

# PLENARY SPEAKER PRESENTATION

BY

GREG CHRISTIE

CONSULTANT, ATTORNEY AND FORMER CONTRACTOR GENERAL OF JAMAICA

*‘The Jamaican Anti-corruption Model’ With Reflections and Lessons for the Region Derived from the Role as the Former Contractor General of Jamaica’*

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**Jamaica is considered as having an 'extensive' anti-corruption model**

In the words of one of Jamaica's most respected jurists, Dr. the Hon. Lloyd Barnett, Jamaica's anti-corruption model comprises an extensive institutional and legal framework for fighting corruption, and inhibiting the unjust enrichment of public officials.

Indeed, the model embraces a significant body of common law, statutory, and constitutional law provisions, as well as international treaty instruments.

While time will not allow me to go into detail regarding the constituent elements of the model, suffice it to say that included in the country's wide anti-corruption institutional framework are, for example, a parliament integrity commission; a corruption prevention commission; a commission of the contractor general; a national contracts commission; an access to information regime; an anti-money laundering regime; a proceeds of crime act; and a corruption prevention act which criminalizes corruption by public servants.

Additionally, Jamaica has an auditor general; an accountant general; a director of public prosecutions; an independent electoral commission; an anti-corruption branch of the Jamaica Constabulary Force; a major organized crime and anti-corruption task force (MOCA); and a financial investigation division of the ministry of finance.

It is also instructive to note that Jamaica has constitutional provisions for the removal from office of parliamentarians who fail to disclose their interests in government contracts, as well as an extensive fiscal management and public body accountability legislative regime.

Finally, and as would be expected, the country is also a party to the Inter-American Convention against Corruption, and the United Nations Convention against Corruption.

**But Jamaica is notwithstanding perceived to be 'highly corrupt'**

But despite having what many have come to regard as one of the most robust anti-corruption architectures in the Commonwealth Caribbean, Jamaica is, nevertheless, generally ranked as the most corrupt country within the region, second only to Guyana.

In Transparency International's (TI's) recently published 2013 Corruption Perception Index (CPI), the country was scored at 38 out of a possible 100 (where '0' is considered to be 'Highly Corrupt' and '100' as 'Very Clean'). Indeed, over the past 12 years, Jamaica has averaged a CPI score of only 35/100, and has never managed to get beyond the 40/100 CPI mark in any single year.

In its 2013 Department of State International Narcotics Control Strategy Report, the United States Government expressed the view that "corruption (in Jamaica) remains entrenched, widespread, and compounded by a judicial system that is poorly equipped to handle complex criminal prosecutions in a timely manner".

Instructively, Jamaicans themselves do not see their country any differently.

A local Don Anderson Poll, which was carried out in 2010, found that "too much corruption" was the most significant problem in Jamaica, next to crime, violence and poverty and all other socio-economic problems.

In the same year, the Latin American Public Opinion Project (LAPOP) Poll ranked Jamaica as the 2<sup>nd</sup> most perceived corrupt country in the Americas, when Jamaicans scored the country at 81.7 points on a 100 point scale, where '0' indicates 'no perceived corruption', and '100' means 'perceived widespread corruption'.

Not surprisingly, the overwhelming majority of Jamaicans also view corruption as a vice that has infiltrated even the country's leading national institutions.

In TI's 2013 Global Corruption Barometer Report, an astounding 85% of the Jamaicans who were polled expressed the view that the country's political parties were "corrupt or extremely corrupt"; 74% said that even the country's Parliament was also "corrupt or extremely corrupt"; while as many as 86% held a similar view of the country's Police.

**Why the seeming contradiction or disconnect? – Some reasons, some notions, and some painful truths**

So, what then are the reasons for this apparent contradiction in terms? Additionally, you might also ask these questions: If Jamaica is indeed a highly corrupt country, why has nothing been done about it; or what exactly should be done about it?

No doubt, many views will contend in the quest to resolve these issues. However, it is important that we must seek to find credible answers, if only so that critical lessons can be learnt, and the right remedial actions pursued, not only for Jamaica, but also for other regional states which might be contemplating a way forward to address the issue of corruption.

At the top of the list of reasons for this seeming disconnect is that Jamaica's leading anti-corruption institutions, although they may look good on paper, are generally dysfunctional – whether by reason of flawed constructs, structural deficiencies, inadequate resources, poorly trained staff, non-aggressive leadership, and/or by virtue of the simple fact that they have failed to effectively discharge their mandates.

The second key reason is that there is, in Jamaica, a demonstrated lack of political will to proactively and aggressively tackle the scourge of corruption that has long afflicted the country.

This is empirically evidenced, in part, by the failure of successive administrations to effectively remedy the aforementioned deficiencies, despite having made solemn commitments to combat corruption, either while campaigning on the political electoral platform, or while delivering prime ministerial inaugural speeches.

Additionally, successive Jamaican governments and parliaments have failed to implement repeated recommendations which have been advanced to strengthen the effectiveness of the country's anti-corruption institutional framework, particularly in keeping with evolving global anti-corruption and anti-graft best practices.

A third and associated reason is that there is also lacking in Jamaica strong, decisive and courageous leadership to do what is right by Jamaica, as opposed to what is politically expedient. Many Jamaicans have attributed this deficit to the pervasiveness of the country's notorious brand of two-party political tribalism and garrison politics.

These considerations, in turn, have significantly helped to fuel substandard practices of governance that are now generally considered to be the norm, rather than the exception.

Topping the list of the referenced practices are (a) the failure of the political directorate to hold public officials accountable for their breaches of the public trust; (b) a general lack of respect for the rule of law; (c) disregard for the rulings and/or recommendations of the country's leading anti-corruption institution; (d) governmental decision-making that is devoid of transparency; and (e) seemingly institutionalized nepotism.

In addition to the foregoing, there are also widely held notions in Jamaica which have not only aided the perception that Jamaica is a highly corrupt country, but which may have also stifled public pressure for corrective action. Among them are the following:

- (1) The seeming accepted view that there are two laws in Jamaica – one for the ordinary Jamaican; and another, which is seldom enforced, for the powerful, the connected, the rich, the white-collared criminal, and the corrupt.
- (2) The perception that the investigation and prosecution of corruption offences in Jamaica is neither a priority for law enforcement nor for the Director of Public Prosecutions. This perception, I should add, is supported by empirical evidence.
- (3) The perception that there are politicians, parliamentarians, public officials, powerful individuals, as well as private sector institutions, that would seem to have a vested interest in maintaining the status quo.
- (4) The oft-spoken suggestion that some elements of the media, and even civil society, are politically aligned and are thus compromised in their independence.
- (5) The general perception that corruption is attributable essentially to the public sector, and not to the private sector, thus removing any focus from the latter.
- (6) And, finally, apathy on the part of the general populace towards the problem of corruption. [There is also a reluctance to publicly call a spade a spade for fear of being branded, victimized or isolated. The corrupt are well aware of this, and are thus emboldened to pursue their conduct, not only with impunity, but also with arrogant indifference to the brave few who are prepared to call them out.]

For any developing country, these would be troubling matters. However, for Jamaica, especially when considered against the background of what could have been, it is even more troubling.

By any empirical measure, Jamaica, which secured its independence from Britain over 51 years ago, should by now be further ahead on the global socio-economic development path, particularly having regard to its abundance of natural resources, not the least of which is its world-renowned tourism brand, and the fact that it was once the globe's leading producer of bauxite.

But Jamaica, which ranks as the largest of the English-Speaking Caribbean islands, has been beset by a multitude of debilitating problems, many of which Jamaicans believe are, in part, either compounded by and/or are traceable to its close alliance with corruption.

The bald facts do not lie.

Jamaica, which has one of the world's highest debt-to-GDP ratios, has for a long time been stricken by political tribalism, a high murder rate, rampant crime, widespread poverty, anemic growth, poor social services, inefficient government processes, low foreign investments, high energy costs, a rapidly declining currency, inflation, and a high rate of unemployment.

It is generally accepted that corruption erodes the quality of life of the society, and denies the poor access to basic entitlements, such as water, electricity, roads, health care, housing and education.

Corruption also leads to human rights violations, hijacks political elections, undermines critical public institutions, and enables organized crime and other threats to human security to flourish. Above all, corruption also constitutes a betrayal of the public trust.

But for a developing country, such as Jamaica, which has failed to aggressively tackle the scourge of corruption, there is another huge and unforgiving price that must be paid.

Foreign investors, many of whom are currently facing heightened reputational and financial risks because of the threat potential of the OECD Anti-Bribery Convention, the United States Foreign Corrupt Practices Act (FCPA), and the United Kingdom Bribery Act, will shy away, taking with them the only opportunities that a country such as Jamaica will have for achieving sustainable growth and economic development.

The warning signs for Jamaica are already on the near horizon. Only recently, in its 2013/2014 Global Competitiveness Survey Report, the World Economic Forum ranked "Corruption" as one of the three most problematic factors for doing business in Jamaica.

An even more compelling feature of the report is the fact that Jamaica was ranked 113 out of 148 countries on "public trust in politicians", and 107 out of 148 countries on "favouritism in decisions of Government officials". These findings alone are indicative of a high-risk country in which judicious investors would feel that they will either be required to pay bribes, or otherwise conduct business on a playing field that is not level.

**Going forward – Some 'lessons learnt'-based recommendations for fixing the problem of corruption in Jamaica and within the Caribbean Region**

It is critical, therefore, that Caribbean jurisdictions, such as Jamaica, that are perceived to be corrupt, must begin to change gears. They must do so immediately, and they must do so by setting in place, visible, measurable, comprehensive and effective institutional best-practice arrangements for combating corruption and bribery.

If ruling administrations refuse, or fail, in the public interest, to rapidly and decisively bring about the requisite changes, they must be pressured into action. They should be held to account by the opposition, the citizenry, civil society, the church, the independent media, international development partners, and/or by the multi-lateral lending community.

For those Caribbean governments that are serious about tackling corruption, there are a host of remedial counter-measures that can be pursued.

As a guide, I will, therefore, close my presentation by outlining 21 'high-level' 'lessons learnt'-based anti-corruption strategies which I would strongly encourage regional governments, where appropriate, to consider as they contemplate the way forward in fighting corruption and graft.

They are as follows:

- (1) Establish a single independent anti-corruption state agency, with specialist resources, and having exclusive criminal investigation and prosecutorial jurisdiction, and full police powers of arrest and detention, over all corruption offences.
- (2) Establish an independent procurement regulator to monitor and to investigate the award of government contracts, sub-contracts and licenses, with the objective of ensuring probity, transparency, competition and value for money in the said awards. It is imperative that the regulator be given the power to halt proposed awards in instances of suspected irregularity or impropriety.
- (3) Establish a corruption court to adjudicate all corruption related offences. In the alternative, give priority to corruption cases in the prevailing courts system.
- (4) Strengthen and enhance the independence, effectiveness, accountability and competence levels of existing anti-corruption institutions, and take all requisite measures to insulate them from government, political or third-party influence, direction or interference.
- (5) Legislate minimum standards of integrity and good-governance conduct for politicians and public officials, and enforce same via impeachment provisions.
- (6) Impose significantly tougher criminal sanctions, inclusive of minimum or mandatory custodial and economic based penalties, for all corruption offences.
- (7) Impose added sanctions, inclusive of the imposition of term bans from office, and forfeiture of pensions, in the case of public officers who are found guilty of corruption, or breach of prescribed good-governance and integrity standards.
- (8) Impose tough criminal and civil sanctions upon private sector entities for the bribery of public officials, and require them to develop, implement and enforce company-wide anti-bribery compliance programmes.
- (9) Legislate appropriate political donation and campaign finance laws.
- (10) Continuously review anti-corruption laws to cauterize loop-holes, criminalize new developments in corrupt behaviour, and elevate existing sanctions, where necessary, to deter unwanted conduct.
- (11) Establish national and regional public registers of corporate beneficial ownership.

- (12) Implement a national (and regional) system for the certification, de-certification, debarment and cross-debarment of government contractors who engage in fraudulent practices or who consistently fail to perform their contracts to the required standard.
- (13) Require the public filing and disclosure of assets, income and liabilities for all parliamentarians, politicians and critical-level public officials.
- (14) Implement a minimum 1-year public sector to private sector 'revolving door' ban for certain classifications of public officers.
- (15) Develop and deploy a mandatory 2-3 hour ethics, public trust, and anti-corruption on-line course to be taken by all public sector employees; and supplement same with annual follow-up refresher courses.
- (16) Introduce a mandatory ethics, corruption prevention and corruption educational module on the curricula of all primary, high and tertiary level educational institutions.
- (17) Develop and administer a national community-based corruption prevention and corruption awareness educational programme.
- (18) Appoint an ethics/good-governance/anti-corruption cabinet minister.
- (19) Establish a national (and regional) anti-corruption/anti-bribery policy development advisory council.
- (20) Implement 'open government' concepts.
- (21) Conduct and publish annual performance surveys of national anti-corruption institutions.