



OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

LECTURE PRESENTATION BY

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*The Fight to Secure Integrity, Transparency and Accountability in the Award of
Government Contracts in Jamaica*

**The Seventh Annual Lecture in The
Caribbean International Network (CIN) Lecture Series**

Wednesday, October 26, 2011

The Schomburg Center, New York City, New York

Office of the Contractor General of Jamaica

www.ocg.gov.jm

1. INTRODUCTION

The Office of the Contractor General (OCG), as it is commonly known in Jamaica today, was established in 1983 amid widespread public outcries that were prompted by allegations of corruption in the award and implementation of Government of Jamaica contracts.

There was very little competition and transparency in the award of contracts.

Friends, family members, supporters and cronies of some public officials and politicians, were rewarded with contracts and Taxpayers' money under an obscure regime that was perceived as providing little or no oversight, scrutiny or enforcement powers.

At the same time, many otherwise capable, but politically unaffiliated contractors were left out in the cold. Old-style back-room dealing and corruption thrived. Some of those who did receive contracts were alleged to have paid kick-backs to corrupt public officials. The perception was that this was, indeed, the order of the day.

Local industries suffered generally since the capacity of domestic contractors, who were not part of the system of the political *quid pro quo*, was compromised. Further, many foreign investors were being turned off by the pervasive stigma of corruption that seemed to have become associated with doing business in Jamaica.

The OCG was expected to change much of that.

The Most Hon. Edward Seaga, the former Prime Minister of Jamaica, was the first person who formally raised concerns regarding the lack of probity in the award of Government contracts in Jamaica, and the need for a Commission of the Contractor General to deal with the problem.

In January 1981, three months after his landslide victory at the polls, he appointed a Committee to develop recommendations for the establishment of the OCG.

The Committee, which incidentally was chaired by the then Minister of Construction, and former Prime Minister of Jamaica, the Hon. Orette Bruce Golding, submitted its Report in March 1982. This, in turn, led to the promulgation of the Contractor General Act of 1983.

The Act established the role and functions of the Contractor General as an Independent Commission of Parliament. Its office-holder was insulated, by law, from any political maneuverings which could compromise his ability to carry out his functions in a fearless and dispassionate manner. He was granted almost complete independence of office, security of tenure and security of compensation.

The Contractor-General was mandated by Section 4 of the Act to monitor the award of Government of Jamaica contracts to ensure that they were awarded "impartially and on merit", and in circumstances which did not "involve impropriety or irregularity". The issue of Government licences and permits was also cascaded under his jurisdiction.

In addition, he was also vested with a discretionary power to conduct formal investigations into a range of matters.

To facilitate the effective discharge of his functions, the Contractor General was accorded the powers of a Judge of the Supreme Court of Jamaica, with wide quasi-judicial powers of enquiry, search, discovery and subpoena.

Included among his powers were his entitlement to be advised of the particulars of the award of any Government contract or licence, as well as his authority, with few exceptions, to secure unimpeded access to any public office, officer, person, document, record, information or thing which, in his discretion, he might deem vital to the discharge of his functions under the Act.

Finally, to further re-enforce the enquiry powers of the Contractor General, the Act made provision for three (3) specific criminal offences – the failure to comply with a lawful requirement of a Contractor General; obstructing a Contractor General; and making a false statement to mislead or attempting to mislead a Contractor General.

With all of this, a significant change was expected in the manner that lucrative Government contracts were to be awarded. Transparency, competition, fairness, value for money, accountability, merit, impartiality and regularity, were all considered to be the key features that would now characterize Government of Jamaica contract awards going forward.

So then, after 28 years and four (4) different Contractors General, you may be asking yourself why is it that I am here tonight to speak to you about “The Fight to Secure Integrity, Transparency and Accountability in the Award of Government Contracts in Jamaica”.

Is it that nothing has changed in Jamaica? Is it that the Contractor General Act has proven to be ineffective; or is it that the OCG was established to be a mere paper tiger?

An early insight into one person’s perspective on some of these questions might be useful in helping to set the context for my presentation. It is the perspective of Mr. Seaga himself.

Writing in his **February 13 Jamaica Gleaner column** earlier this year, Mr. Seaga identified at least two (2) of the major failings of the Contractor General Act’s regulatory regime. (See Gleaner article entitled **‘Public Watchdogs are instruments of discipline’**). He suggested that the Act had fallen short of its intended mark and that there is, perhaps, after 28 years, still the absence of a much needed Political Will to do something about it.

One of the deficiencies that Mr. Seaga identified in the Act is that the OCG has no power to prosecute. He remarked that although criminal prosecutions were the responsibility of the Director of Public Prosecutions (DPP), the DPP was now unable to respond to the OCG in a timely manner, and that this had, in turn, diluted the effectiveness of the OCG in suppressing corruption.

Mr. Seaga also intimated that unless the holder of the office was prepared to speak out, to fight, and to be “aggressive”, nothing would come of the Commission. It was for this reason, he said, among others, that the Commission did not live up to its expectations prior to my appointment as Contractor General in December 2005.

2. INSTITUTIONALIZED AND SYSTEMIC CORRUPTION IN JAMAICA

Another broad and useful empirical indication as to whether and to what extent the expectations of the OCG have been fulfilled, is to examine where Jamaica is perceived to be today in terms of corruption.

When corruption is presumed to have permeated deeply into a country's institutions, and across all of its socio-economic spheres, or is considered to have become a societal way of life, it is no longer considered to be just a matter of a few greedy Public Officials, or dishonest citizens, feeding upon the system. At this stage, corruption can be likened to an aggressive cancer and is characterized as institutionalized or systemic corruption.

The phenomenon of systemic corruption is significantly related to poor standards of governance, accountability and transparency in government.

It will typically thrive in instances where anti-corruption and law enforcement institutions are either non-existent, weak or ineffective, where institutional checks and balances on entrusted power are missing, where governmental decision-making is obscure, where the Rule of Law is neither fully enforced nor respected, and where there is an absence of Political Will to do something about it.

From all indications, it appears that Jamaica is today at this place and, indeed, has been at this place for a long time.

What is my basis for saying this?

In a 2008 **Don Anderson Poll**, "Too much corruption" was ranked by Jamaicans as the "Main Thing Wrong with Jamaica". This was second only to "Too much crime and violence".

However, and quite alarmingly, in 2010, in a "Most Negative Thing about Jamaica" Poll, which was also conducted by **Don Anderson**, "Corruption" shot to the top of the rankings, easily surpassing other public concerns such as crime and violence. This was particularly troubling since the poll came on the heels of 2009, the year in which Jamaica recorded 1,682 murders, its highest ever tally of murders in any single year.

Not surprisingly, the clear indications of the **Don Anderson Polls**, were further corroborated in March of this year, when the well respected **Latin American Public Opinion Project (LAPOP) Poll** ranked Jamaica, in 2010, as the 2nd most perceived corrupt country in the Americas.

But it is also instructive to note that the highly negative perception that Jamaicans have about corruption, in Jamaica, is by no means one that is confined to themselves.

Transparency International (TI), the International Anti-Corruption Watchdog, which currently ranks 178 countries in terms of the degree to which corruption is perceived to exist among their public officials, politicians and public institutions, has, over the years, consistently ranked Jamaica, not only as a "highly corrupt" country, but also as the most corrupt country in the English Speaking Caribbean – second only to Guyana.

The fact that Jamaica is perceived to be a highly corrupt place is also exacerbated by the universally accepted fact that the largest opportunity that exists, in monetary terms, for corruption in any country, lies in the illicit manipulation of the award of Government contracts and licences, and the divestment of State assets.

TI, in a May 2010 publication, which is entitled '*Corruption in Procurement*', estimated that the cost of corruption in public contracting, at the national level, expressed as a percentage of the value of the contract, was an average of 10-25% and, in the worst cases, as much as 50%.

The magnitude of the issue, for Jamaica, and for the OCG, is evidenced by the fact that the OCG exercises its jurisdiction over the contract award and licence issue activities of roughly 200 ministries, agencies, departments and corporations of Government.

Together, these Public Bodies issue more than 600 different categories of licences and permits, and award in excess of 11,000 construction, goods, services and asset divestment contracts, each year, above \$275,000 in value, aggregating an estimated \$110 billion, or about one-fifth of the annual expenditures of the Government of Jamaica.

Consequently, given the high perception that exists about corruption in Jamaica, it is only reasonable to deduce that Jamaica's anti-corruption institutional framework, of which the OCG is an integral part, has failed to realize its objectives, such that massive amounts of Taxpayer funds are still being perceived as being stolen through corruption in public contracting.

3. LACK OF POLITICAL WILL

Another critical question that will also arise tonight, as I proceed with my presentation, is that if it is accepted that the Contractor General Act has fallen short of its mark, then why has the State not taken the requisite steps to remedy the Act's deficiencies so that its purported objectives, of ensuring integrity, transparency and accountability in Government contract awards, can be fulfilled?

Such a question will necessarily invite a discussion on the subject of what is called the lack of "Political Will". This is something that I have already suggested is lying at the root of several of the problems that I will discuss with you tonight. Consequently, I will, therefore, touch briefly upon it now.

The term "Political Will", when used in the foregoing context, is about the demonstrated desire, sincerity and actions of the Government of the Day not only to fight, but also to win, the battle against corruption.

Political Will requires that the State, led by the incumbent Administration, must take all requisite steps to put in place a comprehensive and independent anti-corruption institutional framework which is backed by:

- (a) adequate resources;
- (b) effective laws;
- (c) tough criminal custodial and pecuniary sanctions for breaches of those laws; and
- (d) anti-corruption institutional leaders who are prepared to dispassionately discharge their respective mandates and to forthrightly enforce those laws.

Political Will is, therefore, about walking the talk, not talking the talk. It is about action, not words.

In particular, it demands that a Prime Minister must hold his Cabinet ministers and senior public officials fully accountable for their deviant conduct, or breach of trust, irrespective of the sacrifices that must be made, or the penalties that must be paid.

One of the indispensable and critical subsets of Political Will is what is called Corporate Will. This means ensuring that the right leadership exists at the top levels of each of the State's law enforcement and anti-corruption institutions.

In the case of Jamaica, this will, for instance, mean the Corruption Prevention Commission, the Integrity Commission, the Jamaica Constabulary Force, the OCG, the Office of the Director of Public Prosecutions, the Office of the Auditor General, and the Political Ombudsman, among others.

Corporate Will calls for strong, fearless, independent, apolitical and ethical leadership, at the helm of these institutions. Leadership that will not bow to the demands of the political directorate, nor to the dictates or desires of special interest groups, but who will forthrightly, fearlessly and dispassionately discharge his or her mandate at all times in the interest of the State.

Whenever there is a deficiency of Corporate Will in the State's anti-corruption institutional framework, Political Will demands that immediate steps should be taken to remedy the situation by, among other things, recalling or removing the leadership of the Agency from his or her office.

It is also important to recognize that the lack of Political Will can manifest itself in the deliberate creation of State anti-corruption structures, mechanisms and institutions, which are intended by the political directorate to appease the desire of its domestic and international stakeholders, but which are in effect mere facades.

Such structures are easily identifiable. While on paper they may look good, upon closer examination they will be found, either to be ineffective, weak, structurally deficient, lacking in teeth, lacking in critical resources, and/or led by political implants that are there to do the bidding of the political directorate.

Once this happens, the effectiveness of the State's anti-corruption institutional framework will be undermined, and the institution or the mechanism in question will be rendered literally useless.

4. MAJOR SHORTCOMINGS IN THE CONTRACTOR GENERAL ACT REGULATORY REGIME

The background which all of the foregoing has painted, and the suggestions that it has raised are, therefore, crystal clear. Despite the existence of the Contractor General Act, even when it is assessed within the context of what appears to be a robust national anti-corruption legislative and institutional framework, rampant corruption is still perceived to be the order of the day in Jamaica.

Indeed, it has now become evident that there is, as Mr. Seaga has observed, significant shortcomings in the Act, such that a fairly credible question can be raised as to whether

the OCG was intended by the Executive and Legislative arms of the Jamaican State to be an anti-corruption institutional facade, or, to put it bluntly, a toothless bulldog.

There are also other germane issues that are operating in Jamaica today which are adversely impacting upon, and undermining, the effectiveness of the country's anti-corruption institutional framework, inclusive of the work of the Contractor General.

One of these, as I have already suggested, is the apparent lack of the much needed Political and Corporate Will to decisively address the problem of corruption in Jamaica.

But in so far as the deficiencies of the Contractor General Act are concerned, they have presented enormous operational challenges for the OCG, as it seeks to diligently and effectively discharge its mandates under the law.

I will now, therefore, examine what some of these deficiencies are.

(a) The Contractor General has no power to halt an irregular procurement

Among the major failings of the Contractor General Act is that it expressly mandates a Contractor General to “**ensure**” impartiality, merit, propriety and the lack of irregularity in the award of Government contracts, yet, curiously, it grants to him no powers whatsoever to bring to a halt a Government contracting or licensing process which he has good reason to believe is exhibiting signs of corruption, impropriety or irregularity.

A recent case in point was the refusal of the Golding Administration to heed the OCG's November 2010 recommendations to terminate the Government's Floating Storage and Regasification Unit-Liquefied Natural Gas (FSRU-LNG) tender process – a process which, upon the conclusion of the OCG's twelve month Investigation, was proven to be mired in irregularity and impropriety.

Despite the OCG's documented concerns that the good governance tenets of public contracting were being violated, a seemingly cavalier and arbitrary decision was taken by the Administration to proceed with the tender process for the Project.

Not surprisingly, when the OCG's Investigation was completed, its Findings of rank irregularity in the tender process were not only conclusively established, but were independently corroborated by two (2) independent Legal Opinions which were, in turn, also supported by the Government's own attorney, the Solicitor General.

The OCG was also confronted with a similar situation in January 2011, in respect of the Government's then proposed sale of the Sandals Whitehouse Hotel to the Gordon 'Butch' Stewart held Sandals Group.

The incident occurred after an OCG Preliminary Enquiry had confirmed the veracity of certain public allegations which had been made that the Government was engaged in ongoing “secret negotiations”, with the Sandals Group, for the sale of the hotel.

Despite a 22 page public appeal that was made by me to the Hon. Prime Minister, to halt the proposed divestment, and to restart same under the direct monitoring supervision of the OCG, the OCG's recommendations were nevertheless summarily set aside by the Administration, which publicly declared that the sale would proceed.

It is also instructive to note that, in July 2010, the OCG was faced with another like challenge regarding its monitoring of the divestment of the Government's 45% stake in the GOJ/Alcoa Jamalco joint-venture alumina refinery operations, to a Chinese firm.

The OCG had publicly detailed at least five (5) major considerations, which, when taken together, raised very serious questions about transparency, value for money, competition and a potential conflict of interest, in respect of the proposed divestment.

However, and despite the OCG's expressed concerns, the then Energy Minister, Mr. James Robertson, publicly insisted that the Government would not halt the negotiations, even though the OCG had commenced an Investigation into the matter.

These occurrences are clearly troubling. Apart from calling into question a Government's publicly stated commitment to probity, transparency, accountability and competition in public contracting, they have also raised the inescapable question as to what good purpose is served by maintaining, in place, a so called Independent Commission of the Contractor General, when its considered concerns, recommendations, injunctions and/or findings can be arbitrarily ignored by the Executive arm of the State, the very authority which the Commission was established to monitor and to investigate.

(b) The Contractor General has no power to prosecute in an environment where no prosecutions are being initiated for major corruption and other white collar offences

Another major failing of the Contractor General Act – one which was highlighted by Mr. Seaga himself – is that a Contractor General has no power to prosecute corruption or other criminal offences which are associated with breaches of the Government's procurement, contracting and licensing laws, whether in his own right, or via a broad fiat which is issued by the Director of Public Prosecutions (DPP).

Instead, a Contractor General is required by law to refer matters to the appropriate State authorities, whether it be the Police, the DPP or the Attorney General, for the appropriate action to be taken against offending Public Officials.

Coupled with the fact that a Contractor General's remedial recommendations can be lawfully ignored by the Government, the inability of a Contractor General to initiate his own prosecutions raises even more worrying questions as to whether the Parliament, in promulgating the Contractor General Act, had intended for it to be truly effective.

But what is the OCG griping about, you might ask, since there exists these other arms of the State to investigate and to prosecute allegations of criminal offences, inclusive of corruption related offences?

The simple answer is that looks are deceiving, for despite the presence of a JCF, and a DPP, the fact is that there is now persuasive evidence that the relative paucity of criminal investigations and prosecutions for offences involving corruption, as well as for other related offences, in Jamaica, has now reached disproportionate if not crisis levels.

One major reason why corruption has been having a free reign in Jamaica is that it has historically competed unsuccessfully for the attention of the JCF, the DPP, and the Judiciary.

In what has become an alarmingly imbalanced arrangement that is now seriously hurting Jamaica, corruption has repeatedly lost out, for attention, to offences against the person and, in particular, to an average national murder rate which now stands at more than 1,500 per annum for the past ten (10) years. No one, it seems, is taking the matter seriously and the perceived reasons for this are as troubling as they are varied.

It is also an irrefutable fact that the country's inordinately high rates of violent crime have literally swamped the already limited resources and assets of the JCF, the 41 attorney staffed Office of the Director of Public Prosecutions, and the local court system.

The relatively low clear-up rate for serious crimes, as well as the massive backlog of cases which are currently before the Jamaican courts, and which some estimates have placed as high as 400,000, also paint a telling picture of the disturbing and unacceptable inadequacies of Jamaica's anti-corruption, law enforcement and criminal justice systems.

But as if to deepen the problem regarding corruption in Jamaica, it is also arguable that neither the JCF nor the Office of the DPP, was, in the first place, structured, or adequately resourced, to effectively and efficiently investigate and prosecute sophisticated crimes of corruption, or other potentially complex white collar crimes which have now come to the fore. Indeed, in the case of the Office of the DPP, even more troubling questions have arisen.

Between December 2010 and February 2011, the Anti-Corruption Branch of the JCF, the OCG and the Jamaica Commission for the Prevention of Corruption, have all publicly lamented the fact that several criminal matters which they have separately referred to the DPP had not been prosecuted.

In the case of the JCF, on December 9, 2010, on International Anti-Corruption Day, the Assistant Commissioner of Police, Mr. Justin Felice, who oversees the JCF's Anti-Corruption Branch, while publicly acknowledging the JCF's outstanding successes in laying corruption charges against several low-ranking police officers, raised concerns about referrals regarding senior police officers of the JCF which had been conveyed to the DPP, but which had not resulted in criminal prosecutions.

On February 17, 2011, while appearing before a Joint Select Committee of Parliament, I, myself, tabled before the Committee, a formal written Report of the OCG, in which it was asserted that of the roughly 40 criminal Referrals which had been formally sent by the OCG to the incumbent DPP, Ms. Paula Llewlyn, in the preceding three (3) year period, not one had to date been brought before the courts to test its judicial efficacy.

Further, in February 2011, the Commission for the Prevention of Corruption publicly expressed concerns about the failure of the DPP to prosecute literally thousands of matters, involving Public Officers, which had been referred to it by the Commission.

In particular, the Commission lamented the fact that since its establishment 11 years ago, although more than 18,000 persons had been referred to the DPP, only 512 of the matters had been acted upon. The commission also signaled that it was dissatisfied with the number of matters that were thrown out by the DPP, noting that this frustrated the oversight body's efforts at reducing corruption.

The above-referenced Agencies which, together, substantially constitute the vanguard of Jamaica's anti-corruption institutional framework, and which must rely **exclusively** upon the DPP for the prosecution of all corruption and corruption related offences, do not stand alone in their views on the subject of the relative failings of Jamaica's current anti-corruption, law enforcement and criminal law prosecutorial systems.

The **United States of America (USA)**, which is, among other things, Jamaica's largest strategic ally and trading partner, has also publicly expressed similar concerns in terms of what it perceives to be the unacceptable levels of corruption which have overtaken Jamaica, as well as the inability or unwillingness of the Jamaican State to deal with the problem in a decisive, efficient and effective manner.

In its **2011 Department of State International Narcotics Control Strategy Report**, which was published world-wide on March 3, 2011, the United States Government (USG) stated quite matter-of-factly that "...corruption (in Jamaica) is entrenched, widespread, and compounded by a judicial system that is poorly equipped to handle complex criminal prosecutions in a timely manner".

To compound the problem even further, on October 12, 2011, representatives of the Parliament Integrity Commission, whilst appearing before the Public Administration and Appropriations Committee (PAAC) of Parliament, conceded that despite several infractions of the Integrity Law by Parliamentarians, the Commission had "not been very prosecutorial", in that it had failed to make the requisite referrals to the DPP.

More worrying, however, is the fact that the incumbent Minister of Justice, the Hon. Delroy Chuck, as recently as October 8, 2011, branded the country's justice system as corrupt. He asserted that "there is corruption within the courts and the justice system, where the police have been paid to say they cannot find a witness, or persons have been paid to have documents destroyed - amongst many other things".

At a minimum, it is, therefore, beyond contention that these revelations are suggesting that some of Jamaica's key anti-corruption institutions are failing miserably in the discharge of their critical mandates. Even more disturbing, however, is that it is evident that there is a glaring absence of the requisite Political and Corporate Will to do something about it.

(c) Criminal sanctions for offences under the Contractor General Act are too low

But even if the commission of corruption and other related offences were today being effectively and efficiently investigated and prosecuted in Jamaica – a situation which, unfortunately, as you have seen, is not the case – the fact of the matter is that the sanctions that are associated with breaches of the said offences are so low that they cannot possibly serve as a deterrent, but yet nothing is being done about it.

A case in point is the innumerable OCG recommendations which have been made to have the situation remedied as regards the prescribed sanctions for the three (3) anti-corruption offences that are specified under the Contractor General Act. The subject sanctions have remained, for the past 28 years, at the inexplicable low level of a fine not exceeding J\$5,000 and/or to imprisonment for a term not exceeding 12 months.

The situation with respect to criminal breaches of the Government's Procurement Rules and Procedures is not dissimilar.

Despite specific public promises that were made by former Prime Minister Golding on September 11, 2007, on the occasion of his official inauguration into office, to impose sanctions for breaches of the rules governing the award of government contracts, and to make it "more difficult, more hazardous with stiff penalties for violations", the sole sanction that was eventually promulgated into law was "a fine not exceeding one thousand dollars or imprisonment for a term not exceeding three months or both".

One thousand Jamaican dollars (J\$1,000), at current rates of exchange, is equivalent to less than US\$12. This is roughly the price of four (4) loaves of bread in Jamaica. Obviously, then, this has made a total mockery of the commitment that was given by the Administration that it was genuinely serious about fighting corruption.

As a matter of urgency and necessity, it is, therefore, crystal clear that the situation in Jamaica is in dire need of critical address. Significantly tougher criminal sanctions must be legislated, **and enforced**, if corruption in public contracting is to be effectively tackled. These must include mandatory custodial and economic based penalties, where appropriate.

Should the Jamaican State fail to act accordingly, then we will all be doomed, for it is an incontrovertible fact that a criminal will always proceed with his criminal conduct if his risk/benefit analysis of the situation always suggests to him that it will be beneficial for him to so proceed.

(d) Failure of the State to entrench the OCG in the Constitution of Jamaica

Earlier, I had alluded to the Report of the Bruce Golding Chaired Committee (i.e. the Report of the Committee Appointed to Recommend Legislation for the Establishment of the Office of the Contractor General), which was completed and submitted, in March 1982, to the then Prime Minister, the Most Hon. Edward Seaga.

Paragraph 1.3 (ii) of the Report reads as follows:

"In launching the work of the Committee, the Chairman (Mr. Bruce Golding) indicated that the independence and authority of the Contractor General would be guaranteed in the Constitution and this would be done as part of the process of constitutional reform".

However, and despite the fact that 29 years have since passed, the Commission of the Contractor General is still, today, governed by an Act of Parliament – an Act whose provisions can be arbitrarily interfered with should the Government of the Day feel, for example, that a sitting Contractor General has become too "*overzealous*" or intrusive.

I should also state that, since taking office on December 1, 2005, I have made several representations, in writing, for the Commission of the Contractor General to be entrenched in the Constitution of Jamaica. However, to date, nothing has happened, in consequence of which the OCG continues to remain under the threat of a clear and present danger of political interference.

The gravity of the situation was vividly brought to light as recently as September 2010 when the former Minister of Agriculture and Fisheries, Dr. the Hon. Christopher Tufton, stridently proposed amendments to the Contractor General Act to dilute the powers of the Contractor General.

Dr. Tufton's overture followed the OCG's conclusion of an Investigation that had been launched into allegations of contract award malpractices at his Ministry of Agriculture. The Minister, his Permanent Secretary and a contractor, Mr. Aubyn Hill, were referred to the DPP in light of the OCG's findings of evidence that all three (3) men had perjured themselves when they provided false testimony, under oath, to the OCG.

The proposals of the Minister were publicly canvassed by him after the DPP ruled that she would not act upon the perjury referrals that had been made by the OCG.

In response, I issued a public Statement, on September 21, 2010, to the country's 81 Parliamentarians, in which I was constrained to respectfully warn them against giving effect to the Minister's misguided protestations.

Among other things, I respectfully recommended that their efforts would be best invested in strengthening the country's anti-corruption institutional and legislative frameworks, and to insulate same from arbitrary interference, as opposed to giving countenance to questionable measures which would, as a matter of certainty, weaken the existing good-governance structures that have been established to protect the Taxpayers' money.

5. OTHER CHALLENGES AND OBSTACLES FACED BY THE OCG

Quite apart from the foregoing, there are several other obstacles that have been routinely thrown into the path of the OCG as it diligently and dispassionately seeks to discharge its lawful mandates, to ensure integrity, transparency and accountability in the award of Government contracts in Jamaica.

These so called obstacles have included, for example, (a) the failure on the part of Public Bodies to comply with the lawful requisitions of the OCG, (b) challenges to the lawful authority of the OCG emanating from very senior Government and Ministerial officials, and (c) in at least one instance, the patently conflicted temerity of one local Print Media House, the Jamaica Observer, to publicly instruct the OCG as to how it should proceed in a Government asset divestment matter which involved an entity that was owned and controlled by the very owner of the Jamaica Observer itself.

Time does not permit me to address all of these obstacles in their entirety, but I will nonetheless share with you at least one or two of them.

(a) Failure on the part of Public Bodies to comply with the lawful requisitions of the OCG

One of the most formidable challenges that I have experienced, in my fight to secure probity in the award of Government contracts in Jamaica, has had to do with overcoming the refusal, on the part of the country's 200 Procuring Public Bodies, to comply with a statutory requisition which was first issued by me in early 2006.

The initiative, which is called the OCG's Quarterly Contracts Award (QCA) Report Regime, was developed as a major limb of my strategic plan to secure a marked

improvement in probity, transparency and competition in the Government of Jamaica small contracts award process.

It required Public Bodies to file QCA reports, with the OCG, of the particulars of the contracts which they had awarded during each calendar year quarter, and to do so within one month after the ending of the quarter. The report forms, which were designed in a simple spreadsheet format, were also structured to disclose whether and to what extent a Public Body had breached the Government's Procurement Procedures.

After having had to fight to overcome initial opposition from certain members of the then sitting Parliament, as well as from the sitting Solicitor General himself, the Regime was formally launched by me in mid-2006, but instantly met headlong into a 13% compliance response rate from only 26 of the roughly 200 Public Bodies that were requisitioned.

In an effort to combat the refusal of the offending Public Bodies to comply with the requisition, I immediately met with the then DPP, Mr. Kent Pantry, QC, whose cooperation I sought to assist me to effectively implement, as at October 2006, a Zero Tolerance Policy which I had decided upon to address the issue.

The Policy would dictate that a failure or refusal, on the part of any Public Body, to comply with the OCG's QCA requisition, would result in the automatic referral of the head of the delinquent Public Body, to the DPP, for criminal prosecution under Section 29 of the Contractor General Act.

After it became evident that no exceptions whatsoever would be made by me to the application of the Policy, and that the names of all non-compliant Public Bodies would be routinely published in the Media, Public Officials quickly began to fall into line. DPP Kent Pantry also offered invaluable assistance to my battle, when he sent an unmistakable signal by prosecuting 17 of the offending Public Officials.

The rigidly enforced OCG Zero Tolerance Policy has today succeeded in producing an unprecedented and record 100% compliance rate, on the part of all of the country's 200 Procuring Public Bodies, for ten (10) straight consecutive quarters, ending in June 2011.

The successes that the OCG has achieved in this particular fight, proves that Public Officials will engage in deviant conduct only if the system allows them to do so. It also proves that if a Contractor General is prepared to be aggressive, unrelenting and dispassionate in his enforcement of the law, and is supported by the prosecutorial arm of the State, mountains can be moved, and cultures of defiance, non-compliance and lawlessness can be literally transformed overnight.

On a practical level, the OCG's QCA Regime has also allowed the OCG to utilize computer technology to bring public transparency, via the OCG's official website, to the more than 54,000 small Government contract awards, valuing \$65 billion, which have so far been issued by Public Bodies in Jamaica since May 1, 2006.

The Regime has also facilitated the optimization of the productivity of the OCG's limited human resources, whilst enabling the organization to exponentially expand the effective reach of its contract monitoring and investigation mandates.

(b) Challenge to the OCG's jurisdiction over State asset divestments

Another one of the most problematic and worrying obstacles which the OCG has had to face in discharging its mandates, is what appears to be the inability of the incumbent Administration to make up its mind as to whether or not the OCG has the authority, under the law, to monitor and to investigate the divestment of lucrative State assets.

Suffice it to say that the practices of the OCG over the past 15 years, the expressed provisions of the Contractor General Act, and a formal legal opinion which was secured more than 10 years ago from Dr. the Hon. Lloyd Barnett, OJ, one of Jamaica's leading jurists, say unequivocally that the OCG does in fact have that jurisdiction.

In any event, the question that inevitably arises is why any right-thinking Administration would seek to exclude, from the purview of the law, and from oversight scrutiny, lucrative State asset divestment contracts which are ripe game for corruption addicts. But this is exactly what the incumbent Administration continues to suggest that it wants to do.

Specifically, jurisdictional challenges were launched, against the OCG, as recently as during the course of 2010, when the OCG was forced to make public its concerns regarding apparent irregularities that were evident in the Government's then proposed divestment of its 45% stake in the JAMALCO Alumina Refinery, to a Chinese company.

Subsequently, during the same year, the jurisdiction of the OCG was again, and not surprisingly, questioned, by the Administration, when the OCG sought to enquire into the sale of two (2) A320 Airbus aircraft by Air Jamaica Limited.

The matter, which is a source of continuing disappointment for the OCG, has been aggravated by the fact that the Administration is one that has spoken repeatedly about securing transparency in the affairs of Government.

However, it has boldly demonstrated that it is nevertheless prepared to rule that the divestment of a public asset is a matter which falls outside of the lawful jurisdiction of the OCG, even when it knows full well that it has previously and publicly called upon the OCG to investigate matters in relation to the divestment of Government Assets.

I make specific reference to the fact that less than three (3) months after the then Minister of Agriculture, the Hon. Christopher Tufton, on January 17, 2008, with the support of the Attorney General, challenged, in writing, the OCG's jurisdiction to monitor his Ministry's then ongoing divestment of the country's sugar industry assets, I received a letter, dated April 8, 2008, from the then Minister with portfolio responsibility for Air Jamaica, the Hon. Don Wehby, in which the OCG was requested to review the previous Administration's divestment of Air Jamaica's London Heathrow Slots.

To further compound the issue, on April 23, 2008, the Minister of Finance, the Hon. Audley Shaw, from the floor of the House of Representatives itself, publicly requested the OCG to investigate the said Air Jamaica London Heathrow Slots asset divestment.

Quite curiously, however, there was no word then from the Office of the Attorney General, objecting to the propriety of either Mr. Wehby's or Mr. Shaw's requests, and neither did the OCG reject the requests.

Indeed, it is now a matter of public record that the Ministers' requests were promptly acceded to by me, when a formal OCG Investigation into the matter was commenced on April 23, 2008, and a Report thereon was formally tabled in the House of Representatives on April 7, 2009, and in the Senate on May 8, 2009.

The record of the Administration, regarding this issue, is, therefore, extremely disturbing and disconcerting. It not only points to a glaring double-standard in its approach to the issue of corruption in public contracting, but it also suggests that the Administration is prepared to use the OCG if it is allowed to get away with it.

Such conduct, however, will not be tolerated under my watch. The key functionaries of the State, inclusive of Members of Parliament, Ministers of Government and Senior Opposition officials, whomever they may be, must come to understand that the OCG is not a 'political football'. It was created by them as an Independent Anti-Corruption Commission of the Parliament of Jamaica, and it must, therefore, be respected as such.

(c) Attempts at intimidation of the OCG – Charges that the OCG is over-zealous

Over the past year and a half, the OCG and I have also faced criticism with what appears to have been a covert attempt at intimidation, from at least one senior Minister of Government – the Minister of Information, the Hon. Daryl Vaz, and from Mr. Peter Bunting, the General Secretary of the Opposition People's National Party (PNP).

Both men had reportedly accused my Commission of being overzealous in the discharge of its mandate such that it was having the alleged effect of scaring away public servants.

Immediately after the accusations were first published by the Jamaica Observer Newspaper, Mr. Bunting issued a statement to say that the PNP's comments had been misrepresented, and that the PNP was fully supportive of the work of the OCG and the Contractor General.

To be clear, a Contractor General is required, on the pain of being unceremoniously stripped of his Commission, for "misbehavior in office", to faithfully discharge his statutory mandates, by ensuring that Government contracts are awarded impartially and on merit, and in circumstances that do not involve impropriety or irregularity.

In light of the highly corrupt, crime-ridden and politically polarized environment that Jamaica has become, it should, therefore, be obvious to even the casual observer that the referenced mandate will be incapable of being effectively discharged if the office-holder is someone who easily shirks away from being aggressive and forthright when he should be; who is fearful or docile; who is reluctant to dispassionately use his powers; or who is scared to offend, challenge or confront those who will need to be confronted.

It is the lack of these very qualities that I presume Mr. Seaga was alluding to, when he pointed to a number of the reasons why the Contractor General's regulatory regime, in his opinion, had failed to fulfill its purpose prior to my appointment into office.

In a public response which was issued by me, on July 12, 2010, to the Minister and to Mr. Bunting, I stated, among other things, as follows:

“I would like to categorically state, without any reservation, that I have absolutely no intention whatsoever of discharging my statutory mandate and responsibilities in a manner which suits the desires or dictates of any other person, official or entity, irrespective of who that person, official or entity may be.

So long as I shall have the good honour and privilege of holding the Commission of the Contractor General of Jamaica, I will faithfully and lawfully serve only what I regard to be the best interests of the People and Taxpayers of Jamaica.

While I will at all times do so fairly, impartially and responsibly, it must also be clearly understood that I will also, at all times, do so forthrightly and vigorously and without fear and without favour, and without being subjected to the countermanding dictates of any other person excepting that of a Court of Law.”

(d) Challenge to the OCG’s authority to announce its commencement of Investigations

I have also had to contend with repeated and unlawful attempts by the Administration, and also by the Jamaica Observer Newspaper, to literally muzzle the OCG from exercising its expressed authority, under the law, to announce, to the People and Taxpayers of Jamaica, whose interests I am sworn by oath to serve, the OCG’s intention to commence an Investigation into allegations of impropriety, irregularity and/or corruption in Government contracting.

However, in each instance that such obstacles have been thrown into the OCG’s path, they have been vigorously resisted.

One such incident occurred on January 31, 2011, and again on February 2, 2011, when the Observer Newspaper, in two (2) of its editorials, scolded me for daring to advise the Taxpayers and People of Jamaica of the OCG’s intention to investigate the Government’s proposed sale of the Sandals Whitehouse Hotel to Gorstew Limited – a company which, as I have indicated before, is owned and controlled by the Hon. Gordon ‘Butch’ Stewart, the very owner of the Observer Newspaper itself.

It is instructive to note that the Observer’s misplaced and patently conflicted admonishment of the OCG, was advanced, despite the fact that the public allegations which had given rise to the OCG’s Investigation had been previously made in another Jamaican newspaper.

The allegations were that “secret negotiations” had been taking place between Government of Jamaica officials and the Gordon ‘Butch’ Stewart-owned Sandals and Gorstew organizations, regarding the subject divestment.

More significantly, it was established by the OCG, as an undisputed fact, that the referenced “secret negotiations” had not only been taking place as was alleged, but had indeed been taking place, without the knowledge of the OCG, despite the fact that the OCG had earlier requisitioned the Cabinet Secretary to provide to the OCG, in writing, the full particulars of all such proposed State-owned asset divestments.

The former Prime Minister, the Hon. Bruce Golding, has also expressed his displeasure at my insistence at notifying the People and Taxpayers of Jamaica that my office will be commencing an Investigation into allegations of impropriety, irregularity and/or

corruption in Government contract awards, and the giving of my reasons therefor. (See Jamaica Observer article – ‘Special Prosecutor to be muzzled; March 20, 2011).

The matter of the Jamaica Observer’s and the Administration’s criticisms, was comprehensively addressed by me before a Joint Select Committee of Parliament on February 17, 2011. Among the OCG positions, that were placed on the formal record by me, were the following:

- (a) That the OCG has absolutely no intention whatsoever of discontinuing its practice of issuing Media Releases, to announce its intention to commence an Investigation;
- (b) That the criticisms of the Administration and the Jamaica Observer were grounded in, and tainted, by double standards;
- (c) That the said criticisms were directed at intimidating the OCG from making public, its Investigations into allegations of impropriety, irregularity and/or corruption into certain public contracting matters in Jamaica;
- (d) That the criticisms were intended to directly and unlawfully interfere with and/or obstruct the discharge of the statutory mandates of an Independent Anti-Corruption Commission of the Parliament of Jamaica; and
- (e) That the OCG, like Commissions of Enquiry, and like the recent Manatt Commission of Enquiry, is, in fact, empowered, under the Sections 17, 18 and 24 (1) (b) of the Contractor General Act, to conduct the entire proceedings of its Investigations in public, should it so choose to do.

In concluding my written response to the Joint Select Committee of Parliament on the issue, I made the following closing remarks:

“Once again, the OCG feels obliged to respectfully but strongly caution against any untoward tampering with the provisions of the Contractor General Act where same is intended to muzzle the OCG or to otherwise dilute, weaken or undermine the effectiveness and independence of what is in reality a critical foundation component of Jamaica’s National Anti-Corruption Institutional Framework.

Tampering with the Contractor General Act, to reduce the effectiveness and/or to curtail the independence of the Commission of the Contractor General, as opposed to strengthening the Commission, is likely to be viewed as an ill-conceived and ill-advised step in the wrong direction!

Indeed, such a step is likely to inflict a fatal body blow to the clear signals which the Government no doubt wishes to telegraph to the local populace, Taxpayers, foreign investors, the multilateral financial community and Jamaica’s international bilateral partners alike, that it is serious about tackling the scourge of corruption that Jamaica is perceived to be mired in and which has placed significant impediments in the country’s path to sustainable economic growth and development.”

(e) Attempts to politicize the OCG and its work

Although the OCG was established as an Independent Anti-Corruption Commission of Parliament, and is expected to operate as such, there have also been occasional overt and public attempts by persons, inclusive of Parliamentarians, to politicize its work.

One of the ways in which this has been done is for the OCG and me to be 'directed' by politicians to go back in time, as far as 10 years, to investigate contracts that were awarded by the previous Administration. This is precisely what occurred, for instance, in two (2) specific instances in which the OCG sought to investigate the circumstances of certain contracts which fell within the ministerial portfolio of a particular Parliamentarian.

Quite apart from the fact that it is unlawful for the OCG to be directed by anyone, it is also important to recognize that the OCG currently has only three (3) substantive staffing positions for Investigators.

Consequently, when one considers that more than 11,000 Government contracts, above \$275,000 in value, are awarded each year, it becomes evident that a sitting Contractor General, in exercising his discretionary powers, would be obliged, as a matter of priority, and given his limited resources, to focus upon what is happening before him, versus what took place 10 years before during the tenure of a predecessor Contractor General.

The OCG and I have also been accused of being supportive of the Jamaica Labour Party (JLP), or the People's National Party (PNP), depending upon which party holds the seat of State power at any given point in time.

The perception, in some quarters, appears to be that if the JLP Administration is being vigorously investigated by the OCG, then the presumption is that I must be supportive of the PNP. Not surprisingly, the reverse was also true, during my initial years of service, when the PNP held the reigns of State power.

Of course, the ludicrous nature of both claims ignores the trite fact that it is the job of a Contractor General to investigate the award of Government contracts, and that the Opposition, while it is the sitting Opposition, does not, and cannot possibly, award Government contracts.

Unfortunately, however, absurdities such as these, which can only be propagated in an environment that is as politically charged as Jamaica is, do have the potential to undermine and damage the integrity of a strident Contractor General.

6. FAILURE OF THE STATE TO HOLD OFFENDERS ACCOUNTABLE

Despite all of the foregoing, however, the story, unfortunately, does not stop there.

One of the fundamental tenets of the Rule of Law is that when rules, regulations or laws are violated, there must be an associated sanction which, after due process, is promptly and dispassionately enforced. Simply put, every offender should be held accountable for his deviant conduct.

Regrettably, however, and except for the cooperation that I have received from former DPP Kent Pantry, this has not been the experience of the OCG. Despite making scores

of referrals, over the past five (5) years, to the Commissioner of Police, the DPP, the Corruption Prevention Commission, the Attorney General, the Auditor General, and the Parliament, very little prosecutorial, enforcement or punitive action has resulted.

As I have stated elsewhere, to win the battle against corruption in any form, whether it is in the form of the illicit award of Government contracts, or otherwise, an environment of deterrence must be deliberately created and maintained. Such an environment will only be effectively established when anti-corruption laws with powerful sanctions are first promulgated, and are then forthrightly, swiftly and dispassionately enforced. To do this, the requisite Political and Corporate Will must be found.

Firm and expeditious examples must be made of Public Officers who violate the rules.

This is the only way to deter acts of corruption, and to aggressively force into conformance those deviant members of the society who are either unwilling to submit to the State's voluntary compliance systems, or who believe that they are above the law.

In the final analysis, however, we must get to the point in Jamaica where Justice is blind – where no one is considered to be above the law, irrespective of his political connections, his social standing, his colour, his economic means or his address. There must be one law for all Jamaicans – not one for the majority of Jamaicans and another, which is never enforced, for the rich, the powerful, the well connected and the privileged.

7. FAILURE OF THE STATE TO IMPLEMENT THE CONSIDERED REMEDIAL RECOMMENDATIONS OF THE OCG

Finally, I could not speak to you about the 'Fight to Secure Integrity, Transparency and Accountability in the Award of Government Contracts in Jamaica', without alluding to the innumerable remedial recommendations that have been made by the OCG, to both the Executive and the Legislative arms of the State, in an effort to fix the system.

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

Although a small percentage of the referenced OCG recommendations have been adopted and implemented by the State, the overwhelming majority of them has been essentially ignored.

I daresay that if the said OCG recommendations were, over the years, given priority attention, and speedily and comprehensively implemented by successive Administrations, they would have already radically reshaped the entire landscape of the Jamaican Public Sector contract award and procurement processes.

Additionally, tremendous value would have accrued to the Taxpayers and the People of Jamaica – not only in the reduction of waste and corruption – but also in the form of

enhanced transparency, probity, accountability, competition and value for money, in the award of lucrative Government contracts.

Instead, however, the country has suffered, and continues to suffer, from the wages of corruption. The perception, in some quarters, is that the plague of corruption is currently being manifested, among other things, in the form of reduced foreign direct investment inflows into the island, and less public funds becoming available to build schools and hospitals, to fight crime, and to provide for much needed public infrastructure and services, such as housing, roads, water and electricity.

The subject OCG recommendations have been varied and far-reaching. They have been formally and routinely presented (a) as a part of the OCG's routine contract monitoring functions, (b) via the OCG's Investigation Reports, (c) via the OCG's Annual Reports to the Parliament, and/or (d) via formal pleas that have been made by me directly to the Prime Minister, the Leader of the Opposition, the Speaker of the House of Representatives and the President of the Senate.

Having regard to the grave implications of this matter – a matter which speaks clearly to the lack of Political Will to do what is right by the State – I have decided to outline herein, as follows, a number of the referenced remedial recommendations which have been made by the OCG but which, to date, have not been implemented by the State:

- (1) Recommendations to make it mandatory for habitual non-performing, low-performing or non-compliant Government contractors to be barred from being awarded any further Government contracts.
- (2) Recommendations to delist from the register of approved Government contractors, contractors who have made fraudulent or false representations to the NCC, or the OCG, on their contractor registration application forms.
- (3) Recommendations to cauterize the persistent issue of cost and time over-runs on Government works contracts.
- (4) Recommendations for portfolio Permanent Secretaries to take a more proactive and aggressive role in developing, implementing and enforcing effective risk management systems, checks and balances and other appropriate management systems, in an effort to mitigate against any possibility of deviations from the Government Procurement Rules.
- (5) Recommendations to ensure that the award and implementation of Government contracts are made impartially and on merit.
- (6) Recommendations for amendment to the Government's Procurement Regulations, and the Contractor General Act, to require sub-contractors who are engaged on high-value Government works projects, to be subjected, to the same contract award and scrutiny checks and balances to which Government contractors are subjected.
- (7) Recommendations to revise the definition of "Government contract", in Section 2 of the Contractor General Act, to expressly include contracts for the

acquisition of private lands, contracts for the divestment of state owned assets, and contracts which are awarded by public/private sector joint-venture entities.

- (8) Recommendations to halt the illegitimate abuse of the 'Government's Emergency Contracting Facility', a facility that is often used to direct lucrative State contracts to a preferred contractor under the guise of same being an emergency contract, albeit that, in some instances, the so-called 'emergency' has operated for as long as a year prior to the award of the contract.
- (9) Recommendations to ensure that appointees to the Board of Directors of any Public Body are made fully aware of their responsibilities and obligations under relevant legislation.
- (10) Recommendations for the implementation of legislation to ensure that Directors of Public Body Boards, who flagrantly abuse their office and/or authority, are effectively barred from serving in any like capacity in the future.
- (11) Recommendations for the strengthening of the 'Government's Conflict of Interest Rules', the enforcement of same, and the imposition of sanctions for their violation.
- (12) Recommendations for all Public Bodies that are to become involved in Public/Private Partnerships to prepare an internal project plan or policy, in accordance with the applicable Government procurement and accounting procedures, to guide the joint-venture project which is to be undertaken.
- (13) Recommendations for the development and implementation of a comprehensive and overriding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly-owned assets), by a Public Body, to members of their respective Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.
- (14) Recommendations to immediately expunge, from the Government's Procurement Rules, the concept of 'the unsolicited proposal', on the ground that same is a corruption enabling device which can be clandestinely utilized by corrupt politicians and public officials to corruptly direct lucrative State contracts to a preferred or connected contractor in consideration for a "kick-back".
- (15) Recommendations to cease the grant to certain State Agencies of exemptions from the Government's Procurement Rules.
- (16) Recommendations to develop appropriate mechanisms to ensure that members of the Executive and the Political Directorate are prohibited from committing the Government to binding contracts, contrary to applicable laws and Government accounting, and procurement regulations and procedures.
- (17) Recommendations for the Parliament of Jamaica to urgently examine the country's current anti-corruption institutional and legislative framework, with a view to (a) insulating same from any possible interference, obstruction or

direction from the Executive arm of the State and, (b) significantly strengthening the capacity and effectiveness of same.

- (18) Recommendations for the establishment of a single and adequately resourced National Independent Anti-Corruption Agency for Jamaica. The agency should be structured to (a) discharge, under one roof, the current functions of the Commission of the Contractor General, the Corruption Prevention Commission and the Parliamentary Integrity Commission, (b) possess independent criminal investigative and prosecutorial jurisdictional powers, under the Constitution, over all corruption offences, as well as over offences which are associated with the award of Government contracts and the filing by public officers of their declarations of incomes, assets and liabilities, and (c) possess special police powers of arrest.
- (19) Recommendations for either (a) the establishment of a Special Corruption Court to adjudicate all of the foregoing offences, (b) the assignment of special magistrates/judges to adjudicate same, or (c) the giving of precedence, in the existing Jamaican court structure, to the adjudication of all such offences, save and except for capital offences and other serious offences such as rape.
- (20) Recommendations for the Parliament to review its anti-corruption legislation to ensure, *inter alia*, that the existing sanctions are adequate, effective, proportionate and dissuasive in nature and, in particular, to substantially increase the criminal sanctions for breaches of the Contractor General Act, the Corruption Prevention Act and the Government Procurement Regulations, as follows:
 - (a) Increase the penalty under Section 29 of the Contractor General Act to a mandatory minimum fine of \$3 Million or to imprisonment for a mandatory minimum term of 3 years, or both;
 - (b) Increase the penalty for offences under the Corruption Prevention Act to a mandatory minimum fine of \$10 Million or to imprisonment for a mandatory minimum term of 10 years, or both such fine and imprisonment. In the case of a Public Official, the mandatory minimum fine should be set at \$15 Million or imprisonment for a mandatory minimum term of 15 years, or both; and
 - (c) Increase the penalty for offences involving a criminal breach of the Government's Procurement Rules and Regulations to a fine not exceeding \$10 Million or to imprisonment for a term not exceeding 10 years or to both such fine and imprisonment.
- (21) Recommendations for the Corruption Prevention Commission to take a more proactive and aggressive approach, in the investigation of matters which allege acts of corruption involving Public Officials.
- (22) Recommendations to prohibit the award of Government contracts, above an established minimum value, to any private entity which fails to disclose sworn and certified particulars of its beneficial shareholders or owners, when tendering. The disclosed information would be collated and stored in an anti-

corruption data-base, and would also be cross-referenced with the names of persons who make political campaign donations.

- (23) Recommendations for the insertion of an “Anti-Corruption Clause” in all Government of Jamaica procurement and asset divestment contracts, to create a financial disincentive for private-sector contractors to illegally collude with corrupt politicians and public sector officials to obtain Government contract awards.
- (24) Recommendations to enact legislation to restrict or to prohibit individual contractors, and/or the principals, officers and shareholders of Private Entity Contractors, who are designated by the JCF as not being “fit and proper” persons, from bidding on Government contracts.
- (25) Recommendations to grant to the OCG the power to halt or to regularize a Government contracting or licensing process that is exhibiting signs of corruption, impropriety or irregularity.
- (26) Recommendations to better secure the independence of the OCG by:
 - (a) entrenching same in the Constitution of Jamaica to protect it from arbitrary political interference; and
 - (b) removing all decisions regarding the OCG’s budgetary, resource and staffing allocations from the purview of the Ministry of Finance, and vesting same in a Special Bi-Partisan Committee of Parliament to be chaired by the Opposition.

8. CLOSING REMARKS

In ending my presentation, I will share with you a number of thoughts that I had shared with a Journalist from the Jamaica Gleaner Newspaper earlier this year when he learnt that I would soon be demitting my Commission as Contractor General.

The initial statutory tenure of the Commission of the Contractor General, as specified by Section 6 (1) of the Contractor General Act, is seven (7) years. Consequently, I will demit office, by way of operation of law, on November 30, 2012.

In looking back, I believe that my time with the OCG, over the past roughly six (6) years, has been productively spent and that at the end of my term it will be time for me to pass the baton to another.

We have long turned the corner in rebuilding the OCG from the ground up and transforming the Commission into “a best in class” organization. There is also no question that we are currently pushing the envelope in terms of the effective and efficient discharge of our statutory mandates – at least to the extent that the laws by which we are circumscribed allow.

We believe that we have achieved and are achieving this in a number of ways, inclusive of the following:

- (1) We have elevated the corporate profile of the Commission to one which is highly respected by the wider community of OCG stakeholders.
- (2) We have elevated the Commission into a professional organization which is built upon the foundation pillars of (a) strong corporate ethical principles and values; (b) the commitment and support of a specially recruited cadre of highly qualified staff who fully understand the importance and sanctity of the OCG's mandate; (c) rigidly enforced and documented workplace policies, procedures, processes and disciplinary codes; and (d) the utilization of technology as a cutting-edge and cost-reduction platform to enable and to support the attainment of the Commission's strategic and business operating objectives.
- (3) We have developed and deployed a plethora of strategic and operating initiatives which has enabled us to increase, in exponential terms, the levels of transparency and accountability in government contracting and asset divestment transactions, by extensively monitoring and investigating, on a routine basis, the activities of roughly 200 public bodies, and by making our findings public.
- (4) We have heightened the level of public awareness about (a) the Commission's work activities, its interventions and its considered recommendations; (b) the innumerable challenges which the OCG faces; (c) the incidence of corruption, irregularity and impropriety in public contracting in Jamaica; and (d) the need to secure due adherence, on the part of Public Officers, to the rule of law, by insisting upon probity and transparency in public contracting and to hold them accountable for their actions.
- (5) And, finally, we have increased the level of compliance and accountability, on the part of Public Officers, with the provisions of the Contractor General Act and the Government Procurement Procedures.

At the same time, I have had many disappointments during my tenure as Contractor General.

If I were to, however, choose only one, it would certainly be the realization that, from all indications, there appears to be the absence of the much needed Political and Corporate Will, on the part of successive Administrations, and certain specified State functionaries, to decisively combat corruption in Jamaica, and to adequately empower or support the OCG in its efforts to excise the cancer of corruption, impropriety and irregularity from the Government contracting process.

The impediments that remain, and the issues which must be resolved to make the OCG more effective, are, therefore, neither of the OCG's doing, nor are they within the OCG's realm of control.

Consequently, the destiny of the OCG, and whether and to what extent Jamaica will succeed, in the fight to secure integrity, transparency and accountability in the award of its public contracts, and to root out the scourge of corruption from its midst, is a destiny which remains firmly in the hands of the Government, the Parliament and, ultimately, in the hands of the Jamaican People.

Make no mistake about it. The problems and the challenges that I have sought to overview tonight, which have confronted the OCG and me, will persist as long as the OCG's many remedial recommendations continue to be ignored.

They will remain with us until and unless the OCG is granted independent criminal investigatory powers, independent prosecutorial powers, police powers of arrest, and the power to halt or to regularize a Government contracting process that is exhibiting the signs of corruption, impropriety or irregularity.

In the interim, grave harm is being caused, and will continue to be caused to Jamaica, by the failure of successive Administrations to act decisively, proactively and aggressively on the afore-stated matters, and to do what is right by Jamaica, versus doing that which is right by the measuring stick of political expedience.