



National Integrity Systems

Transparency International

Country Study Report

Jamaica 2003

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The *National Integrity Systems TI Country Study Report Jamaica 2003* was made possible with the funding of the UK Government's Department for International Development.



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Transparency International Secretariat

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Contents

Abbreviations	4
Executive Summary	5
Country Overview.....	6
Corruption Profile.....	7
The National Integrity System.....	9
Executive	9
Legislature.....	13
Electoral Commission	15
Political Parties.....	19
Supreme Audit Institution.....	20
Judiciary.....	22
Civil Service.....	25
Police and Prosecutors	28
Public Procurement	32
Ombudsman	34
Investigative/Watchdog Agencies	36
Media.....	40
Civil Society.....	42
Local Government	44
Anti-corruption Activities	46
Anti-corruption reforms – Overview	46
Donor Anti-corruption Initiatives.....	47
Discussion of Key Issues	49
The NIS.....	49
Effectiveness of Government and Donor Supported Activities	51
Priorities and Recommendations.....	52
Endnotes	54
References	61
Legislation.....	65

Table

Table 1 Police Officers Charged.....	30
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Abbreviations

CAFFE	Citizens Action for Free and Fair Elections
CBO	Community Based Organization
CIDA	Canadian International Development Agency
DFID	Department for International Development
DPP	Director of Public Prosecution
EAC	Electoral Advisory Committee
EOJ	Electoral Office of Jamaica
EU	European Union
FAO	Food and Agriculture Organization
FID	Financial Investigation Division
GCC	Government Contracts Commission
IBRD	International Bank for Reconstruction and Development (World Bank)
IDB	International Development Bank
IDP	International Development Partners
INCSR	International Narcotics Control Strategy Report
JCF	Jamaica Constabulary Force
JICA	Japan International Cooperation Agency
JLP	Jamaica Labour Party
JOCV	Japan Overseas Cooperation Volunteers
NDM	National Democratic Movement
NEPA	National Environmental Protection Agency
NHT	National Housing Trust
OAS	Organization of American States
PAC	Public Accounts Committee
PAHO	Pan American Health Organization
PIOJ	Planning Institute of Jamaica
PNP	People's National Party
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Fund for Population Activities
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
WHO	World Health Organization

Jamaica

Executive Summary

Petty corruption, political corruption and narcotics-related corruption in Jamaica are prevalent, undermine the quality of the country's long established democracy and retard its prospects for economic development. Corruption in its various forms derives, in the main, from public tolerance towards "beating the system", strong political traditions of patron clientelism, a 'winner-take-all' concentration of state power in the executive and Jamaica's strategic location on a main cocaine trafficking route to North America.

In combating corruption, Jamaica possesses an integrity system with many strong pillars. The media and civil society are two such increasingly formidable forces. Institutions like the judiciary, the Auditor General, the Contractor General, the National Contracts Commission, the Services Commissions and the Director of Public Prosecutions' office enjoy significant formal and some real independence. However the main and critical deficiency in the system is the ineffectualness of checks and balances on the overwhelming dominance of executive-prime ministerial power. This undermines the effective autonomy of all other institutions in the anti-corruption struggle, weakens the national integrity system, infects the citizenry with cynicism and disinclines the public from full engagement in the war against corruption.

Against this background of this central conclusion, the main recommendations of the report have to do with:

Firstly, the need to hasten and to deepen constitutional and political reform around consensus measures to strengthen the independence of Parliament, the service commissions, the rights of the people etc. in relation to the Executive.

Secondly, the urgency of enforcement of anti-corruption law against offenders from high society – in the public and private sector – as one means of reaffirming equality before the law, undermining popular conviction that the highly placed corrupt are untouchable and thereby helping to stimulate now dormant public involvement in the anti-corruption processes.

Thirdly, the implementation of a comprehensive program of public education and cultural change management on the issue of corruption.

Fourthly, a programme of building institutional capacity in a number of critical pillars of the national integrity system, such as, the Commission for the Prevention of Corruption, the Office of the DPP, the Resident Magistrates Courts, the Anti-Narcotics Unit of the Jamaica Constabulary Force.

Fifthly, the need to coordinate, harmonize and focus donor support on strengthening democratic governance in building capacity in the above mentioned key areas as well as in raising the level of effectiveness of the media, of civil society and of policy relevant research.

Country Overview

Jamaica, with a population of 2.6 million people, is a parliamentary democracy with the British monarch as ceremonial head of state represented by a Jamaican governor general. The country attained its independence in 1962 and since then has been a member of the British Commonwealth of Nations. Jamaica is a unitary state with a local government system highly dependent on the central government.

The country has strong democratic institutions. Before and after independence, governments have relinquished power and oppositions assumed office on five occasions in the course of 13 constitutionally mandated contested free and fair elections. Two parties – the Peoples National Party and the Jamaica Labour Party – have alternated in office over the almost 60 years since adult suffrage was won in 1944. Each of these two parties was founded by national heroes – Norman Washington Manley and Alexander Bustamante respectively – who dominated national politics and contributed to the development of a leader-centric political culture before and after independence. Other parties have emerged in the periods of decolonization and post-colonialism but none have attracted significant electoral support nor been able to win a single parliamentary seat¹.

Jamaica has a bi-cameral legislature², that is, a House of Representatives with 60 members of Parliament elected to represent single member constituencies and a Senate of 21 members, 13 nominated by the Prime Minister and 8 by the Leader of the Opposition. The Executive³ is constituted by a Cabinet chosen by a Prime Minister, the person best able to command the support of the majority of members of the House of Representatives. The members of the Cabinet must be members of the Legislature and are constitutionally responsible to it. In practice however, the Executive enjoys pre-eminence over the Legislature and the Prime Minister exercises constitutional powers and political authority which gives him overwhelming dominance over the entire governmental system.

Jamaica has an independent judiciary⁴ constituted by superior courts – the highest court being the Judicial Committee of the UK Privy Council, followed by the Court of Appeal and the Supreme Court – and inferior courts viz. the Resident Magistrates Courts and the Petty Sessions Courts. The superior courts have power to review the constitutionality of actions of the Executive and the Legislature as well as to provide redress for citizens who seek recourse for infringement of fundamental rights and freedoms.

Institutions enjoying meaningful independence of the Executive include the superior courts, the Service Commissions⁵, the Offices of the Auditor General⁶, the Director of Public Prosecutions⁷, the Contractor General⁸, the National Contracts Commission, the Commission for the Prevention of Corruption⁹.

The Public Service is established by statute and powers of appointment, promotion and discipline in relation to it are exercised by the Public Service Commission. The public service is responsible for administration under the political executive which is charged with policy making.

Jamaica has 3 television stations, three newspapers and eleven radio stations with national coverage. In addition, there are a number of community based cable TV stations, newspapers and radio stations. Foreign cable TV operates without restriction. None of the media is government-owned and the press enjoys a considerable measure of freedom.

Corruption Profile

The Commission for the Prevention of Corruption in Jamaica became operational in April 2003 and therefore there are as yet no comprehensive statistics on corruption. Available information and evidence suggests that there are three types of corruption which exist to moderate levels in Jamaica:

- Petty corruption
- Narcotics-related corruption
- Political corruption.

Petty Corruption

Petty corruption, understood as the use of position for illicit benefit on a small scale, is perceived to be widespread amongst minor functionaries interacting with ordinary citizens¹⁰. Traffic police, customs officers, civil servants in the offices of the Registrar General (for example, issues relating to birth and death certificates), the Registrar of Titles (for example, dealing with real estate and property titles), the Departments responsible for issuance of various licenses (for example, motor vehicle, drivers' etc) are most prone to petty corruption which exists on a broad scale. By and large, though based largely on anecdotal evidence, we can say that the public is tolerant of this type of corruption even though it may not be accepted as fully legitimate.

Narcotics-related Corruption

"Jamaica is a major transit point for South American cocaine en-route to the United States and also the largest Caribbean producer and exporter of cannabis"¹¹. The country is ranked in the top twenty in terms of global seizures of cocaine¹². Government sources estimate that up to 100 metric tonnes of cocaine are transhipped through Jamaica¹³. The London street value of this quantity of cocaine is approximately US\$5 billion. The authorities seized an average of 2.75 tonnes per annum in the 5 years 1998-2002 valued at US\$137.5 million¹⁴.

Establishing, developing and protecting transshipment of this volume and value of illicit narcotics involves corrupting a network of intermediaries, fishermen, port-workers, customs officials, air-line crew, police officers, security guards, prison warders, inner city gangs, community leaders etc. Though hard evidence is difficult to come by, there are credible allegations that local and constituency level leaders of the major political parties receive drug money. In 2001, a whole section of the police force was transferred from an entire parish because of corrupt relations with narcotics traffickers¹⁵. Some amount of money laundering through real estate and used car companies occurs but Jamaica is not regarded as a major money laundering state. The frequency and intensity of violent turf wars and reprisal killings amongst major drug gangs is testimony to the extent of narcotics-related corruption in Jamaica.

Political Corruption

Corruption related to partisan politics is widespread. It takes the form of patron-client relations whereby party functionaries at all levels reward their supporters with a disproportionate share of scarce benefits while, at the same time, penalising their opponents by disproportionate deprivation. This is the main means of maintaining loyalty amongst party activists a diminishing proportion of the electorate in a highly competitive two party system¹⁶.

This corruption infects public procurement whereby contracts are awarded, often not on merit, but as a reward for party support and in return for financial contributions. Partisanship has also contaminated the disposal of public assets, appointments to public office and offers of employment, particular in construction and on infrastructure projects¹⁷.

Elements in the private sector and politicians are involved in influence buying and influence selling respectively. In terms of the country's electoral system, the corrupt manipulation of election processes has been significantly reduced in recent years. A professional electoral administration has all but eliminated manipulation of electoral lists, constituency boundaries and electoral officials. However electoral corruption (for example, vote buying) does continue and voter intimidation is the norm in one party dominant (or 'garrison') constituencies.

Causes of Corruption

Among the major pre-disposing factors and causes of corruption in Jamaica are the following:

- A highly unequal opportunity structure
- Relatively poor pay and working conditions for public officials
- Inadequate internal controls in key institutions (for example, customs, police) and ineffective application of disciplinary sanctions for corruption
- A culture of tolerance of petty corruption and an attitude of cynicism towards the anti-corruption efforts of the authorities
- Jamaica's geo-strategic location in the cocaine supply route
- A political tradition of patron-client relations and inadequate checks and balances in a 'winner-take-all' political system
- An absence of strong, decisive leadership by example in dealing with corruption.
- A decline in volunteer support for the political parties
- Ineffective law enforcement in corruption related offences.

Effects of Corruption

- Reduced confidence in political leadership and in the criminal justice system
- Violation of human and constitutional rights to life, equality before the law, freedom from discrimination on grounds of politics
- Poor service delivery to ordinary citizens
- Unfair competition to the legal economy from the underground narcotics-related 'informal economy'
- A decline in moral standards, positive values and ethical conduct
- Growth in public cynicism and erosion of the legitimacy of governmental authority
- Additional transaction costs to local and foreign investors.

The National Integrity System

Executive

Section 68 of the Jamaican Constitution (Order in Council, 1962) states that “the executive authority of Jamaica is vested in Her Majesty”. That authority however is exercised on behalf of Her Majesty by the Governor General of Jamaica and is “subject to the provisions” of the Constitution. The Constitution in turn expressly provides that, except in cases where he is required to act “in his discretion”, or after consultation with some other person or authority, the Governor General shall act in accordance with the advice or recommendation of the Prime Minister, the Leader of the Opposition, the Cabinet, a Cabinet Minister or any other official or body as specified in the Constitution¹⁸. As such Her Majesty and Her Representative, the Governor General are properly regarded as the “formal” or “ceremonial” element of the Executive.

The effective Executive authority rests with the Cabinet constituted by the Prime Minister and not less than eleven Ministers who shall either be members of the elected House of Representatives or the Nominated Senate¹⁹. From the latter at least two but not more than four Ministers must be chosen. The Cabinet is designated by the Constitution as “the principal instrument of policy” and “is charged with the general direction and control of the Government of Jamaica”. In fulfilment of these functions, the Cabinet “shall be collectively responsible therefore to Parliament”.

Constitutionally and politically however, the Prime Minister is by far the most powerful figure in the Executive which in turn is the overwhelmingly dominant branch of the three arms of the state in Jamaica. Constitutionally, he is required to be the person “best able to command the confidence of a majority of the members²⁰” of the House of Representatives. Politically, this has meant that the Prime Minister is invariably the leader of the party that wins a majority of seats in the General Election to the House of Representatives and as well a majority of the ballots cast by the voting electorate. Given a strong leader-centric political culture²¹, the person appointed as Prime Minister exercises great power – certainly greater power than any other politician – as the political personality able to attract the most voter support.

This political reality is reinforced by the powers granted by the Constitution to the Prime Minister and to no one else. The most significant of these are the effective powers to:

- Appoint and remove Ministers²²
- Allocate and reallocate portfolio and departmental responsibilities to Ministers
- Cause dissolution of Parliament (even in circumstances where the majority of the elected House of Representatives may not agree)²³
- Appoint the Governor General²⁴
- Appoint the most important authorities in the governmental structure viz the Judicial Service Commission, the Public Service Commission and the Police Service Commission²⁵
- Appoint the Chief Justice, the President of the Court of Appeal²⁶
- Preside over all Cabinet meetings²⁷ and determine Cabinet agenda
- Appoint Custodes²⁸ (the Governor General’s representatives in each parish)
- Appoint Ambassadors, High Commissioners and other representatives of Jamaica abroad²⁹
- Give operational instructions for the deployment of the Jamaican Army – the JDF³⁰

- Exercise the functions of the Leader of the Opposition, vis-à-vis advice to the Governor General in circumstances where there is no one willing or able to accept an appointment to that office³¹.

This exceptional range of powers provided for the Prime Minister in the Jamaican Constitution, institutionalized within a Westminster framework, the extraordinary dominance exercised over the process of decolonization by two leaders of the two major emergent parties – Alexander Bustamante and Norman Manley³².

Not surprisingly given the emergence of not one but two dominant leaders alternating in office for 18 years and 4 General Elections before independence in 1962, the Constitution also established the office of the Leader of the Opposition in Chapter VI which deals with Executive Powers. He is “the member of the House of Representatives.. best able to command the support of a majority of those members who do not support the Government”³³. As such the office of the Leader of the Opposition is best considered in relation to the Legislature and its role in checking the majority as well as the Executive branch of the state. The Leader of the Opposition however shares in the Executive power to the extent that the Constitution requires that the Prime Minister consult the Leader of the Opposition in recommending to the Governor General appointments to key positions in the governmental structure. These include appointments to the Offices of Governor General, Chief Justice, President of the Court of Appeal and to the Public, Judicial and Police Service Commissions. While his advice need not be accepted by the Prime Minister the obligation to consult is unambiguous and is, in practice, followed. There have been public complaints by the Leader of the Opposition however that, from time to time, his advice has been ignored and that consultation amounts to a formality when there is a disagreement. Recommendations have therefore been made, and in some instances followed, that, in the appointment to sensitive positions requiring political neutrality, appointments ought to be made, not by the Prime Minister, but by the Governor General after consultation with both the Prime Minister and the Leader of the Opposition³⁴.

Moreover, the Constitution makes no provision for impeachment of the Prime Minister nor for any other officials of the State. This hiatus has been, on the initiative of the Leader of the Opposition, the subject of debate for many years. Arising from this debate involving not only the Parliamentary parties but civil society groups as well, a joint Select Committee of Parliament on Constitutional Reform has made recommendations for impeachment provisions to be incorporated in amendments to the Jamaican Constitution³⁵. These provisions would allow for impeachment of high officials, including the Prime Minister and other members of the Executive for abuse of power on the initiative of any three members of Parliament or of any three Members of Parliament pursuant to a petition signed by at least 1000 electors. The Joint Select Committee on impeachment is to be constituted by Parliamentarians nominated in equal numbers by the Prime Minister and the Leader of the Opposition under the chairmanship of the President of the Senate. Should the petition not receive majority support, it lapses. Should it however receive endorsement by at least 5 of 7, the matter would be determined by a specially established Impeachment Committee composed of Non-Parliamentarians. Should the “official” be found guilty, a range of sanctions would be available to the proposed Impeachment Tribunal, including removal from office and prohibition from holding public office in the future. The consensual nature of this recommendation reflects the substantial agreement within the political community that additional measures are required to hold public officials to account for abuses of power.

Cabinet

As indicated above, the Constitution provides for a Cabinet and stipulates that they must be drawn from the House of Representatives and the Senate. Following on the October 2002 General Elections and a fourth consecutive general election victory by the Peoples National Party, Prime Minister Patterson named a Cabinet of 17 (including himself). This current Cabinet is of the same size as that of the previous outgoing Government but somewhat larger than the Cabinets of the 1980s and 1990s. The Constitution also allows for the Prime Minister to appoint Ministers of State and Parliamentary Secretaries. Prime Minister Patterson has appointed eleven Ministers of State and one Parliamentary

Secretary. Of the 29 Cabinet Ministers, Ministers of State and Parliamentary Secretary, seven are from the Senate. This means that 22 of the thirty-four elected members of the House of Representatives drawn from the majority party are either Cabinet members or Cabinet members in waiting. The principle of "collective responsibility" restricts the freedom of members of Parliament who are Cabinet members from being critical of the government in Parliamentary debate and votes without relinquishing their Ministerial Office. As such the failure of the Constitution to stipulate an upper limit to the number of Cabinet Ministers and to the size of the Executive element in the legislature allows a Prime Minister so minded to support legislative independence of the Executive by the appointment of an "over-sized" Cabinet. This potential for abuse has attracted considerable critical comment so much so that Constitutional Reform proposals endorsed by both government and opposition, recommend the inclusion in the amended constitution an upper limit on the proportion of the Legislature which may hold office in the Executive³⁶.

In the discharge of their responsibilities, Ministers individually and the Cabinet collectively are required to determine policy but in so doing they "have a duty to give fair consideration and due weight to informed and impartial advice from civil servants..."³⁷.

The Constitution states that the Minister "shall exercise general direction and control over the work relating to (his) subject anddepartment, and subject ... to such direction and control, the ... work and the department shall be under the supervision of a Permanent Secretary...."³⁸. The Permanent Secretary is appointed by "the Governor-General acting on the recommendation of the public Service Commission"³⁹. The members of the Public Service Commission itself (including the Chairman) are appointed by the Governor General "acting on the recommendation of the Prime Minister after consultation with the Leader of Opposition". The civil service as a whole is headed by the Cabinet Secretary "appointed by the Governor General, acting on the recommendation of the Prime Minister from a list of public officers submitted by the Public Service Commission"⁴⁰.

By and large the Permanent Secretaries in Jamaica are not regarded as "party hacks" and are perceived, in the main, as public servants of some competence. In addition to the "formal" element – Her Majesty the Queen or the Governor General and the Cabinet and the Prime Minister, the Permanent Secretaries and (to a limited extent) the Leader of the Opposition, the Executive may be regarded as having an "official element" – the permanent civil service, and a "public order element" – the Director of Public Prosecutions, the Police Forces and the Armed Forces.

Service Commissions

The Constitution provides for a Judicial Service Commission, a Public Service Commission and a Police Service Commission. These Commissions vary in membership – the Judicial Service Commission; the Public Service Commission, a Chairman plus not less than three nor more than five members; the Police Service Commission – a Chairman plus not less than two nor more than four members. In the case of the Judicial Service Commission, as well as the Chairman of the Public Services Commission, the normal period of the three appointed members' tenure is for 3 years, whereas in the cases of the other two Commissions, it is five years.

In terms of appointment and removal however, all three Commissions have similar terms. The appointment to and removal from the Commission is made by the Governor General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition. Each Commission exercises powers of appointment, promotion and discipline over the public services, the police and, in the case of the Judicial Services Commission, over the Resident Magistracy and the Registrars of the Supreme Court and the Court of Appeal. Where the governor general, acting on the advice of the relevant commission proposes to discipline or to remove a particular officer, he must so inform that officer who may then apply for his case to be referred to the local Privy Council. The Privy Council, constituted of six members appointed by the Governor General after consultation with the Prime Minister, considers the case and then advises the Governor General "who shall then act in accordance with that advice"⁴¹.

It is clear from these provisions relating to the Service Commissions that Prime Ministerial power (albeit after consultation with the Leader of the Opposition) is yet again apparent. It should be noted however that the Commissions do constitute something of a buffer between the "political executive" and the day to day functioning of the "official" and "public order" element. How far this buffer insulates important public officials from partisan political interference in large measure rests on the quality of members appointed to the Commissions and to the Privy Council. By and large these have displayed some degree of integrity and independence even though from time to time there are credible allegations of Commissions subordinating regard for principle to political considerations⁴².

Monitoring of Assets and Disclosure Provisions for Ministers and High Level Officials

The Parliament (Integrity of Members) Act 1973 lay down provisions for the monitoring of assets and liabilities of members of the House of Representatives and the Senate (including Ministers of Government). These laws require the Members of Parliament to declare, on an annual basis, their income, assets and liabilities as well as those of their spouses and immediate family. The declarations are made to the Integrity Commission. This Commission established under the Act consists of the Auditor General and four other members "appointed by the Governor General after consultation with the Prime Minister and the Leader of the opposition"⁴³. These four are appointed from amongst members of the Privy Council, the president or past presidents of the Institute of Chartered Accountants of Jamaica, retired Judges of Appeal or the Supreme Court and persons who have held the post of Commissioner of Income Tax, Financial Secretary or Auditor General. The Integrity Commission is authorized under the law to make queries regarding an official's asset disclosure report.

Failure to make the asset declaration, to answer queries fully on a timely basis and to provide accurate information constitute breaches of the law. Instances of non-compliance may be reported to the Director of Public Prosecutions after report to the Parliamentary leaders⁴⁴. The annual reports of the Integrity Commission have from time to time however identified Parliamentarians in breach⁴⁵ yet only two prosecutions have ever been initiated and both of these were withdrawn by the DPP⁴⁶. The law does not require public disclosure. In fact there are heavy penalties provided for unauthorised disclosure of the assets and liabilities of Ministers, Parliamentarians and other public officials.

There is however an offence of "illicit enrichment" under the Corruption Prevention Act 2000. A person is liable for prosecution for this offence where a "public servant" including Ministers as Parliamentarians (a) owns assets disproportionate to his lawful earnings and (b) upon being requested by the Commission (that is, the Commission for the Prevention of Corruption) to provide an explanation as to how he came by such assets he (i) fails to do so; or (ii) gives an explanation which is not considered to be satisfactory.....". "Illicit enrichment" is defined as an act of corruption and, as such attracts on conviction of a first offence "a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or both"⁴⁷.

Conflict of Interest Rules

Section 41 (1) (f) and (g) provides for the seat of a member of either House (and therefore that of a Minister) to become vacant if he or she becomes party to a government contract or is a partner, director or manager in a firm which becomes party to a government contract unless the contract is disclosed to the House of Representatives or the Senate. Beyond this, Ministry Paper 19 of 2002 sets out principles governing the "Conduct of Ministers to which all members of the Government are expected to adhere". In this Ministry Paper it is stipulated that "Ministers must ensure that no conflict arises or appears to arise, between their public duties and their private interests"⁴⁸. In this regard, the rules allow for a Minister to retain membership in a trade union so long as they "take no active part in the conduct of union affairs, Give up any office they may hold in a union and receive no remuneration except a nominal payment, purely for the purpose of protecting the Minister's future pension rights"⁴⁹. Similarly, Ministers who are partners

in professional firms or other businesses should “on taking office, cease to practice or to play any part in the day-to-day management of the firm’s affairs”. They may however retain such partnerships and “any continuing financial interest in the firm would make it necessary for the Minister to take steps to avoid involvement in relevant decisions”. Directorships however, whether in a public or private company, whether honorary or remunerated must be resigned. More generally, on assuming office where it is appropriate for a Minister to retain a private interest, he should declare it to his Ministerial colleagues and “remain entirely detached” from any consideration involving that private interest”. The general principle is that Ministers “should either dispose of any financial interest giving rise to actual or perceived conflict or take alternative steps to prevent it”⁵⁰. In cases of doubt, the advice of the government’s legal officers should be sought and such cases should be brought to the attention of the Prime Minister for his directions.

Rules Concerning Gifts and Hospitality

The Ministry Paper dealing with the Conduct of Ministers is unequivocal:

“... 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 prevent this”.

This prohibition extends to family as well:

“no Minister or public servant shall condone the acceptance of gifts by any dependent member residing in their family household”.

It should be noted that there is no provision in Jamaica for a Register of interests or of gifts and hospitality. Credible allegations have been made concerning the use of public office – in both the “political” and the “official” executive – for benefit to one-self, family, friends or political party in the award of government contracts, in the issuance of licences, in the disposal of public assets⁵¹. The apprehension of offenders and the imposition of sanctions – criminal, civil or disciplinary – has been extremely rare at the Ministerial level and not very significant at other levels of the public service. These failures have given rise to widespread public cynicism concerning the lack of executive accountability in respect of acts of corruption.

Legislature

The power to “make laws for the peace, order and good government of Jamaica” is vested in Parliament “subject to the provisions” of the Constitution. The Parliament is composed “of Her Majesty, a Senate and a House of Representatives”⁵². The Senate consists of 21 members, 13 of who are appointed by the Governor General on the advice of the Prime Minister and the remaining 8 by the Governor General on the advice of the Leader of the Opposition. The House of Representatives is made up of 60 members, each of whom is elected by single member constituencies in a first-past-the-post electoral system. The normal maximum life of each Parliament is five years though there is provision for the extension of the five year period to a maximum extra period of two years by Parliament itself “at any time when Jamaica is at war”⁵³. Within the five year period of course, the Prime Minister reserves the right to call a General Election at any time. In practice, few Jamaican Parliaments have run their maximum term as successive Prime Ministers have called elections at varying time periods within the five year maximum.

In formal terms, the Constitution stipulates that the Executive, specifically the Cabinet, is “collectively responsible” to Parliament⁵⁴. The Constitution also makes provision for the House of Representatives to remove the Prime Minister from office by an affirmative vote of a majority of its members in support of a resolution that “the appointment of the Prime Minister ought to be revoked”. This revocation shall not take place however if, within three days of the Governor General consulting him about such a resolution, the Prime Minister requests that the Governor General dissolves Parliament instead⁵⁵. In this sense, the ultimate means whereby Parliament may hold the Head of the Government and by extension, the Cabinet to account is vitiated. Moreover the very existence of this provision

whereby the Prime Minister can respond to a revocation resolution by terminating the parliamentary life of MPs constitutes an effective deterrent against the usage of that power by Parliament. Needless to say Parliament has never passed a vote of no confidence in either a Prime Minister or a government.

In addition to power to pass a vote of no confidence either in the Prime Minister or in the Cabinet, other mechanisms exist whereby the Legislature may check and balance the power of the Executive:

- Through questions put to Ministers by MPs
- Through motions put by backbenchers
- Through debates on reports from various public departments, agencies and corporations which are required to be laid on the Table of Parliament on an annual basis
- Through debates on bills submitted by the Executive to Parliament and the submission of amendments to these Bills, in the main through deliberations of Joint Select Committees
- Through the moving of censure motions on the performance or conduct of members of the Executive.

By and large there is consensus among Jamaican political parties and in civil society that Parliamentary checks on the Executives are inadequate⁵⁶. This has led to a considerable number of innovative proposals in recent times. For example, the Leader of the Opposition proposed as one means of strengthening Parliamentary oversight that chairpersons of select and standing committees of Parliament should be drawn from the opposition and while the governing party would preserve majority membership on these committees, ministers would be debarred from membership⁵⁷. This it is argued would enhance the effectiveness of these committees without derogating from the majority party's ability, in the final analysis, to govern. Whilst the proposal has not attracted bi-partisan agreement, others have and are at varying stages of implementation.

For example, all committees of Parliament are now open to the media and to the public. Questions from the opposition and from government backbenchers are now more numerous; there is greater attentiveness to answering questions on time and more private members' motions are being debated within each Parliamentary session⁵⁸. Recently, censure motions have been fully debated though ultimately defeated⁵⁹. The more important items of proposed legislation are now invariably subject to the scrutiny of Joint Select Committees⁶⁰. Representatives of interested bodies, private sector organizations and civil society groups appear before the Joint Select Committees to defend their submissions on particular Bills and, most importantly, the Executive has felt constrained to accept and amend proposed legislation in response to legislative and extra-parliamentary recommendations⁶¹. The responsiveness of the government to the legislature and to civil society has undoubtedly increased in recent years but is still regarded as inadequate.

National Budget

In the area of the national budget, the role of Parliament is particularly ineffective even though in formal terms all areas of the Budget are presented to Parliament. The constitution requires that "before the end of each financial year"⁶² the Minister of Finance prepares estimates of revenue and expenditure and that these be laid before the House of Representatives for debate and for approval. Parliamentary debate and approval is invariably a formality as rarely are amendments to the budget accepted and the legislature rubber-stamps the proposals from the Executive.

Recently however much public dissatisfaction has been expressed with this process and meaningful proposals made to make the budgetary process less dominated by the Executive and more transparent and accountable. Discontent crystallised and proposals emerged in response to nation-wide protests in April 1999 following pre-emptory increase in the fuel tax imposed by the Minister of Finance. In the wake of the protests, the Prime Minister appointed a broad-based committee composed of representatives of the private

sector and civil society with broad terms of reference which included recommendations to ensure "greater access...to government". The Committee recommended, among other things, that "pre-budget consultations be held with different sections of the people (through the media and in face to face meetings) in which government would lay before the people the broad options it may be considering in respect of revenue and expenditure measures. On this basis final government decisions would be informed by the view of the public"⁶³. It also proposed that Revenue and Expenditure Estimates be tabled simultaneously and "the greatest ...sensitivity (be) shown to the people's condition and urged that in the budget debate "the language used...be easily understood by persons from a range of educational levels"⁶⁴. The government accepted these recommendations in part and agreed to establish a Taxation Committee through which taxation options would be explained and explored with the interested public, prior to Parliamentary debate and approval. This agreement however has not been implemented and the budgetary process has continued to be characterised by limited pre-budget consultation, executive dominance and post-budget damage control as various sectors express dissatisfaction with the budget.

Similarly other recommendations to strengthen the independence of Parliament vis-à-vis the Executive have been left pending for many years. In the main these are to be found in proposals which attracted consensus support on the Constitutional Commission and on the Joint Select Parliamentary Committee on Constitutional Reform. Amongst these are recommendations to:

- Introduce an independent element in the Senate whose appointment process would reflect a civil society presence and be independent of the leadership of the government and opposition parties⁶⁵
- A limit on the proportion of the members of both Houses who may be members of the Executive and thereby bound to it by "collective responsibility" and incapable of strengthening independent legislature and oversight of the Executive⁶⁶
- Introduce impeachment provisions and processes in which Members of Parliament, through a Joint Select Committee on Impeachment, would investigate a complaint against persons primarily exercising executive authority, and determine whether a prima facie case has been made regarding the commission of an impeachable offence⁶⁷.

The continued delay in implementing these and other measures to strengthen the role of the Legislature as a check and balance on the Executive is a major failure of the Jamaican national integrity system.

In addition to the formal constitutional and institutional constraints on the power of the Legislature vis-à-vis the Executive there are political cultural factors which deserve notice. Perhaps the most important of these is the leader-centric traditions of Jamaican politics. The party-leader whether in government as Prime Minister or in the minority party as Leader of the Opposition is the main magnet for popular party support and the primary determinant of the party's electoral fortunes. As such he exercises power beyond the formal provisions of the party constitution not least of all in determining election candidacy and ministerial careers⁶⁸. Thus Parliamentary 'back-benchers', whether on the government or opposition sides, are very reluctant to demonstrate any independence of the party leader lest this damage prospects for candidacy in the next election or for promotion to (or retention in) the Cabinet. Hence whilst institutional and constitutional changes are of importance in strengthening Parliament, attention needs to be paid as well to reducing leader-centrism and legitimating independent thinking in the political culture.

Electoral Committee/Commission

The Second Schedule of the Jamaican Constitution deals with the number and boundaries of constituencies in the country. The Jamaican Parliament has delegated such responsibilities pertaining to the constituencies, polling divisions and boundaries to the

Electoral Advisory Committee (EAC). However, the EAC must act in accordance with the stipulated guidelines enshrined in the second schedule of the Constitution. For instance, paragraph 2 and sub-paragraph 1 of the schedule stipulates that the boundary of a constituency shall not cross the boundary of a Parish as delimited by the Counties and Parishes Act or by any law amending or replacing that law.

Therefore clear guidelines exist which the EAC must follow in executing its tasks. The norm is that the EAC's decisions would normally be accepted by Parliament.

The Electoral Advisory Committee was created by Parliament in 1979 by virtue of the Representation of the People (Interim Electoral Reform) Act. Its responsibilities include to:

- Protect the electoral process from the immediate direction, influence and control of the Government, which may influence its functioning to the detriment of persons with opposing views who may wish to participate in the process
- Select and provide proper staffing for the efficient operation of the Electoral Office and ensure that the Electoral Office functions and operates a system which supports free and fair elections, one man one vote, same man same vote
- Advise the Director of Elections on policy and operations since in law the Director has the legal authority and responsibility for operating the electoral system and conducting elections.

If the Director of Elections considers advice from the EAC to be unacceptable and therefore does not propose to act on it, then the Director is required by law to report this position to Parliament.

The EAC is made up of two persons nominated by the Prime Minister, two nominated by the Leader of the Opposition, 3 independent voting members and the Director who has no vote.

The EAC was set up as an interim body, in order to remove from the ruling political party the responsibility for electoral matters. An Electoral Commission was then contemplated and is to be established in the Constitution, but this step, along with other proposals for constitutional reform, is yet to be implemented.

In budgetary matters, the Electoral Office of Jamaica is treated as a Department of the Ministry responsible for electoral affairs and is required to seek approval for each item of expenditure. The EOJ acts much like a Department of the EAC. The EOJ currently is treated as a part of the Ministry of National Security. There is no consistency as to which Ministry will address the budgetary matters of the EOJ. In the past 6 years, the EOJ budgetary matters moved through 3 separate Ministries starting first with the Ministry of Health, then the Ministry of Transport and Works and currently it is with the Ministry of National Security⁶⁹. This procedure has caused serious delays in meeting deadlines in the performance of its functions as some Ministries were more committed and more accommodating to the needs of the EOJ than others.

The EOJ obtains its funding through a Ministry but it operates independently since there is no oversight with the exception of budgetary matters. The independence of the EOJ is crucial as the scope of their operations have very far-reaching implications for Jamaica's democracy. The officers of the EOJ must not only be, but must be seen to be, persons of the highest integrity and capability, in order to operate in a political climate without fear or favour.

The EOJ must therefore be given the necessary resources and the flexibility to enable it to attract and retain highly qualified personnel; to put in systems to achieve and maintain acceptable levels of performance and to implement decisions free of the cumbersome bureaucratic procedures for the release of funds. The EOJ received its proposed budget of 750 million for the fiscal year 2002. This meant that the EOJ had adequate funds going into the October 2002 general elections.

In November 1993, the Cabinet accepted the following proposals from the Committee:

- That the Electoral Commission should be made a corporate body

- That the emoluments of the Director of Elections should be of the order of \$750,000 to \$1 million
- That the tenure of the office of Director of Elections should be increased from eighteen months to seven years
- That should an incumbent Director cease to hold office for any reason prior to the expiry of his term, the tenure of his successor should be initially be for the full term provided under the Act, and not restricted to the un-expired portion of his predecessor's term.

These decisions have facilitated the Committee in finding a suitable person to be Director of Elections.

The law as it stands requires a full enumeration exercise every four (4) years, with an updating exercise between each full enumeration. The clear purpose behind this provision in the law is that persons attaining voters' age are given a reasonable opportunity to be enumerated and registered, so that at the time of an election they are qualified to vote. Prior to the October 2002 elections, there had been serious deficiencies in the enumeration process and in the preparation of a good, clean voters' list.

The problems which have been encountered are, inter alia:

- Failure to contact the citizen
- Poor quality of photographs and fingerprints
- Poor handwriting of enumerators
- Failure of the full enumeration team to be present at the home of the citizen during the enumeration exercise
- Loss of or mislaying of enumeration forms
- Improper cancelling of enumeration forms
- False names on list (padding of list)
- Under-age persons enumerated (padding of list)
- Multiple registration of the same person (padding of list)
- That voters long deceased or who have emigrated remain on the list.

In 1997 there were 1,500,000 eligible voters and 1,182,294 registered voters. This meant that 317,706 eligible voters did not opt to be registered so that they could exercise their franchise. However, by 2002, the eligible voters were 1,600,000 and the registered voters figure stood at 1,301,379. This meant that from the 1997 eligible voters' figure of persons who opt not to be registered, 119,085 more eligible voters opted to get registered in order to have their option to exercise their franchise.

In, Jamaica the voters' list has always been a subject of great controversy and allegations of fraud in its preparation have come with each election.

The following complaints about the problems with the voters list include:

- Elector wrongly listed in a polling division or constituency in which he or she does not reside
- Unqualified persons listed as electors
- Failure to exhibit publicly the list in sufficient time to deal with objections
- Elector is enumerated but is left off official list
- The production of supplementary lists by Statement of Changes to be official list which has been a recipe for chaos.

Investigations carried out by the EAC revealed that fingerprints provide the most accurate and convenient method of identification for the preparation of a clean voters' list.

As such the EAC therefore decided that:

- The system to be implemented should have fingerprints as the critical item to be used for identifying the applicant for registration and for the preparation of a clean voters' list. In this regard steps have been taken to acquire the necessary equipment to carry out this exercise. However by 1997, there were severe difficulties experienced with the implementation of such a system and thus fingerprinting as a basis to compile the voters list was abandoned
- There be publication of the official list at least once every six (6) months and that the list to be used for any election be the published list which is not more than six (6) months old and is current (not less than five (5) days before nomination day)
- The power given to the director of elections to amend the published list by a statement of change should be removed.

The 1997 General Election⁷⁰ in Jamaica revealed the following weaknesses in the system resulting either from the inadequacies and inefficiencies in the administration or through opportunities that existed for the manipulation of voting.

The following were some of the problems experienced⁷¹:

- Last minute withdrawal by polling station officials because of fear of their lives or their safety or because of inducement
- Election materials and voters' list did not reach the polling stations on a timely basis
- Poor level of officiating by reason of inadequate education and/or lack of proper training of some of the electoral officials
- Failure by electoral officials to record the process, properly or at all in accordance with the requirements of the law
- Fraudulent behaviour on the part of electoral officials
- Violence or threats of violence to electoral officials and/or voters to mark ballots or to give up ballots for marking
- The use of violence or threats of violence to restrict citizens to their homes or to prevent them from attending polling stations to vote
- Open voting whereby legitimate electors are intimidated, or feel intimidated, thus preventing them from casting the ballot for the candidate of their choice
- Stealing of ballot boxes. Some of these boxes turn up later at counting stations with ballots spoilt or additional ballots placed therein, and are counted.

The limited scale and impact of these irregularities were such as to allow the Political Ombudsman to speak of overall improvement of the 1997 General Elections over those of 1993 and to conclude that "the results of the 1997 General Elections must be accepted"⁷². In addition the Carter Center which provided a team of international observers found that the 1997 elections adequately expressed the collective will of the Jamaican people⁷³.

Nevertheless the catalogue of problems, those relating to organizational shortfalls were addressed by the October 2002 elections with appropriate legislative provisions coupled with proper systems and training.

The following preparations were made in time for the October 2002 general elections:

- Enumeration data properly completed and audited and entered into the EOJ computer data-base
- Preliminary list produced and displayed three (3) weeks at the Electoral offices and at other public buildings. Copies provided to political parties
- Allowed three (3) weeks to process omissions and objections from anyone

- After verification and approval of the data received, ensured that an effective security mechanism is triggered to restrict access to the data
- Printed official voters' list which was approved by the EAC.

On the basis of this work, the 2002 voters' list has been regarded as the cleanest ever and the preparations for elections among the most trouble free. The EAC and the EOJ enjoy considerable confidence among stakeholders in the electoral process. The Carter Center concluded that the 2002 Elections reflected "the strength of purpose of the electoral authorities, security forces and political party leaders in promoting a peaceful election"⁷⁴.

Political Parties

Jamaica has two major political parties – the Peoples National Party and the Jamaica Labour Party. Since the attainment of universal adult suffrage in 1944, there have been 14 General Elections of which the Jamaica Labour Party has won 6 and the People's National Party - currently returned to office following the October 2002 elections - has won 8. Apart from the first general election held in 1944, no candidate whether Independent or another party has won a seat in any Jamaican general elections. The PNP and the JLP between them have consistently won over 95% of the popular vote. Jamaican elections have therefore produced single party majority Parliaments and single party Executives more consistently than any other modern democracy. Moreover, governing parties have yielded power to the opposition, following elections, on 5 times during the last 50 years. This record of constitutional transitions combined with an absence of military coup, political assassination or one party dictatorship marks Jamaica as distinctive amongst both established and emerging democracies.

Nevertheless there are important deficiencies in the political parties and in the country's democratic processes⁷⁵. In the first place, support for the political parties as well as voter turnout in general elections has been declining in the elections of the 1990s and in 2002. This is consistent with a global tendency reflecting in large measure alienation of an information age citizenry from industrial age parties and party systems. In addition however there are factors specific to Jamaica contributing to this decline. These include excessive rivalry between the two major political parties (contributing to a history of election-related violence), widespread perception of political corruption attached to both major parties, and underdeveloped levels of internal party democracy. The alienation of important segments of the population – particularly amongst the middle class and the youth – has therefore diminished the interest-aggregation and interest articulation capabilities of the Jamaican parties so evident in the earlier decades of their emergence and maturation between the 1940s and the 1970s.

To compound matters, the Jamaican parties are almost completely unregulated. There are no requirements under the law for them to be registered and hence no statute based standards for them to observe. The minimal election related obligations required of their candidates during elections – viz to declare election related expenses within a specific time period – are honoured in the breach more than in the observance⁷⁶. There is no campaign or political finance law and therefore no requirement for political parties to have their accounts inspected, to disclose sources of income or to limit levels of expenditure. This lack of financial transparency and accountability to party members, much less to the public, has been a matter of increasing concern as election-related expenses have grown and the influx of illicit drug money into the country has increased. Urgent needs are therefore a party registration regime and political finance regulations designed to suit Jamaica's circumstances⁷⁷.

Equally there is a need for a reformed electoral system which may preserve the advantages of the present first-past-the post electoral arrangements in facilitating stable parliamentary majorities whilst facilitating encouragement and representation of significant minorities outside of the two major parties. Hitherto the efforts of third parties to mobilise electoral support from the growing bloc of voters "uncommitted" to either the PNP or the JLP have failed. There are no doubt many reasons for this. One such however is the long

noticed and well established tendency of the single member plurality system to disadvantage minority parties. Another is the lack of funds and the absence of access to the state resources for new players who have sought to enter the political arena. Hence, large sectors of the population which would wish to see the backs of the PNP and the JLP do not vote, thereby facilitating the continued alternation in power of the two major parties with diminishing bases of electoral support and rising levels of popular alienation. One positive benefit of this unhealthy and increasingly dangerous situation is no doubt the growth of community-based organizations and civil society groups to give voice and representation to those alienated from traditional party politics⁷⁸. But this is not adequate. There is an urgent need for party and electoral system reform if Jamaica is to preserve from decay its considerable democratic foundations and to renew, as well as to transform, its political parties into instruments of modern democratic governance.

Supreme Audit Institution

Chapter 8 of the Constitution stipulates that all revenues of Jamaica are paid into a "Consolidated Fund"⁷⁹. The Constitution further specifies how money may be moved out of the Consolidated Fund. The Minister of Finance must prepare a budget showing estimates of revenue and expenditure for each "financial year" (April 1-March 31). The estimates are tabled in the House of Representatives and must be debated and approved by the House. Proposed expenditure is in the form of an "Appropriation Bill", which when passed becomes the Appropriation Act. The Minister of Finance may then issue "warrants" permitting payments out of the Consolidated Fund. Before the Appropriation Act is passed the House of Representatives may allow expenditure of a carry-on allowance known as a "vote on account".

The Minister of Finance can authorize payment for unexpected expenditure through a Contingencies Fund. He may also get approval from the House of Representatives for additional expenditure during the financial year by introducing Supplementary Estimates.

Chapter 8 of the Jamaican Constitution also provides for the appointment of an Auditor General. Section 120 of the Constitution stipulates that this appointment is made by the Governor General "in accordance with the recommendation of the Public Service Commission". However before action on that recommendation, the Constitution obliges the Governor General to inform the Prime Minister of the nature of that recommendation and "if the Prime Minister so requires", the Governor General shall refer the original recommendation and one subsequent recommendation back to the Public Service Commission "for reconsideration". The Auditor General is responsible for auditing the accounts of all Government departments except his own. The audit of the Auditor General's department is carried out by the Minister of Finance. "His duties involve bringing to attention extravagant or unauthorized expenditure, irregularities in official accounts and improper variations from the estimates approved by the House"⁸⁰. To fulfil these responsibilities the Auditor General and his staff have access to all accounting records, documents, books, reports etc.

The Auditor General is subject to the direction and control of no other person or authority. His salary is secured by the Constitution and he can be removed from office only on the recommendation of a specially constituted judicial inquiry.

The Constitution guarantees the independence of the Auditor General. He can only be removed from his office by age or infirmity. In practice, the appointment of the Auditor General is based on professional merit although no such stipulation can be found in the Constitution.

As a part of his mandate, the Auditor General audits all expenditures under the ambit of the Central Government and Statutory Bodies. His office also audits all projects in Jamaica, such as those of the IDB, World Bank and UNDP projects. These audits are conducted annually. All the audited reports are up-to-date. The last completed report was for the financial year 2001/2002 and it was submitted on December 31, 2002, one full day before the deadline.

The Office of the Auditor General obtains its funds from the Consolidated Fund and follows the procedures like any other Ministry, with its allocation coming from the Ministry of Finance. The 2002 budget allocated to the Office of the Auditor General was 136 million and it rose to 138 million for 2003. By and large, the funds have been adequate to carry out the operations of the Office. The staff complement of the Office is 173 and all these positions are filled and operational. In 2003, 25 of these posts were reclassified and upgraded⁸¹. There is however a definite need to upgrade and to sustain the training of officers in the Auditor General's Department to keep abreast of modern developments in areas such as : Value for Money Audits, Information Technology Audits and Environmental Audits.

Whenever the Auditor General audits an agency or Ministry, its audited report is first sent to the head of the agency requiring a response to resolve the issues highlighted. If the response is not satisfactory then it is submitted to Parliament who in turn submits it to the Public Accounts Committee. The Public Accounts Committee then calls the Head of the agency and questions him or her about the shortcomings and offences. It is at this point that greatest transparency is reflected in the process as it often reaches the attention of the public via the media. Over the years, the Public Accounts Committee has highlighted a number of instances of mismanagement and misappropriation of public funds.

For example, the Auditor General reports 2000-2002 demonstrated a number of irregularities in a number of government agencies:

Ministry of Land and Environment – It was noted that an ex-employee of Government continued occupancy at Armada Apartments for which he had accumulated rental arrears of \$80,800 up to 31st October, 2000⁸².

Natural Resources Conservation Authority – the report mentioned that although one of the Authority's fully maintained motor vehicles was assigned on a full-time basis to an officer for almost 4 years he was also paid motor vehicle upkeep allowance amounting to \$630, 829 for the same period⁸³.

Ministry of Tourism and Sports – In early 2000 the Ministry reported certain financial irregularities at the Jamaica Vacations/Jamaica Reservations Office located in Miami involving amounts totalling US\$204,305 (approximately J\$9M). This occurred by way of duplicated refunds and forged signature on cheques. This person is no longer employed by the agency⁸⁴. There were no indications that 2 contracts involving the payment of fees of up to \$87,274,800 per annum had the required Cabinet approval. Also there was no evidence that the awards of 4 contracts valued at \$9, 223, 444 were based on competitive tenders as stipulated by Government Procurement Procedures⁸⁵.

Ministry of National Security and Justice – A comprehensive audit disclosed suspected fraudulent transactions involving approximately \$8.1M. These occurred between January 1997 and March 2000⁸⁶.

Ministry of Local Government – revenue totalling \$1.6M which represented market fees collected was reported missing⁸⁷. Irregularities relating to unauthorized disbursement of parochial funds totalled approximately \$2.4M⁸⁸.

Jamaica Customs – payment totalling \$862,100 for refurbishing the Department bathrooms showed no indication that Government stipulated procurement procedures had been followed⁸⁹.

Accountant General – proceeds of loans amounting to US\$9,015,200 received from an overseas EXIM bank and \$63M received in kind from a local commercial bank and which related to expenditure of a Government project and acquisition of motor vehicles for a government department, respectively, were not paid into the consolidated fund bank account as required by law. This resulted in the understatement of government's revenue and expenditure⁹⁰.

Inland Revenue – lodgements totalling \$28m made by collectorates over period 1999-2002 were not yet credited to the Departments bank account⁹¹.

Public Accounts Committee

The Auditor General is required to submit his reports to the Speaker who then lays them before the House of Representatives for examination by the Public Accounts Committee.

The Public Accounts Committee (PAC) is a Standing Committee of Parliament and is the only committee chaired by a member of the opposition. It is an independent body but the majority of its members are government members. Decisions within the Public Accounts Committee are made by consensus. The Public Accounts Committee submits annual reports to Parliament. These reports are then tabled in Parliament and debated.

In 2003 the PAC questioned the unauthorized expenditure of \$354,777 by EOJ to purchase first class air tickets for officials to travel abroad as election observers⁹².

A report prepared by the Auditor-General, covering the financial year 2000/2001, revealed that on six occasions economy class tickets were sent by overseas organizations to the Electoral Office inviting officials to observe elections in other countries.

It was noted that these tickets were upgraded to first class at a total cost of \$354,777. The PAC claimed that such actions did not represent justifiable and economic use of public funds.

The Director of the EOJ argued that because the EOJ and the EAC operated at arms length from the government, he did not apply to the Finance Minister for permission to travel first class. This and other similar cases highlight strengths and weaknesses of the Audit Institution in Jamaica. In the first place the Auditor General's Department does unearth even relatively minor infractions and improprieties in public expenditure. Moreover, the fact that the PAC is open to the media and to the public allows for exposure of irregularities and for pressure to be brought to bear on rectification. On the downside however is the fact that the Auditor General and the PAC can only act ex post, that is, after wrong has been done with the public accounts. In addition, neither the Auditor General nor the PAC has executive power. They can only recommend corrective measures. Very often no corrective action is taken by the Ministry, Department or statutory body concerned. In those circumstances, neither the Auditor General nor the PAC has the power to impose sanctions.

Nevertheless, recent hearings by the PAC, and in particular, the aggressive leadership provided by its Chairman, Mr. Audley Shaw the opposition shadow Minister of Finance, has led to the exposure of a series of credible allegations of corrupt use of public funds. One such has involved Operation Pride, a government low income housing programme, in relation to which charges have been made that tens of million of dollars of public contracts have been corruptly awarded to contractors connected to the ruling Peoples National Party and that huge sums of money have been paid for work not done⁹³. Whilst the Auditor General and the PAC have by themselves not been able to sanction this conduct, having only recommendatory powers themselves, massive media coverage aroused public disquiet and police investigations have led to the matter being referred to the Director of the Public Prosecutions⁹⁴. Charges have not yet been laid but are anticipated thereby illustrating that while not able to take corrective actions directly, the Auditor General and the PAC can certainly set in motion a process which increases the likelihood of punitive or corrective action.

Judiciary

Chapter VII of the Constitution establishes the Judicature in a hierarchical structure from the highest to the lowest as follows:

- Her Majesty in Council (or the Judicial Committee of the U.K. Privy Council)⁹⁵
- The Court of Appeal⁹⁶
- The Supreme Court⁹⁷

In addition to these superior courts established by the Constitution, there are inferior courts established by the statute as follows:

- The Resident Magistrates Courts (provided for in the Judicature (Resident Magistrates) Law
- The Petty Sessions Courts (provided for in the Justices of the Peace Jurisdiction Law).

At the Superior Court level there are a number of Special Courts, viz: Revenue/Commercial Court, Gun Court, Family Court. The head of the judiciary is the Chief Justice who (along with the President of the Court of Appeal) is appointed by the Governor General "on the recommendation of the Prime Minister after consultation with the Leader of the Opposition".

Judges of the Court of Appeal, the Supreme Court and the Resident Magistrates courts are appointed in similar fashion viz: "on the advice of the Judicial Service Commission". The Supreme Court consists of the Chief Justice, a Senior Puisne Judge and "such number of other Puisne Judges as may be prescribed by Parliament". At present there are 10 such Judges. The Court of Appeal consists of a President, the Chief Justice (ex-officio), three other judges and "such number, if any, of other Judges as may be prescribed by Parliament". At present there are 6 Judges of Appeal in addition to the president. At the inferior court level there are 9 senior Resident Magistrates and 37 Resident Magistrates.

To qualify for appointment as a Judge of the Court of Appeal or of the Supreme Court, one has to be an attorney with at least 10 years practice at the bar. To qualify as a Resident Magistrate one has to be an attorney with at least five years practice. Justices of the Peace are appointed by the Governor General on the recommendation of the Minister of Justice. Such persons need no professional qualifications but are required to be literate, of good character and of "unquestioned integrity". There is no requirement for judges at any level of the Jamaican judiciary to undergo confirmation hearings or ratification by any authority other than the Judicial Service Commission.

The Constitution makes provision for appeal from the Jamaican Court of Appeal to the UK Judicial Committee of the Privy Council. This provision of the colonial period was retained in the Jamaica Independence Constitution. However, unlike the provisions relating to the Supreme Court and to the Court of Appeal, the section establishing the UK Privy Council as the highest court is not entrenched and therefore might be amended or removed by Parliamentary majority vote. Since 1970 the issue of termination of appeals to the Judicial Committee and the establishment, in its place of the Caribbean Court as the final court of appeal has been placed on the public agenda by Caribbean Community states as well as by the Organization of Commonwealth Caribbean Bar Associations⁹⁸. In 2001 after years of discussion and fine tuning of the Agreement establishing a Caribbean Court of Justice all CARICOM states signed the agreement and so far eight have ratified⁹⁹. Recently however the consensus on the necessity for this change has been ruptured, particularly in Jamaica, and currently the matter of withdrawal from the Privy Council and the establishment of a regional court with appellate jurisdiction is an issue of considerable public debate¹⁰⁰. In the meantime, the Privy Council remains Jamaica's highest court of appeal.

Independence of the Judiciary

Section 20 of the constitution accords to any person "charged with a criminal offence" the right to "a fair hearing within a reasonable time by an independent and impartial court established by law". The provisions relating to the security of tenure and more specifically, to the removal of judges are designed to reinforce the independence of the judiciary. Their salary and conditions of service may not be altered to their disadvantage during their tenure. In addition, a judge of the Supreme Court or of the Court of Appeal "may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind) or for mis-behaviour"¹⁰¹. In the case of the Chief Justice and the President of the Court of Appeal only the Prime Minister may represent to the Governor General the question of removal on the above grounds. In the case of other judges of the superior courts, this Chief Justice and the President of the Court of Appeal

may initiate the process in respect of the Supreme Court and the Court of Appeal respectively. Following this representation, the Governor General shall appoint a three person Tribunal of Commonwealth High Court judges or ex-judges selected on the advice of the person initiating the process, whether the Prime Minister, the President of the Court of Appeal or the Chief Justice as the case may be. Thereafter that Tribunal shall enquire into the matter, report to the Governor General "and recommend to the Governor General whether he should request that the question of the removal... should be referred by Her Majesty to the Judicial Committee". If the Tribunal so recommends, the Governor General shall refer the matter and thereafter act in accordance with the Judicial Committee's recommendation. Since Jamaica's independence 40 years ago, the question of the removal of a Chief Justice, a President of the Court of Appeal or a judge of the superior courts has never been raised and therefore the special provisions to protect independence of the judiciary never been activated.

The security of tenure of the Resident Magistrates is less protected. Nevertheless, a Resident Magistrate may not be removed by direct political interference or overt political pressure. Power "to remove and to exercise disciplinary control over" Resident Magistrates rests with the Governor General "acting on the advice of the Judicial Service Commission"¹⁰². The Constitution also provides that before the Governor General can act on such advice he must first inform the Magistrate who may apply for his case to be referred to the local Privy Council. "The Privy Council shall consider the case... advise the Governor General what action should be taken... and the Governor General shall then act in accordance with such advice". This process clearly offers some degree of protection for the independence of the Resident Magistrate though not so much as that of a judge of the superior court. It needs to be added as well that the promotion of a Resident Magistrate to the Supreme Court Bench is done by the Judicial Service Commission. Nevertheless the issue of "political" considerations influencing judgements of Resident Magistrates has been raised by an opposition Senator and, controversially, the real independence of magistracy questioned¹⁰³.

Judicial Review

The Constitution explicitly provides for judicial review of executive and legislative action in cases where a person alleges infringement of fundamental rights and freedoms. The power is implicit however in so far as all arms of the state are required to act in accordance with the constitution. The judicature is that branch of the state power authorized to interpret when and whether breaches of the law – including constitutional provisions – occur. Citizens have the right to sue the Jamaican government and do file suit regularly against the state. Indeed, the superior courts frequently hand down judgements against the government and award damages in favour of citizen-plaintiffs. Between 2000 and 2002, the courts handed down over 100 judgements against the state and over J\$90 million in damages to aggrieved citizens¹⁰⁴. Moreover, the courts have demonstrated an ability to rule against powerful economic interests in cases involving allegations of infringement of workers' rights¹⁰⁵.

Constraints facing the Judiciary

The Judiciary is constrained by an inadequacy of resources devoted to the justice system. This historic deficiency is dramatically reflected in the 2003/2004 expenditure budget. The Courts received J\$892,970m out of a recurrent budget of J\$162,191,134 or 0.6%. In terms of the Capital Budget J\$44m of J\$94,427,484m or 0.04% was assigned to the Courts. Clearly the budgetary allocation to the courts is inadequate even taking into account the severe fiscal constraints and the high percentage of the revenue devoted to debt servicing. The under-resourcing of the courts leads to a number of negative consequences viz:

- Court houses in a most deplorable condition, for example, leaking roofs, inadequate toilet facilities, unsatisfactory accommodation for the public etc
- Lack of adequate support staff and unavailability of electronic equipment to replace manual methods of note-taking

- Slowness in court hearings and in handing down court decisions.

The government acknowledges these deficiencies but is proceeding far too slowly in rectifying the resource shortfall for the courts.

The constraints are particularly evident in the Resident Magistrates courts, the level of the judicial system in which the vast majority of cases are heard. Moreover, the justice sector needs to have greater autonomy in allocating resources assigned to that sector by the national budget. In this regard, a recent diagnostic assessment done by the Inter-American Development Bank made an important recommendation:

“... a total budgetary allowance should be set by agreement between the executive, the legislative and the judicial branches of government. Then each individual component should be allowed greater flexibility in allocating their respective total allowance, with the Ministry (of Finance) playing a coordinating role”¹⁰⁶.

As far as the public is concerned however the two main obstacles to using the courts are the length of time that cases take to be heard and concluded; secondly, the expense of the process in terms of fees for lawyers and notaries¹⁰⁷. Corruption in the courts and amongst judges has not been a major issue. One judge – at the Resident Magistrates level – has been charged, prosecuted and found guilty since independence¹⁰⁸. Rarely have Ministers, Members of Parliament or politicians been publicly critical of, much less attacked, the judiciary. Not surprisingly, in this context, the public do not regard court decisions as influenced by bribes or by personal connections. Indeed available data suggests that the courts are held in high regard within the criminal justice system¹⁰⁹.

Civil Service

The Jamaican Civil Service is currently spread in 19 Ministries and is divided into 30 different salary groups. The regular Civil Service worker in Jamaica is recruited through the Office of the Services Commission, and is headed by the Cabinet Secretary who is located in the Office of the Prime Minister. Individual ministries are headed by Permanent Secretaries, except the Ministry of Finance and Planning, which is headed by a Financial Secretary.

In addition to the Civil Service Ministries and departments, there are a number of para-statal and public sector entities. At the beginning of the 1990s, there were over 300 of these entities¹¹⁰. During the decade, consistent with the neo-liberal policies embraced by successive PNP governments, some divestment and privatisation took place largely without any serious or substantial allegations of corruption. Alongside this process, efforts to improve para-statal governance produced the Public Bodies Management and Accountability Act 2001. Amongst the issues addressed in this law were the duties and responsibilities of Boards of Directors, the uniformity of reporting requirements and the mandatory establishment of Audit committees within each entity¹¹¹. This legislation was in part prompted by revelations that chief executives and top managers in certain public sector entities were being paid excessive compensation packages in violation of the relevant guidelines. Credible charges were made that “fat cat” salaries were related to connection to governing party¹¹². Moreover there is evidence that political patronage plays a significant role in appointments to Boards and employment role in appointments to Boards and employment in certain public sector entities¹¹³.

The law governing the Civil Service “comprises regulations made by virtue of the Constitution, statutes and prerogative; the common law principles affecting the relationship between the Crown and its servants and the administrative rules and practices which regulate the conduct of public officers”¹¹⁴. There is no mention of the Civil Service in the Jamaican Constitution. However, Chapter IX of the Constitution addresses the Public Service Commission. Section 124, sub-paragraph (1) states that:

“there shall be a Public Service Commission for Jamaica consisting of a Chairman and such number of other members, being not less than three nor more than five, as the

Governor General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may from time to time decide”.

Staff Regulation, Recruitment, Promotion and Discipline

In addition, the conduct of employees within the Civil Service is regulated by the Public Service Regulations of 1961 and the Staff Orders for the Public Service of Jamaica. The Staff Orders for the Public Service of Jamaica, among other things, sets out the process involved in promotion and hiring of Civil Servants. This expressly states that hiring and promotion must be based on merit upon the advice of an objective selection panel. The Staff Order, however, does not expressly make any reference to the recruitment process that will prevent nepotism. Despite this loophole in the legal framework of the Staff Order however, the norm within the Civil Service is to discourage this practice by persuasion.

Similarly, the Staff Order for the Public Service complements the Amendment to the Corruption Prevention Act 2000. It expressly highlights the issue of conflict of interest and maintains that the Civil Service must not be used for private gain. “Public Officers are forbidden to solicit or accept presents (other than the ordinary gifts from personal friends) whether in the form of money, goods, free or reduced passages, or other personal benefits or from giving such presents”¹¹⁵. In addition, public officers are forbidden from taking active part on behalf of any party or candidate in either Parliamentary or Local Government elections. They are also prohibited from engaging in private work from payment ... in any commercial or agricultural undertaking without the consent of the appropriate Service Commission”¹¹⁶. Finally, the public servant is required, on appointment, to disclose particulars of any private shareholding or investment to the appropriate service commission and be required to divest such holdings by the Commission to the extent that “the officer’s private affairs might be brought into real or apparent conflict with his public duties or in any way influence him in the discharge of his duties”¹¹⁷. In addition, the Corruption Prevention Act 2000 stipulates that all public officials can be required to disclose to the Commission for the Prevention of Corruption their assets. The spouse and children of a Public Official declarant will be subjected to declare their assets as well, once they are residing with the Public Official declarant. This is an important step in the attempt to curb corruption in Jamaica as corrupt public officials sometimes transfer proceeds from their corrupt activities to their children and spouses in order to prevent suspicion and possible investigation. However, this piece of legislation is limited in that it only refers to spouse and children who are residing with the declarant. It therefore means that assets could be transferred to spouse and children who are not living with a corrupt public official declarant and this would not be subjected to investigation.

Although Jamaica adopts a merit-based system, recruitment or promotion in the Civil Service reflects certain factors such as patronage versus merit, the “old boys” network, place of residence and sometimes even gender preferences. The stresses of recruitment and promotion in the Civil Service have become severe as Jamaica’s small economic growth has not opened up job opportunities for the employable, either educated or the unskilled, and government now seems to be the employer of last resort¹¹⁸.

Pay and emoluments are the strongest single factor in attracting competent staff, encouraging them to work efficiently and giving them incentive to stay in public service. In Jamaica, public service workers tend to be paid less than their private sector counterparts. Bribes that are offered to public service workers are often seen as attractive in complementing their salaries. The Jamaican Civil Service is not totally devoid of corruption. The National Housing Trust up until last year had a system by which houses were offered for sale through a system of lottery. Corrupt public officials used their knowledge of this system once the lottery has been drawn to call persons who had been successful in the lottery and ask them if they are interested in purchasing NHT homes. They then offer that they will get them selected if they are willing to pay for it. This has been discovered and methods have now been implemented to limit the lottery information to a few Civil Service workers and to reduce the time between when the house offer is made public and when the lottery is drawn. Similarly, NHT letterheads are closely monitored now as corrupt civil service workers would sell the letterheads to persons going to the embassies to seek a visa. These persons would then get a fraudulent letter stating

that they are NHT homeowners when they have no home or property, with the hope of obtaining a visa¹¹⁹.

The Registrar General's Department is one area of the Civil Service that is open to corruption. Last year, some workers were arrested for issuing false birth certificates to individuals. This corruption among civil service workers must be watched closely especially following September 11, 2001 terrorist attacks on the US as birth certificates now have important security implications. In 1995, the Registrar General's Department earned 5 million but by 2003 it made 300 million. It is believed that the government is now collecting all its revenue because of the mechanisms in place and fewer dollars from government revenue are now channelled into the hands of corrupt public service workers.

Whenever it is alleged that civil service workers are involved in corruption, investigations are conducted internally, via the police or the Director of Public Prosecutions or through the Public Service Commission.

Section 125, Chapter IX of the Jamaican Constitution, states that the power to remove and to exercise disciplinary control over persons holding or acting in any public offices is vested in the Governor General acting on the advice of the Public Service Commission. The Governor General is required to advise the public officer of the allegations before he can act in accordance with the advice of the Public Service Commission to effect the service worker's removal or to impose disciplinary action. The public official has the legal right to refer the case to the local Privy Council. However the Governor General retains the right to suspend that officer from the exercise of his office pending the determination of the reference to the Privy Council. Once a ruling has been made, the Governor General is required to act in accordance with the Privy Council's ruling.

The welfare of civil service workers is protected by the Jamaica Civil Service Association. This Association was founded in 1919 and is a non-partisan organization which aims to represent and safe-guard the legitimate interest of civil service workers. The Jamaica Civil Service Association handbook of 2001 sets out, among other things, the aims and objectives of the Association as to:

- Improve the standards of the Public Service of Jamaica
- Promote programs for organizational and staff reform necessary in the public interest so as to secure, improve and maintain efficiency in the Service
- Make representation on behalf of all members of the Association
- Seek to improve the social and economic conditions of the members of the Service
- Do all lawful things as are incidental or conducive to the advancement of the general welfare of its members.

The Association is independent as it obtains its funding through the collection of dues by its members. It is not a government entity and though it is not registered under the Trade Union Act, it operates much like a trade union.

The Jamaica Civil Service Association has a membership of 15000 civil service workers. Although not all civil service workers are members of the Association it represents all civil service workers in negotiations, especially for wages.

Public Sector Reform Programme

Since the 1980s successive governments of Jamaica have been pursuing reform of the public sector. Currently, the PNP government with external assistance from the World Bank, the Department for International Development of the UK government, the Inter-American Development Bank, the Canadian International Development Aid and the Government of Japan "is undertaking approximately 30 projects in support of public sector reform"¹²⁰. The overall aim of this process includes enhancement of public sector accountability, higher levels of customer service delivery and improved efficiencies in all areas of government.

Towards these ends a number of steps have so far been taken viz:

- The establishment of eight Executive Agencies of seventeen organizations targeted to become executive agencies. In these agencies "performance pay and incentive systems based on organizational achievement, unit/group achievement and individual goal achievement" have been introduced¹²¹
- Strategic reviews of six key ministries and implementation of review recommendations in 4 critical ministries – Finance and Planning; Health; Education, Youth and Culture; Transport and Works¹²²
- Establishment of websites and information liaison officers in all Ministries
- Implementation of "a policy open competitive selection for appointments to key senior positions, including Permanent Secretaries and Chief Executive Officers of Executive Agencies"¹²³
- Phased implementation of an agreement with public sector unions to raise civil service salaries to within 80% of benchmarked private sector salaries by fiscal year 2004-2005¹²⁴
- The adoption and issuance of citizens' charters by 25 public sector organizations. In this regard, designed to improve service delivery to citizens, a Standards and Monitoring Unit has been established in the Cabinet Office to promote and monitor customer service improvement¹²⁵.

There has obviously been some progress in the modernization of the Jamaican public sector. The process has however been slow and uneven. There remains widespread dissatisfaction and much discontent with poor and inadequate service from public sector employees in many departments and agencies. Training programmes in customer service delivery objective performance indicators need to be more rapidly developed and, as well, performance based compensation schemes elaborated. In addition, allegations of corruption in key areas such as customs, the licensing departments, the Title and Stamp Office are credible. In the 1990s, the disposal of public lands attracted particular charges of political patronage. This became the subject of a special report by the Contractor General in 1992 and of a special committee set up by the Minister of Agriculture in 1994¹²⁶. The latter committee found "that some MPs exercise an undue influence in the selection process"¹²⁷ for determining purchasers of public lands and recommended among other measures, that MPs should not have a role in the selection system. At the same time means of detection, investigation and application of disciplinary measures are inadequate, cumbersome and ineffective. The Staff Orders and the Public Sector Regulations need to be far more rigorously enforced by the Service Commission. In addition, the Financial Administration and Audit Act must be applied more consistently to address issues of misappropriation of funds in the public sector.

Police and Prosecutors

The Jamaica Constabulary Force was founded following the Morant Bay Rebellion in 1865. Section 13 of The Jamaica Constabulary Force Act stipulates the duties and powers of the Jamaica Constabulary Force. Police Officers within the Jamaica Constabulary Force must be Jamaican citizens of good character. The duties and powers of the JCF as enshrined in Section 13 of JCF Act are:

- To keep the watch by day and night
- To preserve the peace
- To detect crime; apprehend or summon before a Justice, persons found committing any offence, or whom they reasonably suspect of have committed any offence
- To serve and execute all summonses, warrants, subpoenas, notices and criminal processes issued by any Justice in a criminal matter

- To do and perform all duties appertaining to the office of the Constable.

The total establishment for the JCF is 8500. However the force currently has 7614 officers. This police force therefore suffers from a shortage of 886 members from the establishment. The establishment is being reviewed as many more officers than currently stipulated are needed to police the country adequately in the face of growing security-related threats. The JCF is divided into 5 branches, 5 Areas and 19 Geographic Divisions. More police officers are required particularly in specialized areas such as in narcotics, marine policing and in tourist related crimes. Currently, officers have to be taken from general policing to man these specialized areas. The result has been that general policing suffers and these officers who are called upon to operate in specialized areas for which they have no training results in citizens complaining about the officers' lack of professionalism in dealing with the public.

The Commissioner of Police is responsible to the Minister of National Security for the Command and Superintendence of the Force but is independent of him in operational matters. He administers this responsibility in accordance with a chain of command through which all communication and correspondence are normally channelled. The Constabulary Force Act recently amended emphasizes that the Commissioner of Police is independent and that all appointments of promotions are to be based on merit. The Jamaica Constabulary Force Police Promotions Examinations set out the system for performance appraisal based promotion examinations for members of the JCF up to the rank of Senior Superintendent.

The Commissioner of Police enjoys little security of tenure. The Jamaican Constitution makes no mention of the procedure to be followed in removing the Commissioner. This is a clear weakness in the system as the Commissioner can be removed from office if a loss of confidence is stated by the Police Service Commission. This weakness in the system makes it relatively easy for the government to remove a Commissioner from office on the basis that the government can no longer work with that Commissioner. It is so much easier therefore to remove a Commissioner from office than a Deputy Commissioner since the removal of the Deputy Commissioner warrants a clear case of wrong-doing.

The Office of Professional Responsibility is the umbrella group with specific mandate to address investigations of all issues of corruption. There are two main organs that fall under the jurisdiction of the Office of Professional Responsibility. These are the Bureau of Special Investigation and the Bureau of Internal Affairs. The former is responsible to investigate all controversial police shootings and all major corruption issues and the latter is responsible to investigate all minor corruption allegations.

All corruption allegations are investigated and based on the weight of the evidence, the investigation is then sent to the Director of Public Prosecution (DPP) for a ruling. The DPP can make two rulings, either to charge the alleged offender or to deal with the issue internally. The norm is that once a ruling has been made to charge the alleged offender, employment is terminated as continued employment of such an individual is likely to jeopardize the reputation of the police force and put the public at risk. If the ruling is for it to be dealt with internally then that individual might be demoted to a lower rank or transferred to another division.

There is no case of charges levied by police officers for private-to-private corruption. Most of these violations do not fall under the ambit of corruption but rather fraud or other specific criminal offences.

The police force has been ineffective in controlling levels of crime. Within recent years violent crime has escalated dramatically and Jamaica has become one of three countries with the highest murder rate in the world¹²⁸. At the same time, it must be noted that property-related crime has remained relatively stable. Of course the roots of the violent crime problem extend beyond strict police competence and jurisdiction. They encompass factors such as: breakdown in parenting and family structure; rapid urbanization; high unemployment; unequal opportunity structures, party political warfare and, most recently, the transnational narcotics trade as well as small arms trafficking. Not surprisingly over 40% of all murders in Jamaica are related to drug trafficking, turf wars among drug gangs and reprisal killings. These phenomena are highly concentrated in sections of inner-city

Kingston. The gun is used in almost 70% of killings and the majority of perpetrators as well as victims are young males¹²⁹.

The police have been unable to get on top of the situation for a number of reasons:

- Inadequate training, particularly in investigative techniques, intelligence-gathering and gang-penetration methods
- Inadequate numbers. The police to citizen ratio is 267 to every 100,000 inhabitants
- Uneven conditions of service. Police salaries are tolerable but very often the conditions of police stations are extremely poor
- Poor police-community relations. This derives from the fact that Jamaican police are very often guilty of excessive use of force and extra-judicial killing. The rate of killings by the police is among the highest in the Western hemisphere. There are consistent allegations by Amnesty International, Human Rights Watch and other human rights organizations that the Jamaican police repeatedly violate the rights of citizens, particularly in poor communities¹³⁰
- The ill-equipped nature of the force, particularly in respect of motor vehicles and firearms
- High levels of corruption, particularly in relation to the narcotics trade, amongst police officers. Police officers are disciplined, prosecuted and sometimes convicted but at levels well below allegations
- Continuing allegations of partisan political considerations in police promotions. This de-motivates and demoralizes non-partisan elements in the force
- High levels of organization of the main criminal gangs as well as sophisticated weaponry available to them¹³¹
- Historic weaknesses in the legal framework particularly in respect of communication interception and plea bargaining legislation.

Table 1 shows the number of Police Officers charged for corruption from 1999 to 2003 (Jan. to May 14).

Table 1 Police Officers Charged

Acts	1999	2000	2001	2002	2003
Police ruled to be charged criminally by the DPP	18	20	16	1	0
Police arrested and charged re: shootings	12	16	13	0	0
Deserters	4	2	2	0	0
Police arrested and charged re: corruption	1	0	0	0	5

Source: The Gleaner Tuesday May 20, 2003

These deficiencies in the police force are being addressed through a wide-ranging police reform programme. Elements of the programme include:

- An increased emphasis on community policing
- Strengthening of the intelligence gathering capability
- Renewed firearm training for officers and renewed emphasis on the use of lethal force guidelines
- Intensified efforts on anti-corruption measures within the force¹³²

- Passage or introduction of new and upgraded legislation to deal with interception of communication, plea-bargaining, asset-forfeiture and money-laundering.

Director of Public Prosecutions

Chapter VI Section 94 of the Jamaican Constitution establishes the office and the functions of the Director of Public Prosecutions. It states that the Office of the Director of Public Prosecutions (DPP) shall be a public one and that the Director shall not be qualified to hold or act in this position unless he is qualified for appointment as a Judge of the Supreme Court.

The Director of Public Prosecutions shall have power to intervene in any case in which he considers it desirable. In exercising his powers of intervention in any case, the DPP is not answerable to political representatives or to the Prime Minister nor is he "subject to the direction or control of any other person or authority".

Section 96 of the Jamaican Constitution states that the Director of Public Prosecutions shall hold office until he attains the age of sixty years. During his tenure, he is allowed to resign his office at any time. However, should he decide, after age 60 to continue his tenure, the Governor General acting on the recommendation of the Prime Minister after consultation with the leader of the opposition can extend his tenure until he has attained 65 years.

The DPP can be removed from office by the Governor General only on the basis of an inability to discharge the functions of his office, arising from infirmity of body or mind or any cause involving dishonesty or corruption. However, his removal can only be effected based on the report of inability or misbehaviour advanced by a special tribunal commissioned by the Governor General comprising sitting and/or retired members of the Supreme Court.

In 2001, the Director of Public Prosecutions expanded its office to include a Financial Crimes Unit. This unit had a specific mandate to address cases involving financial crimes, corruption, money laundering and assets forfeiture. The unit comprised individuals with special expertise in law and forensic accounting as the DPP trained its staff to deal properly with these issues. The DPP had intended this Unit to be very integral in stemming corruption and drug related cases by bringing the dons, the bosses and the big king-pins to justice. However, by 2003 when the Financial Crimes Unit was becoming fully operational it was transferred under the portfolio of the Ministry of Finance. The resulting effect therefore is that the DPP currently has no investigative and analysis unit in its office. Despite this, the DPP is currently setting up a prosecution unit to address corruption and corruption related offences and will have a specialized staff to man this unit¹³³. There are about 40 attorneys in the Office of the Director of Public Prosecutions.

An investigative and analysis unit within the DPP is important as control over sensitive information is critical in some high profile cases. Last year the DPP was working on a case involving 'Operation Pride Housing Project' in Jamaica. The details of the file involving the case were under the control of investigators and the DPP. The sensitive information involving names and addresses of witnesses as well as other information was leaked.

This incident reflects one aspect of deficiency in the management and administration of the office of the DPP. Dissatisfaction amongst professional staff in the department has centred around excessive delay and apparent arbitrariness in promotions to senior positions¹³⁴. Delays in instituting prosecution in high profile cases have also led to some public disquiet. Arising from these circumstances, a committee was set up by the Public Service Commission on the advice of the Prime Minister to enquire into and make recommendations to improve the functioning of the DPP's office. The proposals from this Committee have dealt largely with improvement in the human resources management function of the office. It is also necessary to improve the resources available to the office, particularly to computerize the office and to make on-line internet access available to prosecutors.

The Corruption Prevention Act of 1999 stipulated that Public Officers could not be prosecuted without the consent of the DPP and most of the corruption-related charges

included bribery. However, the Corruption Prevention Act as amended no longer requires Public Officials involved in corruption to be prosecuted only on the consent of the DPP. Similarly, the Corruption Prevention Regulations 2002 are much broader in scope defining corruption as any remuneration paid to public servants in connection with their performance of a public function.

Public Procurement

The Office of the Contractor General was established in 1986, three years after the Contractor Generals Act was passed. This Office is an independent body which is responsible to ensure transparency, efficiency, impartiality and integrity in the awarding of government contracts, licences, permits and other concessions. It is also responsible to ensure that government contracts are implemented efficiently, economically and expeditiously through constant monitoring.

The National Contracts Commission is another independent body appointed through an amendment to the Contractor-General's Act effected in 1999. The staff of the Office of the Contractor-General provides all the resources of the Commission: in addition the National Contract Commission has its own chairman. Its mission is to recommend the award of government contracts and to seek to ensure transparency, equity and integrity in the contract award process. Simultaneous with the establishment of the National Contracts Commission, the Government Contracts Committee was wound up.

The Handbook of Public Sector Procurement Procedures sets out step-by-step procedures in the government procurement process. This is accessible to the public as it can be located on the Office of the Contractor General's website. There have been many references of undue political influence on the Government Contract system however there has been improvement and greater transparency concerning the rules involved in the awards contract system.

Contracts are awarded based on competitive or single sourcing (formal tenders) tender system. However, despite this the tender system suffers from:

- Partial and unfair information system
- Mismanagement and poor leadership (for example, 80% of the time elapses but project would be less than 20% complete)
- Lack of formal agreement and terms of reference (eg Sanding the Caymanas Park)
- Unsatisfactory performance (eg Albion Primary School Project).

There is transparency in the public procurement system. Public procurements are widely advertised usually in the media and the procurement decisions are made public and can be viewed or accessed on the government procurement website. There also exist procedures in place for an unfavourable decision to be reviewed by the courts. The fact that entities will utilize the legal review process after an unfavourable decision has been made means that there exists confidence in this mechanism. Currently, the Postal Corporation of Jamaica is utilizing this process to fight an unfavourable public procurement decision.

The Corruption Prevention Act was passed by the Jamaican Parliament and came into force in 2003. This Act requires Public Officials, inclusive of Public Procurement Officers, to declare their incomes and their assets. This is an important step in improving transparency and accountability reflecting a commitment by the Government of Jamaica to strengthen the legal framework in their efforts to fight corruption.

Nevertheless, over the years a small percentage of the contracts monitored have been executed with competence but the great majority of cases examined by the Contractor-General have disclosed a variety of weaknesses with regularity throughout the years from 1992 to 2000.

The Jamaican contract system suffers from:

- An inadequate site inspection/investigation
- Acceptance of non-qualified contractors' tenders
- Omission of contract dates
- No tax compliance certificate
- Poor planning for implementation
- Inability of contractor to finance the project
- Unsecured or excessive mobilization payment
- Lack of, or inadequate, insurance coverage
- Selection of contractors by Members of Parliaments (MPs)
- Bypassing the Government Contracts Committee
- Uncompetitive selection of consultants
- Acceptance of unrealistically low tenders
- Negligence of client agencies and consultants in carrying out their responsibilities.

There are many documented cases of the abuse of the construction contract procedures and shortcomings of all sorts in the award and implementation of the construction contracts. Whereas politicians are not to be fully blamed for the abuse and shortcomings in the contract system, pressure is often exerted on functionaries by politicians to ensure that certain people are engaged, to add to or vary projects, and to pressure the consultants to approve the variations, additions and applicable rates¹³⁵.

Further, Members of Parliament are known to name contractors and submit lists from which contractors are to be selected¹³⁶. For instance, the Ministry of Construction has been and remains one of the worst offenders. The Contractor General Report 1993 notes that they have at least one letter on their files from the Minister of Construction, in which instructions were given for a particular contractor to be engaged. Similarly, in the Ministry of Water & Transport at the request of a Member of Parliament¹³⁷, instructions were given to Carib Engineering Corporation to negotiate four contracts with specific contractors one of whom has the same uncommon surname as the Member of Parliament. The names of none of these contractors appear on the approved list and the contractors all relate to one project. The project was made the subject of four contracts so as to avoid having to get the approval of the Government Contracts Committee. This directly contravenes the letter and spirit of the Contractor-General Act and the principles of openness and fairness to which the Government should be committed. Yet there were no effective sanctions or prosecutions. A more alert and independent Parliament debating the annual report of the Contractor General in accordance with this recommendation would have highlighted this breach and brought the matter to the DPP's attention.

As such, contracts which should be the subject of selective tendering are sometimes negotiated on untenable pretexts. Consultants are also commonly named and some of these names have recurred with monotonous regularity until there is a change in the political administration. By and large, millions of dollars continue to be lost each year because of project mismanagement due to some of these interferences in the award and implementation of construction contracts¹³⁸.

Members of Parliament continued to be too involved in the process of awarding contracts with the result that unqualified and incompetent contractors are often assigned tasks beyond their capabilities¹³⁹. Such a situation was evident in *the Cambridge Water Supply Scheme – Phase 1- Gabion Wall, a Pump Slump, Pump Base and silt Chamber – St. James*. Under the above-mentioned scheme, a contract was negotiated by Carib Engineering Corporation Ltd. (CECL) with Ultimate Construction Co. Ltd to undertake the captioned works for a contract sum of \$473,715, to be executed between February and June, 1994. It soon became clear however, that the contractor lacked the necessary resources and was incapable of even commencing the job. The client consequently terminated the contract.

The contract was subsequently divided into two parts which were negotiated with two other contractors on site at a total cost of \$601, 270 that is, \$127,715 or 21.2% above the original figure. The conduct of this contract manifests a number of procedural breaches. In the first place the Ministry of Water and Transport directed that this contract be negotiated. Second, an MP supplied a list of contractors whom he claimed to be qualified and capable but none of whom appeared on the official Government Contracts Committee (GCC) list. Third, the project was divided into four contracts so as to circumvent going to the GCC and allowing the Contracts Committee of the CECL to approve the contracts. Further, it was asserted that the works were of an emergency nature yet although the agreement was signed on 8th November, 1993, the recorded commencing date was over three months later, 24 February, 1994 and at the end of December, 1994 none of the four contracts were completed, reflecting an overrun of up to six months¹⁴⁰.

Towards the end of the 1990s, the Contractor General "detected improvement on past practice". Though "the quality of contracts' management" continued to be a "serious concern"¹⁴¹. For example, the contractor General found that the procurement of Modular Furniture for the Ministry of Finance and Planning in 1999 was "irregular and improper"¹⁴². Similarly, the process for the award of a contract for the supply of meals for inmates at the adult correctional facilities in 2000 valued at J\$58.5m per year to Cara Catering Services Limited "was not transparent and its fairness" was "questionable"¹⁴³. It did not escape public notice that the principal owner of Cara was a former general election candidate of the ruling People's National Party.

Obviously, more effective measures are needed to increase levels of efficiency, insulation from partisan politics and deterrents against corruption in the public procurement system. One such is for offices of the Parliamentary Ombudsman to monitor the implementation of the Contractor General's recommendations. More importantly is for Parliament to debate the Report of the Contractor General after it is tabled each year. At the minimum this would take notice, at the highest level, of abuses of the public procurement system and help to increase public pressure particularly against political interference in the award of public contracts.

Ombudsman

The Political Ombudsman

The Office of the Political Ombudsman was established on 9 August 2002 the Political Ombudsman (Interim) Act. The Political Ombudsman was appointed by the Governor General after consultations with the Prime Minister and the Leader of the Opposition.

The Office has three main functions:

- Ensure the Agreement and Declaration on Political Conduct are adhered to by all politicians
- Investigate any complaints from citizens and public servants regarding politicians
- Make annual recommendations to the Commission which is then taken to Parliament.

This agency arose out of the growing consensus amongst political leaders and within civil society that special measures needed to be developed to reduce political violence and to enhance civility in Jamaica's acutely competitive electoral politics. Arising out of this an Agreement and Declaration on Political Conduct, strengthening previous codes, was signed by Prime Minister Patterson and Leader of the Opposition Seaga on June 11, 2002. This document affirmed the support of both party leaders to peaceful, non-violent elections and declared "opposition to and rejection of the use of violence or intimidation by any of their members or supporters as a means of expressing political support or furthering political objections"¹⁴⁴. It also committed the parties to repudiate candidates "pronounced by a judicial body to be guilty of criminal conduct involving violence". The agreement also

incorporated a code of political conduct upholding “non-violence and non-intimidation”, “avoidance of confrontation” and “freedom of access” among other things. The specific responsibility of the Political Ombudsman is to investigate breaches of the Code of Conduct and to recommend corrective measures. It is generally agreed that the office performed effectively in relation to the October 2002 General Elections which saw a reduction in violence.

The report of the Political Ombudsman goes to Parliament after which it becomes public. The GOJ is expected to act on the recommendations of the Political Ombudsman once they are made in August 2003. To date, the Political Ombudsman operates independently without interference from politicians or the political parties and the political parties accepted and acted on the recommendations of the Ombudsman going into the October 2002 general election.

Public Defender

The Public Defender Interim Act of 1999 sets out clearly all the powers and jurisdiction of the Public Defender.

The Office is responsible for investigating complaints brought by any member of the public against the State. Further, it also seeks redress for constitutional and administrative injustice and provides where necessary and possible, the attorney’s fees needed to pursue constitutional remedies in court.

The office of the Ombudsman was changed in April 2000 to The Office of the Public Defender. The current Public Defender was appointed as a senior Parliamentary Ombudsman in October 1998.

The Independence of the Public Defender is mainly attributable to the fact that he is appointed by a Commission of Parliament and is answerable to Parliament not to any Ministry of Government. Further, the Public Defender though he is paid by the Government enjoys security of tenure. He can only be removed from office having attained the age of 70 or through a substantiated claim of an inability to perform his tasks or through misbehaviour. The security of tenure that the Public Defender enjoys is similar to that of a High Court Judge. The removal of the Public Defender from office requires a resolution from each House of Parliament asking for the issue to be investigated. Thereafter the Governor General shall appoint a tribunal consisting of a chairman and 2 Judges from the Commonwealth. All recommendations for removal from such a tribunal need to be passed on to the Governor General for a final decision.

Section 7 of the Act stipulates that the Public Defender at the end of his tenure cannot hold public office or be a political representative. For the most part, the appointment of the Public Defender is based on merit. The law, as it is, does not stipulate that the public defender needs to be a lawyer. However by custom it has always fallen to a lawyer. There have been 3 public defenders from the mid 1980s to present. All three were lawyers or former Judge of Appeal. Over the years, no Public Defender in Jamaica has been removed from office without relevant justification. As a matter of fact, all served their time in office and were removed having attained the age of 70.

There are no specific provisions in the law for petitioners to complain anonymously if they fear reprisals. However, every complaint has to be in writing and is treated confidentially. Despite this however, 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 to complete the investigation. This right is stipulated under Section 14 (5) of the Public Defender Interim Act 1999. In some of the cases, the individual is given a cover identity when investigations are being conducted, and the identity only revealed if and when it is time for compensation.

The reports of the Public Defender are submitted to Parliament annually. In the 21 years of the existence of the Office of the Ombudsman, the former designation of the Office of the Public Defender, over 14,600 complaints have been received by the office. In 2000, the Public Defender received a total of 693 complaints, the highest number since 1991¹⁴⁵. The authorities with the largest number of complaints against them were the Jamaican

Constabulary Force (48), the Ministry of Labour, Welfare and Sports (43), the Department of Correctional Services (23), the Ministry of Education (21) and the Registrar General and Resident Magistrate Court (18 each). The complaints relating to the police had to do with dismissals, pensions and interdiction, to the Ministry of Labour with non-receipt of national insurance benefits and to the correctional service department with dismissals and non-promotion. It is not clear from the Public Defender's Report for the Calendar Year 2000 that some redress, if any, was won by citizens in relation to complaints disposed of by the Public Defender. The Public Defender has tried unsuccessfully to ask Parliament to debate these reports.

The Government only acts on some of the recommendations of the Public Defender. There is a tendency for the Government not to respond immediately but 2 or 3 years later the recommendations would be implemented without the Office of the Public Defender being credited for these recommendations. For instance, the Public Defender recommended in the 2000 report that police officers should obtain regular refresher courses in fire arm training, handling and use. This report was made in an effort to reduce the incidence of death by shooting at the hand of the police. This recommendation was initially scoffed at by Government Ministers but was implemented in 2003 with the Government taking the credit for it¹⁴⁶.

The services of the Public Defender are free and the office operates with 2 lawyers and 23 administrative and auxiliary staff. The office obtains its funding from the Government. Most of the claims were settled without going to court and only 2 since 1998 went to the court and in both cases the Government has accepted liability and honoured its claims.

Investigative/Watchdog Agencies

The first investigative/watchdog agency set up in Jamaica was the Integrity Commission. Section 3 of the Parliament (Integrity of Members) Act 1973 established the Commission and the First Schedule of the Act stipulated that the Commission shall consist of the Auditor General and four other 'appointed members' appointed by the Governor General after consultation with the Prime Minister and the Leader of the Opposition. The main function of the Commission "shall be to receive and keep on record statutory declarations"¹⁴⁷ of income assets and liabilities of Parliamentarians and to make whatever inquiries and investigations it deems fit in relation to the declarations.

Initially the Integrity Commission had power, if a Parliamentarian failed to furnish a satisfactory statutory declaration, only to report the offending person to the Parliamentary leaders (the speaker of the House, the President of the Senate, the Prime Minister and the Leader of Opposition). Under the Parliament (Integrity of Members) (Amendment) Act 2001, the Commission "may" now report such dereliction to the Director of Public Prosecution or the Commissioner of Police who may act as they see fit¹⁴⁸.

Over the years, Parliamentarians often failed to submit their declaration or to reply to queries from the Integrity Commission. In its report for the year ended 31st December 2000 for example, the Integrity Commission named 12 Parliamentarians who had failed to furnish one or more of the annual declarations since 1987¹⁴⁹. Twelve Parliamentarians were also listed in the same Report as having been reported to the Parliamentary leaders during the calendar year 2000. By the end of December 2002 however, as a result of public pressure only two Parliamentarians had declarations still outstanding¹⁵⁰ and, later, two Senators were prosecuted by the DPP for failure to furnish declarations through the cases were later withdrawn.

The Commission for the Prevention of Corruption is the special watchdog and investigative agency for corruption-related matters in the Country. This agency was established by the Corruption (Prevention) Act 2000 which came into effect in April 2003 after the Regulations under the Act were introduced, debated, amended and passed by Parliament in January 2003. The operation of the Corruption (Prevention) Act represented the culmination of a seven-year process. It was in March 1996 that Jamaica voted along with other members of the Organization of American States, at a meeting in Caracas Venezuela, for the

adoption of the Inter-American Convention Against Corruption. Not until April 1998 was the Bill giving effect to the provisions of the Convention introduced into Parliament. Appropriately, the proposed legislation was referred to a Joint Select Committee of the House of Representatives and the Senate. This Committee held open hearings on six occasions and received public submissions from four organizations.

In January 2000, the Joint Select Committee submitted its report. Through much of 1999 and 2000 the proposed Act attracted public discussion and the Parliamentary debate concluded with the passage of the Bill in December 2000. The time spent on debate and representations outside and within Parliament was well spent as the final Act incorporated a number of substantial amendments to the Government's original proposals, making the Bill far more satisfactory. Amongst the more important amendments to the initial legislation put before Parliament by the Government were the following:

- The deletion of the "gag clause", which would have had the effect of prohibiting the publishing of certain types of information relating to allegations of corruption
- The broadening of the definition of corruption to embrace acts by private sector individuals, and not just public servants
- The granting of authority to the Corruption Prevention Commission to conduct investigations on its own initiative, and not be required to await a complaint as originally proposed
- The inclusion of an explicit (rather than implied) obligation in the law requiring the Commission to make an Annual Report public by laying it before Parliament.

All in all, over thirty significant changes and amendments were made to the original bill. Yet, significant flaws remain in the law. Three might be mentioned. One is the continuing, though considerably narrowed, difference in regimes to which the Parliamentary and the non-Parliamentary public servants are subjected under the Integrity and the Corruption Prevention Commissions, respectively. An example of this difference is that alleged breaches of the corruption prevention law by civil servant "shall" be reported to the Director of Public Prosecutions whereas breaches by Parliamentarians under integrity legislation "may" be reported.

The second is the silence of the law on the question of gifts to political parties, though it is some comfort that the Joint Select Committee in its report recommended that "the matter of declaring gifts.... should be a subject matter for legislation ...as soon as possible"¹⁵¹. The third deficiency lies in the failure of the legislation to impose on the Corruption Prevention Commission any statutory obligation to ensure public education and public involvement in the anti-corruption process.

Section 5 of the Corruption Prevention Act stipulates the functions and powers of the Commission. Specifically Section 5 (1) (a) to (e) records the function of the Commission as to:

- Receive and keep on record declarations furnished by public servants pursuant to the Act
- Examine such statutory declarations and request from a public servant any information relevant to a statutory declaration made by him
- Make such independent enquiries and investigations relating to a statutory declaration as it thinks necessary
- Receive and investigate any complaint regarding an act of corruption
- Conduct an investigation into an act of corruption on its own initiative, if it is satisfied that there are reasonable grounds for such investigation.

Section 2 further stipulates that the Commission has the power to summon witnesses, require the production of documents and to do all such things as it considers necessary or expedient for the purpose of carrying out its functions. The Commission does not however do prosecutions. This is the prerogative of the DPP.

It is clear from the Section 5 of the Act that the Corruption Prevention Commission has a major responsibility in investigation and prosecution but no stipulated responsibility as it relates to prevention and education and awareness of corruption related issues.

The law defines acts of corruption in such a manner as to embrace both public servants and private persons seeking to corruptly influence public servants. The former "commits an act of corruption if he corruptly:

- solicits or accepts, whether directly or indirectly, any article or money or other benefit, being a gift, favour, 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
- in the performance of his public functions does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person
- fraudulently uses or conceals any property derived from any such act or omission to act
- offers or grants, directly or indirectly, to a public servant any article, money or other benefit being a gift, favour, promise or advantage to the public servant or another person, for doing any act or omitting to do any act in the performance of the public servant's public function
- instigates, aids, abets or is an accessory after the fact or participates in whatsoever manner in the commission or attempted commission of or conspires to commit any act of corruption referred to in the Corruption Prevention Act".

Any citizen or resident of Jamaica or any corporation, either aggregate or sole, any club, society or other body of one or more persons, who offers or grants, directly or indirectly, to a person performing a public function in a foreign state, any article or money or other benefit, being a gift, favour, promise or advantage in connection with any economic or commercial transaction for any act to be performed by or for the omitting to do any act by that person in the performance of that his public functions, commits an act of corruption.

Where there is a significant increase in the assets of a public servant which cannot be reasonably explained having regard to his lawful earnings, the significant increase shall be deemed to be illicit enrichment and that public servant shall be deemed to have committed an act of corruption.

Any public servant who improperly uses for his own benefit or that of a third party:

- Any classified or confidential information that he obtains as a result of or in the course of the performance of his functions; or
- 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, commits an act of corruption.

Any person who is or acting as an intermediary or through a third person who seeks to obtain a decision from any Ministry or Department of the Government or any statutory body or authority or any government company or any body providing public services whereby he illicitly obtains for himself or for another person any benefit or gain (whether or not the act or omission to act from which the benefit or gain is derived is detrimental to the Government) commits an act of corruption.

Any public servant who for his own benefit or for that of a third person, 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 Corruption Prevention Commission is independent and has a start-up staff of ten. Although the Commission obtains its funding from the Ministry of Justice it is an autonomous entity. Despite a severe fiscal problem the Commission for the Prevention of Corruption received an allocation of \$21.3 million for 2003-2004, over twice the allocation of 2002-2003. Section 1 of the First Schedule of the Act states that the Commission shall

consist of the Auditor-General and 4 other persons, who are appointed by the Governor General after consultation with the Prime Minister and the Leader of the Opposition. Although the Act does not specifically stipulate that the appointees are to be based on merit it can be inferred as the Act specifically states that the appointees should be from the following categories of persons:

- Members of the Privy Council
- Retired Judges of Appeal or retired Judges of the Supreme Court
- Persons, who in the opinion of the Governor General are persons of high integrity and are able to exercise competence, diligence and sound judgment in fulfilling their responsibilities under this Act.

The Appointees of the Commission are protected from removal without relevant justification as the Act makes provision for security of tenure for seven years after which the appointees are eligible for re-appointment. Despite this however, the Governor General after consultation with the Prime Minister and the Leader of the Opposition may at anytime revoke the membership of any appointed member.

As required by Section 12 of the First Schedule, the Commission is to make annual reports and can be asked at any time to forward reports to the Minister of Justice on its activities as well as a Statement of its audited accounts.

Citizens can complain to the Corruption Prevention Commission without fear of recrimination. Complaints can be made via the telephone as there will be access to a special 1-800- number designed specifically for this purpose. The whistleblower 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 employment have to sign a secrecy oath which has penalty for disclosure of identity or information etc. This secrecy oath is applicable even after an employee has left the Commission. The penalty of disclosure is 500,000 dollars or 5 years in prison.

The law also provides for substantial penalties for persons found guilty of committing acts of corruption. First offenders convicted before a Resident Magistrate's Court are liable to a maximum fine of a million dollars or 2 years imprisonment or both. A second or subsequent offence would attract a maximum tripling of the first offence fine and/or a maximum of three years imprisonment. Convictions before a Circuit Court attract heavier sanctions – in the case of a first offence a maximum fine of 5 million dollars and/or a maximum 5 year prison term. Second or subsequent offences before the Circuit Court would be punished by a maximum fine of ten million dollars and/or a maximum prison term of 10 years.

Financial Investigations Division/Anti-money Laundering Authority

The Financial Investigations Division (FID) merged with the Revenue Protection Department and the Financial Crimes Unit and effectively became a Division of the Ministry of Finance and Planning on December 16, 2002. The Financial Investigations Division has 7 departments. These are:

- Intelligence
- Special Investigation
- Internal Investigation
- Legal Services
- Financial Crimes
- Information Technology
- Administration.

The FID has an adequate staff compliment of 120 personnel. Its objectives are to:

- Investigate and monitor alleged breaches of the Revenue Administration Act, the Money Laundering Act and all other Associated Acts falling under Jamaican jurisdiction
- Investigate alleged acts of corruption and bribery within the Tax Administration and the Financial Sectors
- Recommend ongoing legislative amendments and enhancements to the Revenue Acts and Regulations, the Money Laundering Acts and all other Associated Acts
- Collaborate investigative audits with key tax agencies such as Jamaica Customs, Taxpayer Audit and Assessment and the Internal Revenue Departments
- Collaborate with Revenue Departments on issues of tax evasion, breaches of the Customs and General Consumption Tax Acts, among others
- Collaborate with local and overseas law enforcement agencies on issues of money laundering or anti-terrorism which poses serious threats to the economic/social health of the country
- Apply best practice in intelligence gathering/financial investigations to combat corrupt practices which present serious threats to the tax administration and the economy
- Detect, deter and aid the prosecution of offences committed under the various acts dealing with drugs, revenue breaches and financial crimes by reducing the actual and expected profits that would evolve from such corrupt practices.

The Financial Investigations Division enjoys relations with key public and private sector institutions. Public sector institutions, such as Jamaica Customs Department, General Consumption Tax, Motor Vehicles and Registrar of Companies and the various Shipping and Port departments are obligated to disclose information to the Financial Investigations Division in relation to violations of the Customs Act, the General Consumption Tax Act, the Money Laundering Act.

For example, in 2002, 904 breaches of the General Consumption Tax (GCT) Act were identified valued at J\$1,058,067. Similarly for the year 2002, 1,154 persons and companies opted for a mitigated penalty. The quantum of duty evaded and the penalties applied to these cases amounted to J\$79.5 million. No person has been sentenced to any prison term under the Customs Act and the GCT Act between 1997-2002. This reflects inexcusable laxity on the part of the law enforcement authorities. It should also be noted that Jamaica has asset-forfeiture legislation for narcotics and corruption related offences but this legislation is inconsistently applied.

There is need for the Government to mount a public education campaign in schools to educate children as to the importance of paying taxes. This will help the society when they become adults and are required to pay taxes.

There is a need to enforce laws to act as a deterrent to those individuals who are refusing to pay their taxes. The Government must recognise that voluntary compliance is not working so those who are guilty of tax evasion must be punished severely.

Media

Section 22 of the Constitution provides "protection of freedom of expression" and stipulates that freedom of expression "includes the freedom to hold opinions and to receive and impart ideas without interference...". In reflecting this freedom, the media in Jamaica are undoubtedly among the most important pillars of the country's national integrity system.

From a position of some state ownership, the government has divested its media institutions and fully liberalized the sector. There are three local television stations and 50

cable television providers all of which are privately owned. There are in addition eleven national radio stations, none of which are government owned.

The four largest newspapers are all privately owned. Among the 50 cable providers five new licences were issued in 2002 while 2 new licences were issued in that same year to bring the number of radio stations up to eleven. Alongside these national media, there are a significant number of newspapers, radio stations and cable providers with local and community audience. Private ownership is diffuse and not highly concentrated. None of the major national media are party-linked to any significant extent¹⁵².

The media in Jamaica have deep penetration and enjoy wide and growing coverage. The number of radios averages more than one per household and over 60% of households have television. Newspaper purchase runs close to one million per day and there are a half a million video cassette recorders in Jamaican homes. A particularly noteworthy feature of Jamaican media, in particular radio, is the exceptional prevalence and popularity of talk shows. These run literally "around the clock" and enjoy a daily audience of well over half million people¹⁵³. Not surprisingly, in 2002 total revenue of broadcasting firms, relative to 2001, increased by 19.5% while cable television businesses increased their revenue by 88.9% over the same period. Public opinion surveys indicate that the people regard the media as the most important national institution, coming out slightly ahead of the church and well ahead of trade unions and political parties¹⁵⁴.

Media Freedoms

Section 22 of the Constitution qualifies "freedom of expression". It stipulates that "nothing done in or under the authority of any law shall be held to be inconsistent with or in contravention of" the right to freedom of expression to the extent that the law in question...is reasonably required:

- In the interest of defence, public safety, public order, public morality or public health; or
- In the interest of legitimate rights to privacy, confidentiality, reputation; or
- In imposing "restrictions upon public officers, police officers or upon members of the defence force".

The electronic media operate under the Broadcasting Commission, the regulatory authority under the Broadcasting and Radio Rediffusion Law. There are no licensing restrictions for the media in Jamaica.

There are no laws that censor the media. However, the libel law leads directly to some voluntary censorship. The libel law can have a serious adverse effect on the media, in particular on the print media. For instance, there is a current case between Gleaner Company of Jamaica vs. Anthony Abrahams in which J\$80 million was awarded to Abrahams under a libel lawsuit. The plaintiff, a Minister in the Jamaica Labour Party Government 1980-1989, alleged and the court accepted that the Gleaner newspaper published a false allegation that Abrahams had accepted a bribe from an American company in return for being granted the tourism advertising contract on behalf of the Government of Jamaica. The local court of appeal reduced the figure to J\$30 million as it claimed that whereas compensation is evident the level of compensation should not have an effect to wipe out the existence of the Gleaner Company. In addition, the Jamaica legal system appears flawed. Although the Gleaner Company accepted at the very beginning that it was guilty, the case took 11 weeks in court costing a J\$½ a million per week¹⁵⁵. The Gleaner Company was also required not only to cover its legal cost but also the legal cost of the Mr. Abrahams. Bearing in mind that all these costs were incurred before and does not include compensation for damages. This case is now before the highest court of the land – the Privy Council.

The media regularly cover the views of government critics. Editorials, newspaper columnists, television and radio commentators, talk show hosts, reportage are frequently critical of the government, ruling party parliamentarians, ministers of government as well as the Prime Minister. Government ministers and spokespersons regularly appear in the

media. The media regularly reports on corruption issues. The national newspaper with the widest coverage had over 600 items dealing with corruption between October 1998 and May 2003. Nevertheless it is difficult for a Jamaican journalist to investigate corruption without being mindful of restrictions derived from the libel laws. No journalist however in Jamaica has ever been harassed or victimized for investigating corruption much less maimed, injured or killed.

Other constraints however impact investigative reporting especially on corruption related issues. First, inadequate training of journalists combined with pay and conditions of service that often do not attract and retain high quality professionals. For example, journalists make inadequate use of large number of annual reports of state agencies, statutory corporations and government companies laid on the Table of Parliament each year. In the same vein, the annual reports of the Contractor General, the Auditor General and the Ombudsman's Office provide much material for investigative analysis of corruption-related conduct. However this is not forthcoming. Secondly, media are sometimes unwilling or unable to provide the time and resources necessary to carry out serious investigative reporting. Thirdly, information from the public sector is often withheld from the media. The continuation on the statute books of the Official Secrets Act provides some legal justification for withholding information. However, a culture of secrecy has developed and taken root in both the public and the private sector. The passage of the Access to Information Act and its coming into effect in October 2003 should help to improve this situation.

It is necessary in addition to repeal the Official Secrets Act. Moreover to strengthen the media's role in upholding freedom of expression:

- There is a need to move closer to the rights and protection enjoyed by the US media. In the famous case *New York Times vs. Sullivan* it became clear that if the media reported on a Public official the test of libel is different than for a private individual. To stem corruption a move to what was evidenced in *New York Times vs. Sullivan* is important
- There must be the introduction of a wire service defence to protect the local media. The local media can not verify everything. As such there needs to be protection for the local media if the local media broadcast an item from another legitimate source such as Reuters and Associated Press etc. (Had this been the case, there would be no lawsuit involving *Gleaner vs. Abrahams*)
- An apology or correction of an item printed previously should prevent individuals from suing the media. In some states, if an apology has been given after a media report has been made, an individual can only claim compensation from the time the media reports to the time when the statement has been retracted. Jamaica needs to move to this system
- The print media, more so than television and radio, are more likely to be the targets of lawsuits. This is particularly so because it is relatively difficult to obtain tapes, but a newspaper can be used as tangible evidence. This means that the Government should provide more protection for the print media.

Nevertheless, in international ratings of press freedom, Jamaica consistently ranks in the top 10 to 15% of countries around the world.

Civil Society

The 1990s have seen contradictory tendencies in civil society in Jamaica¹⁵⁶. Traditional civil society groups like the trade unions, the historic churches and farmers associations have weakened in terms of membership growth, financial base and national influence. At the same time however other elements of civil society have emerged and grown in significance even as support for the political parties and traditional groups have declined. The new civil society includes:

- Community based organizations (CBOs) that is, youth clubs, citizens associations, parent teachers associations, sports groups
- Non-governmental organizations, for example, United Way of Jamaica, Kingston Restoration Company
- Fundamentalist churches
- 'Cause' or 'advocacy' groups concerned primarily with human rights issues and matters of democratic governance.

Among the most important of this last category of civil society groups are Jamaicans for Justice, Families Against State Terrorism, the Independent Council for Human Rights, the Citizens Action for Free and Fair Elections (CAFFE). The main organizations involved in fighting corruption are Transparency International – Jamaica Chapter; the Farquaharson Institute for Public Affairs; the Private Sector Organization of Jamaica; the Media Association of Jamaica. In terms of service delivery, there are citizens groups monitoring government to one degree or another in the delivery of:

- Educational services – the association of teachers, of parents and of students
- Medical – health services – association of doctors, nurses, medical technologists
- Children's services – Jamaica Foundation for Children, Jamaica Coalition on the Rights of the Child
- Senior citizens' services – Government Pensioners Association
- Disability services – Jamaica's Disabilities Association.

During the 1990s, no major legislation or policy change of the government has taken place without input from civil society, even though many members of the government have reservations, bordering on hostility to civil society. The method usually adopted is as follows:

- Announcement of proposals by the government
- Publication of a discussion paper (Green Paper) by the Government
- Tabulation of submissions from the public and interested civil society groups
- Subsequent amendment of the Green Paper
- Publication of a white paper and the receipt of further submissions
- Tabling of a Bill in Parliament
- Establishment of a joint-select committee of Parliament to examine the bill in detail, receive representations from civil society groups and report proposed amendments to Parliament
- Debate, passage and implementation of new law.

This process is obviously cumbersome and time consuming. For example, it took approximately seven years for the new Corruption Prevention Act to move from initial proposal to enacted legislation. Similarly, in relation to the Access to Information Act which is to be implemented in October 2003. The benefit however is that, in the main, civil society organizations have opportunity to influence policy even though there is complaint from time to time that the process does not always produce acceptance of civil society recommendations. The reality of frequent amendments by government to initial proposals as a result of civil society submissions does however make the consultative process meaningful.

Nevertheless there are important aspects of the anti-corruption drive with which civil society groups remain dissatisfied. For example as it relates to the Access of Information Act, the main objections advanced by civil society groups include:

- The provision that allows for Ministers of Government to exclude any public sector entity from application of the law

- The provision that gives only partial access to some Cabinet documents. Civil society wanted a totally transparent system that allowed access to all Cabinet documents
- The nature of the oversight committee, which is appointed by the Government. Civil society wanted a transparent oversight committee which is fully open and would enter questions from the public.

Civil society groups in Jamaica suffer from membership reluctant to campaign publicly with them¹⁵⁷. This is so mainly because many members from the business community or other sectors within the society are afraid to support the group publicly out of fear that the government will indirectly marginalize them in the award of contracts. Such tendencies to corruption on the part of successive governments through the manipulation of contracts to garner support and expand their base is a challenge facing civil society in trying to fight corruption levels in the country.

Local Government

Jamaica is a unitary state. However independent Jamaica inherited from the colonial period a local government system through which the island is divided into parishes for administrative purposes and the system has endured. There are 13 parishes, each with an elected Parish Council. Originally these were composed of prominent local citizens but there are now Parish Council elections fought on political party lines. Traditionally, Parish Councils were responsible for the administration of local government services: roads and works, health and sanitation, fire brigade, water supply, but had little autonomy. Over the years, central government has usurped most of these responsibilities (like water supply), and others (such as garbage collection), have been divested to private enterprise. However, the existing government has expressed intention to strengthen local government through the local government reform.

The Parish Council Act Section 121-123 lists the functions of the Parish Council. In addition to these functions, there are a number of services offered by the Kingston and St. Andrew Corporation (KSAC). These include:

- Approval of Buildings and Subdivisions
- The maintenance of the following:
 - Cemeteries and Parks
 - Drains and Gullies
 - Fire Services
 - Markets and Abattoirs
 - Parking Facilities
 - Parochial Roads
- The collection and disposal of solid waste.

At the central government level, the Ministry of Local Government, Youth and Community Development has the mandate to work closely with the local authorities in executing their tasks. For instance the Ministry is expected to provide the necessary information to guide the Parish Councils as well as to establish the national policy framework that will support the actions of the Local Authorities. If required the Ministry should review or revise legislation which may be a hindrance or may not sufficiently encourage local sustainable development planning.

Among other things the role of the Ministry of Local Government includes:

- Reviewing and approving the annual budget
- Making regulations regarding the operation of the Councils

- Approving certain transactions such as the sale of land and other assets of the Council.

The local Government Parish Councils are firmly subordinate to the Central government.

At the local government level, there exist procedures in place for staff employment, which ensures transparency. The laws that govern the employment of civil service workers are also applicable at the local government level. As such the Public Services Commission addresses all employment of local government workers. However, there exist no rules to prevent nepotism at the local government level. Despite this however, the Local Government Staff Orders maintains that there should be no conflict of interest and the Ministry of Local Government should not be used for private gain. The Anti-corruption Act is also applicable at the local level.

For the most part, the meeting of the city or town council is open to the press and the public. The Parish Council Act stipulates that the meetings of the Council should be open to both the press and the public but meetings are normally conducted through committees. It is the responsibility of the committees to decide which council meetings are to be open and which ones are to be closed depending on the issues to be discussed. The practice though is that all meetings with the exception of those discussing financial and administrative matters would be open to the press and the public.

Dissatisfaction with the inherited system of local government led to the initiation of a Local Government Reform Programme in February 1993. The overall purpose of the reform has been to strengthen local government vis-à-vis central government. The features envisioned to characterize the new framework of local governance are: participation, autonomy, accountability, development and empowerment. "The objective of the policy is the implementation of mechanisms to ensure the effective delivery of service to the citizens of the communities on a financially sustainable basis with the active involvement and participation of the citizens..."¹⁵⁸. So far this reform process has:

- Improved the financial autonomy of the local councils
- Strengthened collaborative relations between the private and public sectors at the parish level through the Parish Development Committee mechanism
- Through the Municipalities Act 2003 provided the legislative framework for a more autonomous, participatory and development oriented local government
- Increased levels of transparency in local governance as Parish Councils have begun to develop, pass and implement Parish budgets in open forums involving citizens participation
- Raised the level of institutional capacity in the administrative mechanisms of local government.

Nevertheless, Local Government remains constrained by:

- Subordination to central government
- Lack of financial autonomy and inadequate resources
- Poor delivery and monitoring of services to communities
- Excessive political partisanship leading to corruption in contract awards and procurement
- Low citizen interest and voter support
- Poor candidate quality and administrative staff, not least of all because of inadequate levels of remuneration.

Anti-corruption Activities

Anti-corruption reforms – Overview

During the last five to ten years, the government's anti-corruption reforms have been meaningful but more formal than effective, impacted institutions more than behaviour and been more responsive than proactive.

Anti-corruption Legislation, Institutions and Activities

The Government passed two new anti-corruption laws and strengthened previous legislation on the statute books. The Corruption Prevention Act (2002) set up the Commission for the Prevention of Corruption, instituted a comprehensive regime for the declaration of assets and liabilities by public servants and provided strong penalties for corruption offences. The Access to Information Act (2002) grants "to the public a general right of access to official documents held by public authorities, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information of a sensitive nature". The Parliamentary (Integrity of Members) Act (1973) was amended in 2001 to increase penalties for breaches of the Act by Parliamentarians and to bring the procedures relating to violations of the asset-disclosure requirements by Parliamentarians more into line with the regime imposed on non-Parliamentary public servants. In this regard, the Integrity Commission, as a result of the Amendment, now has the option to report violations of the Parliament (Integrity of Members) Act 1973 by Parliamentarians to the Commissioner of Police or the Director of Public Prosecutions. The Commission for the Prevention of Corruption has the obligation to report acts of corruption to the Commissioner of Police or to the DPP. Neither Commission however has the authority to prosecute. This is the prerogative of the DPP. The last two legislative enactments were response to impulses from within the Jamaican policy-making community. The Corruption Prevention Act, in contrast, derived its initial motivation from external circumstances viz: the need to pass law to give domestic effect to the OAS Inter-American Convention on Corruption, ratified by Jamaica in 1996.

The Government has set up or strengthened a number of institutions in its anti-corruption programme. These include the National Contracts Commission with responsibility to regulate and monitor the public sector contract awards system. In relation to the police and the public sector more broadly, the Bureau of Special Investigation and the Office of Professional Responsibility share responsibility for investigating allegations of police corruption from within the force. The Police Public Complaints authority, in contrast, is a civilian oversight institution with its own investigative capacity charged with the responsibility to investigate complaints; including corruption charges, against the Police. The Offices of the Public Defender and of the Political Ombudsman have the mandate respectively, to take up citizen charges regarding rights violations by corruption officials and political discrimination in the distribution of "scarce benefits". Finally, the Financial Crimes Unit in the Ministry of Finance and Planning has been established to combat corruption related to tax evasion, money laundering and, more generally, white collar crime.

Outside legislative enactment and institutional development, the Government has engaged in a range of anti-corruption activities. These included, in cooperation with the Parliamentary opposition, amending the Agreement and Declaration on Political Conduct (agreed between the PNP and the JLP) "to work together" to deal with "the vexed question of distribution of scarce benefits". In addition, the government tabled in Parliament, during 2002, Ministry Paper No. 19, setting out standards and guidelines for the Conduct of Ministers. Integrity and honesty are among the principles laid down, as well as the obligation of Ministers to renounce corruption in their own conduct.

Despite the enactment of laws and the promulgation of codes, credible allegations of corruption persist alongside widespread public perception that the government is not doing enough to deal with corruption. In relation to specific charges, the government has responded to public outcry by appointing enquiry committees or task forces to examine corruption related allegations. Examples of these include the "Operation Pride" National Housing Development Corporation Commission, the committee to examine compensation for top executives in public sector entities and, most recently, the internal enquiry into government consultancies. These investigative activities sometimes produce results. For example, the resignation of the Minister of Housing in 2002 was clearly related to the finding of improper conduct on the Minister's part by the Commission reviewing the Operation Pride. More often than not however, corrective action commensurate with the extent of public feeling is either not recommended, or if recommended, not effectively implemented. It is worthy of note that in the last ten years, the sum total of prosecutions and convictions among public authorities is one Minister, one Permanent Secretary and one Resident Magistrate, all in the last ten years.

Two further areas of activity are necessary to mention in conclusion. One is the opening up of Parliamentary Committees to the media, thereby increasing transparency in the legislative process. The other is the step taken by the administration towards a campaign to transform negative public values and attitudes. One goal of this campaign would be, by precept and leadership example, to foster intolerance of corruption, particularly in the partisan distribution of "scarce benefits". Almost ten years after the Prime Minister initiated the drive to promote "better values and attitudes", follow up activities have been limited and tangible outcomes non-existent.

Donor Anti-corruption Initiatives¹⁵⁹

There are a number of bilateral and multilateral donor agencies located in Jamaica, ranging from UN agencies, International Development Partners to Embassies. The UN agencies include: UNDP, UNFPA, UNEP, FAO, IBRD, UNESCO, UNICEF and PAHO/WHO. The multilateral financial institutions include the Caribbean Development Bank, the Inter-American Development Bank and the International Bank for Reconstruction and Development (World Bank). The International Development Partners are, Delegation of the E.U., USAID, JICA/JOCV, Japan Bank for International Cooperation, OAS, CIDA and DFID. The Embassies are Embassy of France, Royal Netherlands Embassy, Embassy of Japan, US Embassy, Embassy of Colombia, Canadian High Commission, Germany Embassy, Embassy of the Republic of Venezuela, Embassy of the United Mexican States and the British High Commission.

Direct anti-corruption initiatives have not been a predominant feature of official Development Assistance in Jamaica. 2002 was a typical year. Thirty four percent of all ODA went to Administration (in particular the Financial Sector Reform Programme); 31% to social infrastructure, mainly to education and health; economic infrastructure was allocated 22%. The emphasis and distribution of these allocations reflected the protracted economic difficulties which Jamaica has been facing over the last decade.

The relatively limited number of anti-corruption initiatives is also reflected in the fact that the multilateral financial institutions were engaged in funding over 50 projects none of which were corruption centred. Fifteen countries were involved in bi-lateral assistance relations with Jamaica. Of these Canada, Japan, Colombia, the United Kingdom and the United States were involved in democracy and governance programmes with implications for strengthening public sector reform, grass roots civil society organizations and anti-narcotics interdiction.

Within Jamaica the UNDP is arguably the most active UN agency involved in the fight against corruption. The UN General Assembly Resolution adopted on 28 January 1997 provides the basis for UNDP's mandate in assisting developing countries to fight corruption. By July 1998 the corporate position paper "Fighting Corruption to Improve Governance" was adopted to guide the organization's work in this field. At the heart of this mandate is UNDP's holistic approach of tackling corruption as a problem of poor

governance. Minimizing corruption is critical to reduce poverty and promote social and people-centered sustainable development. Currently, the UNDP is embarking on one such initiative referred to as "The Civic Dialogue for Democratic Governance in Jamaica". Within the context of a national dialogue, this project will concentrate initially in three action areas of employment creation, crime and violence and anti-corruption work in three pilot communities.

More now than before, bilateral and multilateral donor agencies are cooperating and coordinating their activities. This was facilitated following a request from the World Bank and multilateral banks (eg The Development Assistance Committee of the Organization for Economic Cooperation and Development (OECD-DAC), and The Inter-American Development Bank (IADB) etc) to develop good practice principles or standards in a number of areas, including financial management, procurement and environmental assessments, around which donor/lender agencies and partner countries could harmonize their operational requirements.

Subsequent to this, the Jamaican Minister of Finance welcomed the work on harmonization and offered Jamaica as one of the three initial pilots. By September 2002 the Jamaican pilot was launched. The initial work has begun on some of the harmonization elements. These include:

Strategy and Analytical work – there is cooperation between the IDB and the World Bank on analytic work. The UN Country Team has completed a Common Country Assessment (CCA) and UNDAF. There is interest in exploring joint analytic work, for example, building on the Government of Jamaica's own poverty assessment and reconciling three existing Youth at Risk studies.

Financial reporting and Auditing – The GOJ has recently upgraded its financial management procedures and practices. With support of the UNDP and the CDB, the PIOJ is implementing improved project cycle database to track both physical and financial milestones. Donors are interested in exploring the possibility for single reporting formats, content and frequency.

Environmental Assessment – the GOJ already has its own environmental assessment guidelines monitored by NEPA. The IDB, CIDA, USAID and the World Bank have submitted documentation for the mapping of current donor requirements against NEPA.

Public Sector Modernization – the GOJ has articulated a comprehensive vision and strategy of public sector reform. The GOJ and the various International Development Partners (IDP) agree that the public sector reform does lend itself to harmonization of support of the IDPs.

Although most of the harmonization elements discussed above have no direct link with corruption, the process of harmonization in all the crucial areas above is an indirect step in fighting corruption, as greater accountability and transparency can be achieved with harmonization via joint donor review of monitoring and evaluation activities.

Discussion of Key Issues

The NIS

The national integrity system in Jamaica has operated and continues to function very unevenly. At one end, the media and, increasingly, civil society are powerful tools against corruption. At the other extreme, the relative weakness of “checks and balances” on executive power and the comparative ineffectiveness of law enforcement severely weaken the national integrity system. As a result, levels of corruption are moderate to high. Nonetheless, the trends against increasing corruption are gathering momentum and there is now a more even balance between forces undermining and forces strengthening the national integrity system. A number of key issues will determine whether negative or positive tendencies become more dynamic.

Leadership

More effective political leadership in combating corruption is essential. In this regard, the stewardship of Prime Minister Patterson has been mixed. On the one hand, he has been outspoken in exhortations against corruption and led the way in the passage of anti-corruption legislation and the establishment of anti-corruption institutions. Follow through in terms of punishment of members of the executive tainted by corruption allegations and enhancement of law enforcement capacity to sanction the corrupt has been lacking.

But the need to strengthen leadership in combating corruption goes beyond the political context. Firmer direction is both possible and necessary in the private sector and among law enforcement agencies – in particular in the police and the prosecutorial system.

Overall, there is not so much an absence as an inadequacy of leadership will given the magnitude of the task.

Followership

There are contradictory tendencies among the Jamaican people on the issue of corruption, which impact the pillars of the national integrity system. On the one hand, the overwhelming majority of the public are hostile to “grand corruption”, particularly in public procurement, public appointments, public asset-disposal and police conduct. This segment is supportive of more effective investigation, prosecution and punishment of corruption in “high places”, amongst leading politicians, big contractors, police officers and private sector “big wigs”. On the other hand, significant sections of the people turn a blind eye to “petty corruption” and very often are themselves involved in “using contacts” or paying small fees to expedite services (for example, getting licences, birth certificates etc) or to avoid prosecution (for example, tickets from the police). More significantly, the activist minority (about 30% of the electorate) which remains attached to the main political parties in fact expect to receive benefits and to suffer discriminatory treatment depending on whether their party is in government or in opposition. This “corruption-friendly” core is diminishing as the parties lose support but its continued strength constitute a severe constraint on tendencies within the political leadership to leave behind corruption based on clientelism and partisan distribution of scarce benefits. Clearly an entirely new level and quality of public education on the evils of corruption in respect of even those who may benefit in the short run is an urgent necessity.

Legal Framework

Within recent years the legal framework of Jamaica’s national integrity system has been strengthened. Much more needs to be done however – particularly in respect of the passage of plea bargaining legislation. This would increase the incentive for the “small fry” in the corruption chain, particularly in respect of narcotics related corruption, to facilitate

the identification, charging and successful prosecution of the “big fish” engaged in corruption practices. Another serious gap in the legislative framework is the absence of law regulating political finance. A huge loophole for corruption is therefore the freedom of political parties and election candidates to receive contributions from whatever source, to spend money without limit and to have no disclosure requirements.

Law Enforcement

More effective legislation without more consistent law enforcement, especially against the “high and mighty” is likely not only to be futile but actually dysfunctional in terms of bringing the justice system into disrepute. In this regard there have been some positive signs in the recent prosecution and conviction of prominent citizens, including a former Minister, a Resident Magistrate, the son of a Jamaican ambassador and a number of attorneys. Nevertheless, the predominant tendency remains one of delay in prosecuting serious cases of corruption, particularly against the police and against personalities connected to the ruling PNP government. It is essential for the police and the prosecutorial pillars of the national integrity system to be strengthened, in the first case by better training and in the second by increased numbers of professional staff.

Civil Society

The key issue here is how to strengthen this increasingly positive element in Jamaica’s anti-corruption framework. In this regard, the main advocacy groups need more resources and outreach capacity in order to improve their capacity as well as influence. The same is true of the growing number of community based organizations. Here the need is to increase their level of independence as a counter weight against discriminatory party patronage and corrupt allocation of scarce benefits at the grass-roots level in the constituencies. At the same time, civil society groups need to avoid both inflexible adversarialism and debilitating co-optation in their relations with the executive in particular and the governmental structure in general. Strengthening the anti-corruption struggles requires a partnership permissive of both criticism and support, with the state and the private sector. This may well require more exposure of civil society groups to such partnerships in other countries where they work successfully.

The Media

The media is undoubtedly the star performer in Jamaica’s national integrity system. To be more effective however, the media needs to build institutional capacity for more sustained, investigative reporting and analysis of corruption related issues. Pending implementation of freedom of information legislation should increase media access and encourage greater professionalism. This implies greater balance in presenting both advances as well as deficiencies in combating corruption and requires more attention to exposing the dangers of public tolerance, even of petty corruption. Stronger protection for the media through amendment of existing libel and defamation law is important but secondary to more effective utilization of prevailing freedoms.

Constitutional and Political Reform

The reform of Jamaica’s structure of government has been in the public agenda for over a decade. There is consensus among the major political parties and between the parties, civil society and the private sector in a number of areas critical to strengthening the country’s national integrity system. These include measures to:

- Diminish the power of the Prime Minister
- Strengthen the independence of Parliament and its involvement in the budgetary process
- Make public officials more accountable by way of provisions for impeachment
- Strengthen the rights of the people and their access to redress

- Institutionalize an independent element within the legislature
- Increase the independence of critical institutions, such as the Police Services Commission, from the influence of the political executive
- Give greater autonomy for local government and empowerment of communities.

These areas on which there is a measure of political and societal consensus need to be urgently implemented even while debate continues on important issues as to whether Jamaica ought to change from a Parliamentary to an executive Presidential system with more effective separation of powers.

Anti-corruption Agencies

Three critical institutions need to be more aggressive in upholding integrity law and in exposing as well as punishing corruption. These are the newly formed Commission for the Prevention of Corruption, the Financial Crimes Unit in the Ministry of Finance and Planning and the National Contracts Commission. Each needs to utilize fully provisions for independence from the political executive. The media and civil society need to keep their work and activity in the spotlight whilst encouraging maximum effectiveness. It is vital that the Corruption Prevention Commission gets off to a confidence-building start and not be regarded as form without substance. Equally important is the necessity for closer inter-relationships amongst the various agencies, in particular, among the Integrity Commission, the Commission for the Prevention of Corruption, the Office of the DPP, the Financial Investigations Division, the Services Commissions and of course the JCF.

The Illicit Narcotics Trade

The trans-shipment of cocaine through Jamaica from Central America to the United States and Western Europe constitutes a major source of corrosion of the country's national integrity system. Drug money is used by trans-national criminal enterprises and their Jamaican collaborators to corrupt functionaries in critical state agencies – particularly the police and customs – political party functionaries and grass roots, community organizations. It is essential to maintain and enhance the consensus in the national anti-crime plan on the need to prioritize the struggle against the illicit narcotics trade. In this regard, a key issue is raising the level of collaboration between Jamaican and foreign law enforcement agencies.

Effectiveness of Government and Donor Supported Activities

As is evident from other sections of this study, government activities and the development of an anti-corruption framework have not been very effective in dealing with the reality of corruption. The time has come for the government to bring together the various elements in its anti-corruption activity into a single comprehensive strategy, indicating areas of responsibility, targets, tactics and the forms of work itself and the social partners intend to pursue.

At the same time donor activity has not been particularly focused on anti-corruption activity. To the extent that there has been some attention this has helped civil society groups, legislative changes and law enforcement. A greater harmonization and coordination of effort is now called for in focusing on strengthening key pillars in the national integrity system.

Priorities and Recommendations

Priorities and recommendations need to be framed in the context of widespread public concern about the high levels of corruption and the continuing cynicism regarding the seriousness of the authorities in combating corruption. Indeed, the paradox is that as more institutional pillars of the national integrity system are being put in place, the belief is that levels of corruption are increasing. Winning public support for the struggle against corruption is essential but this cannot be done in the short run by increasing levels of public education alone, important as this is. This requires unambiguous action from the authorities indicating their own seriousness in dealing decisively with corruption, particularly in high places.

This would involve:

Firstly: A clear, publicly announced and reaffirmed priority on the part of the Prime Minister and the Minister of National Security on the priority of combating corruption wherever it exists but primarily amongst the top echelons of society.

The establishment of a task force from the Office of the Director of Public Prosecutions, the Police Organized Crime Division, the Financial Crimes Unit, the National Intelligence Services and their American and British counterparts in bringing to completion cases being developed against targeted corruption “king-pins” and carrying such prosecutions to successful conviction and incarceration.

The prompt laying of charges, successful prosecution and exemplary punishment of public officials who breach the provisions of existing integrity legislation, in particular, the declaration requirements in the Corruption Prevention Act, the Parliament (Integrity of Members) Act, the Representation of the People Act.

Secondly: A comprehensive programme of public education and cultural change-management.

This should involve:

- Intense public education, with the active collaboration, coordination and support of the private media, concerning the negative effects of both political, narcotics-related and petty corruption on the people themselves, as well as on the economy, politics and society. A major aim of this campaign should be to elicit public support in the reporting of suspected acts of corruption to the anti-corruption agencies and law enforcement authorities
- Continuous training and orientation of public officials – ministers, civil servants, public sector employees – in the existing codes of conduct and the application of incentive systems to reward those who uphold the codes and punish those who are found to be in violation
- The development and publicizing of anti-corruption codes of conduct in the private sector, in particular applicable to foreign investors, trans-national corporations and major private sector enterprises. This should include codes developed and enforced by umbrella organizations such as the Jamaica Chamber of Commerce and the Private Sector Organization of Jamaica.

Thirdly: A programme of building institutional capacity in targeted organs of the national integrity system. Priority should be given to:

- The Office of the Director of Public Prosecutions
- The Commission for the Prevention of Corruption
- The Police Anti-Narcotics Unit
- The Financial Crimes Unit of the Ministry of Finance and Planning
- The Values and Attitudes and the Access to Information Units in the Ministry of Information

- The strengthening of the policy research capacity of the House of Representatives and of the Senate
- The Auditor General's Department
- The condition of the Resident Magistrates' Courts.

Fourthly: Donor support, cooperation and coordination should be directed at strengthening institutional capacity in the above mentioned areas and, more broadly, in raising the quality of democratic governance. This should entail:

- Assistance in public education on the long-pending constitutional reform programme and, in particular, on the importance of measures for more effective 'checks and balances' within the governmental system
- Support for measures to improve transparency and accountability, in particular the repeal of the Official Secrets Act and appropriate amendments to the Access to Information Act; the enactment of legislation to regulate political parties and political finance; the public dissemination of information relating to the tendering process and contract awards in the public procurement system
- Strengthening the capacity of civil society groups both of the advocacy type as well as those based in communities
- Improving the effectiveness of the media through programmes of training for journalists
- Exposure of national and grass roots leaders of political parties to processes of democratic renewal and institutional modernization of parties in mature and established democracies.

Finally: There is need for further research and investigation in a number of areas of relevance to the Jamaican national integrity system:

- Survey of public attitudes to corruption among the activist and the uncommitted in the electorate
- The annual report of the Contractor General, the Auditor General, the Ombudsman, the Public Accounts Committee – analysis of remedial action on recommendations
- Law-making with and without civil society – a comparative analysis
- Recommendations from reports on Police Reform – an evaluation of implementation, progress and obstacles
- The role of the media and civil society in exposing corruption – specific case studies
- 'Best practices' among reforming parish councils in the Local Government system
- Leader-centrism and internal party democracy – limits and possibilities

Endnotes

- ¹ For useful overviews of Jamaica's recent political history and political development. See Trevor Munroe The Politics of Constitutional de-colonization: Jamaica, 1944-1962 Institute of Social and Economic Research University of the West Indies, Kingston 1972; Trevor Munroe Renewing democracy into the Millennium : The Jamaican experience in perspective, The Press UWI, Kingston 1999; Anthony J. Payne Politics in Jamaica (Revised edition) Ian Randle Publishers Kingston 1994; Carl Stone Democracy and Clientelism in Jamaica, Transaction Books New Brunswick and London 1980; Carlene J. Edie Democracy by Default : Dependency and Clientelism in Jamaica, Lynne Rienner Bolder 1991.
- ² Jamaica Constitution (Order in Council) 1962, Section 34.
- ³ Jamaica Constitution (Order in Council) 1962, Section 69.
- ⁴ Jamaica Constitution (Order in Council) 1962, Chapter VII.
- ⁵ Jamaica Constitution (Order in Council) 1962, Section 111, 124, 129.
- ⁶ Jamaica Constitution (Order in Council) 1962, Section 120.
- ⁷ Jamaica Constitution (Order in Council) 1962, Section 94.
- ⁸ Contractor General's Act (Act's of 1983).
- ⁹ Corruption (Prevention) Act (2000).
- ¹⁰ See "Corruption shadows public confidence. The majority of Jamaicans are convinced corruption exists among most of the institutions in the country, but the police force, government and customs were the principal areas". The Jamaican Gleaner February 9, 2000 reporting on a national public opinion survey.
- ¹¹ US Department of State International Narcotics Control Strategy Report 2002 (released on March 1, 2003) The Caribbean p. 26 (<http://www.state.gov/g/inl/rls/nrcrht/2002/html/17945hf.htm>).
- ¹² Global Illicit Drug Trends 2002 United nations Office for Drug Control and Crime Prevention. New York 2002.
- ¹³ INCSR 2002 op. cit. p. 29.
- ¹⁴ Caribbean Drug Trends 2001-2002 United Nations Office on Drugs and Crime, Caribbean Regional Office, Bridgetown Barbados, WI February 2003, p.27.
- ¹⁵ INCSR 2001.
- ¹⁶ Stone op. cit., Edie op. cit. For explicit confirmation of this system of patronage see Report of the National Committee on Political Tribalism July 27, 1997 pp. 19-23. The National Committee was established by Prime Minister Patterson on September 10, 1996 and included representatives from PNP, the JLP, the NDM as well as from civil society.
- ¹⁷ "It has been the experience of some contractors (local and foreign) that political officials have instructed that certain persons should go on their payroll. In some cases contractors are told which equipment rental, material suppliers and subcontractors to use" Construction Revival 2001 Proposals for a Revival in the Local Construction Industry : Requirements for sustained growth. Joint Consultative Committee for the Building and Construction Industry of Jamaica January 2001 Kingston p. 7.
- ¹⁸ Jamaica Constitution (Order in Council) 1962, Section 32.
- ¹⁹ Jamaica Constitution (Order in Council) 1962, Section 69.
- ²⁰ Jamaica Constitution (Order in Council) 1962, Section 70.
- ²¹ See Trevor Munroe An Introduction to Politics Canoe Press Kingston 2002 pp 15-23 for a discussion of traditional and changing attitude to leadership in Caribbean political culture.

- ²² Jamaica Constitution (Order in Council) 1962, Section 70 (1), 71 (4) (b).
- ²³ Jamaica Constitution (Order in Council) 1962, Section 71 (3).
- ²⁴ The power of the Prime Minister to effectively appoint the Governor General is not explicitly stated in the constitution but it is a well established convention amongst Commonwealth countries where the Monarch of England is still the formal head of state. See Lloyd G. Barnett The Constitutional Law of Jamaica Oxford University Press Oxford 1977 p. 170.
- ²⁵ Jamaica Constitution (Order in Council) 1962, Sections 111, 124, 129.
- ²⁶ Jamaica Constitution (Order in Council) 1962, Section 98 (1), 104 (1).
- ²⁷ Jamaica Constitution (Order in Council) 1962, Section 75.
- ²⁸ The office of customs has a long history in Jamaica and is more or less equivalent to that of the Lord Lieutenant in the English county. He represents the Governor general in his parish and among the more important responsibilities, is the duty, as the Chief Lay Magistrate, to recommend persons to the relevant Minister for appointments as Justices of the Peace. See Barnett, op.cit., p.64.
- ²⁹ Jamaica Constitution (Order in Council) 1962, Section 128.
- ³⁰ The Defence Law 12 (1962), Section 9.
- ³¹ Jamaica Constitution (Order in Council) 1962, Section 81.
- ³² Trevor Munroe, The Politics of Constitutional Decolonization op. cit., chap. 5.
- ³³ Jamaica Constitution (Order in Council) 1962, Section 80.
- ³⁴ For example, this is the procedure stipulated in law for the selection of the "appointed members" of the Commission for the Prevention of Corruption, See Corruption Prevention Act 2000, First schedule, section 1(6).
- ³⁵ Final Report of the Joint Select Committee of the Houses of Parliament on Constitutional and Electoral Reform Gordon House 31st May 1995 pp. 19-20.
- ³⁶ Final Report of the Joint Select Committee of the Houses of Parliament on Constitutional and Electoral Reform Gordon House 31st May 1995 pp. 27.
- ³⁷ Ministry Paper No 19, 2002 Conduct of Ministers p. 10.
- ³⁸ Jamaica Constitution (Order in Council) 1962, Section 93.
- ³⁹ Jamaica Constitution (Order in Council) 1962, Section 126.
- ⁴⁰ Jamaica Constitution (Order in Council) 1962, Section 92.
- ⁴¹ Jamaica Constitution (Order in Council) 1962, Section 112 (4).
- ⁴² The Leader of the Opposition has from time to time accused the Police Service Commission of partisanship.
- ⁴³ The Parliament (Integrity of Members) Act 1973. First Schedule, Section 1.
- ⁴⁴ The Parliament (Integrity of Members) (Amendment) Act 1999, Section 6.
- ⁴⁵ See Appendix 1 Report of the Integrity Commission for the year ended 31st December, 2000.
- ⁴⁶ Prosecutions against JLP Senators Ryan Peralto and Bryan Wallace were not pursued by the DPP in early 2003.
- ⁴⁷ The Corruption Prevention Act 2000 section 14 (5). The Regulations under this Act were passed in December 2002 and the Act came into force in April 2003. There are as yet no investigations or prosecutions for "illicit enrichment".
- ⁴⁸ Ministry Paper 19, 2002 p. 2.
- ⁴⁹ Ministry Paper 19, 2002 p. 12.

- ⁵⁰ Ministry Paper 19, 2002 p. 13.
- ⁵¹ See section on Public Procurement below.
- ⁵² Jamaica Constitution (Order in Council) 1962, Section 34.
- ⁵³ Jamaica Constitution (Order in Council) 1962, Section 64 (3).
- ⁵⁴ Jamaica Constitution (Order in Council) 1962, Section 59 (3).
- ⁵⁵ Jamaica Constitution (Order in Council) 1962, Section 71 (3).
- ⁵⁶ Final Report, Joint Select Committee op. cit., p. 25.
- ⁵⁷ See Notice of Nation by Lt. Hon. Edward Seaga, P.C., MP in JLP: Developing a New Political Order Jamaica Institute of Public Education September 1995 p. 77-79.
- ⁵⁸ In the 2002/2003 Parliamentary session 14 private members motions were debated in the House of Representatives and 3 in the Senate. Twenty four questions were tabled and all were answered in the House.
- ⁵⁹ In the wake of the 2003/2004 Budget debate, a censure motion against the Ministry of Finance was tabled, vigorously debated but ultimately defeated.
- ⁶⁰ Between the Parliamentary years 1998/99 and 2002/03, thirty three Joint Select Committees were set up.
- ⁶¹ See for example, the debate on the Corruption Prevention Bill discussed below.
- ⁶² Jamaica Constitution (Order in Council) 1962, Section 115 (1).
- ⁶³ "The Moses Report: The Moses committee's recommendations on alternatives to the high gas taxes" The Daily Observer May 13, 1999 p. 11.
- ⁶⁴ The Moses Report: The Moses committee's recommendations on alternatives to the high gas taxes" The Daily Observer May 13, 1999 p. 11-12.
- ⁶⁵ Joint Select Committee on Constitutional and Electoral Reform op. cit., p. 25.
- ⁶⁶ Joint Select Committee on Constitutional and Electoral Reform op. cit., p. 27.
- ⁶⁷ Joint Select Committee on Constitutional and Electoral Reform op. cit., p. 19-22.
- ⁶⁸ For a rare and highly insightful account of the power of the leader from a former Minister and member of the leadership of the Jamaica Labour Party, see Parnell Charles A Cry from the Grassroots Kingston 1999 pp. 39-66.
- ⁶⁹ This movement of the Electoral Office of Jamaica has taken place as the portfolio responsibilities of the Minister with responsibility for electoral matters shifted successively from Health, to Transport and Works and, most recently to National Security.
- ⁷⁰ General Election 1997 Report of the Director of Elections Jamaica Published November 1998.
- ⁷¹ See, for example, General Elections 1997 J.S.Kerr, Ombudsman for Political Matters April 28, 1998; A Statement on the irregularities of Jamaica's General Elections, December 18, 1997 published by the Jamaica Labour Party.
- ⁷² J. S Kerr, Ombudsman for Political Matters April 28, 1998; A Statement on the irregularities of Jamaica's General Elections, December 18, 1997 published by the Jamaica Labour Party, p. 22-23.
- ⁷³ The Observation of the 1997 Jamaican Elections, A Report of the Council of Freely Elected Heads of Government. The Carter Center.
- ⁷⁴ Observing the 2002 Jamaica Parliamentary Elections. Final Report Written by Laura Neuman. The Carter Center April 2003.
- ⁷⁵ For an analysis and discussion of the challenges and prospects of Jamaican democracy, see Trevor Munroe Renewing Democracy into the millennium: the Jamaican experience in perspective The Press UWI Kingston 1999.

⁷⁶ See answers to questions from the Honourable Minister of Information and Leader of Government Business in the Senate re: General Elections 2002 (from Senator Professor Trevor Munroe). Ninety-six of 175 candidates/agents of candidates from both government and opposition parties failed to make returns of expenditure within the six weeks period following the October 16, 2002 election as required by the Representation of the People Act. The Electoral Office has general responsibilities for ensuring the observation of this as well as other aspects of the electoral law.

⁷⁷ In May 2002, the Senate gave bi-partisan support to a resolution calling for the urgent establishment of a broad-based national commission to study and make recommendations on appropriate legislation governing political party and campaign finance. Following the October 2002 General Elections, the Government reaffirmed its commitment to deal with the establishment of the commission early in the Parliamentary year 2003/2004.

⁷⁸ See Trevor Munroe Voice, Participation and Governance in a changing environment : the case of Jamaica Caribbean Group for Cooperation in Economic Development. Discussion Draft, World Bank/University of the West Indies June 2000 (for data on growth of community organizations) p. 23-24.

⁷⁹ Jamaica Constitution (Order in Council) 1962, Section 114.

⁸⁰ Barnett op. cit., p. 220.

⁸¹ The Civil Service Establishment Act. The Civil Service Establishment (General) Order, 2003 pp 95-97.

⁸² Report of the Auditor General on the Appropriation and other Accounts of Jamaica (for the financial year ended 31st March 2000) p. 8.

⁸³ Report of the Auditor General on the Appropriation and other Accounts of Jamaica (for the financial year ended 31st March 2000) p. 9.

⁸⁴ Report of the Auditor General on the Appropriation and other Accounts of Jamaica (for the financial year ended 31st March 2000) p. 10.

⁸⁵ Report of the Auditor General on the Appropriation and other Accounts of Jamaica (for the financial year ended 31st March 2000) p. 7.

⁸⁶ Report of the Auditor General on the Appropriation and other Accounts of Jamaica (for the financial year ended 31st March 2000) p. 20.

⁸⁷ Report of the Auditor General on the Appropriation and other Accounts of Jamaica (for the financial year ended 31st March 2000) p. 58.

⁸⁸ Report of the Auditor General on the Appropriation and other Accounts of Jamaica (for the financial year ended 31st March 2000) p. 63.

⁸⁹ Report of the Auditor General on the Appropriation and other Accounts of Jamaica (for the financial year ended 31st March 2000) p. 11-12.

⁹⁰ Report of the Auditor General on the Appropriation and other Accounts of Jamaica (for the financial year ended 31st March 2000) p. 11.

⁹¹ Report of the Auditor General on the Appropriation and other Accounts of Jamaica (for the financial year ended 31st March 2000/2001) p. 12.

⁹² Report of the Auditor General on the Appropriation and other Accounts of Jamaica (for the financial year ended 31st March 2000) p.

⁹³ "Probe of NHDC ordered. PM names four-man commission in wake of corruption "charges" Jamaica Gleaner, February 18, 2002. "Probing another scandal" Jamaica Gleaner, February 19, 2002; "Making light of scandals" Jamaica Gleaner, February 22, 2002; "Shaw blasts Government" Jamaica Gleaner, April 12, 2000.

⁹⁴ Barnett op. cit., p. 102-103.

⁹⁵ Jamaica Constitution (Order in Council) 1962, Sections 100, 106.

⁹⁶ Jamaica Constitution (Order in Council) 1962, Section 103.

- ⁹⁷ Jamaica Constitution (Order in Council) 1962, Section 97.
- ⁹⁸ Ministry Paper No 41/98 The Caribbean Court of Justice (Caribbean Court of Appeal).
- ⁹⁹ Agreement establishing the Caribbean Court of Justice (mimeo) (ratified as of June 2003 by Barbados, Belize, Dominica, Guyana, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Jamaica).
- ¹⁰⁰ One indication of the intensity of the debate is that an on-line search of the Jamaica Gleaner archives 1998-2003 found 800 items.
- ¹⁰¹ Jamaica Constitution (Order in Council) 1962, Section 100, 106.
- ¹⁰² Jamaica Constitution (Order in Council) 1962, Section 112.
- ¹⁰³ Senator Dorothy Lightbourne Senate Hansard 8 May 2003.
- ¹⁰⁴ Data from the Ministry of Justice.
- ¹⁰⁵ See for example Suit No. M105 of 2000 before the Hon Mr. Justice Wolfe, Chief Justice, the Hon Mr. Justice Clarke, the Hon Mr. Justice Marsh Between Jamaica Flour Mills Ltd (Applicant) and the Industrial Disputes Tribunal (Respondent) 17 December 2001.
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- ¹⁰⁷ Challenges of Capacity Development Towards Sustainable reforms of Caribbean Justice Sectors. Volume II: A diagnostic assessment. Inter-American Development Bank/ Caribbean Group for cooperation in Development May 2002 p. 11.
- ¹⁰⁸ On April 28, 2000 Resident Magistrate Norma Von-Cork was sentenced to 1 year in Prison for conspiring to pervert the course of Justice. The Jamaica Gleaner April 29, 2000.
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- ¹¹¹ Jamaica Public Sector Entities Estimates of Revenue and Expenditure for the Year ending March 2004 as presented to the House of Representatives April 2003 Ministry of Finance and Planning p. 2-3.
- ¹¹² See Budget Debate, April 1999; The Jamaica Gleaner April 28, 1999 "Shaw targets"; also Ministry Paper No 50, October 7, 1999; the Walker Report February 22, 2000.
- ¹¹³ In one public company in relation to which the author has some direct knowledge, one consequence of patronage influenced appointment is "in the employment of persons in positions for which they were not qualified". The Jamaica Urban Transit Company Limited A Review of the JUTC: July 1998 – Feb 2002 KPMG June 7, 2002 p. 27.
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- ¹¹⁵ Staff Orders for the Public Service Government of Jamaica 1976, 3.17.
- ¹¹⁶ Staff Orders for the Public Service Government of Jamaica 1976, 3.7.
- ¹¹⁷ Staff Orders for the Public Service Government of Jamaica 1976, 3.6.
- ¹¹⁸ Interview Wayne Jones.
- ¹¹⁹ Interview Dr. Carlton Davis.
- ¹²⁰ Public Sector Modernization Vision and strategy 2002-2012 September 2002 Cabinet Office, Kingston Jamaica p. 2.
- ¹²¹ Public Sector Modernization Vision and strategy 2002-2012 September 2002 Cabinet Office, Kingston Jamaica p. 21.

- ¹²² Public Sector Modernization Vision and strategy 2002-2012 September 2002 Cabinet Office, Kingston Jamaica p. 3.
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- ¹²⁴ Public Sector Modernization Vision and strategy 2002-2012 September 2002 Cabinet Office, Kingston Jamaica p. 21.
- ¹²⁵ Public Sector Modernization Vision and strategy 2002-2012 September 2002 Cabinet Office, Kingston Jamaica p. 26.
- ¹²⁶ Report of the Committee to Inquire into the present system for the sale of lands by the Commissioner of Lands and to make recommendations 1995 (MIMEO).
- ¹²⁷ Report of the Committee to Inquire into the present system for the sale of lands by the Commissioner of Lands and to make recommendations 1995 (MIMEO), p. 11.
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- ¹³² In January 1999, the Commissioner of Police ordered the transfer of most of the 127 police personnel assigned to the Portland Division because of suspicion of involvement with cocaine-related corruption. In September 1999, the Commissioner transferred the entire 91 member Special Anti-Crime Task Force because of allegations of involvement in unprofessional and corrupt conduct. See Lloyd Williams "Policemen implicated in drug-dealing" Jamaica Gleaner October 29, 2000.
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- ¹³⁹ The Eight Annual Report of the Contractor-General January to December, 1994 p.5.
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- ¹⁴² The Fourteenth Annual Report of the Contractor-General January to December, 2000 p.26.
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- ¹⁴⁵ First Annual Report of the Public Defender for Jamaica – Calendar Year 2000 p. 24.
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