



National Integrity Systems

Transparency International

Questionnaire

Jamaica 2003

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Jamaica

The National Integrity System Indicators

Questionnaire

Executive

Can citizens sue Government for infringement of their civil rights?

Yes. Citizens have the right to sue government for the infringement of their civil rights. Section 25 of the constitution gives any person – not just a citizen – who alleges that his rights are infringed to apply to the Supreme Court for redress, and, if agreed by the determination of the Supreme Court, may appeal to the Court of Appeal. Section 15 (5) and (6) of the Public Defender (Interim) Act 1999 provides that any person who alleges that his constitutional rights have been or are likely to be infringed shall be provided with access to professional advice and, if the Public Defender determines that the complainant is in need of legal aid, with legal aid out of funds provided by Parliament to the Public Defender for that purpose.

Practice

In practice, very few persons sue Government for infringement of their civil rights because of:

- Lack of public awareness of the available means of redress
- Public skepticism concerning the likelihood of redress
- Anticipated delay in the court process
- The perception that the process would be expensive.

Are there procedures for the monitoring of assets, including disclosure provisions for Cabinet and other Government Ministers?

The Parliament (Integrity of Members) Act 1973 imposes an obligation on Cabinet and other Government Ministers to make annual declarations of assets and liabilities. The annual declarations are lodged with the Integrity Commission which has the right to make queries or to require further particulars. There are no provisions for disclosure of the asset-liability declaration beyond the Integrity Commission. In fact unauthorized disclosure constitutes an offence under the law attracting a fine and/or imprisonment.

Practice

In fact the majority of members of the House of Representatives and of the Senate do make annual declarations, respond to follow-up queries and thereby fulfill the requirements of the law. There have been however many cases in which Members of Parliament have failed to fulfill the requirements of the law without any sanction and without being prosecuted for an offence.

Are there procedures for the monitoring of assets, including disclosure provisions, for high level officials?

The Corruption Prevention Act 2000 requires high level public officials to make annual declarations of income, assets and liabilities. These annual declarations are to be lodged with the Commission for the Prevention of Corruption. The Commission for the Prevention of Corruption has the authority to make queries of the official in relation to the declaration and the official is obliged to reply. Failure on the part of the official to make the required declaration constitutes an offence under the law, attracting a fine and/or imprisonment. Disclosure of the declaration or its contents constitutes an offence.

Practice

It is too early to say what the practice under the law is in so far as the requirement for income-asset-liability declarations on the part of high level officials came into effect at the end of March 2003.

Are there any differences in procedures and disclosure provisions between elected Ministers, appointed Ministers and High Level Officials?

There is one difference in procedures and disclosure provisions as between elected/appointed ministers on the one hand and high level officials on the other. In the latter case the Corruption Prevention Act obliges the Commission for the Prevention of Corruption to report any high level official who fails to comply with the disclosure provisions directly to the Director of Public Prosecutions. In the case of the Minister of Government (elected and appointed) the Integrity Commission "may" report a similar breach (but is not obliged so to do) to the DPP after bringing the breach to the attention of the Parliamentary Leaders (that is, the speaker of the House, the President of the Senate, the Prime Minister and the Leader of the Opposition).

Practice

Despite many more violations, only two Senators have ever been reported to the DPP for breaches of the asset declarations provisions. When the cases came up for hearing, the DPP declined to pursue the prosecution and the charges were dropped.

Are there conflict of interest rules for Ministers?

Section 41 (1) (f)(i) provides that the seat of a member of either House (and therefore the position of Minister) shall become vacant if he becomes party to any contract with the Government of Jamaica without prior exemption from vacating his seat by the House of Representatives or of the Senate as the case maybe. Ministry Paper 19 of 2002 "conduct of Ministers to which all members of the government are expected to adhere" stipulates that "Ministers must ensure that no conflict arises or appears to arise, between their public duties and their private interests".

Practice

In practice, it appears that Ministers do often retain business and professional interests which, directly or indirectly may well entail some contractual relationship with Government. Rarely are prior exemptions sought from the House or from the Senate and no sanctions are applied.

Are there conflict of interest rules for high level officials?

The Public Service Regulations prohibits conflict of interest between the private interests and public duties of such officials.

Are there rules and registers concerning gifts and hospitality for Ministers and for High Level Officials?

Ministry Paper 19 of 2002 states "... no Minister or public servant should accept gifts, hospitality or services from anyone which might appear to place him or her under an obligation, and should take all reasonable steps to avoid this". Furthermore "no Minister or public servant shall condone the acceptance of gifts by any dependent member residing in their family household". The Civil Servant Staff Orders and Public Service Regulations prohibit the receipt of gifts by public servants.

Practice

Ministers from time to time do receive gifts and hospitality especially from private sector firms and CEOs. To a far lesser degree, this would also be the case in respect of high level officials.

There are no provisions or requirements for the keeping of registers either for ministers or for high level officials.

If so, are these registers kept up to date? By whom?

N/A

Have they legal powers to enforce disclosure?

N/A

Have they staff to investigate allegations?

N/A

What powers of sanction are in place against parliamentarians?

N/A

Have they ever been invoked?

N/A

What powers of sanction are in place against Ministers who are also parliamentarians?

N/A

Have they ever been evoked?

N/A

What powers of sanctions are in place against ministers who are not parliamentarians?

N/A

Have they ever been invoked?

N/A

Are there restrictions on post ministerial office employment?

No there are no restrictions on post ministerial office employment.

Are members of the executive obliged by law to give reasons for their decisions?

No, under normal circumstances. If however, questions are tabled in Parliament requesting a Minister to give reasons for a particular decision, the Minister would be obliged to answer. Similarly, principles of natural justice require officials in the executive to give reasons for decisions when such decisions are challenged before an administrative, quasi-judicial or judicial tribunal.

Practice

Parliamentary questions are invariably answered by the Executive within the time period required by the Standing Orders and the numbers of such questions are increasing.

Do Ministers or equivalent high level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?

Under the Handbook of Public Procurement Procedures, the National Contracts Commission reviews contract award recommendations by any procuring entity (government ministry, Department, Statutory Organization, Executive Agency, Local Government Authority, Public Company or any other Agency of Government) for the procurement of goods, services and works with estimated values equal to or above J\$ 4M. Cabinet takes the final decision on such contract awards taking into account the recommendations of the NCC.

In relation to licensing cases, Ministers or equivalent high level officials do have and exercise the power under various statutes to make final decisions in licensing cases.

Practice

Ministers and equivalent high level officials often violate the procedures established to safeguard against improper award of contracts or issuance of licences. These violations, such as in the case of award of contracts under the Operation Pride low cost housing, give rise to credible allegations of corruption and continue despite frequent exposure in the annual reports of the Contractor General.

Are there administrative checks and balances on decisions of individual members of the executive?

Yes. These are found in the Judicial Service Regulations, the Public Service Regulations and the Police Service Regulations. These make provisions to check and balance decisions of individual members of the executive in stipulating conditions for consultation, making and terminating appointments, promotion, discipline etc.

Legislature

Is the legislature required to approve the budget?

Yes. Section 115 of the Constitution requires the Minister of Finance to table annual estimates of revenue and expenditure for public services and table the estimates in the House of Representatives. Section 116 requires the House of Representatives to vote on the budget and thereby provide authorization of expenditure.

Practice

The legislature does in fact approve the annual budget in accordance with the provisions of the constitution.

Are there significant categories of public expenditure that do not require legislative approval? (which departments does this involve, what is their expenditure and what percent does this represent of the government's annual expenditure?)

Yes. Section 116 (3) of the Constitution debars the House of Representatives from voting on "statutory expenditure". This means :

- Expenditure charged on the consolidated fund by virtue of provisions of the Constitution viz the remuneration of the Director of Public Prosecutions, the Judges of the Supreme Court, the Judges of the Court of Appeal, the Auditor General, public service pensions or expenditure provided for by any other statute
- All debt service charges for which the Government is liable.

The debt service component of statutory expenditure has averaged 49% of Government's annual expenditure in the five years between 1998 and 2002.

Are there conflict of interest rules for Parliamentarians?

Yes. In both formal and actual terms these are the same constitutional provisions as apply to Ministers. However the prohibition against receiving gifts and hospitality laid out in the Ministers' code of conduct does not apply to Parliamentarians.

Are there restrictions on post legislative employment?

No.

Electoral Commission

Is there an independent Electoral Commission?

Yes. The Electoral Advisory Committee was created under and by virtue of the provisions of the Representation of the People (Interim Electoral Reform) Act, 1979. It is comprised of three independent members, one member and an alternate from each of the two major political parties and the Director of Elections. The Director of Elections is recognized under the Representation of the People Act recognized under the Representation of the People

Act and is supported in the performance of his duties by the staff of the Electoral Office Jamaica.

Practice

The EAC and the EOJ have improved their performance consistently over recent elections and now enjoy a high reputation for independence and non-partisanship.

Political Parties

Are there rules on political party funding?

No.

Are substantial donations and their sources made public?

No.

Are there rules on political party expenditures?

No.

Are political party accounts published?

No.

Are accounts checked by an independent institution, are they published and are they submitted to Parliament?

No.

Does that institution start investigations on its own initiative?

N/A

Who appoints the Head of the institution?

N/A

Supreme Audit Institution

Is the national Auditor General independent?

Yes. Section 129 and 121 of the Constitution establishes and protects the independence of the Office of the Auditor General.

Practice

The Auditor General's annual reports to Parliament regularly reveal improprieties in public expenditure demonstrating in practice both competence and independence. The impact of the Auditor General's office however is limited by the fact that he is empowered to make recommendations only.

Are all public expenditures audited annually?

Yes. Section 122 of the Constitution requires the Auditor General to fulfill this formation.

Practice

The Auditor General's audit reports are up to date.

Are reports submitted to a Public Accounts Committee and/or debated by the legislature?

Yes.

Practice

The Auditor General's report is presented to the speaker who lays them before the House of Representative on whose behalf the report is examined by the Public Accounts Committee.

Are all public expenditures declared in the official budget?

Yes.

Judiciary

Have the courts the jurisdiction to review the actions of the executive?

Yes. Section 25 gives any person the right to apply to the Supreme Court for redress. Where he believes that any of his fundamental rights and freedoms specified in the constitution have been, are being or are likely to be infringed. In this context the courts have the jurisdiction to review the actions of the Executive.

Practice

Judicial review of the actions of the executive is rare because of :

- Perception of high cost

- Skepticism re: success
- Slowness of the process.

Are judges/ investigative magistrates independent?

Section 20 (1) and (2) stipulate that courts hearing criminal charges or civil actions must be "impartial and independent". There is no constitutional or statutory requirement that appointments be based on merit.

Practice

Judges of the Superior Courts do demonstrate a measure of independence in dealing with government and powerful special interests. This is less so at the level of Resident Magistrate's courts.

Are appointments required to be based on merit?

Yes. There is a presumption that appointments will be based on merit but no there is no constitutional or statutory requirement that this be so.

Practice

Merit is certainly one of the most important of the criteria applied by the Judicial Service Commission in appointments of judges.

Are the appointees protected from removal without relevant justification?

Section 100 and 106 of the constitution protect Superior Court judges from removal without relevant justification. Resident Magistrates are less protected since their removal may be effected by the Public Service Commission without recourse to an external, independent tribunal as is the case with Superior Court judges.

Practice

No Superior Court Judge has ever been removed from office since independence in 1962 and there is no conclusive evidence that Resident Magistrates have been removed without justification.

Are recruitment and career development based on merit?

Yes. The laws stipulate the criteria that have to be met for appointment to the position of Resident Magistrate as well as of the Supreme Court and the Court of Appeal.

Practice

Recruitment and career development are in fact to a considerable degree based on merit.

Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?

Yes. A Resident Magistrate has been charged, prosecuted, found guilty and sentenced.

Civil Service

Are there laws establishing criminal and administrative sanctions for bribery?

Yes. The main laws are the Prevention of Corruption and the Representation of the People Acts as well as the Civil Service Staff Orders.

Are there rules requiring political independence of the civil service?

Yes. The Public Service Staff Orders 3.19 states:

“Public officers are expressly forbidden to participate actively on behalf of any party or candidate in an election of Members of the House of Representatives or at a Municipal or Parish Council election. They are expressly forbidden to act as agents, sub-agents, or canvassers at elections of this nature”.

Section 40 of the constitution disqualifies any member of the public service from being appointed a Senator or elected as a member of the House of Representatives.

Practice

From time to time, Ministers or officials from one or other of the major political parties may regard particular civil servants as less than politically independent but in general, partisanship does not compromise the independence of the civil service.

Are recruitment / career development rules based on merit?

Yes. The Public Service Regulations state that:

“merit and ability shall be given more weight progressively relative to seniority as the work involves a higher degree of responsibility and initiative”.

Practice

There are complaints that appointments and promotions are based on considerations other than merit but these are not widespread and are taken up by the Jamaica Civil Service Association.

Are there specific rules to prevent nepotism? Cronyism?

No. However the merit-oriented criteria outlined in the Public Service Regulations for appointment and promotion implicitly rule out nepotism and cronyism.

Practice

There is some cronyism based on “old boys networks” based on lodge membership, “school ties”, service club affiliation etc.

Are there rules concerning acceptance of gifts and hospitality?

Yes. Under the Public Service Staff Orders “public officers are forbidden to solicit, accept or give presents other than the ordinary gifts to personal friends. This prohibition is expressed to apply not only to the officers themselves but also to their families”.

Practice

There is little enforcement of these rules. Improper if not corrupt, acceptance of gifts and hospitality exists to a significant extent especially in strategically placed departments such as the Customs.

Are there registers?

No.

Are there restrictions on post public service employment?

Yes. Section 124 of the Constitution stipulates that a member of the Public Service Commission shall not, up to three years after ceasing to be a member of the Commission, be eligible for appointment to any position in the public.

Practice

This prohibition is followed in practice.

Are procedures and criteria for administrative decisions published?

Yes and No. In some cases, such as the criteria for eligibility for housing constructed by the National Housing Trust, transparency is required. In other cases, for example, the granting of firearms licenses, much discretion resides in the authority concerned and the criteria for making decisions are unclear. With the coming into force of the Access to Information Act in October 2003, the citizens' ability to access the procedures and criteria for administrative decisions shall be enhanced.

Are there complaint mechanisms for public servants and whistleblower protection measures?

Public servants can file complaints with the Public Service Commission, the Public Defender or the Jamaica Civil Service Association. There are no whistleblower protection measures though some public discussion has recently begun on the need for such measures.

Practice

Public servants do use these channels.

Are there means for complaint by members of the public?

Yes. Members of the public may make complaints against corruption or malpractice with the Commission for the Prevention of Corruption, the Service Commissions, the Public Defender, the Police Public Complaints Authority, the Contractor General, the Political Ombudsman with the superiors of the officers concerned.

Practice

These means are used by the public but the extent to which complaints are expeditiously tackled and effective remedial action taken leaves a great deal to be desired.

Are there administrative checks and balances on decisions of individual public officials?

Yes. Superior officers may review these decisions. In relation to decisions having to do with discipline, there is an elaborate set of regulations reflecting principles of natural justice and there is a right of appeal ultimately to the Jamaican Privy Council.

Police and Prosecutors

Is the Commissioner of Police independent?

Yes and No. Yes in that an amendment of the Jamaica Constabulary Force Act makes the Commissioner of Police independent in relation to the operational direction of the Force. No in that the Commissioner is subject to the direction of the Minister of National Security in matters of policy.

Are appointments required to be based on merit?

Yes. The Police Service Regulations, 1961 require that "as vacancies occur The Commission shall consider the eligibility of all members for promotion and ... take into account ... merit, ability and good conduct".

Is the appointee protected from removal without relevant justification?

No. The Jamaican Constitution makes no mention of the procedure to be followed in removing the Commissioner of Police. As such there is no requirement for relevant justification.

Practice

Commissioners of Police are removed when they lose the confidence of the political directorate.

Are public prosecutors independent?

Yes. Section 94 of the Constitution stipulates that the Directorate of the Public Prosecutions and "persons acting under and in accordance with his general or special instructions ... shall not be subject to the direction or control of any other person or authority". Section 96 protects the tenure of the Director of Public Prosecutions. He "may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour". This may only be effected after a Tribunal of judges or ex-judges of courts enjoying unlimited jurisdiction in the Commonwealth, appointed by the Governor General "acting in accordance with the advice of the Prime Minister", enquires into the matter and recommends removal.

Practice

There have been occasional reports of attempted political interferences in the office of the DPP, particular in the first decade following independence in 1962. Recently however, the independence of the office has been undermined mainly by lack of resources in terms of manpower and technology.

Are there special units for investigating and prosecuting corruption crimes?

Yes. There is a Special Financial Crimes Unit developed initially in the Office of the DPP but now located in the Ministry of Finance. There is also the Commission for the Prevention of Corruption which is an independent body.

Is there an independent mechanism to handle complaints of corruption against the police?

Yes. The Police Public Complaints Authority and the Commission for the Prevention of Corruption handle such complaints.

Practice

Disciplinary action as well as prosecutions do take place against police in response to complaints alleging corruption. However there are insignificant in comparison to the extent of credible allegations of corruption against the police.

Does civil society have a role in such a mechanism?

No except in so far as representatives of civil society may be appointed to membership on the Commission for the Prevention of Corruption.

In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

Yes. Six police officers have been prosecuted for corruption in the last five years.

Are there any cases of corruption within the prosecuting agencies?

No.

Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery?

The Corruption Prevention Act (2000), the Anti-Money Laundering Act (2001), the Representation of the People Act (1944) are the main legislative instruments.

Is the law applied?

The Representation of the People Act has been inadequately applied over the years particularly in respect of allegations of bribery of voters. The other two laws are too recently on the books to make a judgment. The Corruption Prevention Act (1931) which preceded the Act of 2000 was rarely applied.

Is private-to-private corruption punishable by law?

Yes under the Corruption Prevention Act 2000.

How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?

Very few prosecutions for corruption have been undertaken in the last ten years. To the extent that these have occurred, they have been of low level officials. One former Minister, a Permanent Secretary and a Resident Magistrate have been exceptions to this rule over the last few years. The reasons for the low rate of prosecution have had to do with low levels of education regarding the harmful effects of corruption, high public tolerance and inadequate investigative/prosecutorial competence re more complex types of white collar crimes.

Public Procurement

Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

Yes. The policy on Public Sector Procurement requires the National Contracts Commission to review recommendations for procuring entity contract awards equal to or above J\$4M in value. However the Policy states that "although competitive tender is the primary mode, the use of limited tender (shopping) and direct contracting through negotiation or sole-sourcing processes, with due consideration to the nature and circumstance of the procurement is permitted".

Practice

The annual reports of the Contractor General and periodic special investigations of the Auditor General have identified violations of public procurement policies in particular, involving partisan political involvement in the award of government contracts.

Are the rules laid down in documents publicly accessible?

Yes. The Handbook of Public Sector Procurement Procedures sets out step-by-step procedures in the government procurement process and can be located on the Office of the Contractor General's website.

Are there strict formal requirements that limit the extent of sole sourcing?

No.

Are procurement decisions made public?

Yes.

Is there a procedure to request review of procurement decisions?

Yes. There exist procedures for an unfavourable decision to be reviewed by the courts.

Practice

The review procedure is used. Currently, the Postal Corporation of Jamaica is utilizing this process to fight an unfavourable public procurement decision.

Can an unfavourable decision be reviewed in a court of law?

Yes.

Are there provisions for blacklisting of companies proved to have bribed in a procurement process?

No.

Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?

Yes.

Are assets, incomes and life styles of public procurement officers monitored?

Yes. Since the regulations under the Corruption Prevention Act 200 came into being in 2003, the public procurement officers, along with other public servants are required to make annual declarations of assets, income and liabilities to the Commission for the Prevention of Corruption.

Ombudsman

Is there an Ombudsman or its equivalent (that is an independent body to which citizens can make complaints about maladministration)?

Yes. There are three offices/bodies to which citizens can make complaints about maladministration viz:

- The Public Defender
- The Political Ombudsman
- The Police Public Complaints Authority.

Is the Ombudsman independent?

Yes. The persons who occupy these positions enjoy security of tenure similar to that of a superior court judge.

Practice

The Public Defender and the Political Ombudsman do function with independence and enjoy a degree of public confidence. The Police Public Complaints Authority is less effective than it needs to be because of under-resourcing in terms of skill, experience, numbers and independence of its investigators.

Are appointments required to be based on merit?

Yes and no. Yes because appointees have to enjoy a measure of bi-partisan confidence in so far as the Prime Minister is required to consult the Leader of the Opposition prior to

recommending appointment to the Governor General. No because there is no explicit mention of merit as a criterion for appointment.

Has an Ombudsman been removed without relevant justification in the last five years?

No.

Can petitioners complain anonymously if they fear possible reprisals?

Yes. The Public Defender has the power to allow a person not to disclose his identity if in the Public Defender's view the circumstances so warrant (See Section 4 (5) of the Public Defender (Interim) Act 1999).

Are reports of the ombudsman published?

Yes. Annual Reports to Parliament are published and any other statements made by the Ombudsman.

Does the government act on the Ombudsman's recommendations?

Yes. The Government acted on the recommendations of the Political Ombudsman prior to 2002 elections and on recommendations, though not all, of the Public Defender as well.

Investigative/Watchdog Agencies

Are there special investigative or watchdog agencies

Yes. The Commission for the Prevention of Corruption created under Section 3 of the Corruption Prevention Act, 2000, is the main investigative or watchdog agency.

What are their main responsibilities?

The Commission for the Prevention of Corruption has major responsibilities relating to investigation and secondary responsibilities relating to prosecution. In the latter regarding the Commission, under section 12 of the Corruption Prevention Act, does not itself prosecute but reports acts of corruption "to the appropriate Service Commission, Board, Body or other Authority and to the Director of Public Prosecutions" for appropriate action.

The Commission does not have "prevention" nor "education and awareness" amongst its powers and functions though it would be expected to engage in such activities.

**Are they independent? That is are appointments required to be based on merit?
Are appointments generally based on merit?**

Under the first schedule to the Corruption Prevention Act, the Commission shall consist of:

- The Auditor General

- Four other members appointed by the Governor General after consultation with the Prime Minister and the Leader of the Opposition.

These four shall be drawn from members of the Privy Council, retired superior court judges and "persons who, in the opinion of the Governor-General, are persons of high integrity ... able to exercise competence, diligence and sound judgment in fulfilling their responsibilities under the Act".

The current first chairman of the CPC is a retired Supreme Court judge and the present members are regarded as having merit but this criterion is not a statutory requirement.

Are appointees protected from removal without relevant justification?

Each appointed member shall hold office for seven years. "The Governor General after consultation with the Prime Minister and the Leader of the Opposition may at any time revoke the membership of any appointed member" Clause 7 First Schedule.

Are their reports published?

Not applicable as no reports have yet been made but the Act does require that an annual report be tabled in Parliament.

Do they report publicly to the legislature on the general scope of their work?

Section 12 of the law requires an annual report to Parliament.

Can people complain to the agency without fear of recrimination?

Yes and no. Yes - complaints can be made via the telephone as there will be access to a special 1-800-number designed specifically for this purpose. The Whistle blower identity will be kept a secret and only the Commission will know the true identity of the complainant. All members of the Commission as a requirement of their appointment have to sign a secrecy oath which continues in force even after an employee has left the Commission. The penalty for disclosure of unauthorized information is J\$500,000 or 5 years in prison.

No - in that there is no whistleblower protection legislation.

Media

Is there a law guaranteeing freedom of speech and of the press?

Yes and No. Yes Section 22 (1) of the Constitution protects "freedom of expression". This freedom "includes the freedom to hold opinions and to receive and impart ideas and information without interference".

No, in that freedom of the press is not specifically guaranteed. Freedom of expression is not absolute but subject to "what is reasonably required in the interests of defence, public safety, public order, public morality or public health". There are no laws that censor the media.

Practice

Freedom of speech and of the press are recognized in practice. Laws relating to sedition, incitement, treason and the security of the state do not in any significant way impinge on this freedom.

Is there censorship of the media?

There is no formal censorship of the media. All media regularly produce reportage, comment and analysis critical of successive governments of Jamaica.

Is there a spread of media ownership?

Yes. There are four national newspapers, 3 television stations, 11 radio stations with national coverage and a number of community based media. These are all privately owned.

Does any publicly owned media regularly cover the views of government critics?

There is no publicly owned media.

Have journalists investigating cases of corruption been physically harmed in the last five years?

No.

Do media licensing authorities use transparent, independent and competitive criteria and procedures?

The government has not used the relevant laws, the Broadcasting and Radio ReDiffusion Act nor the Broadcasting Commission, to deny licences to applicants considered hostile to the government. The website of the Broadcasting Commission includes the laws, regulations, criteria and procedures relevant to licensing of radio, television and cable services. Licences are issued in accordance with these criteria and procedures.

Are libel laws or other sanctions (for example withdrawing of state advertising) used to restrict reporting of corruption?

Yes and no. Yes in so far as the libel law leads to a measure of voluntary censorship. Moreover the continued existence of the Official Secrets Act reduces access to information relevant to reporting on corruption.

No in so far as law and sanctions are not explicitly used to restrict reporting of corruption.

Civil Society

Does the public have access to information and documents from public authorities?

Limited access at present. However in October 2003, the Access to Information Act is scheduled to come into force. This will considerably widen access to information and documents from public authorities. Nevertheless, as presently constituted, the Act is flawed in so far as among other deficiencies it retains in the Executive the power to declare any public body outside of the application of the Act. Moreover the Act shall operate alongside the Official Secrets Act which essentially contradicts the canons of transparency and openness.

Do the public authorities generally cooperate with civil society groups?

Yes and no. Civil society groups regularly make submissions to public authorities in relation to a wide range of governance issues such as the criminal justice system, community development, the quality of public service delivery, constitutional and legislative reform. Public authorities have responded positively in accepting many recommendations from civil society groups. At the same time civil society groups often do not get their way on critical matters, for example, representations for an indicative referendum prior to Jamaica's accession to the membership in the Caribbean Court of Justice.

Are there citizen's groups or business groups campaigning against corruption?

Yes. The main groups are Jamaicans for Justice and Transparency International – Jamaica Chapter.

Are there citizen's groups monitoring the government's performance in areas of service delivery?

Yes but these are not highly developed. The main groups are the consumers' league, the parent teachers associations, the police-citizens consultative committees, citizens associations, the independent Human Rights Council.

Do citizens groups regularly make submissions to the legislature on proposed legislation?

Yes.

Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?

No. There are now proposals to improve the attention paid by the educational system to these issues.

Regional and Local Government

Are there, at regional and local level, rules and disclosure provisions similar to those operating at the national level on nepotism, conflict of interest, gifts and hospitality, and past public-office employment?

Yes. The laws and regulations that govern the employment of public servants at the national level are also applicable to the local government. However there exist no rules against nepotism. The Local Government staff orders also prohibits conflict of interest.

Practice

Petty corruption is prevalent at the local level.

Is there a legal requirement that meetings of city/town councils be open to the press and public?

Yes. The Parish Council Act stipulates that the meetings of the Council should be open to both the press and the public.

Practice

All meetings with the exception of those discussing financial and administrative matters are open to the press and the public.

Are there clear criteria restricting the circumstances in which city/town councils can exclude the press and the public?

No.

Do national agencies with a remit to deal with corruption (anti-corruption agencies, ombudsman, supreme audit institutions and so on) work at local levels and are there specific agencies with local responsibilities?

The Commission for the Prevention of Corruption, the Jamaica Constabulary Force, the Auditor General, the Public Defender all have national jurisdiction. There are no specific agencies with local responsibilities.

Practice

Resources limitations mean that coverage at local levels is inadequate.

Progress with Government Strategy

Has the government announced an anti-corruption strategy and a timetable for implementation?

Yes and no. The Government has announced an anti-corruption objective and put in place anti-corruption institutions. However there is no overall strategy nor implementation timetable.

How much of the strategy has been implemented?

N/A

Is the strategy at national level or local level?

N/A

Is the government meeting its own timetable?

No. In respect of individual anti-corruption initiatives such as the passage of the Corruption Prevention and Access to Information Acts these took much longer than the government had planned or anticipated.

Donor Anti-Corruption Initiatives

Which bilateral and multilateral donor agencies are based in the country?

The UN agencies include: UNDP, UNFPA, UNEP, FAO, IBRD, UNESCO, UNICEF and PAHO/WHO.

The International Development Partners are IADB, Delegation of the EU, USAID, JICA/JOCV, Japan Bank for International Cooperation, OAS, CIDA and DFIF.

What types of anti-corruption initiatives have they supported?

- The Public Sector Reform Programme
- Support to government institutions such as the Financial Crimes Unit, the Jamaican Constabulary Force, the Commission for the Prevention of Corruption.

Are there any examples of donors cooperating or coordinating their programmes?

Yes.

- Strategy and Analytical work – cooperation between the IDB and the World Bank

- Financial Reporting and auditing – the UNDP and the CDB are cooperating among themselves and with the PIOJ in implementing improved project cycle database to track both physical and financial milestones. Donors are interested in exploring the possibility of single reporting formats, content and frequency.

Future Research and Donor Support

Can key areas or issues be identified in terms of corrupt activity that the research for this report has demonstrated as requiring immediate attention, and which are they?

The key areas or issues requiring immediate attention are:

- Lack of prosecution of drug “king-pins” involved in narcotics-related corruption
- Lack of public education on the negative effects of corruption, particularly of petty corruption
- Lack of adequate checks and balances, particularly in the legislature, on the executive
- Lack of legislation on political party and election campaign financing as well as on the protection of ‘whistle-blowers’
- Lack of adequate institutional capacity in critical public sector institutions, in particular the Director of Public Prosecutions, the Auditor General and the Resident Magistrates’ Courts
- Lack of single, comprehensive anti-corruption strategy with appropriate timetable
- Lack of effective implementation of recommendations from the reports of the Auditor General, the Contractor General, particular in respect of partisan political contamination of the public procurement system
- The need for repeal of the Official Secrets Act and the amendment of the Libel Law to facilitate more effective media in the anti-corruption struggle.

Is there a particular aspect of corrupt activity either particular to the country concerned, or significant in terms of effect or impact, that would require more in-depth research?

The link between illicit drug trafficking and corruption in critical institutions such as the police, the customs and political parties and an evaluation of countervailing measures requires more in-depth research. Equally, the public procurement system and how to strengthen the contract awards process against partisan political interference.

Is there a particular approach or initiative in combating corruption that may be considered for further research or study as an example of best practice?

The role of the media and the Public Accounts Committee in exposing allegations of political corruption.

Can key areas or issues relating to possible anti-corruption initiatives be identified as requiring donor support?

- Support to law enforcement agencies (for example the DPP, the Financial Crimes Unit, the Police Anti-narcotics Unit) in prosecuting cases involving king-pins in narcotics-related corruption
- Support to public education on the importance of constitutional reform and on the negative effects of corruption
- Support to capacity-building in civil society.

Can key areas or issues relating to anti-corruption initiatives be identified in terms of forming the basis for potential donor prioritization, sequencing, cooperation and coordination?

Law enforcement in relation to major players in political and narcotics-related corruption should receive priority. This should involve:

- Strengthening prosecutorial resources, investigative capacity and collaboration between key Jamaican institutions with external law enforcement agencies.
- Development of appropriate sentencing policy
- Fast-tracking relevant law reform, in particular in relation to plea-bargaining legislation.

Constitutional, legislative and political reform. In particular development and implementation of recommendations regarding:

- Restricting the power of the Executive
- Enhancing the independence of the Legislature
- Introduction of provisions for impeachment
- Strengthening of the Bill of Rights
- Political party and election campaign finance legislation
- Democratization of political parties
- Review of the first-past-the-post electoral system
- Whistle-blower protection
- Strengthening the system of public procurement by black listing companies and politicians found to be in violation, by implementing recommendations of the Auditor and Contractor Generals and by strict, transparent criteria on sole-sourcing.

Prevention measures, involving:

- Public education concerning the negative effects of petty, narcotics-related and political corruption
- Development introduction into all levels of the education system ethics related and integrity enhancing components
- Development and institutionalization of codes of conduct for public servants as well as for private sector and civil society entities.