staff Orders. All political offices, as well as Judges of the Supreme Court and Judges of the Court of Appeal, members of boards, panels, committees or similar bodies established by law, and other offices specified not to be public offices for the purpose of the constitutional provisions also are exempt from these controls. The Committee notes that in relation to the constitutionally established positions, i.e., the Director of Public Prosecutions, the Auditor General, judges of the Supreme Court and Court of Appeal, the Public, Police and Judicial Services Commission, there are procedures established under that Constitution for removal in the event of misconduct. The Committee also notes that the Attorney-General (in his capacity of Minister of Justice) is subject to provisions of the Parliament (Integrity of Members) Act and the Code of Conduct of Ministers. These exceptions present a means to undermine the system in place to prevent conflicts of interest and corruption and it would be convenient to put standards in place to monitor and regulate the actions of those offices. The Committee will formulate a recommendation in that regard. (See recommendation 1.1(a) in Chapter III of this report).

Additionally, in order to avoid a conflict of interest, it may be useful to have written guidelines within the public service that require hiring on basis of merit. The Committee will formulate a recommendation in that regard. (See recommendation 1.1(b) in Chapter III of this report).

The Committee notes that there are Constitutional provisions for the prevention of conflicts of interest after exiting public office in relation to the Members of the Services Commissions and the Auditor General. Nevertheless, the Committee is concerned that in relation to other public servants, there are

³⁵ Staff Orders, Introduction, first paragraph.

no explicit rules which contemplate restrictions on employment subsequent to exiting public office in order to prevent conflicts of interest. The Committee will formulate a recommendation in that regard. (See recommendation 1.1(c) in Chapter III of this report).

Moreover, unlike the Corruption (Prevention) Act, the sanctions contemplated for violation of Ministry Paper No. 19 of 2002, “Conduct of Ministers” are political in nature, as this Document is enforceable at the sole instance of the Prime Minister. In addition, with the exception of the above mentioned constitutional provisions and the Parliament (Integrity of Members) Act, there are no rules of conduct to govern the behavior of Senators or Members of the House of Representatives regarding conflicts of interest during the exercise of their functions. The Committee will formulate a recommendation in that regard. (See recommendation 1.1(d) in Chapter III of this report).

The Prime Minister, under the aforementioned Code of Conduct of Ministers, has discretion to allow Ministers to keep any relevant interest he or she is unable or unwilling to dispose of. However, there appears to be no provisions in place regulating the manner in which the Prime Minister makes this determination. The Committee will formulate a recommendation in that regard. (See recommendation 1.1(e) in Chapter III of this report).

In accordance with Ministry Paper No. 56 of 2002, “Government at Your Service – Public Sector Modernization, Vision and Strategy 2002-2012”, Jamaica has been implementing on an on-going basis, training courses at public sector institutions and at departmental level, that include the essential elements of how public servants should undertake their duties.³⁶ Nevertheless Jamaica did not submit information about outreach and training programs specifically designed to help those in the public service identify and prevent conflict of interests and also prevent and fight corruption. The Committee will make a recommendation in that regard. (See recommendation 7.1 in Chapter III of this report).

1.1.3 Results of the legal framework and/or other measures and enforcement mechanisms

According to Jamaica’s Response: “Reports into allegations of violations have been investigated and where applicable disciplinary proceedings or prosecution have been taken”.³⁷

The data submitted points out that the Public Services Commission has dealt with sixteen cases regarding involvement in drugs (of which, five cases are pending); fourteen cases regarding fraud (of which, seven cases are pending) and four cases of larceny as a servant (of which, one case is pending).

The data provided also states that in 2003, the Police Services Commission dismissed 14 members of the Police (or Jamaica Constabulary Force – JCF) because of judicial convictions. In 2004, 5 members of the Police were dismissed because of judicial convictions.

Information is also provided on the number of police officers arrested for corruption related offences: “In 2002, four police officers were arrested for corruption violations. One was found guilty and sentenced to pay a fine of J\$50,000 or 6 months imprisonment; the other three cases are pending. In 2003, thirteen police officers were charged for corruption related offences. Eleven cases are pending, one police officer was dismissed and one was found guilty and sentenced to 6 months imprisonment. In 2004, thirteen police officers were charged for corruption related offences, one case was dismissed, three police officers were found guilty – two were sentenced to pay a fine of J\$150,000 or 6 months

³⁶ Ministry Paper No. 56 of 2002, p. 25.

³⁷ Updated response to the questionnaire, p. 6.

imprisonment and one was sentenced to pay a fine of J\$100,000 or three months imprisonment. The other cases are still pending”.³⁸

Finally, in its response, Jamaica affirms that no disciplinary cases were reported to the Judicial Services Commission.³⁹

The general nature of the information provided does not allow the Committee to analyze comprehensively the results in this field. Taking into account this circumstance, the Committee will formulate recommendations. (See general recommendations 7.2 and 7.3 in Chapter III of this report).

1.2 STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PROPER CONSERVATION AND USE OF RESOURCES ENTRUSTED TO GOVERNMENT OFFICIALS

1.2.1 Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

Jamaica has a set of norms concerning the standards of conduct for the conservation and proper use of resources entrusted to public officials in the performance of their functions, consisting of various Constitutional and legal provisions, including the following:

- The Constitution, under Section 114, creates a Consolidated Fund, into which is paid all Government revenues. The Minister of Finance is to prepare annually, estimates of revenues and expenditures for public services to be paid out of this Fund during the next financial year and an Appropriations Bill. Authorization from the Minister of Finance is necessary before any money can be spent from this Fund.

- In addition, section 120 of the Constitution provides that there be an Auditor General whose functions include the auditing of all government departments and agencies, the Courts, the Senate and the House of Representatives. He reports to the House of Representatives. The Auditor General is appointed by the Governor General on the recommendation of the Public Service. His salary may not be reduced while he is in office. He cannot be removed from office except for misbehaviour or inability to perform and such removal must be based on a decision of a tribunal made up of judges or retired judges.⁴⁰

- The Financial Administration and Audit Act, as noted in the Jamaican Updated Response to the questionnaire, “regulates the manner in which government funds are to be managed, including the safeguards in place for the various Government accounts and procedures for withdrawal and use of government funds, including the purchase of investments. The Act also regulates the payment for goods and services and the acquisition, custody, control and disposal of government property”.⁴¹ Section 25 (1)(c) requires that all money expended by a Ministry or Department should be for the purpose approved by Parliament and should be incurred with due regard to the avoidance of waste and extravagance.

³⁸ *Ibid.*, p. 7.

³⁹ *Ibid.*, p. 7.

⁴⁰ The Constitution of Jamaica, Section 122(4).

⁴¹ Updated Response to the questionnaire, p. 7.

- Section 69 of the Standing Orders of the House of Representatives of Jamaica establishes a sessional select committee⁴² designated the Public Accounts Committee. The Committee is chaired by an appointee of the Opposition Party (traditionally, the Opposition's spokesman on finance). This Committee examines the accounts showing appropriation of the sums granted by the Legislature to meet the public expenditure of Jamaica, as well as any other accounts as may be referred to it by the House or any law, and also the report of the Auditor General on any such accounts. Additionally, a Public Administration and Appropriations Committee is established under Section 73A, and it has, among others, the functions of examining and monitoring the budgetary expenditure of Government agencies to ensure that expenditure is done with parliamentary approval.

- The Corruption (Prevention) Act, Section 14 (6), establishes as an act of corruption the improper use by any Public Servant of any: (a) classified or confidential information that he obtains as a result of or in the course of the performance of his functions; or (b) any property belonging to the Government or any statutory body or authority or any government company or any body providing public services which he has access as a result of or in the course of the performance of his functions. Section 14(8) also states that a public servant who diverts any property belonging to the Government or any other person, which is in his custody for the due administration of his duties, commits an act of corruption.

- The Contractor-General's Act provides for the monitoring of the award and implementation of government contracts and establishes a National Contracts Commission for that purpose.

- There are also Procurement guidelines that stipulate the procedure that should be followed by public sector agencies to ensure economy in the purchase of goods and services. A deviation from these requirements would be disclosed by the audits of the Auditor General and the Contractor General and would be included in the reports to the relevant government agencies and to Parliament.

Jamaica also has mechanisms to enforce the aforementioned standards of conduct, among which the following should be noted:

- The Constitution, under Section 122(1), prescribes that "the accounts of the Court of Appeal, the accounts of the Supreme Court, the accounts of the offices of the Clerks to the Senate and the House of Representatives and the accounts of all departments and offices of the Government of Jamaica (including the offices of the Cabinet, the Judicial Service Commission, the Public Service Commission and the Police Service Commission but excluding the department of the Auditor-General) shall, at least once in every year, be audited and reported on by the Auditor-General who, with his subordinate staff, shall at all times be entitled to have access to all books, records, returns and reports relating to such accounts". These reports are public documents once they are presented to the House of Representatives through the Public Accounts Committee.

- The Financial Administration and Audit Act, under Section 26(I)(b), requires that any improper, extravagant or wasted expenditure disclosed by the Auditor General in the course of his audits, is to be reported to the Financial Secretary for possible surcharge of the responsible officer(s).⁴³ The liability of public officers who misappropriate public funds is established under Section 20(1). This section reads: "If it appears to the Financial Secretary upon a report by the Auditor General that any person who is or was an officer: (a) has failed to collect any moneys owing to the Government for the collection of which such person is or was at the time of such employment responsible; (b) is or was responsible for any improper payment of public moneys or for any payment of such moneys which is

⁴² See Chapter V, Part III of the Constitution for details regarding sessions of Parliament which are distinct from sittings of Parliament.

⁴³ The procedure to be followed is regulated by Section 49 of the Financial Administration and Audit Act.

not duly vouched; or (c) is or was responsible for any deficiency in, or for the loss or destruction of, any public moneys, stamps, securities, stores, or other Government property, and if, within a period specified by the Financial Secretary, an explanation satisfactory to him is not furnished with regard to such failure to collect, improper payment, payment not duly vouched, deficiency, loss or destruction, as the case may be, the Financial Secretary may surcharge against the said person the amount not collected or such improper payment, payment not duly vouched, deficiency, loss or the value of the property destroyed, as the case may be, or such lesser amount as the Financial Secretary may determine”.

- Section 24 of the Financial Administration and Audit Act regulates the recovery of the surcharge by monthly deductions from the salary of such officer, or by the Attorney-General instituting legal proceedings to recover the debt. Additionally, Section 39 regulates the liability of any person who removes, destroys or obliterates any identification marks to any Government property.

- The Contractor-General monitors the awards and implementation of awards and also monitors the grant, issue, suspension or revocation of a prescribed licence. The powers of the Contractor-General include investigating, among other matters, the registration of contractors, tender procedures relating to contracts and the award and implementation of government contracts.

- The National Contracts Commission, among other things, approves the award of government contracts within the specified limits.

- As mentioned in the previous section on examining the standards of conduct regarding conflicts of interests, the Corruption (Prevention) Act, section 15(1), regulates the penalties for those convicted of an act of corruption.

1.2.2 Adequacy of the legal framework and/or other measures and enforcement mechanisms

The standards and mechanisms for the conservation and proper use of public resources that have been reviewed by the Committee, based on the information at its disposal, are relevant for the promotion of the purposes of the Convention.

There are legal provisions and mechanisms in place to recover funds that have been misappropriated. There are also provisions which place a duty on accounting officers to conserve and properly use government resources.⁴⁴ There is also a general duty on public servants to properly use government resources.⁴⁵ The Committee notes that these provisions could be further strengthened. The Committee will formulate a recommendation in that regard. (See recommendation 1.2.1 in Chapter III of this report).

1.2.3 Results of the legal framework and/or other measures and enforcement mechanisms

According to Jamaica, in its Updated Response to the questionnaire, there has been a greater compliance by public officers with the aforementioned standards, and a consequent reduction in the number of irregularities found by the Auditor General over the years. Jamaica also points out that some government agencies have adopted better practices in the maintenance of accounts and records. The Update Response also notes that “in general, agencies have responded positively where the

⁴⁴ See sections 24 (A)(2), 24 (B)(3), 24 (F) and 36 of the Financial Administration and Audit Act.

⁴⁵ See section 14 (6) and (8) of the Corruption (Prevention) Act.

Auditor General has had to query certain accounts, request further information or make recommendations on methods to be employed”.⁴⁶

It is also noted in the updated response that “there has been greater transparency in the issuance of contracts. The reports of Contractor General have revealed that some agencies have not complied fully with the requirements of the Act. These reports have been submitted to parliament and recommendations made to ensure that the agencies are carrying out best practices.”⁴⁷

Jamaica also adds in its Updated Response that “some government agencies remain delinquent in providing the appropriation accounts to the Auditor General for certain periods”,⁴⁸ and that “there has also been excess in the expenditure approved by parliament in several government agencies”.⁴⁹ Despite the fact that no further details are given and based on this information, the Committee will formulate a recommendation. (See recommendation 1.2.2 in Chapter III of this report).

Thus, the Committee lacks sufficient information to fully assess results in this field. In light of this circumstance, the Committee will make recommendations. (See general recommendations 7.2 and 7.3 in Chapter III of this report).

1.3. MEASURES AND SYSTEMS REQUIRING GOVERNMENT OFFICIALS TO REPORT TO APPROPRIATE AUTHORITIES ACTS OF CORRUPTION IN THE PERFORMANCE OF PUBLIC FUNCTIONS OF WHICH THEY ARE AWARE

1.3.1 Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

Jamaica has a set of provisions related to the above-mentioned standards of conduct and mechanisms, consisting of various legal provisions, among which the following should be noted:

- The Financial Administration and Audit Act, Section 26, which provides that the Auditor General is under a duty to inform the Financial Secretary in the case of irregularities found in the course of an audit (such as any loss, deficiency or improper payment). Moreover, either the Auditor General or an Accounting Officer are required to report to the Financial Secretary the occurrence of any deficiency, loss or destruction of government property⁵⁰ and the occurrence of an unauthorized expenditure⁵¹ of which he or she is aware.

- The Contractor-General Act⁵², Section 21, which requires the Contractor General to report to the competent authority any evidence of a breach of duty, misconduct or criminal offence on the part of

⁴⁶ Updated Response to the questionnaire, p. 9.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ Financial Administration and Audit Act, Section 49.

⁵¹ *Ibid.*, Section 52.

⁵² The Contractor General, established by the Contractor General Act, is a commission of Parliament consisting of such person or persons appointed by the Governor General after consultation with both the Prime Minister and the Leader of the Opposition. (Contractor General Act, Section 3) The Contractor General is appointed for an initial period of seven years and thereafter can be re-appointed for periods not exceeding five years at a time. The position of a Contractor General is independent and secure. Pursuant to section 5 of the Contractor General Act, a Contractor General is not subject to the direction or control of any other person or authority. Furthermore, similar to the Auditor General he can only be removed from office for inability to discharge his functions; misbehaviour; or trading with the Government of Jamaica without prior Parliamentary approval.

an officer or member of a public body, found during the course of his investigation. In addition, the Contractor General is also under a duty to lay a special report before Parliament in all such cases.

- The Corruption (Prevention) Act, Section 5(1)(d), which provides that the Commission for the Prevention of Corruption (established under the Act) has, among others, the function of receiving and investigating any complaint regarding an act of corruption. Additionally, Section 12(2) requires the Commission to report any act of corruption by a Public Servant to the appropriate Service Commission, board, body or other authority and to the Director of Public Prosecutions.

- The Parliament (Integrity of Members) Act, Section 12(1), which requires the Integrity Commission (established under the Act) to report any act of corruption on the part of any parliamentarian, to the Parliamentary leaders and the Director of Public Prosecutions.

In its Updated Response to the questionnaire, Jamaica also notes that Permanent Secretaries and Heads of Departments are required to report all cases of fraud involving their respective agencies to the police immediately upon becoming aware of them and that the Police are required to properly investigate the matter and lay criminal charges where the evidence so indicates.⁵³

1.3.2 Adequacy of the legal framework and/or other measures and enforcement mechanisms

The standards and mechanisms related to the measures and systems that require public servants to report acts of corruption in the public service of which they are aware, as reviewed by the Committee based on the information made available, are relevant for the promotion of the objectives of the Convention.

The Committee believes that Jamaica should consider extending this obligation to all public servants, as well as establishing further rules on this matter to include provisions to facilitate reporting acts of corruption and to grant them effective protection from the threats or any other act of pressure or coercion they might face as a consequence of discharging those duties. The Committee will make recommendations in that regard. (See recommendations 1.3(a), 1.3(b) and 1.3(c) in Chapter III of this report).

1.3.3 Results of the legal framework and/or other measures and enforcement mechanisms

In accordance with Jamaica's response,⁵⁴ and as detailed in sections 1.1.3 and 1.2.3 above, Jamaica has conducted investigations of various corruption cases. However, Jamaica has not provided specific information on this particular matter in its response.

The lack of specific information makes it impossible to fully assess results in this field. In light of this circumstance, the Committee will formulate recommendations. (See general recommendations 7.2 and 7.3 in Chapter III of this report).

⁵³ Updated Response to the questionnaire, p. 10.

⁵⁴ *Ibid.*, p.11.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)

2.1 Existence of provisions in the legal framework and/or other measures

Jamaica has a set of provisions concerning these systems, consisting of various kinds of regulations, among which the following should be noted:

- The Parliament (Integrity of Members) Act, Section 4, which makes provisions for the disclosure of the assets, liabilities and income for Senators and Members of the House of Representatives. They are required to declare their assets, liabilities and income in a prescribed form, within three months from the date of his/her election or appointment, and thereafter on or before March 31st each year. Moreover, at the end of twelve months from the date of ceasing to be a Senator or Member of the House of Representatives, a declaration must be furnished, covering the period from the last declaration to the anniversary date.⁵⁵ Section 4(2) of the Act provides that the assets, liabilities and income of the declarant's spouse and children are to be furnished as well.⁵⁶ The declarations are not made public.

- The Corruption (Prevention) Act, Section 4, which requires public servants to give to the Commission for the Prevention of Corruption, statutory declarations of their assets, liabilities and income. The exceptions to this rule are set out in Section 4(3).⁵⁷ The declarations must also include information regarding the assets, liabilities and income of the spouse and the children of the declarant.⁵⁸ As with the requirement for Senators and Members of House of Representatives, a declaration must be submitted within three months from the date of his/her appointment as a public servant and be re-submitted annually on or before March 31st and another one must be made one year after the aforementioned public servant has ceased holding the office.⁵⁹ The declarations are not made public.

- The Parliament (Integrity of Members) Act, Section 3, which establishes the Integrity Commission, an oversight body that examines these declarations, with the competence to request further explanations and conduct enquiries (Article 7(1)). If a declaration is not provided or if the Commission is not satisfied with any aspect of the declaration after examination and enquiries, it shall report the matter to the Parliamentary Leaders.

⁵⁵ The Parliament (Integrity of Members) Act, Section 4(3)(b).

⁵⁶ *Ibid.*, Section 4(2) provides that if the spouse and/or children over 21 were not living with the declarant for the period in which the declaration was made, the information to be provided is limited to those assets held by them in trust for, or as agent of, the declarant.

⁵⁷ The exceptions are the following:

1 - Parliamentarians (Members of the House of Representatives and Senate). They must submit a declaration to the Integrity Commission under the Parliament (Integrity of Members) Act, Section 4.

2- Members of the Corruption Commission. They must also submit a statutory declaration to the Integrity Commission. (Corruption (Prevention) Act section 4(2)).

3- Public servants whose total emoluments are less than two million Jamaican dollars; except those public servants whose posts are set out under Parts I and II of the Corruption (Prevention) Regulations, 2002.

⁵⁸ The Corruption (Prevention) Act, Section 4(2). If the spouse, children over 18 and/or married children under 18 were not living with the declarant for the period in which the declaration was made, the information to be provided is limited to those assets held by them in trust for, or as agent of, the declarant.

⁵⁹ *Ibid.*, Section 4(6).

- The Corruption (Prevention) Act, Section 3, which establishes the Commission for the Prevention of Corruption, an oversight body in charge of analyzing the declarations, with powers to request further information from the declarant and conduct enquiries (Article 7(1)). If a declaration is not provided or if the Commission is not satisfied with any aspect of the declaration after examination and enquiries, it shall report the matter to the appropriate Service Commission Board, Body, or other Authority and the Director of Public Prosecutions.

- Both the Parliament (Integrity of Members) Act, as amended, and the Corruption (Prevention) Act provide for sanctions for failure to furnish a declaration or give further information to the Commission as required or attend an enquiry or for knowingly making a false declaration or knowingly giving false information at an enquiry. A person who commits any of the above acts is liable, upon conviction in a Resident Magistrate's court, to a fine not exceeding two hundred thousand dollars and/or to imprisonment for a term not exceeding two years.

- The Corruption (Prevention) Act, Section 14(5), which prescribes illicit enrichment as an act of corruption whose penalties are regulated under Section 15(1).

Jamaica also notes, in its Updated Response to the questionnaire, that its Government is pursuing certain amendments to the Corruption (Prevention) Act and regulations based on recommendations made by the Commission for the Prevention of Corruption, such as "amending the definition of spouse to include persons living together as man and wife for a certain period of time but who are not legally married pursuant to the Marriage Act".⁶⁰

2.2. Adequacy of the legal framework and/or other measures

Jamaica has a set of provisions that clearly establish the requirement that public officials who hold certain posts must submit a sworn declaration of assets, liabilities and income, which is relevant to the purposes of the provision of the Convention the implementation of which is being reviewed. Additionally, The Committee notes with satisfaction the criminalization of illicit enrichment under Jamaican laws.

The Committee also wishes to underscore the existence of a brochure entitled "Guide to the Corruption (Prevention) Act, 2000 and Regulations, 2002", which explains in a clear and detailed manner the duty of public officials to declare their assets, liabilities and income; and the content of such declarations. This guide is available at the following internet address: <http://law.moj.gov.jm/pdf/brochure.pdf>.

Nevertheless, the Committee notes that the aforementioned declarations are not made public and are not used to detect and prevent conflict of interests. The Committee will formulate recommendations in that regard. (See recommendations 2(a) and 2(b) in Chapter III of this report)⁶¹.

2.3 Results of the legal framework and/or other measures

The response of Jamaica⁶² notes the following regarding the results obtained by the Commission for the Prevention of Corruption in relation to the analysis of declarations of assets, liabilities and income, required to be submitted by 15,536 Jamaican public servants:

⁶⁰ Updated Response to the questionnaire, p. 13.

⁶¹ Jamaica shares the same concern expressed by members of the subgroup regarding the publication of the declarations of assets, liabilities and income, and the real possibility of public officers being targeted for criminal attack upon such publication.

⁶² Updated Response to the questionnaire, p. 13.

“Since the passing of the Regulations, two (2) sets of declarations became due, the initial set as at January 31, 2003 and the latter December 31, 2003 due by March 3, 2004. The third set of declarations (as at December 31, 2004) will be due by March 2005.

11,818 declarations as at January 31, 2003 were received up to March 31, 2004, a compliance rate of 73%.

The Commission had started issuing reminders to the 3,718 recalcitrant declarants as at March 31, 2004 prior to reporting them to the Director of Public Prosecutions⁶³. The Commission has submitted 63 cases to the Director of Public Prosecutions for failure to submit the declarations, despite the reminders.⁶⁴

7,403 declarations as at December 31, 2003 were received by March 31, 2004, a compliance rate of 47%.

Six (6) allegations of corruption were received. Four (4) were closed because the allegations could not be substantiated. The remaining two (2) are being pursued”.

In relation to the results obtained by the Integrity Commission, Jamaica’s Updated Response notes:⁶⁵

“During the year 2003 - 2004 the Commission completed the examination of one-hundred and thirty-nine (139) declarations. In the process of examining declarations the Commission issued sixty-five queries, the answers to which were considered necessary for proper examination of the declarations.

As at March 31, 2003, the deadline set by the Act for submission of statutory declarations due as at December 31, 2002, there were twenty-two (22) declarations outstanding. Four (4) of the outstanding declarations were received during the first five days of April, 2003. Nineteen Parliamentarians and ex-parliamentarians subsequently furnished the required declarations with the result that at the 31st December 2003 three (3) of the declarations were still outstanding.

The Commission submitted to the Director of Public Prosecutions for necessary action the names of three (3) ex-Parliamentarians whose declarations as at December 31, 2002, were still outstanding.

In addition the following declarations due as at the December 31, 2000, August 29, 2003 and September 22, 2003, (final) were outstanding at the December 31, 2003.

- 2 statutory declarations due as at December 31, 2000.
- 1 statutory declaration due as at August 29, 2003.
- 18 statutory declarations due as at September 22, 2003 (final).”

Nevertheless, Jamaica notes in additional information provided to the subgroup⁶⁶ that the Commission for the Prevention of Corruption had received, as of June, 2005, a total of 11,875 declarations for the declaration period ending in January 31, 2003; and 10,282 declarations for the

⁶³ The First Annual Report on the activities of the Director of Public Prosecutions Office was tabled in Parliament earlier in 2005.

⁶⁴ 14 cases were brought by the DPP. The charges were withdrawn after compliance by the officers.

⁶⁵ Updated Response to the questionnaire, p. 14.

⁶⁶ See section 10 of Jamaica’s Comments to Draft Preliminary Report, pgs. 8-11.

declaration period ending in December 31, 2003 (a compliance rate of 66%). For the declaration period ending in December 31, 2004⁶⁷, 11,678 declarations were received.

Jamaica also provided the following additional information to the subgroup: “Since its 2003 report in which the Commission referred (63) Sixty-three public servants to the Director of Public Prosecutions (DPP), the Commission has referred a further 271 persons to him for failing to furnish the Statutory Declaration of Assets Liabilities and Income, as at January 31, 2003. Fourteen cases were brought before the Resident Magistrate’s Court by the Director of Public Prosecutions and as at March 31, 2005 four (4) cases were disposed of when the DPP exercised his discretion and withdrew the charges after the declarants filed all outstanding declarations⁶⁸.”

The Committee wishes to underline the high level of compliance with respect to the presentation of the statutory declarations by those required to furnish it to the Integrity Commission. However, the Committee notes that the deadlines for submission of the declarations are not being met by a considerable number of those required to present it to the Commission for the Prevention of Corruption. The Committee will formulate a recommendation in that regard. (See recommendation 2(c) in Chapter III of this report).

The Committee would also like to note that it does not have sufficient data to fully assess the enforcement of sanctions against those who fail to furnish the statutory declaration, those who provide a false statement, or those who commit the offence of illicit enrichment. Based on the data available, the Committee believes Jamaica should consider strengthening its enforcement mechanisms, in order to duly prosecute those who do not fulfill their legal duty to present a statutory declaration, those who provide one with false information, or those who own assets disproportionate to their lawful earnings without a satisfactory explanation. The Committee will formulate recommendations in that regard. (See recommendation 2(d) in Chapter III of this report).

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4, AND 11 OF THE CONVENTION)

3.1 Existence of provisions in the legal framework and/or other measures

Jamaica has in place several oversight bodies for enforcement of the measures covered in paragraphs 1, 2, 4 and 11 of Article III of the Convention. For clarity, some of the explanation of the functions of these bodies is taken from sections 1.1.1, 1.2.1 and 2.1 of this report:

- The Public Service Commission, established pursuant to Section 124 of the Constitution in relation to public officers. The functions of this Commission include advising the Governor-General on appointment and dismissal of these officers and holding disciplinary proceedings for misconduct in accordance with the Public Service Regulations and the Staff Orders.

- The Judicial Service Commission, as established under Section 111 of the Constitution in relation to judicial officers. This body’s main function is to advise the Governor-General on the appointment, removal and exercise of disciplinary control over persons holding or acting in the capacity of judicial office in accordance with the Judicial Service Regulations.⁶⁹

⁶⁷ The total expected number of declarations for this period was 16,694.

⁶⁸ See section 10 of Jamaica’s Comments to Draft Preliminary Report, p. 11.

⁶⁹ The appointment, removal and disciplinary control over Judges of the Supreme Court and Court of Appeal are governed by Constitutional provisions. While the Judicial Service Commission has a role to play in the

- The Police Service Commission, established pursuant to Section 129 of the Constitution in relation to the Police Force (Jamaica Constabulary Force). The primary function of this Commission is to advise the Governor-General with respect to the appointment, removal and exercise of disciplinary control over Members of the Police Force, in accordance with the Police Service Regulations, the Standing Force Orders and the Book of Rules.

- The Police Public Complaints Authority (PPCA) which monitors investigations by the Force of any complaint or other matter to which the PPCA Act applies with a view to ensuring that such investigation is conducted impartially; supervises the investigation of complaints by the Force; undertake direct investigation of complaints in sum circumstances as may be prescribed by or pursuant to the PPCA Act; and evaluates and reports to the Minister from time to time on the system of handling complaint.⁷⁰ The Office of Professional Responsibility (OPR) of the Jamaican Constabulary Force also serves to investigate reports of police misconduct, in particular corruption.⁷¹

- The Commission for the Prevention of Corruption - The functions of the Commission are: to receive, keep on record and examine statutory declarations from public servants, pursuant to the Corruption (Prevention) Act; to make enquires of the public servant or any other person or entity in relation to the statutory declarations, and to conduct investigations into an act of corruption pursuant to a complaint by any citizen or on the Commission's own initiative⁷².

- The Integrity Commission - The functions of the Commission are: to receive, keep on record and examine statutory declarations from Parliamentarians, pursuant to the Parliament (Integrity of Members) Act; and to make independent enquires and investigations in relation to the statutory declarations.⁷³

- The National Contracts Commission - The principal objects of the Commission are the promotion of efficiency in the process of award and implementation of government contracts and ensuring transparency and equity in the awarding of such contracts. The Commission's functions include: examining applications for the award of government contracts; approving or overseeing the award of government contracts within the specified limits; in the case of government contracts above the specified limits, making recommendations to the Cabinet regarding the award of such contracts; registering and classifying prospective contractors according to the level and scope of government contracts to which such registration applies; establishing and keeping up-to-date lists of contractors so registered, distinguished according to the category of work for which they have been registered; continuously assessing the financial and human resources, technical, financial and managerial capacity and performance of contractors; and making recommendations to the Cabinet for improving the efficiency of the procedures for the granting and implementation of government contracts.⁷⁴

appointment of judges of the Supreme Court and Court of Appeal, that is, to advise the Governor-General, the Commission does not have that same power in relation to removal and disciplinary control. Removal of judge of the Supreme Court and Court of Appeal can only be done after the Governor-General, on the advice of a tribunal established to look into the question of removing the judge, has referred the matter to the Judicial Committee of the Privy Council which has advised that the Judge should be removed. The Judicial Committee of the Privy Council sits in London and is comprised of judges of the English House of Lords. The Government of Jamaica does not have any power in relation to the appointment and removal of those judges.

⁷⁰ Police Public Complaints Authority Act, Sections 3 and 4.

⁷¹ Updated Response to the questionnaire, p. 17.

⁷² The Corruption (Prevention) Act, Section 5.

⁷³ The Parliament (Integrity of Members) Act, Section 5.

⁷⁴ The Contractor-General Act, Section 23D.

- The Public Accounts Committee - This Committee of the House of Representatives examines the accounts showing appropriation of the sums granted by the Legislature to meet the public expenditure of Jamaica, as well as any other accounts as may be referred to it by the House or under any law, and also the report of the Auditor General on any such accounts.

- The Public Administration and Appropriations Committee – This Committee of the House of Representatives has the functions of examining the budgetary expenditure of Government agencies to ensure that expenditure is done with parliamentary approval, as well as monitoring expenditure as it occurs and keeping Parliament informed of how the budget is being implemented. It also has the responsibility of enquiring into the administration of government and determining hindrances to efficiency and making recommendations to Government for improvement of public administration.

- The Auditor General annually audits and reports on the accounts of the Court of Appeal, Supreme Court, Offices of the Clerks to the Senate and House of Representatives and all accounts of all departments and offices of the Government of Jamaica including the offices of the Cabinet, the Judicial Service Commission, the Public Service Commission, the Police Service Commission but excluding the department of the Auditor General. The accounts of the Auditor General’s department are audited and reported on by the Minister responsible for Finance.⁷⁵

- The Contractor General - The Contractor General’s functions include: monitoring the award and the implementation of government contracts with a view to, among other things, ensuring that the contracts are awarded impartially and based on merit; that the award or termination of a contract does not involve impropriety or irregularity. The Contractor General also monitors the grant, issue, suspension or revocation of any prescribed license, 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.⁷⁶

- The Access to Information Unit – The Unit’s mission includes: providing guidance and training for government bodies on how to interpret and administer the Access to Information (ATI) Act; identifying and addressing difficult or problematic issues arising from implementation of the ATI Act; providing policy recommendations on how best these problems may be addressed; monitoring compliance with the ATI Act and providing guidance and advice for the public and Government Bodies; and educating the public with respect of their rights and obligations under the ATI Act.

3.2 Adequacy of the legal framework and/or other measures

Jamaica’s measures for oversight bodies charged with the responsibility of ensuring compliance with the provisions stated in paragraphs 1, 2, 4 and 11 of Article III of the Convention satisfy those provisions, considering the existence of bodies with general or specific competence to ensure compliance, which constitutes progress in implementation of the Convention.

Based on the information at its disposal, the Committee considers that Jamaica has relevant standards for the promotion of the purposes of the Convention in the above-mentioned provisions.

However, in relation to Article III, paragraphs 1 and 2, as previously noted under section 1.1.2, the Committee is concerned that the Staff Orders do not apply to the conduct of all personnel employed by the Government. The Committee will make a recommendation in this regard. (See recommendation 3.1 in Chapter III of this report).

⁷⁵ The Constitution of Jamaica, Section 122.

⁷⁶ The Contractor General Act, Section 4.

Moreover, the Committee notes that Jamaica may wish to consider, when appropriate, strengthening mechanisms for coordination and cooperation among oversight bodies, which is a positive step towards designing common public policies to fight corruption. The Committee will make a recommendation in this regard. (See recommendation 3.2 in Chapter III of this report).

3.3 Results of the legal framework and/or other measures

In accordance with Jamaica's response,⁷⁷ and as detailed in sections 1.1.3 and 2.3 above, Jamaican oversight bodies have conducted investigations of various corruption cases.

With the above in mind, the Committee also refers to what has already been stated in earlier chapters of this report with respect to the general nature of the referenced information. In light of this circumstance, the Committee will formulate recommendations. (See recommendations 3.3, 7.2 and 7.3 in Chapter III of this report).

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)

4.1 GENERAL PARTICIPATION MECHANISMS

4.1.1 Existence of provisions in the legal framework and/or other measures

Jamaica states in its Updated Response to the questionnaire, that "the legislation does not specifically encourage participation by civil society in efforts to prevent corruption".⁷⁸ However, there are some provisions and mechanisms that are related to the goals of article III, paragraph 11 of the Convention, such as:

- The Access to Information Act, Section 6(1), which establishes the right of every person to obtain access to an official document, other than an exempt document.
- The Corruption (Prevention) Act, Section 5(d), which prescribes that the Commission for the Prevention of Corruption has, among others, the function of receiving and investigating any complaint regarding an act of corruption made by the public.
- Members of the public may make complaints to the Police Public Complaints Authority concerning corruption by Police Officers. The Office of Professional Responsibility of the Police Force has the function of investigating such complaints.
- The National Contracts Commission described in Chapter III above, has the purpose of recommending the award of government contracts and ensuring transparency, equity and integrity in the process. It is comprised of government and private sector organizations.
- The Human Rights Consultative Committee of the Ministry of Justice, which is comprised of various government representatives and non-governmental organizations, addresses various concerns relating to justice, including corruption.

⁷⁷ Updated Response to the questionnaire, p. 17.

⁷⁸ *Ibid.*, p. 17.

- The Community Conflict Resolution Council (CCRC), which consists of 5 community leaders, a Justice of Peace or Minister of Religion and 3 police officers, and seeks to resolve conflicts between citizens, or between the police and the community, and to assist in upholding law and order within the community.⁷⁹

- Constitutional provisions also are in place that relate to Article III, paragraph 11 of the Convention. Chapter III of the Constitution guarantees many freedoms to the citizens of Jamaica, such as freedom of conscience (Section 21), of expression (Section 22), and of peaceful assembly and association (Section 23), and the fundamental right not to be deprived of life, liberty and the security of the person, the enjoyment of property and the protection of the law (Article 13).

4.1.2 Adequacy of the legal framework and/or measures

Based on the information available to it, the Committee observes that Jamaica has constitutional and legal provisions that, in general terms, encourage the participation of civil society and non-governmental organizations in public activities. Encouraging the protection of civil liberties provides a basis for civil society and non-governmental organizations to operate freely and independently and thereby facilitate the prevention of corruption.

Despite the above, and bearing in mind the classification referred to by the methodology for review of the implementation of Article III, paragraph 11 of the Convention,⁸⁰ in each of the corresponding sections, the Committee will express some considerations and formulate specific recommendations with respect to this matter.

4.1.3 Results of the legal framework and/or other measures

In its Updated Response,⁸¹ Jamaica presents some concrete examples of civil society organizations' participation in public activities, such as their assistance in the preparation of the "Handbook of Public Sector Procedures", "The Code of Conduct for Police Citizen Relations" and the "Corruption (Prevention) Regulations". It also mentions the collaboration and close work between the Access to Information Unit and NGOs, notably The Carter Centre Access to Information Project.

Nevertheless, as stated in the previous subsection, in accordance with the indicated methodology for review, those results will be analyzed in each of the corresponding sections below.

4.2. MECHANISMS FOR ACCESS TO INFORMATION

4.2.1. Existence of provisions in the legal framework and/or other measures

Jamaica has a set of provisions regarding the mechanisms referred to, including the following:

- The Access to Information (ATI) Act, Section 6, provides a general right of access by any person to official documents held by public authorities.⁸² To request such access, a person must make an

⁷⁹ Police-Citizen Code of Conduct, p. 8.

⁸⁰ Methodology for the Review of the Implementation of the Provisions of the Inter-American Convention Against Corruption Selected Within the Framework of the First Round, Chapter V, (d). (Document SG/MESICIC/doc.21/02).

⁸¹ Updated Response to the questionnaire, p. 18.

⁸² The definition of Public Authority is provided in Section 3 of the Act. Section 6 expressly excludes from the scope of the Act the following: The Governor-General, the judicial function of courts or holders of a judicial

application to the public authority which holds the document,⁸³ be it in writing, by telephone or by any other electronic means.⁸⁴ No reason is required to justify the request,⁸⁵ but applicants are required to cover the cost of reproduction of documents.⁸⁶ Furthermore, section 7 (4) stipulates that Authorities must respond within 30 days of the receipt of the application. This period can be extended by a maximum of 30 days, if there is reasonable cause for such extension.⁸⁷ Additionally, in accordance with Section 10 (2), the Public Authority may also defer access to an official document under certain circumstances established thereunder.

- The ATI Act, Part III (Sections 14 to 23), expressly recognizes the documents considered exempt from disclosure.⁸⁸ Moreover, Section 7 (5) states that when deferring or refusing (total or partial) access to a document, the Public Authority must state the reasons for such deferral/refusal, and present the options available to the aggrieved applicant, which include the possibility of applying for an internal review or to eventually lodge an appeal before the Appeal Tribunal.⁸⁹ However, those certificates issued by the Prime Minister under Section 23 (1) (a) are considered conclusive and therefore cannot be appealed.⁹⁰ In general, as stated by Section 6(2), exemptions are 20 years or less as the Minister decrees.⁹¹

- The ATI Act, Section 34, imposes sanctions on those who alter, deface, block, erase, destroy or conceal an official document with the intention of preventing its disclosure. A person who commits such offense is liable to a fine not exceeding five hundred thousand Jamaican dollars and/or to imprisonment for a term not exceeding 6 months.

office, security and intelligence services, and any bodies as decreed by the Minister of Information. It should also be noted that the Act was phased into effect in four phases comprehending the eighteen months after its appointed day, January 5, 2004. After this period it will apply to all other public authorities, in accordance with Section 3 of the Act to Amend the Access to Information Act, 2003, which modifies Section 5 of the principal act. The ATI Act initially applied to the seven bodies specified in the Access to Information (Public Authorities) Order, 2004: The Office of the Prime Minister; The Cabinet Office; The Ministry of Finance and Planning; The Ministry of Local Government, Community Development and Sport; The Jamaica Information Service; The Planning Institute of Jamaica and the National Works Agency.

⁸³ The Access to Information Act, Section 7 (1).

⁸⁴ *Ibid.*, Section 7 (2).

⁸⁵ *Ibid.*, Section 6 (3).

⁸⁶ *Ibid.*, Section 12 (1). The table of reproduction costs can be found at “The Access to Information (Cost of Reproduction of Official Documents) Regulations”, 2003. Section 12 (2) provides that a Minister may waive, reduce or remit such cost where he is satisfied that such waiver, reduction or remission is justifiable.

⁸⁷ *Ibid.*, Section 7 (4) (b).

⁸⁸ This applies to those documents: the disclosure of which would prejudice the security, defense, or international relations; which contain information from a foreign government communicated in confidence; which are a submission to the Cabinet or a Cabinet Decision or record of any deliberation of the Cabinet (except for factual information); which are law enforcement documents that would endanger or could reasonably be expected to endanger the life or safety of any persons, prejudice investigations or fair trials, or reveal methods or sources; the disclosure of which would constitute a breach of confidence, be in contempt of court or infringe the privileges of Parliament; which contain opinions, advice or recommendations or a record of consultations or deliberations for Cabinet decisions that are not factual, scientific or technical in nature or if the release is not in the public interest; which would harm the national economy; which would reveal trade secrets or other confidential commercial information; which could be expected to result in damage, destruction, or interference with historical sites, national monuments or endangered species if the release is not in the public interest; or which relate to the personal affairs of any person, whether living or dead.

⁸⁹ The Access to Information Act, Part V, Sections 29 to 32. See also the Second Schedule for more information on the constitution of the Appeal Tribunal.

⁹⁰ *Ibid.*, Section 23 (3).

⁹¹ *Ibid.*, Section 6 (2).

- The Access to Information Regulations, 2003, coordinates the implementation of the ATI Act and provides the appointment, by every public authority, of their responsible officer in charge of administering the process of access to information.

With regards to mechanisms responsible for the implementation and monitoring of the Access to Information Act, Jamaica has set up an Access to Information Unit within the Jamaica Archives and Records Department of the Office of the Prime Minister. The Unit's mission is to provide guidance and training for government bodies on how to interpret and administer the Act; to identify and address difficult or problematic issues arising from implementation of the Act; to provide policy recommendations on how best these problems may be addressed; to monitor compliance with the Act and provide guidance and advice for the public and Government Bodies; and to educate the public with respect of their rights and obligations under the Act.⁹²

In accordance with the information provided by Jamaica in its Updated Response,⁹³ the Access to Information Unit has provided several sensitization sessions for a wide cross section of Government employees.⁹⁴ The Unit has also published several informative documents regarding the ATI Act, including a User's Guide and brochure, sample forms for requests and appeals, as well as Public Officers' Guidelines.⁹⁵

4.2.2. Adequacy of the legal framework and/or other measures

The laws regarding the mechanisms for access to information that the Committee has analyzed, based on light of the information available to it, are relevant for promoting the purposes of the Convention.

Nevertheless, the Committee is concerned with the provision found in Sections 5 (6) (d), which allows for the Minister of Information, subject to affirmative resolution, to exclude any public sector entity from the application of the ATI Act. Unlike the exemption of documents, the Committee believes that exempting government bodies could undermine the mechanism by completely removing the possibility of review or appeal of a decision to deny access to information. The Committee believes it would be appropriate for Jamaica to consider revising this provision. The Committee will formulate a recommendation in this regard. (See recommendation 4.2(a) in Chapter III of this report).

The Committee also notes the efforts put forth by Jamaica to disseminate Government information through the internet, and particularly acknowledges the work done by the Access to Information Unit in providing sensitization sessions for government bodies as well as for publishing relevant information on the ATI Act on the Unit's webpage. Accordingly, the Committee urges Jamaica to continue strengthening these systems of dissemination of Government information and to continue providing training and continuing education programs to public officers on their obligations under the ATI Act. The Committee will formulate a recommendation in this regard. (See recommendation 4.2(b) in Chapter III of this report).

⁹² The Access to Information Unit Webpage <http://www.jis.gov.jm/special_sections/ATI/aboutUs.html>.

⁹³ Updated Response to the questionnaire, p. 21.

⁹⁴ See Access to Information Unit - Sensitization Report, June 2002 - March 2004.

⁹⁵ These and other relevant documents can be found at The Access to Information Unit Webpage <http://www.jis.gov.jm/special_sections/ATI/>.

4.2.3. Results of the legal framework and/or other measures

Jamaica notes the following in its Updated Response:⁹⁶

“The ATI Unit prepares quarterly reports on the implementation of the Access to Information Act.

To date, 279 applications for access to information have been received by the Government. In all quarters to date, the Ministry of Finance and Planning received the most applications (total of 61 of the 279 applications). The Office of the Cabinet and the Ministry of Local Government, Community Development and Sport received the second and third highest numbers of applications (39/36 respectively). [According to the ATI Unit, this however, should be viewed in the context of these Entities (phase 1) having had a head start on the others).

Applications are received primarily from the Media, NGOs and other stakeholder groups.

The Unit acts as Secretariat to the ATI Appeal Tribunal and initially received ten (10) appeals against three (3) public authorities, namely, the Bank of Jamaica (5 appeals), the Ministry of Finance and Planning (4 appeals) and the Office of the Prime Minister (1 appeal). Relevant copies of the appeals received were sent to these public authorities as well as to the members of the ATI Appeal Tribunal.

One of the appellants subsequently indicated a desire to withdraw an appeal against the Ministry of Finance as the information originally requested, and which was denied, was later made available”.

Additionally, Jamaica submitted information from two NGOs that are part of the Access to Information Stakeholders Committee: Jamaicans for Justice and Jamaican Environment Trust (JET).

Jamaicans for Justice presented 120 access to information requests as of October 2004, of which 52 were responded to and only 36 were responded to on-time (i.e. within the 30 day deadline).

JET made 9 direct requests (from July to September 2004). Of these, 2 were responded to and only 1 of them was responded to within 30 days.

As noted by Jamaicans for Justice in the Jamaican Updated Response,⁹⁷ “the slated thirty day deadline is not being adhered to. According to the Access to Information Unit this matter has been brought to the attention of responsible officers and all attempts are being made to improve on this matter”.

The Committee believes Jamaica should continue strengthening the important access to information mechanism already in place by including in the quarterly reports of the ATI Unit, detailed information on the status of the requests received by public authorities (including, but not limited to, information such as if they have been completed or not and the average response time), and making sure that responses to requests are provided in a timely manner as established in the ATI Act. The Committee will formulate recommendations taking these circumstances into account. (See recommendations 4.2(c) and 4.2(d) in Chapter III of this report).

⁹⁶ Updated Response to the questionnaire, p. 21.

⁹⁷ *Ibid.*, p. 22.

4.3 MECHANISMS FOR CONSULTATION

4.3.1. Existence of provisions in the legal framework and/or other measures

Jamaica has a set of measures related to the mechanisms under review, among which the following should be noted:

- The Consultation Code of Practice for the Jamaican Public Sector, 2005, which provides a set of minimum rules required of public sector professionals in conducting consultation exercises. In accordance with the Jamaican Response to the questionnaire,⁹⁸ the Code, while not carrying the force of law, should be generally regarded as binding on all Government ministries it applies to, including those ministry agencies and departments as well as executive agencies and local authorities. The Code aims to facilitate the influence of stakeholders⁹⁹ in the decision making process. To this end, rule number 3 establishes that at least 8 weeks are required for a consultation process, from the presentation of proposal to the close of the consultation period. The process allows for both formal and informal consultation with stakeholders, including the use of the internet and web-forums for these purposes. Additionally, as stated in rule 4, a feedback summary should be provided at the end of the process, including “an explanation of how it is proposed to change the proposal in light of the responses received”.¹⁰⁰ Finally, Ministries are required to develop registers of key stakeholders in policy areas, and update their lists on a regular basis. Ministries should also, in accordance with rule 5, nominate a Consultation Liaison Officer, who shall be responsible for reporting on consultation exercises and ensuring that the code of consultation is adhered to by the Ministry’s officers.

- Both the Standing Orders of the House of Representatives and of the Senate allow for the establishment of Joint Select Committees, which may be formed to examine and provide observations on Reports which have been tabled in Parliament and deemed to require further discussion. In accordance with Jamaica’s Response,¹⁰¹ such committees “will receive comments, concerns and suggestions from the public”.

4.3.2 Adequacy of the legal framework and/or other measures

The standards and provisions in relation to the mechanisms for consultation that the Committee has examined, based on the information made available to it, are pertinent for promoting the purposes of the Convention.

In this regard, the Committee notes that the provisions and measures described above contribute to promoting civil society and non-governmental organization participation in efforts intended to prevent corruption and facilitate the purposes of the Convention.

4.3.3 Results of the legal framework and/or other measures

With respect to the results of the mechanisms for consultation, Jamaica notes that “While there are no results yet regarding the Code of Consultation, various consultations have been held in relation to legislation and government policy, including corruption. The Government, for example, encouraged

⁹⁸ *Ibid.*, p. 23.

⁹⁹ Such as members of the non-governmental organizations and civil society, among others, affected by a policy, plan or program; or those who possess information, resources or expertise needed for their formulation or implementation.

¹⁰⁰ Consultation Code of Practice for the Public Sector, p. 9.

¹⁰¹ Updated Response to the questionnaire, p. 24.

public participation in the drafting of the Corruption (Prevention) Regulations through comments to the Joint Select Committee considering the draft Regulations. The Human Rights Consultative Committee, which meets on a bimonthly basis to discuss various issues related to justice, also held discussions concerning the draft Regulations and concerns which were brought to that Committee were considered”.¹⁰²

In light of this circumstance, the Committee will formulate a recommendation. (See recommendation 4.3 in Chapter III of this report).

4.4 MECHANISMS TO ENCOURAGE PARTICIPATION IN PUBLIC ADMINISTRATION

The Committee notes that Jamaica did not provide additional information on this specific topic other than those regarding General Participation Mechanisms referred to in Section 4.1.1 of this report.

In light of this circumstance and based on what has been noted in Sections 4.1.2 and 4.1.3 of this report, the Committee will formulate recommendations (See recommendations 4.4(a), 4.4(b) in Chapter III of this report).

4.5 MECHANISMS FOR PARTICIPATION IN THE FOLLOW UP OF PUBLIC ADMINISTRATION

Jamaica indicates in its response, that “the Corruption (Prevention) Act provides in Section 5 that the Commission [for the Prevention of Corruption] shall receive and investigate any complaint regarding an act of corruption and does not limit in any way the persons or entities that may offer such a complaint”.¹⁰³ However, no further information is provided on this topic.

In light of this circumstance, the Committee will formulate recommendations. (See recommendations 4.5(a) and 4.5(b) in Chapter III of this report).

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

5.1. MUTUAL ASSISTANCE

5.1.1. Existence of provisions in the legal framework and/or other measures

Jamaica has a set of provisions and measures for mutual legal assistance as referred to in Article XV, paragraph 1 of the Convention, including, most importantly, “The Mutual Assistance (Criminal Matters) Act”. This Act establishes the legal framework and the process for making and receiving requests for international criminal legal cooperation, including assistance in the investigation and prosecution of acts of corruption, from other Commonwealth countries¹⁰⁴ or countries that are party to a relevant treaty¹⁰⁵ with Jamaica. For those countries that do not fall into either of these categories, Jamaica states in its response, that they “have been able to receive limited assistance provided it does not involve intrusive methods of investigation, such as a search warrant or access to financial records”.¹⁰⁶

¹⁰² Updated Response to the questionnaire, p. 24.

¹⁰³ *Ibid.*, p. 25.

¹⁰⁴ The Mutual Assistance (Criminal Matters) Act, Section 31 (1).

¹⁰⁵ *Ibid.*, Section 31 (2).

¹⁰⁶ Updated Response to the questionnaire, p. 26.

Section 15 (3) specifies a wide scope of assistance which may be provided under the Act, including:

- the location and identification of persons and objects;
- the examination and taking of testimony of witnesses;
- the production of documents and other records, including judicial or official records; and other articles;
- the making of arrangements for persons to give evidence or assist investigations;
- the temporary transfer of persons in custody for the giving of testimony;
- the carrying out of search and seizure;
- the service of documents;
- the restraining of dealings in property, or the freezing of assets that may be forfeited or that may be needed to satisfy orders which are similar to pecuniary penalty orders imposed in respect of a prescribed offence;
- the tracing, seizure and forfeiture of property that may be subject to a forfeiture order in force for the time being in relation to a prescribed offence in the foreign state which makes a request;
- any other matter included in an agreement or arrangement in force between Jamaica and the requesting country.

The grounds for refusal of assistance are set out in Section 16 of the Act. The following sections (Sections 19 – 30) establish the procedure for the execution of each of the previously mentioned kinds of assistance provided by Jamaica.

Additionally, Jamaica has acceded to/ratified relevant multilateral treaties in this area, such as the Inter-American Convention on Mutual Assistance in Criminal Matters and the United Nations Convention against Transnational Organized Crime. With regard to additional measures, Jamaica plays an active role with respect to important developments in this area within the OAS, including the Hemispheric Information Exchange Network for Mutual Legal Assistance in Criminal Matters and the Pilot Project of Secure E-mail Communications between Central Authorities.

5.1.2 Adequacy of the legal framework and/or other measures

The above-mentioned provisions and measures are appropriate and can contribute to achieving the purposes of the Convention of promoting and facilitating mutual assistance among the States Parties. They can also serve to meet the specific goals of the Convention related to the investigation and prosecution of acts of corruption, if they are used for such purposes.

5.1.3 Results of the legal framework and/or other measures

Jamaica states that it has not received nor made requests for assistance dealing specifically with offences under the Convention. However, Jamaica states that it has received and has considered a request from a State regarding investigations into an insurance scheme promoted by that State's previous Government officials.¹⁰⁷

5.2 MUTUAL TECHNICAL COOPERATION

5.2.1 Existence of provision in the legal framework and/or other measures

In its Updated Response, Jamaica informs of the existence of various mechanisms providing for mutual technical cooperation, as well as treaties for economic and technical cooperation, such as those establishing the Caribbean Community (CARICOM) and the Commonwealth, both of which Jamaica is a member.

Jamaica further notes that CARICOM has set up task forces in relation to the fight against transnational crime and corruption, such as the task force established for the purpose of participation in the negotiations on the United Nations Convention against Corruption and the Task-Force on Crime and Security, "which meets regularly and provides a forum for exchange of information on ways to prevent, detect, investigate and punish crime".¹⁰⁸ In addition, Jamaica is also a member of the Association of Caribbean Commissioners of Police, which provides another forum for such information exchange.

Among other general police cooperation initiatives, Jamaica is a member of INTERPOL and has bilateral treaties on police cooperation with other countries (e.g. Colombia) "which establish Bi-national Commissions which allow for general cooperation initiatives".¹⁰⁹

Finally, Jamaica states that it has general cooperation arrangements with various countries, including the United Kingdom, Canada and the United States. With respect to the latter, Jamaica informs that "in October, 2004, the United States Department of Justice in collaboration with prosecutors and investigators in the English speaking Caribbean put on a workshop on Investigating and Prosecuting Corruption for Caribbean Investigators and Prosecutors. The workshop involved exchange of experiences of US and Caribbean prosecutors and investigators".¹¹⁰

5.2.2 Adequacy of the legal framework and/or other measures

The mechanisms regarding mutual technical cooperation that the Committee has examined, on the basis of available information to it, are relevant for promoting the purposes of the Convention.

Nevertheless, the Committee believes that it is important for Jamaica to continue identifying specific areas in which it may need or could use technical cooperation to prevent, detect, investigate and punish acts of corruption. Such an exercise could facilitate the implementation of Jamaica's anti-corruption and good governance strategy¹¹¹ and its dealings with other States, including those who are

¹⁰⁷ The request was for permission to conduct searches at the Companies office. The request was granted but to date our Central Authority has not received any further communication in this regard.

¹⁰⁸ Updated Response to the questionnaire, p. 28.

¹⁰⁹ *Ibid.*, p. 28.

¹¹⁰ *Ibid.*, p. 28.

¹¹¹ Ministry Paper No 56 of 2002: Government at your Service – Public Sector Modernization, Vision and

not parties to the Convention, and with international agencies or financial institutions engaged in international cooperation, to help obtain the technical cooperation it needs. The Committee will formulate a recommendation in that regard. (See recommendation 5.1 in Chapter III of this report).

5.2.3 Results of the legal framework and/or other measures

Jamaica's response in relation to this topic contains the following comments:¹¹²

"Specific requests relating to corruption have not been made but we have made and received general requests on community policing, preventing, detecting, investigating and punishing crime in general. These have resulted in exchange of personnel for training purposes and exchange of information on best practices. These have resulted in successful investigations leading to a decision to prosecute".

Moreover, Jamaica notes that the aforementioned CARICOM task forces (see Section 5.2.1) have allowed for additional exchange of information.

In relation to the Workshop on Investigating and Prosecuting Corruption for Caribbean Investigators, also previously referred to in section 5.2.1., Jamaica highlights the establishment of an e-mail forum in order to assist in the creation of best practices as a result of the workshop.

Taking the above into account, the committee notes that general technical cooperation programs have been developed, and it encourages Jamaica to continue its mutual technical cooperation efforts, especially those relating specifically to the fight against corruption. As such, a recommendation in this regard will be formulated. (See recommendation 5.2 in Chapter III of this report).

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

6.1. Existence of provisions in the legal framework and/or other measures

Although Jamaica's updated response¹¹³ states that "the General Secretariat of the OAS has not yet been informed in writing of the designation of the Central Authority in relation to mutual legal assistance as it specifically relates to the offences under the Inter-American Convention Against Corruption.", the country under analysis informed the General Secretariat of the OAS on September 16th, 2005, in accordance with the prescribed formalities, of the designation of the Minister responsible for Justice and the Director of Public Prosecutions as the central authority for the purposes of the Inter-American Convention against Corruption.

In addition, Jamaica states that an Organized Crime Investigation Division assists in the execution of mutual legal assistance requests. The Financial Investigation Division of the Ministry of Finance and Planning also assists in executing requests, particularly where the requests have a financial component.

6.2. Adequacy of the legal framework and/or other measures

The standards and mechanisms in the area of central authorities reviewed by the Committee, based on the information at its disposal, are relevant for promoting the objectives of the Convention.

Strategy 2002-2012, pp. 17-30.

¹¹² Updated Response to the questionnaire, p. 28.

¹¹³ *Ibid.*, p. 29.

The Committee notes that Jamaica has complied with Article XVIII of the Convention by adopting measures regarding the appointment of the Minister responsible for Justice and the Director of Public Prosecutions as the central authority for the purposes of the assistance and cooperation provided for in the Convention.

In this regard, Jamaica notes, additionally, that there are some human and technical resources constraints¹¹⁴ within the Office of the Director of Public Prosecutions which hampers its ability to enable it to properly make and receive requests for assistance and cooperation under the Convention. The Committee suggests that Jamaica consider the possibility of giving that authority resources necessary for performing its tasks. The Committee will formulate a recommendation in that regard. (See recommendation in Chapter III, Section 6 of this report).

6.3 Results of the legal framework and/or other measures

Jamaica states that it has not received in nor made requests for assistance and cooperation relating to the Convention. However, as noted under section 5.1.3 of this report, Jamaica has stated that it is presently considering a request specifically concerned with a financial crime.

III. CONCLUSIONS AND RECOMMENDATIONS

Based on the review in Chapter II of this report, the Committee offers the following conclusions and recommendations regarding implementation by Jamaica of the provisions of Article III, paragraphs 1 and 2 (standards of conduct and mechanisms to enforce them); III.4 (systems for registering income, assets, and liabilities); III.9 (oversight bodies, solely with respect to the exercise by such bodies of functions related to compliance with the provisions contained in Article III. 1, 2, 4, and 11 of the Convention); III.11 (mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption); Article XIV (Assistance and Cooperation) and Article XVIII (Central Authorities) of the Convention, which were selected in the context of the first round.

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1 Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms

Jamaica has considered and adopted measures to establish, maintain, and strengthen standards of conduct aimed at preventing conflicts of interest and mechanisms to enforce them, as described in section 1.1 of Chapter II of this report.

In light of the comments made in that section, the Committee suggests that Jamaica consider the following recommendation:

- Strengthen the implementation of laws and regulatory systems related to conflicts of interest, ensuring that they are applicable to all public officials and employees, so as to permit practical and effective application of a public ethics system.

¹¹⁴ In its Updated Response to the questionnaire, Jamaica informs that there are seven attorneys within the Office of the Director of Public Prosecutions in charge of receiving, analyzing and supervising the execution of MLA requests. In addition to this task, they perform their normal prosecutorial duties. On the technical aspect, Jamaica states that the Office is not totally computerized but that efforts are being made to solve the issue.

In meeting this recommendation, Jamaica may wish to take into account the following measures:

- a. Establish or adapt and then implement standards of conduct for those offices that currently do not fall under the purview of any controls, including adequate sanctions for violations of those standards.
- b. Establish written guidelines within the public service that require hiring on the basis of merit.
- c. Develop, where appropriate, provisions that limit participation by former public servants in situations that could involve taking undue advantage of one's status as a former public servant for an appropriate period of time.
- d. Encourage the implementation of a code of ethics for Senators and Members of the House of Representatives, including sanction mechanisms for violations.
- e. Ensure that there are mechanisms in place that provide transparency and eliminate risks of conflict of interest in the cases where the Prime Minister allows a Minister to keep any relevant interest the latter is unable or unwilling to dispose.

1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms

Jamaica has reviewed the applicability of and adopted certain measures intended to establish, maintain, and strengthen standards of conduct to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions, as indicated in section 1.2 of Chapter II of this report.

In light of the comments made in that section, the Committee suggests that Jamaica consider the following recommendations:

- 1.2.1 Strengthen control systems within the public administration by improving written standards applicable to all public officials and employees establishing a duty to conserve and properly use of the resources entrusted or assigned to them.
- 1.2.2 Adopt measures to ensure the timely delivery by government agencies of appropriation accounts to the Auditor General and encourage greater accountability in instances where some agencies exceed expenditures approved by Parliament.

1.3 Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

Jamaica has considered and adopted certain measures to establish, maintain, and strengthen standards of conduct and mechanisms concerning measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, as noted in section 1.3 of Chapter II of this report.

In light of the comments made in that section, the Committee suggests that Jamaica consider the following recommendation:

- Develop, where appropriate, and strengthen mechanisms requiring public officials to report to appropriate authorities, acts of corruption in the performance of public functions of which they are aware.

In meeting this recommendation, Jamaica may wish to take into account the following measures:

- a. Establish reporting obligations for those public officials and employees who are currently not required to report to appropriate authorities, acts of corruption in the performance of public functions of which they are aware.
- b. Adopt and implement measures of protection for public officials who report acts of corruption in good faith in order to protect them from the threats or reprisals that they may be subject as a result of carrying out this obligation.
- c. Provide appropriate training to officials and employees concerning the requirement and the processes to report acts of corruption and the protection mechanisms in favor of those who report.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)

Jamaica has considered and adopted, measures intended to establish, maintain, and strengthen systems for registration of income, assets, and liabilities of persons who perform public functions in certain posts as specified by law, as noted in section 2 of Chapter II of this report.

In light of the comments made in that section, the Committee suggests that Jamaica consider the following recommendation:

- Strengthen the systems for registration of income, assets, and liabilities.

In meeting this recommendation, Jamaica may wish to take into account the following measures:

- a. Maximize the use of the systems for analyzing the contents of the declarations, and adopt the appropriate measures so that they can also be used to help detect and prevent conflicts of interest and detect cases of illicit enrichment, using modern technologies, when possible, to expedite the filing of declarations and also as a means of improving systems, analysis and case investigations.
- b. Regulate the conditions, procedures, and other aspects relating to the public disclosure, as appropriate, of declarations of income, assets and liabilities, subject to the Constitution and fundamental principles of Law.
- c. Intensify awareness campaigns and provide training for public officials on their legal and ethical duty to furnish their declarations of income, assets and liabilities, as well as for officials in charge of enforcing the obligation to file declarations.
- d. Strengthen the bodies responsible for overseeing the compliance of public officials to furnish their declarations of income, assets and liabilities, as well as consider strengthening the Office of the Director of Public Prosecutions, as necessary, to ensure that these bodies have the material and human resources needed to enforce the law and prosecute those who fail to submit their declarations, those who provide a statement with false information, or those who commit the offence of illicit enrichment.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)

Jamaica has considered and adopted measures to establish, maintain, and strengthen oversight bodies for effective compliance with the four provisions selected for analysis in the first round (Article III, paragraphs 1, 2, 4 and 11 of the Convention), as noted in section 3 of Chapter II of this report.

In view of the comments made in that section, the Committee suggests that Jamaica consider the following recommendations:

- 3.1 Establish bodies, or provide additional authority to an existing body, in charge of overseeing those offices that currently do not fall under the purview of any controls.
- 3.2 Strengthen oversight bodies in their functions related to the enforcement of Article III, Paragraphs 1, 2, 4 and 11 of the Convention, in order to ensure that such control is effective; give them greater support and the resources necessary to carry out their functions; and establish mechanisms that allow for the institutional coordination of their activities, as appropriate, and their continuous evaluation and monitoring.
- 3.3 Have the oversight bodies keep and systematize information for the purpose of performing an objective evaluation of the results of the legal framework and other measures.

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)

Jamaica has considered and adopted certain measures to establish, maintain, and strengthen mechanisms to promote the participation of civil society and nongovernmental organizations in efforts to prevent corruption, as noted in section 4 of Chapter II of this report.

In light of the comments made in this section, the Committee suggests that Jamaica consider the following recommendations:

4.1 General participation mechanisms

No recommendations were considered in this section.

4.2 Mechanisms for access to information:

- Strengthen the mechanisms for ensuring public access to information.

In meeting this recommendation, Jamaica could consider the following measures:

- a. Review and if necessary modify the provisions under the Access to Information Act which allows the Minister of Information to exclude any statutory body or authority from the application of the Act.
- b. Continue developing training and dissemination programs dealing with the mechanisms for public access to information, in order to help civil servants and citizens understand them and to optimize the use of available technology to that end.

- c. Continue the preparation of quarterly reports on the access to information requests presented to public authorities, including more detailed information on the status of such requests (*e.g.*, average time taken for completion).
- d. Take the appropriate measures to ensure that requests to access to information are responded to within the time-frame established by the Access to Information Act.

4.3 Mechanisms for consultation

- Strengthen the existing mechanisms of consultation.

To carry out this recommendation, Jamaica could give consideration to the following measure:

- Continue implementing consultation mechanisms with interested sectors of civil society and non-governmental organizations regarding the design of public policies and the legislative process in efforts to prevent corruption.

4.4 Mechanisms to encourage participation in public administration

- Strengthen and continue implementing mechanisms to encourage civil society and nongovernmental organizations to participate in public administration.

In meeting this recommendation, Jamaica may wish to take into account the following measures:

- a. Establish additional mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption.
- b. Promote public awareness of available corruption prevention mechanisms.

4.5 Mechanisms for participation in the follow-up of public administration

- Strengthen and continue implementing mechanisms to encourage civil society and nongovernmental organizations to participate in the follow up of public administration and generate opinions and proposals to be taken into account in preventing, detecting, investigating and punishing corruption.

In meeting this recommendation, Jamaica may wish to take into account the following measures:

- a. Promote additional methods, where appropriate, to allow, facilitate, and assist civil society and nongovernmental organizations in developing activities in the follow up of public administration and the prevention of corruption.
- b. Design and implement specific programs to publicize the mechanisms for encouraging participation in the follow up of public administration.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Jamaica has adopted measures in relation to mutual assistance and mutual technical cooperation, in accordance with the provisions of Article XIV of the Convention, as noted and reviewed in section 5 of Chapter II of this report.

In light of the comments made in this section, the Committee suggests that Jamaica consider the following recommendations:

- 5.1 Review comprehensively the specific areas in which Jamaica might need or could usefully receive mutual technical cooperation to prevent, detect, investigate, and punish acts of corruption; and based on this review, design and implement a comprehensive strategy that would permit Jamaica to approach other States Parties and non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs.
- 5.2 Continue the efforts of technical cooperation exchange with other State Parties on the effective ways and methods to prevent, detect, investigate and punish acts of corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Jamaica has complied with Article XVIII of the Convention, by designating the Minister responsible for Justice and the Director of Public Prosecutions as the central authority for the purposes of international assistance and cooperation under the Convention, as indicated in Chapter II, Section 6, of this report.

In light of the comments made in this section, the Committee suggests that Jamaica ensure that the aforementioned central authority has the necessary human and technical resources to ensure adequate performance of its functions.

7. GENERAL RECOMMENDATIONS

Based on the review and the contributions made throughout this report, the Committee suggests that Jamaica consider the following recommendations:

- 7.1. Design and implement, as appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.
- 7.2. Select and develop procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into account the list of more general indicators applicable within the inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.
- 7.3. Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, and the recommendations contained in it.

8. FOLLOW-UP

The Committee will consider the periodic reports from Jamaica on its progress in implementing the above recommendations in the framework of the Committee's plenary meetings, as prescribed in Article 30 of the Rules of Procedure.

It is further recommended that the Committee review the progress made in implementing the recommendations contained in this report, as provided in Articles 31 and, when appropriate Article 32 of the Rules of Procedure.

The Committee wishes to place on record the request made by Jamaica to the Technical Secretariat to publish this report on the Mechanism's webpage and by any other means of communication, in accordance with the provisions of Article 25(g) of the Rules of Procedure and Other Provisions.

ANNEX
TO THE REPORT ON THE IMPLEMENTATION IN JAMAICA
OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW
IN THE FRAMEWORK OF THE FIRST ROUND

Together with its response, Jamaica sent attachments on the following provisions and documents:

1. The Constitution of Jamaica
2. The Access to Information Act, 2002
3. The Access to Information Regulations, 2003
4. The Access to Information (Amendment) Act, 2003
5. The Access to Information (Public Authorities) Order, 2004
6. Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth, as amended in 1990
7. The Consultation Code of Practice for the Public Sector
8. The Contractor-General Act
9. The Mutual Assistance (Criminal Matters) Act, 1995
10. The Parliament (Integrity of Members) Act (Amended)
11. The Police Public Complaints Act
12. The Code of Conduct for Police-Citizen Relations
13. The Police Public Complaints Authority
14. Review of Police Promotion Examinations – Jamaica Constabulary Force
15. The (Revised) Staff Orders for the Public Service, 2004
16. Sensitization Report (June 2002 – March 2004)
17. The Corruption (Prevention) Act, 2000
18. The Corruption (Prevention) Regulations, 2002
19. The Financial Administration and Audit Act
20. The Judicial Service Regulations, 1961
21. The Police Service Regulations, 1961
22. The Public Service Regulations, 1961
23. The Book of Rules for the Guidance and General Direction of the Jamaica Constabulary Force
24. The Instrument of Designation of Central Authority – Mutual Assistance (Criminal Matters) Act, 1995
25. Ministry Paper No 56 of 2002: Government at your Service – Public Sector Modernization, Vision and Strategy 2002-2012
26. Ministry Paper No 19 of 2002: Conduct of Ministers
27. Standing Orders of the House of Representatives of Jamaica, 1964
28. The Jamaica Constabulary Force Act.