



**PRESENTATION BY PROFESSOR TREVOR MUNROE, CD, DPhil
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THE HILTON ROSE HALL RESORT & SPA, MONTEGO BAY, JAMAICA
PANEL: GOVERNANCE & TRANSPARENCY, CORRUPTION &
MISCONDUCT ON PUBLIC & PRIVATE BOARDS
PANELISTS: DR. TREVOR MUNROE/SUZANNE FFOLKES-GOLDSON**

Distinguished guests, ladies and gentlemen, good afternoon.

Allow me first of all to thank the Jamaican Bar Association for the opportunity to present at this important conference and also for extending an invitation to participate in sponsorship.

My co-panellist and friend, Suzanne Goldson, presented on Corporate Governance on Public and Private Boards in relation to the framework of law, codes and regulations as well as with reference to recent scandals the latter primarily in the international arena, but as well making mention of some national events. May I add to her excellent presentation two elements of Jamaican law relevant to our conversation. **One** is the Public Procurement Act passed by both Houses of Parliament in October 2015, but coming into effect on April 1, 2019 following the Parliamentary approval of the regulations. **Secondly**, the Amendments to the Representation of the People's Act dealing with Campaign Finance and Political



Party Registration, the former regulating the role of money during an election campaign period.

My presentation however, shall be divided into **four** parts. **One**, the magnitude of the deficit of compliance with and enforcement of the governance framework relating to public boards. In a sense, Suzanne dealt with the surplus of regulation; I am dealing with the deficit of implementation. **Secondly**, the increasingly devastating consequences of this deficit for Jamaica, our economy, our society and our governance. **Three**, I shall make suggestions as to what is to be done and **fourthly** I shall make recommendations as to how it is to be done.

THE MAGNITUDE OF THE DEFICIT

The first Annual Report of Jamaica's newly established Integrity Commission gives an indication of the extent of public funds disposed of each year by approximately 190 public bodies. Between January 1, 2018 and March 2019 the web portal of the Integrity Commission registered 25,000 contracts, excluding those valued under \$500,000, with a total value of 126 Billion Dollars. In other words, the Boards and Senior Management of public bodies are responsible for awarding contracts (and remember this does not take in contracts of under \$500,000) totalling almost One



Billion US Dollars. Immediately we can see how important it is for those awards to result in value for money to the taxpayer, ensure no wastage of scarce public resources and avoid illicitly enriching the corrupt with public funds.

In this regard, the Integrity Commission reported that it had carried out and completed the long pending investigation into PETROJAM, the largest public body by far, with revenues of over 1 Billion US Dollars in 2018/2019. This Investigation Report was referred to the Director of Corruption Prosecutions at the time of the Annual Report of the IC, that is, in July 2019. As you know, the Office of the Director of Corruption Prosecution, has been for some time vacant and the public remains in the dark as to where the Investigation Report now is and what is contained therein.

Nevertheless, the shortfall in implementation of the framework relating to public bodies is graphically revealed in the most recent Auditor General's Report into PETROJAM published in December 2018. I bring to your attention excerpts from this Report and previous investigation into that body.

- “In awarding contracts, PETROJAM frequently contravened the terms of Procurement Law...[committed] explicit acts of nepotism...could not account for \$5.2 Billion in unaccountable losses, made sponsorships and engaged consultants in breach of relevant policy”.
- The Auditor General’s Report December 7, 2007 “widespread breaches of Government Procurement Rules” (page 13).
- Auditor General’s Report June 17, 2010 “numerous procurement breaches” (page 7)
- January 2015 to October 2017 69 percent of contracts awarded were done on a non-competitive basis.

Regrettably PETROJAM was not alone in this misconduct. Across successive administrations there are many reports of deficits among public bodies in compliance with Governance Framework of Public Boards. For example, the **Public Bodies Management Accountability Act**, Section 3, subsection 2 requires Public Bodies to file a report with the responsible Minister, and through the Minister, to Parliament and the public within four months of the end of each Parliament Year. In 2016 only 37 of 163 Public Bodies were in compliance with this statutory requirement. Other examples of breaches:

- According to the Auditor General’s Report into the National Works Agency, that entity paid off over \$800 Million Dollars in relation to fifteen (15) road rehabilitation contracts but test results relating to those road rehabilitation contracts were falsified.
- In 2013 the Annual Report of the Contractor General’s Office pointed out that over a quarter Billion Dollars were paid to unregistered contractors.
- In 2011 private sector groups had to call for sanctions in relation to breaches under the Jamaica Development Infrastructure Programme.
- In 2017 the Investigation Report of the Contractor General into the November 2016 De-bushing Contracts found “a deviation from Government of Jamaica Procurement Guidelines” (page 364). The extent of sustained non-compliance with the corporate governance framework is a matter of indisputable record.

In response sanctions applied have fallen short of the full application of the relevant law and regulations. Admittedly resignations required by the doctrine of Individual Ministerial responsibility have been the order of the day. Eleven ministers, six PNP and five JLP have resigned between 1991 and 2019 for misconduct, including credible allegations of corruption; none except one have been convicted or sent to

prison. At a lower level, board members and senior management have also followed the practice of resignation without conviction. For example, the Board of PETROJAM resigned in 2018 along with the General Manager and senior staff members.

CONSEQUENCES FOR JAMAICA

- **Negative Assessments by our International Partners.** I mention three. **The International Monetary Fund**, May 2019: “There are serious shortcomings in the governance of public bodies...Jamaica fares relatively poorly on corruption related measures...and public corporate governance with potentially significant implications for growth (paragraph 16)...weak governance and corruption can...undermine macroeconomic and financial stability, private and public investment and the rule of law (page 31). **Secondly**, Transparency International Corruption Perception Index 2018 on a scale of 0 to 100 where 100 is the least corrupt, Jamaica scored 44 and ranked 70 out of 180 countries. This placed us among two thirds of states which scored under fifty and put us at number seven of ten countries in the Caribbean with only Trinidad & Tobago, Guyana and Haiti perceived to have higher levels of corruption in the public sector.

Thirdly, The World Economic Forum 2019 Global Competitiveness Report ranked Jamaica number 80 of 141 countries in terms of competitiveness. Annually the GCR places corruption as one of the top three of sixteen most problematic factors for doing business in Jamaica. Amongst 112 indicators used in making their assessment of competitiveness, Jamaica uniformly scores and ranks lowly in terms of “favouritism in decisions of Government officials” and “irregular payments and bribes”.

- **At the national level these negative assessments are replicated, not least of all in declining trust and confidence in critical democratic institutions.**

Between 2012 and 2017, according to the Latin American Public Opinion Project Reports (LAPOP), Jamaican people’s confidence in political parties declined from 27.2% to 22.5%; in the police from 48% to 43.9%; in elections from 43.6% to 31.8%. In this last case, not surprisingly, the percentage voter turnout in the February 2016 elections was the lowest in 70 odd years of our democratic elections and the lowest in the Western Hemisphere.

Along similar lines, a UNDP survey of seven Caribbean states in 2010 found that 52% of Jamaican people believe that powerful criminals go free and 57% believe that politically connected criminals go free. Against this background the most recent

2019 survey found that 78% of Jamaicans believe that corruption is a serious problem in Government and that 49% that Government is not doing enough to deal with it. Regrettably, but not surprisingly, in this context, support for military takeover to deal with crime and corruption has steadily grown from 41.3% to 56.4% between 2012 and 2017, the latter percentage being the highest amongst states surveyed in Latin America and the Caribbean. Lack of confidence in the performance of our democratic institutions also underpins the recommendation from 55% of Jamaicans that our international partners should use success in fighting crime and corruption as a basis for determining the extent of aid and grants to Jamaica. It should be noted that whilst a majority are not trusting our Anti-corruption institutions to perform effectively, the Major Organised Crime Anti-corruption Agency (MOCA) enjoys the largest percentage of satisfaction – 46% amongst our people.

WHAT IS TO BE DONE?

First, recall the inaugural pledges of successive heads of Government and insist as citizens for the fulfilment of these commitments.

- **Prime Minister Holness, February 2016** – “the historic election delivered the smallest majority, but also the clearest mandate: fix Government...Jamaican people want to see action in building trust...no doubt that significant numbers of Jamaicans have lost hope in the system”
- **Prime Minister Simpson Miller, March 2012** “I...pledge to the Jamaican people to work tirelessly to eradicate corruption and extortion...I am committed to their eradication”
- **Prime Minister Golding, September 2007** “What are to be the priorities of our Government...transparency and accountability in Government and the elimination of corruption...corruption in Jamaica is much too easy, too risk free...we intend to impose criminal sanctions for breaches...”

In supporting effective action to complement good pledges I suggest four steps to be taken.

- Enforce the law, in particular, the Public Bodies Management Accountability Act Section 25, which among other things, allows the courts to impose penalties on those found guilty of not complying with the requirements of the Act. For example, by failing to submit Annual Reports of the Public Body within the four months stipulated.



- Secondly, the Procurement Act, which as I mentioned came into effect on April 1, 2019. Section 26 of this Law indicates that the Financial Secretary may impose a surcharge on any officer or employee of a procuring entity in breach of Procurement Provisions to the extent of a sum equivalent to the loss of public monies by the Procurement breach. Sections 56 and 57 make it an offense to attempt to influence an officer involved in procurement proceedings and such a person on conviction to be fined \$3 Million Dollars or \$7 Million Dollars depending on whether the matter is heard in the Parish or Supreme Court. This fine may be a substitute for or in addition to imprisonment for three years.
- Thirdly, the long pending regulations to give full operational independence from the JCF to the Major Organised Crime Anticorruption Agency should be completed and affirmed in the House of Representatives. Similarly, the regulations to limit partisan political influence on and the increase of merit based considerations in the nomination, selection and appointment of public boards, should be completed. The Minister of Finance has indicated that these new regulations will be laid in Parliament before the end of November and the IMF recommends that it be completed by December 2019.

- Finally, I agree with the strong recommendation in Jamaica’s National Security Policy (Ministry Paper No. 63, 2014) that in seeking to curb organised crime and corruption our justice system, including investigators, prosecutors and judges, should modify their operational priority: “focus has to shift from street level criminals to the top bosses...that is, the facilitators...the politicians, lawyers, real estate dealers” etc.

HOW IS THIS TO BE DONE

Experience here and elsewhere suggests the following:

- (1) Civil Society bodies such as NIA and The Jamaica Bar Association need to sustain advocacy in critiquing breaches and supporting measures to enhance good governance. I note for example that one of the objectives of the Jamaican Bar Association, from its foundation in 1973, is to “strive for maintenance and strengthening of the rule of law”. May I suggest that your Association, in the context of Jamaica falling short in fulfilling the target set in relation to the “rule of law” indicator under our National Development Plan, renew its attentiveness to this objective.

(2) It is clear that enhanced citizen awareness and citizen engagement is the way to reverse bad policy and to enhance good conduct by the authorities. Four cases in point over the last five years:

- 2014, April 8 – then Minister of Finance Phillips proposes to impose a tax on withdrawal from bank deposits. This proposal reversed on April 29, 2014.
- 2018, February 2 – Prime Minister Holness proposes appoints the Chief Justice to act for an indeterminate period and undisclosed criteria for appointment. February 28, 2018, the acting appointment terminated and the Chief Justice fully installed.
- 2018, May 22 – Parliamentary exposure of gross misconduct in the Ministry of Science, Energy and Technology. July 31, 2018 Minister of Science, Energy and Technology Wheatley resigns.
- 2019, October 1 – the Government proposes that non-disclosure of Cabinet documents to the public should be extended from 20 to 70 years. October 3, 2019, proposal withdrawn by the Government.

In each of these instances, a bad decision by the authorities was reversed by significant public outcry, strong civil society advocacy and stout resistance through the media. In this regard I wish to commend and to encourage the engagement of

both junior and senior attorneys in talk shows, written commentary and current development programmes in the media. I refer to members of your profession such as, Andre Earle, Emily Shields, Dionne Jackson-Miller, Danielle Archer, Carolyn Haye, Jodi-ann Quarie and Ronnie Thwaites in the electronic media; Jackie Samuels-brown QC, Frank Phipps QC, Gordon Robinson in the print media. Their interventions do much to raise citizen awareness, enhance public resistance to bad governance and set an example for others to follow.

(3) The critical importance of building professional will and capacity amongst officials in the justice system, ultimately responsible on the frontline for upholding law and regulation relating to public boards, more widely good corporate governance. I mean that where political will is weak or fractured and the social will of the public is divided or emergent, it is the investigators, the prosecutors and the judges who have to take up the lead responsibility, whether in Brazil, where two presidents have had to face justice or in Japan where the Chairman of Nissan is before the courts or in France where the former president is indicted for corruption, or in Malaysia, similarly with the former prime minister, or in Europe where eighteen of the largest twenty banks have been brought before the courts, tried, convicted and fined for breaches of corruption law. So it must be in Jamaica. Enhancing



professionals with courage and competence is what shall raise the conviction rate for illicit enrichment from 17.1%. Such success is what shall encourage public engagement, to increase even further average monthly reports to CrimeStop of 100 (the first nine months of 2017/2018) to 200 (in the first nine months of 2018/2019). In all of these respects your profession and your Association has a most important role in dealing with corruption and misconduct and upholding good governance to public and private boards.