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STATEMENT OF THE OFFICE OF THE CONTRACTOR GENERAL (OCG) TO THE PARLIAMENT OF JAMAICA REGARDING THE OCG'S SEPTEMBER 2010 STATUTORY INVESTIGATION INTO THE MINISTRY OF AGRICULTURE'S AWARD OF TWO CONSULTANCY CONTRACTS TO AUBYN HILL

Introduction

The Office of the Contractor General (OCG) has taken note of the recent Rulings of the Office of the Director of Public Prosecutions (ODPP) which were issued in response to the Statutory Referrals which were submitted to it following the conclusion of the OCG's September 2010 Investigation into the two (2) consultancy contracts which were awarded by the Ministry of Agriculture and Fisheries (MAF) to Business Consultant, Mr. Aubyn Hill.

The OCG wishes to make it abundantly clear that it fully acknowledges, accepts and respects the lawful and independent authority of the ODPP, under the Constitution of Jamaica, to decide, as it alone sees fit, whether a criminal prosecution should be commenced in any matter which has been lawfully referred to it.

The OCG, in its Report of Investigation into the matter, had determined that there was evidence that Mr. Hill, the MAF Minister, Dr. the Hon. Christopher Tufton and the MAF Permanent Secretary, Mr. Donovan Stanberry, had each made separate, sworn and materially false statements, under the pain of criminal prosecution, with the seeming intent to mislead a Contractor General, contrary to Section 29 (a) of the Contractor General Act (CGA) and Section 8 of the Perjury Act.

The OCG continues to stand firmly and unconditionally by those of its Findings, Conclusions, Referrals and Recommendations which are set out in the referenced Report of Investigation.

The Commission of the Contractor General is a Quasi-Judicial Authority which was established under the CGA of 1983 as an Independent Anti-Corruption Commission of the Parliament of Jamaica. In conducting Investigations, pursuant to the provisions of the Act, a Contractor General is vested with the powers of a Judge of the Supreme Court of Jamaica and is expressly empowered to examine witnesses under oath, or otherwise, and to make a Quasi-Judicial determination or finding, on the basis of sworn or other evidence that has been presented to it, *"that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body"*.

In discharging his mandates and functions under the Act, a Contractor General is required to act independently. Section 5 (1) of the CGA expressly mandates that *"In the exercise of the powers conferred upon him by this Act, a Contractor General shall not be subject to the direction or control of any other person or authority"*.

After considering the OCG's Report, the ODPP determined that there was no basis for commencing criminal proceedings against any of the three (3) men. That is the right of the ODPP. Indeed, in referring the said matters to the ODPP, the OCG in no way directed or attempted to direct the ODPP or made any recommendation whatsoever to the ODPP but clearly expressed that the matter was being referred *"to the Learned Director of Public Prosecutions **for such further action as she may deem to be appropriate**"*.

The ODPP issued its Rulings on Tuesday, September 28, 2010. The Rulings were issued 15 days after the OCG's Report of Investigation was formally submitted, as is required by law, to eight (8) State Authorities, inclusive of the Speaker of the House of Representatives, the President of the Senate and the ODPP, and 14 days after the Report was tabled in the House of Representatives.

At the time of the ODPP's Rulings, the OCG's Report of Investigation had not yet been tabled in the Senate nor has the Report been tabled in the Senate as at the date of this Statement. Consequently, the Report has not yet been formally published by the OCG pursuant to Section 28 (4) of the CGA.

The OCG's Investigation Report, the ODPP's Rulings and, in particular, certain public statements which have been made by the MAF and by the three (3) MAF officials in the instant matter, have raised a number of critical questions in the public domain. These questions cannot be left unaddressed or unattended.

The OCG believes that the public interest would be best served if its positions, in respect of the above-referenced questions, are lucidly, forthrightly and dispassionately articulated. The OCG trusts that its efforts to do this will not be mischaracterized as an attempt to advance what some have branded as a *"public spat"* between the OCG and at least one other public institution.

One of the questions which has been raised is whether the OCG has *"over-reached"* in the discharge of its statutory mandates, has acted unlawfully or with indiscretion, or has failed to *"understand (the) context motives and intent"* of the matter, whatever that was intended to mean.

The OCG's position is that it has done none of these things. Indeed, the OCG is firmly fortified in its view that it has faithfully and lawfully discharged its mandate under the CGA and that it has dispassionately arrived at its positions after having conducted a thorough Investigation in the matter, inclusive of an objective assessment of the sworn evidence and all of the circumstances of the case as was presented to it.

The OCG is an organization which strives to attain the highest levels of professionalism, integrity and ethical standards in the administration of its functions and mandates under the CGA. The OCG is prepared, without reservation, to defend its positions, in any forum, should it become necessary to do so.

The OCG is also acutely aware that it is likely to be criticized and ridiculed for taking a stand which some may regard as a stand which is not in keeping with the popular grain of public opinion. However, taking a popular stand is not what the OCG is supposed to be about, nor is it what the OCG is about. The OCG is about discharging its mandate, faithfully and dispassionately, and fairly but fearlessly, in accordance with the law and in the interests of the People of Jamaica. In the final analysis, the OCG's job must be about the search for the truth.

The OCG would respectfully encourage those commentators and interested persons who have not yet done so to read the OCG's 148 Report of Investigation, into the matter, in its entirety. The Report was published by the Houses of Parliament on September 28, 2010 and can be viewed on, or downloaded from, the Houses of

Parliament's official website at www.japarliament.gov.jm/.

False But Pivotal Premise Placed in the Public Domain Regarding Alleged "Genuine Mistake"

While the OCG does not intend to rehash or revisit its Report of Investigation in this Statement, it is, however, constrained to correct a false but very pivotal and damaging premise which has been disingenuously placed in the public domain to the effect that the alleged *"genuine mistake"*, which was made by the three (3) MAF officials, was one which was voluntarily corrected or conceded by them to the OCG.

The assumption, although entirely false, has apparently given credence and flight to the now apparent and widely held notion that there was no basis for the OCG's inference of a criminal intention, on the part of the three (3) men, to mislead the Contractor General. As one newspaper editorial has put it, *"Indeed, it is widely acknowledged that Mr. Stanberry, early in the investigations, voluntarily conceded the error, genuinely made"*.

The contention is not only false and mischievous, but it is a deliberate obfuscation of the sworn and incontrovertible evidence which has been entered upon the record, since there was absolutely no documentation or information which was voluntarily furnished to the OCG by any of the three (3) men throughout the entire course of the Investigation. All information or documentation which was furnished by the men was furnished in direct compliance with the formal written Statutory Requisitions which were issued to them by the OCG.

The germane facts of the matter are that Mr. Stanberry's first statement to the OCG, in which he falsely classified the contracts as *'employment contracts',* was one which was made in a sworn Declaration, dated November 19, 2009, that was given by him in answer to a formal OCG Statutory Requisition. However, it was not until six months later, on May 14, 2010, that the Permanent Secretary admitted in writing to the OCG that he had made a false statement to the OCG in his November 19, 2009 Declaration.

Mr. Stanberry's written admission was by no means voluntarily rendered. It was rendered only after the OCG, by way of a second Statutory Requisition, which was dated April 30, 2010, demanded of Mr. Stanberry, under the pain of criminal prosecution, a sworn explanation as to the discrepancy that the OCG had discovered between his earlier assertion that the contracts were *'employment contracts'* and the overwhelming fact evidence that the contracts were indeed *'consultancy contracts'*. It was only then that Mr. Stanberry stated that he had made his so called *"genuine mistake"*.

This worrying development raised, for the OCG, a credible and legitimate question as to whether Mr. Stanberry had set out to deliberately deceive the OCG and had decided to confess to his alleged *"mistake"* only when he was confronted by the OCG with incontrovertible facts which he could not deny.

Likewise, it was in response to the OCG's second Statutory Requisition, which was directed to Mr. Tufton on April 30, 2010, that he, Mr. Tufton, on June 2, 2010, conceded that he had mischaracterized Mr. Hill's contracts as *'employment contracts'*. There was absolutely nothing that was volunteered to the OCG by the Hon. Minister. The Hon. Minister provided an admission of his *"error"* – shifting the blame to the Permanent Secretary – only after he was compelled, by the OCG, on the pain of criminal prosecution, to explain the discrepancy which had existed between his own earlier sworn statement vs. the fact of the contracts being *'consultancy contracts'*.

So too, in the case of Mr. Hill, absolutely nothing was volunteered by him, to the OCG, to remedy his sworn Declaration, dated March 16, 2010, in which he had falsely asserted to the OCG that the contracts which he held were *'employment contracts'*. When the OCG, via a second Statutory Requisition, sought an explanation regarding the discrepancy from Mr. Hill, he side-stepped the question entirely by stating thus: *"… This question can best be answered by my former employer MAF"*.

Mr. Hill's answer was clearly puzzling to the OCG, particularly since he, Mr. Hill, was also being asked to explain a discrepancy in a sworn statement that he himself had previously and independently given to the OCG under the pain of criminal prosecution.

Issue of determination of 'employment' vs. 'consultancy' contracts not a trivial one

It must also be clearly understood that there is nothing which was *de minimis* or trivial about the false classification, by the three (3) men, of Mr. Hill's consultancy contracts as *'employment contracts'*. Indeed, the very substratum of the OCG's Investigation centered around the determination as to whether or not Mr. Hill's two (2) contracts were to be classified as *"employment contracts"* or as *"consultancy contracts"*.

If the contracts were accepted as *'employment contracts'*, that would have been the very end of the OCG's Investigation, since '*employment contracts'* are not subjected to the strictures or regimentation of the Government's Procurement Regulations, nor are they scrutinized by the National Contracts Commission (NCC), nor are they subject to the Statutory monitoring or investigation jurisdiction of the OCG.

If, on the other hand, however, the contracts were deemed to be *"consultancy contracts",* as the three (3) men subsequently conceded that they were, then, as the saying goes, that would be a *'horse of a different colour'*. '*Consultancy contracts'*, unlike *'employment contracts'*, must, by law, be subjected to the regulatory rigours of the Government's Procurement Regulations and the Contractor General Act, as well as to the scrutiny and prior endorsement of the National Contracts Commission (NCC) before they can be lawfully awarded.

Having said that, it is critically instructive to note that the sworn evidence which was adduced to the OCG, by the MAF Permanent Secretary, himself, in response to the first of two (2) OCG Statutory Requisitions that had been directed to him, unequivocally established that he was fully cognizant of the preceding facts when he falsely swore to the OCG, under the pain of criminal prosecution, that Mr. Hill's contracts were in the nature of an *'employment contract'*.

Consequently, consideration had to be given to the prospect that the Permanent Secretary may have set out to cover his tracks, particularly when the evidence disclosed that the two (2) consultancy contracts had in fact been unlawfully awarded to Mr. Hill in flagrant violation of the Government's Procurement Rules, the Public Sector Procurement Regulations and the Contractor General Act.

Indeed, the evidence on the record has conclusively established that the MAF Permanent Secretary had bypassed the NCC in the award of the first consultancy contract to Mr. Hill and had failed to subject the second consultancy contract to a competitive tendering process. The latter act, it must be noted, amounted to the commission of a criminal offence, on his part, under the December 2008 Public Sector Procurement Regulations. Accordingly, the question of a motive could not, in the circumstances, be ignored.

Questions which inevitably arise

A number of critical questions have, therefore, come to the fore.

One is this: If the three (3) men had indeed made a *"genuine mistake"* as they claim that they did, why then did they not confess to same on their own volition instead of waiting until they were challenged by the OCG, by way of a second Statutory Requisition that was issued some six (6) to seven (7) months after the first of the three (3) false representations were made, to concede to facts which they could no longer deny and thus strengthening the inference, which was otherwise raised by the preponderance of the evidence, that there was a clear probability of a deliberate intent to deceive?

A second question must also be asked. If an inadvertent or *"genuine mistake"* was indeed made by the men, how then did Mr. Hill, at the very outset, come to be persuaded by the MAF that his contract should be characterized to the OCG as an *'employment contract'* and not as a *'consultant contract'*?

By Mr. Hill's own account, this occurred after what he, Mr. Hill, described as a *"long discussion"* on the subject had taken place between himself and the MAF Permanent Secretary. Mr. Hill stated that he was persuaded to take the Permanent Secretary's *"advice"* despite the fact that he, Mr. Hill, had had no *"doubt what I was, as a Consultant, (before) going to the (meeting at the) Ministry"* (**Ref. Statements made by Mr. Hill to Garfield Burford on CVM TV 'Direct' on September 15, 2010).**

Is it not evident, therefore, that contrary to what the MAF has suggested, there were extensive prior deliberations and consultations on exactly how the men should have answered the OCG's Requisitions and, in particular, how they should characterize Mr. Hill's contracts to the OCG?

And is this not, therefore, evidence of collusion between the parties and proof that there was indeed a concerted and pre-meditated plan of action to characterize the contracts as *'employment contracts'*?

And, finally, does this not then make suspect the men's contention that a *"genuine mistake"* was made by them when they failed to accurately characterize the contracts as *'consultancy contracts'*?

Significance of making false sworn statements whilst under caution for criminal prosecution

The foregoing matters, among the many other adverse evidentiary considerations which have been recorded in the OCG's Report of Investigation, are extremely grave and critical in import. They have raised issues of questionable motives, gross negligence, dereliction of duty, the undermining of the procurement process by a State Accounting Officer, and/or flagrant breaches of good governance and accountability standards, in the MAF's award of the subject consultancy contracts to Mr. Hill.

Curiously and regrettably, however, and to the certain detriment of the People and Taxpayers of Jamaica, these issues have been wholly overlooked or ignored by most commentators who have expressed an adverse opinion on the matter, and who seem to believe that the three (3) MAF public officials who were involved have done no wrong or, worse yet, have been unjustifiably wronged or brought into disrepute by the OCG.

The inexplicable contention that has been bandied about that the OCG is somehow responsible for the men's plight becomes glaringly ludicrous, if not preposterous, when one considers the fact that each man, independently of each other, had made a material and manifestly false statement to a Quasi-Judicial Authority, during the course of a Statutory Investigation. This was done after each of them had been **extensively cautioned in writing** that should they *"fail to provide a complete, accurate and truthful response to any of the*

(OCG's) requisitions", they would "become liable, inter alia, to criminal prosecution under Section 29 of the Contractor General Act."

To further compound the issue of the men's obvious culpability and the responsibility which they should accept for their own actions, each of them was required to, and did in fact, willingly and knowingly execute a formal Statutory Voluntary Declaration, before a Justice of the Peace, swearing, upon the pain of criminal prosecution under the Perjury Act, to the veracity of the false statements which they provided to the OCG.

It is not unlikely that, in the foregoing circumstances, in certain other jurisdictions, all three (3) men could have easily found themselves in prison for their actions or, at a minimum, be compelled to defend their conduct, before a Criminal Court of Law, for admittedly lying in sworn testimony or under 'oath' to a Quasi-Judicial State Authority.

OCG's Response to Public Recommendations Made by the MAF

The OCG's Investigation Report, the ODPP's Rulings and the consequential positions which have been publicly advocated by the MAF in the instant matter, have also raised other critical issues in the public domain. Some of the referenced issues are based upon a fundamental misunderstanding of the provisions of the Contractor General Act. Accordingly, they cannot be left unattended if the public interest is to be served.

One of the tangential issues which has surfaced in the foregoing regard is that the MAF has, among other things, publicly recommended that persons who are adversely affected by Investigations of the OCG should be given an opportunity to comment upon the Findings of the OCG ***before*** the relevant Report of Investigation is sent to the Parliament or to any other State Authority.

Other suggestions have also been advanced as to the manner in which OCG Investigations or Reports of Investigation should be handled. One of these is that the OCG should conduct its Statutory Investigations in the same or similar manner as the Office of the Auditor General conducts its audits into the accounting or financial management practices of public bodies.

There are, however, certain fundamental misconceptions and misunderstandings which have informed these views and it is critical that they are brought to light as a matter of urgency.

MAF recommendations cannot be lawfully adopted by the OCG or practically legislated

As a matter of law, the MAF's recommendations are not only entirely impossible to implement under the CGA – the very Statute which has established the Commission of the Contractor General and by which a Contractor General is circumscribed in terms of what he can and cannot lawfully do in the discharge of his Statutory mandates – but should any attempt be made to implement the recommendations, via legislative amendment, and on a piecemeal basis, the entire construct of the CGA, as it was conceived to exist, will have to be abandoned.

A cursory review of the essential elements of the platform on which the Commission of the Contractor General was constructed will bear credence to the foregoing positions of the OCG. They are as follows:

(a) The Commission of the Contractor General was established in 1983, under the CGA, as an Independent Anti-Corruption Commission of the Parliament of Jamaica. It is vested with the exclusive authority, under the law, to monitor and to investigate the award of Government contracts and the

issue of Government licences to ensure, *inter alia,* that they are awarded and issued impartially and on merit, and in circumstances which do not involve impropriety or irregularity. (See Sections 3, 4, 15 and 16 of the CGA).

(b) The Commission is required by law to discharge its mandates and functions independently of any other person or authority. In this regard, Section 5 (1) of the CGA expressly mandates that *"In the exercise of the powers conferred upon him by this Act, a Contractor General shall not be subject to the direction or control of any other person or authority"*.

This provision, alone, would render useless the MAF's Recommendation, since there would be no point in the Commission consulting with a person who is found to be adversely affected by an Investigation of the Commission since that person would be in no position to direct or to influence the considered Quasi-Judicial findings of the Commission, particularly in circumstances in which the person, during the course of the Investigation, was already afforded with the opportunity to answer specific questions and to provide any other information which he felt necessary to provide to the Commission to aid it in its Investigation.

As a matter of record, it should be noted that all three (3) MAF officials, in the subject Investigation, were each afforded two (2) separate and distinct opportunities, during the course of the Investigation, to provide information, via sworn testimony, to the OCG.

(c) The Commission possesses almost unfettered and unrestricted powers of enquiry, subpoena, discovery and search to facilitate its lawful access to any person, place, document, record, information or thing. So extensive are these powers that not even the Official Secrets Act or any other legislation or rule of law (save for the exceptions that are noted below) can be held up as a bar to the Commission in response to the Commission's Requisitions for the provision of information or documentation from any public officer or other person. (See Sections 4 and 18 of the CGA).

Indeed, Section 18 (4) of the CGA provides that *"Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing imposed on any person and by or under the Official Secrets Act, 1911 to 1939 of the United Kingdom (or any Act of the Parliament of Jamaica replacing the same in its application to Jamaica) or, subject to the provisions of this Act, by any law (including a rule of law) shall not apply in relation to the disclosure of information or the production of any document or thing by that person to a Contractor General for the purpose of an investigation …"*.

The only exceptions to the foregoing provisions are those which are contained in Sections 15 (2) and 19 of the CGA regarding national security matters, and Section 18 (5) of the Act, regarding the rule against self-incrimination.

(d) In order to place an effective and enforceable check on the obviously extensive powers which have been accorded to the Commission to gather sensitive and confidential information, and in an effort to secure the secrecy, confidentiality and the unauthorized disclosure of any such information or documentation that comes within the possession of the Commission, a Contractor General and every employee of the Commission is bound, among other things, by a solemn oath of secrecy which, if violated, will lead to criminal prosecution under Section 29 (c) of the CGA. (See Sections 14, 24 and 29 and the Second Schedule of the CGA).

It is clearly evident that this provision, alone, would also prohibit the premature or unauthorized disclosure to a person, by the Commission, of the particulars of, or reasons for, any finding or intended referral of the Commission which the Commission deems may be adverse to that person.

(e) The Commission, in the conduct of its Investigations under the Act, is also enclothed with the powers of a Judge of the Supreme Court of Jamaica. It is empowered to examine witnesses under oath (or otherwise) and, upon the completion of its Investigations, to issue Recommendations and/or to make a Quasi-Judicial determination or finding, on the basis of the sworn or other evidence that has been presented to it *"that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body"*. (See Section 21 of the CGA).

(f) In its conduct of Investigations under the CGA, the Commission is also entitled, at its own discretion, to adopt whatever procedure it considers appropriate to the circumstances of a particular case and to obtain information from any person and to do so in such manner as it alone may deem fit. (See Section 17.1 of the CGA).

(g) The Commission, in its conduct of its Investigations, if it so deems fit, is empowered not *"to hold any hearing"*. Indeed, it is critical to note that the CGA expressly provides that "*… no person shall be entitled as of right to comment on any allegations or to be heard by a Contractor General"*. This provision of the CGA clearly establishes that it was the intent of Parliament to permit the conduct and completion of Investigations under the CGA without the subject of the Investigation even being made aware of same, much less being afforded with the opportunity to be heard. (See Section 17.2 of the CGA).

(h) Where an independent finding is made by the Commission *"that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body"*, the Commission is mandated, as a matter of law, to *"… refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member (of a public body)* ***and in all such cases shall lay a special report before Parliament****",* thus automatically rendering the Commission's findings and referrals public. (See Sections 21 and 28.3 of the CGA).

Legislative obligations and constraints imposed upon the OCG on completion of an Investigation

Upon conclusion of the conduct of an Investigation, pursuant to Sections 15 (1) and 16 of the CGA, a Contractor General is required to be guided in his actions by the expressed provisions of the CGA. Some of these provisions, such as Section 21 of the CGA, have already been addressed.

A close review, however, of all of the relevant and germane provisions of the CGA will disclose that a person who is or who will be adversely affected by a Report of Investigation of the Commission is entitled only to be *"inform(ed) … of the substance of the report*" and to be so informed only *"after"*, and not before, the Commission *"concludes an investigation under this Act"*.

Of critical note is that the person who is to be so informed must be informed either after or contemporaneously with the other State Authorities who are required to be informed by the Commission. The Commission has no discretion in the matter.

It must also be clearly understood that the Secrecy provisions of the CGA, as has been indicated above, will otherwise prohibit any pre-mature disclosures or consultations by or between the Commission and any unauthorized person, inclusive of a person who is adversely impacted by a Report of Investigation of the Commission.

The critical provisions of the CGA, which guides what the Commission can and cannot lawfully do upon the conclusion of any of its Investigations, are as follows:

Section 15 (2):
*"A Contractor General **shall** not, without the prior approval of the Secretary to the Cabinet acting at the direction of the Cabinet, investigate any government contract or any matters concerning any such contract entered into for purposes of defence or for the supply of equipment to the Security Forces … and any report or comment thereon by the Contractor General **shall** be made only to the Cabinet".*

Section 20 (1):
*"After conducting an investigation under this Act, a Contractor General **shall**, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor of the result of that investigation and make such recommendations as he considers necessary in respect of the matter which was investigated".*

Section 20 (2):
*"If any report of a Contractor General reflects adversely upon any person the Contractor General **shall**, so far as practicable, inform that person of the substance of the report".*

Section 21:
*"If a Contractor General finds, during the course of his investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he **shall** refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases **shall** lay a special report before Parliament".*

Section 28 (2):
"A Contractor General … may at any time submit a report relating to any particular matter or matters investigated, or being investigated, by him, which, in his opinion, require the special attention of Parliament".

Section 28 (3):
*"Reports under this section **shall** be submitted to the Speaker of the House of Representatives and the President of the Senate who **shall**, as soon as possible, have them laid on the Table of the appropriate House".*

Section 28 (4):
"A Contractor General may, in the public interest, from time to time, publish in such manner as he thinks fit, reports relating to such matters as are mentioned in sub-section (2) and any case which is the subject of a special report under Section 21, but no such report shall be published until after it has been laid pursuant to subsection (3)".

Breach of CGA or oath by OCG could constitute a criminal offence and/or misbehaviour in office

The OCG is compelled to lucidly state, so that it is clearly understood, that a Contractor General, and all of the members of staff of the OCG, have been required, by law, to swear to a solemn Statutory oath to discharge the mandates and functions of the Commission of the Contractor General, on behalf of Parliament, and to do so in strict accordance with the expressed provisions of the Contractor General Act. (See Section 14 and the Second Schedule of the CGA).

A breach or violation of this solemn oath could result in an offending Contractor General or OCG employee becoming liable for criminal prosecution, under Sections 24 and 29 (c) of the CGA, in any instance in which the secrecy or confidentiality provisions of the CGA are violated. It could also result in an offending Contractor General being removed from office, under the provisions of Section 7 of the CGA, for *"misbehaviour"*.

It should, therefore, be clear to all concerned that unless a Contractor General or the officers of the OCG are prepared to break the law and to suffer the consequences, the recommendations which have been advanced by the MAF in this matter cannot be lawfully accommodated under the CGA, nor can they be practically accommodated via a piecemeal revision of the CGA, without altering the very construct of the Commission of the Contractor General and the overall manner or way in which it was conceived or intended to operate.

The OCG cannot be likened to the Office of the Auditor General

The suggestion that the OCG could or should operate as the Office of the Auditor General does in its conduct of public body audits is one which, with respect, does not require much of an inspired response. Both Authorities are totally different in nature and construct, and were established to do and to accomplish two (2) entirely different things.

A Statutory Investigation which is conducted by a Quasi-Judicial Authority which (a) has extensive powers to secure confidential, secret and sensitive information from a wide variety of sources and not just from the public body or public officer concerned, (b) is vested with the powers of a Judge of the Supreme Court of Jamaica, (c) is empowered to subpoena and to question witnesses under oath in circumstances in which such proceedings shall be deemed to be a *"judicial proceeding within the meaning of Section 4 of the Perjury Act"*, and (d) which is empowered under the law to make a Quasi-Judicial determination that their is evidence *"of a criminal offence on the part of an officer or member of a public body",* cannot, by any stretch of the imagination, be likened to a confined audit of the accounting or financial management practices of a public body.

The CGA was purposefully crafted, framed and developed by Senior Jamaican Public Servants

It may come as a surprise to many that the CGA is the product of the considered and extensive deliberations of a distinguished ***Committee of Senior Jamaican Public Servants*** which was established on January 27, 1981, by the Most Hon. Edward Seaga, the then Prime Minister of Jamaica, to develop and to make recommendations for the establishment of a Commission of the Contractor General.

The Committee, which was chaired by the then Minister of Construction and current Prime Minister of Jamaica, the Hon. Bruce Golding, completed and presented its Report in March 1982. This was done after intensive deliberations were undertaken by the Committee for more than one (1) year. It was that Report, which was entitled '*The Report of the Committee Appointed to Recommend Legislation for the Establishment of the Office of the Contractor General*', which gave birth to what is known today as the 1983 CGA, the Commission of the Contractor General and the OCG.

Among the Committee's members were the Hon. Douglas Vaz, Minister of Industry and Commerce, Mr. Horace Barber, Financial Secretary, Mr. A. B. Edwards, Senior Assistant Attorney General, Dr. Allan Kirton, Permanent Secretary in the Office of the Prime Minister, Mrs. Gloria Knight, General Manager, Urban Development Corporation, Mrs. Shirley Miller, Director of Legal Reform, Mr. Adrian Strachan, Auditor General, Mr. Gordon Wells, Permanent Secretary in the Ministry of the Public Service (who was subsequently appointed Jamaica's second Contractor General), and the Permanent Secretaries in the Ministries of Education and Local Government.

Among the Recommendations which are embodied in the Report and which, if carefully examined, will reveal the nature of the intended construct of the Commission and, in particular, how it was designed to operate, is the following enlightening Recommendation which can be found on page 25 of the Report at paragraph 3.32:

"In view of the foregoing, it is felt that the Contractor General's means of exerting pressure on an Agency of Government regarding a contract which was exhibiting irregularities and/or impropriety, either in the award or in performance, should be to launch an investigation and make recommendations for rectification to the Agency concerned, ***his ultimate weapon being exposure by means of a Special or Annual Report to Parliament, the forum of the people****".*

Closing remarks

With the greatest of respect, it is, therefore, for the foregoing reasons, among many others, that the OCG would urge extreme caution with the Recommendations which have been advanced by the MAF.

Furthermore, the OCG is ***very*** concerned that the Recommendations that the MAF has advanced will serve only to undermine and/or to dilute the powers of the Commission of the Contractor General under the CGA and will interfere with the integrity of a Quasi-Judicial regulatory framework and regime which was established more than twenty-seven (27) years ago to root out corruption, impropriety and irregularity from the Government contracting process – a process which, last year, was responsible for the expenditure of approximately $90 Billion of taxpayers funds or literally all of the discretionary spending that was available to the Government of Jamaica.

The Government and Legislature of Jamaica should be mindful of tampering with the CGA and the Commission of the Contractor General, especially at a time when Jamaica has been consistently slipping on Transparency International's Corruption Perception Index, as well as on local corruption perception surveys.

With the deepest of respect, the efforts of the State, at this time, should be concentrated upon strengthening Jamaica's anti-corruption institutional and legislative frameworks and insulating same from arbitrary interference, as opposed to giving countenance to questionable measures which will, as a matter of certainty, weaken the State's existing anti-corruption regulatory and good-governance structures.

The foregoing consideration, namely the risk of arbitrary interference with the Commission of the Contractor General, continues to represent one of the most fundamental reasons why the OCG and the National Integrity Action Forum (NIAF) have long lobbied for the entrenchment of the Commission of the Contractor General in the Constitution – a position which has been publicly supported and accepted by the Hon. Bruce Golding, Prime Minister of Jamaica.

October 5, 2010