A Civil Society Initiative

Auditor General's Reports & MDA Accountability Assessment

2010 - 2015

Final Report

October 2016

The Auditor General's Department MDA Assessment is the product of the work of the Jamaica Civil Society Coalition (JCSC) and the Caribbean Vulnerable Communities Coalition (CVC).

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Collaborators

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Caribbean Vulnerable Communities Coalition

1. Executive Summary

Purpose: This report focuses primarily on the Auditor General's Department, its work, the support it receives from the wider accountability environment and the level of responsiveness from other public officials (especially the Public Accounts Committee). The report looks at the crucial question of sanctions - who has the authority to sanction, what sanctions are available and are they being used.

The research was undertaken against the background of decades long, public cries of concern for the lack of accountability, repeated reports of waste and public perception of corruption. As coalitions of civil society groups, both the Jamaica Civil Society Coalition and the Caribbean Vulnerable Communities Coalition desired a fuller understanding of Jamaica's accountability environment and if and how the public can strengthen the work of the Auditor General. Shedding further light on the auditor general's findings and the state of governance as well as building understanding of the accountability framework in order to better use it are main goals of the research.

Method: 41 audit reports were reviewed to identify egregious breaches categorised as follows: Non-compliance with government rules and policies (in particular procurement), human resource administration and demonstrable poor governance decisions. Using the Access to Information Act twenty two (22) government institutions were asked to produce documentation to support what corrective measures were taken after the Auditor General's report to ameliorate the concerns. Only nine (9) responded.

Interviews were conducted with representatives of the different institutions that form a part of the Government's accountability framework and desktop research was done to identify examples of 'best practices from other countries that involve supporting the work of national supreme audit institutions.

Findings: The Auditor Generals' reports span a wide cross section of MDAs and identify a litany of various breaches. Waste, inefficiency and gross non-compliance are not confined to any particular sector or certain public institutions, rather they are pervasive and are committed through the length and breadth of government. Notwithstanding, three institutions that stood out among the rest (quantitatively and qualitatively) for number of breaches, recurring breaches and egregious nature of the breaches were the Ministry of Labour & Social Security, Ministry of Health and Ministry of Education.

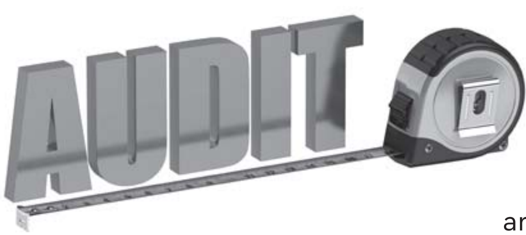
Breach (2009-1	Amount ($)
Over Payments*	65,442,328
Unsupported Payments	457,223,621
Unapproved Payments	247,259,983
Unremitted Deductions	10,676,147
Reported Losses, Fraud	5,395,204,237
Grand Total	**6,292,093,184**

*Of which $7,000,978 was recovered

By way of example, over the span of three financial years (2009/10 to 2011/12) the AG's reports tallied a total of **$6.292 Billion** constituting waste, losses, unsupported payments, etc. as outlined in the table below.

Of the 9 institutions (41%) that responded to requests for information, the majority of the concerns were found to have been fully remedied or were in the process of being remedied. However, in the absence of responses from 13 entities (59%) it is not unreasonable to proffer that the non-response can be attributed to the level of the inattention they have paid to the concerns highlighted.

Regarding the power to sanction, we determined that it rests primarily in the posts of the permanent secretaries and the financial secretary at the Ministry of Finance & the Public Service. A number of sanctions are available ranging from repayment of monies (surcharge), fines, suspension without pay, withholding of salary increases, reduction in rank and dismissal. There was little evidence to support that these sanctions were being actively used to encourage judicious use of government assets. None of the legislation governing accountability and performance speak to imprisonment. Surcharges, as currently utilised, are not proving to be a significant or practicable deterrent to maladministration and malfeasance. Notwithstanding, the need for reinforcement of existing legislation, there are provisions under the new corporate management framework that allow for more effective holding to account.



The research identified a number of accountability gaps. For example, the Public Bodies Management Accountability Act lacks clarity on who is empowered to sanction. The House of Representatives does not review and discuss the annual findings and recommendations of their oversight committee (Public Accounts Committee) whom they have mandated to examine the auditor generals report. This gap also extends to the Cabinet, (the executive) as it does not receive a report from the Parliament on which to base policy decisions that could mitigate against the practices that lead to waste, corruption and inefficiency.

As is the case in other jurisdictions, the members of the Public Accounts Committee do not have power to sanction public officials. We concluded however, that the Committee could but does not sufficiently exercise the option to refer matters for further investigation to other watch dog agencies that are empowered to investigate and sanction if necessary.

Examples of breaches extracted from Annual Reports 2010-2015 are outlined below to provide an appreciation for the types of concerns that are detailed in this report and that proliferate several ministries, departments and agencies of government.

<table>
<tr><th colspan="2">AuGD Findings</th><th>Description</th></tr>
<tr><td>1</td><td>Non-Compliance</td><td>Where agents acting on behalf of the State fail to adhere to set rules, policies and regulations</td></tr>
<tr><td colspan="3">2014 - National Water Commission: The National Water Commission (NWC) established a Unit to manage the K-Factor programme. The Office of Utility Regulations (OUR) agreed that the NWC would cover the administrative costs. NWC without the OUR’s approval instituted a supervision cost of 8.5% of project costs and transferred $1.08 billion to NWC’s operational bank accounts. The NWC failed to produce evidence that this charge was made known to the OUR. The AuGD also noted that the expenditure for the K-Factor Unit 2013/14 amounted to only M$72.</td></tr>
<tr><td colspan="3">2013 - Universal Access Fund: The AuGD found no evidence to support an approval for advances totalling US$78.415 million made from the Universal Service Fund in 2009 for public debt payments. Despite requests the AuGD was not provided with the requisite approval for the transfer of US$60.09 million.</td></tr>
<tr><td colspan="3">Poor scholarship bond agreements:
2011 Ministry of Finance - At March 31, 2011, beneficiaries who failed to honour their bond agreement, owed the Government JMD$36.8M, CAD$198,557, USD$176,340 and GBP£36,371. Management was tardy in referring delinquent cases to the Attorney General
2012 Ministry of Education - At March 31, 2012, 212 teachers owed the Government $410 million because they have not honoured their bond agreements.
2012 CHASE Fund - 2007/08 to 2011/12, a total of 87 awardees received scholarship assistance amounting to $127.6 million for which no bonding agreements were executed.</td></tr>
<tr><td>2</td><td>Procurement Breaches</td><td>A specific area of non-compliance where agents acting on behalf of the State fail to adhere to the GoJ Handbook of Procurement.</td></tr>
<tr><td colspan="3">2011 - Tax Administration of Jamaica - Despite being the subject of previous audit reports, formal contracts with 5 companies were not presented to the AuGD when requested for inspection. The companies were paid a total of $142M. Neither Cabinet’s approval nor the National Contracts Committee’s approval was obtained for a $60.6M contract awarded for armoured services.</td></tr>
</table>

2012 - Ministry of Education: The Ministry did not present the relevant Cabinet approvals for the procurement of textbooks from two suppliers, which totalled **£1.1 million.** The contract for one of the suppliers was not presented.		
2015 - Ministry of Health: Despite requests, the AuGD was not presented with the contracts to support the payment for security and catering services costing **$699,240.66** and **$20,618,939.58,** respectively.		
3	Human Resource Infractions	Where improper payments or emoluments are made to agents acting on behalf of the State
2011 - Ministry of Finance - An Executive Secretary was overpaid $170,100 for commuted traveling allowance from January to December 2010 despite a Ministry's driver was paid overtime to transport her to and from work. Management was asked to recover the amount.		
2015 - Early Childhood Commission & the Early Childhood Development Project: The Commission continued subsidy payments to early childhood practitioners who had separated from various early childhood institutions. This resulted in over-payments totalling **$21,663,190.95,** of which $10,360,229.87 occurred in the current period 2014/2015. Only $4.26 M recovered.		
2015 - Ministry of Labour & Social Security: Jamaica Liaison Services Ltd did not present formal authority for paying gratuity for a full year to an officer whose services was terminated within nine months of completing the contract. To compound the issue, the Officer was paid gratuity at a rate of 25% instead of the MoFP approved rate of 12.5%.		
4	Poor Governance	Where no stated or set policies, rules or regulations exist and agents acting on behalf of the State abuse that policy gap.
2010 - Ministry of Labour & Social Security: Up to October 2010, the PBX voice related feature which was acquired for use at the Ministry's head office in 2007/2008 at a cost of **US$13,000** was still not activated. To date, the Ministry has not benefited from this expenditure. It was again recommended that measures be implemented to prevent abuse of the telephone facilities.		
2013 Annual Report - Ministry of Health: The absence of a Ministry of Health strategy and its guidance has resulted in variable purchasing arrangements for pharmaceuticals. Three Health Regions namely; the South East, North East and Western Regional Health Authority, opted to purchase prescription drugs valued at a total of **$796 million,** from private suppliers rather than the Government owned company Health Corporation Limited. Consequently, the Ministry failed to realise possible savings of approximately **$202 million** on the acquisition of these drugs.		
2013 Annual Report - Agri Investment Corporation: The AuGD found that a contract of employment of one of the signatories to an account ended in February 2009. However, during the period July 2009 to November 2011, the individual was a signatory to **91 cheques valuing $112 million** and signed documents authorising the encashment of investments amounting to **$56.6 million** during the period March 2009 to November 2011.		
2015 Annual Report - Jamaica Tourist Board: The AuGD found that the JTB had paid **J$4.07 billion** to three marketing and public relation service providers to promote the country as a tourist destination over the period 2012-2015. JTB however, did not require all agencies to submit annual plans. The AG opined that this would compromise JTB's ability to examine and influence the marketing strategy of these agencies in a structured manner.		

RECOMMENDATIONS: The key recommendations were generated by the gaps found in the 'accountability chain' and can be summarised to include:-

- ☑ Greater information sharing of the findings of the Auditor General's reports with other 'watchdog agencies' of government.
- ☑ Moving beyond the mere tabling of the Public Accounts Committee annual report to scheduling review and debate in the House and the submission of the Parliament's decisions to the Cabinet for execution.
- ☑ Incorporating government entities such as the Central Bank within the remit of the Auditor General.
- ☑ Tracking the progress of delinquent agencies via an online database that records the breach and the remedial measures taken (or not) by the entities to correct same.
- ☑ Widening the witnesses that can be summoned to the Public Accounts Committee to include Ministers of Government.
- ☑ Devising a mechanism to better hold the Financial Secretary to account should he/she fail to act under the provisions of the law to sanction public servants who are in breach of government rules, guidelines and policies.
- ☑ Reviewing and amending the legislation that governs the public bodies to ensure a clear line of sight between a breach on the part of the a public official and holding them to account.
- ☑ Improving the resource base of the Public Accountability Inspectorate of the Ministry of Finance to resume its mandate to shore up the work of the Auditor General in monitoring agencies who have been audited and found to be in breach.
- ☑ The Auditor General's Department actively engaging CSOs to jointly establish mechanisms that accommodate the interest and expertise of citizens and CSOs to reinforce the work of the Auditor General and improve accountability in government.

"This is not a political statement, but everybody thinks that taxpayer's money is free money.

It's a culture that has to change."

PAC Chair
October 11, 2016

The small sample of AG findings was deeply disturbing. At least now have a better picture of who can do what. But clearly the Government's "accountability framework" cannot be working if every year the reports sound like this. So what can be done?

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7. Bridging Accountability Gaps

The research shows that there are significant, glaring gaps in the accountability framework which, if not addressed, will ensure that the situation of widespread breaches of guidelines - unrecorded assets, improper payments, spending outside of budget, unsupported transactions and other such failings will continue. Jamaica will be the poorer for it.

Several key actions are needed to strengthen the accountability framework. These include information sharing across accountability agencies, as well as consistent application of sanctions and indeed the strengthening of sanctions. Additionally, legislative and policy actions are needed to clarify accounting officers' and bodies' legal standing and authority with respect to sanctions.

The recommendations which follow address these and other ways in which the accountability framework can be strengthened.

The Auditor General

The AuGD derives its mandate from Section 122 of the Constitution and Section 29 of the FAA Act. Both require the AG to report to the Parliament. Beyond that, there is no formal relationship with other "watchdog" agencies with compatible mandates such as, the Office of the Contractor General, the Office of the Services Commission or the Revenue Protection Division of the Ministry of Finance, etc. In some jurisdictions the equivalent of the AuGD has its own specific Law that strengthens its independence, and there are more avenues for civil society participation. The accountability framework would be greatly strengthened by:

1. Formalising/institutionalising information sharing across watchdog entities would greatly improve trouble spotting and the investigative capacity of the overall system.
2. Enacting legislation specific to the AuGD. Separating the responsibilities of

the Auditor General from the FAA Act, would further reinforce the AuGD's independence from the government's financial administrative operations. It would also reinforce the unique role of the office, as being distinct from the executive.

3. Creating a wider platform for citizen participation. The Auditor General has commenced a new initiative of engaging non-government stakeholders during the auditing process. Performance audits in particular, have benefitted significantly from the feedback of service users. Such initiatives can be broadened by actions such as incorporating secure "whistle-blower" reporting facilities on the AuGD's website. For citizens with a non-financial background, further attention to the use of language and the inclusion of a glossary would aid public education. This will require additional research and exchanges with the AG and other government stakeholders to determine the best mechanism for participation. [See Case Studies Section 11]

4. According to World Bank Institute research [2] central banks should be subject to the Auditor General's audit as other public sector agencies are, as such including the Central Bank of Jamaica within the ambit of the Auditor General's audit portfolio, would be an important step. This would build on the earlier effort of the PAI which investigated and made recommendations with respect to the contract of the Governor of the Bank of Jamaica in 2009.

The Public Accounts Committee

As a sub-committee of Parliament, the PAC is required to submit an annual report with recommendations to the House of Representatives for debate. The PAC was fully compliant with producing reports for the six years spanning the research. Although all the reports have been tabled they have not been discussed nor submitted to the Cabinet for its consideration. This denies the public, opportunity for legislative change and budgetary support that could improve governance, accountability and ultimately improve the delivery of public goods and services. Follow up of findings and implementation of recommendations is crucial for achieving the desired governance practices among MDAs. The research indicates that there is very limited follow up, policy amendment or referral of matters where warranted. A more robust process is called for. The following actions can improve the situation.

2 Findings of the 6th Global Forum on Reinventing Government, May 24-27 2005

5. Convening additional sittings (as done during peak parliamentary periods) to treat with the backlog of tabled PAC recommendations. This should be followed by a post debate submission of the House's recommendations for the Cabinet's attention.

6. Online publishing of findings and recommendations directed at MDAs that appear before the PAC. This online database should be updated until full compliance is achieved. This is currently practiced by the Canadian and German Parliament and civil society activists in South Africa. It allows the media, citizens, CSOs and other stakeholders, both in and out of government, to contribute to the monitoring and oversight effort.

7. Adjusting the Standing Orders of Parliament to allow for the appearances of Ministers and Ministers of State before the PAC, should the Auditor General's report implicate their offices in any acts of maladministration and/or malfeasance.

8. The PAC holding the Accounting Officers to account by requesting investigations be conducted by the Public Services Commission, whenever the Committee concludes that the action or inaction of PSec has contributed to the compliance concerns before them. The recommendations of the PSC will determine the exoneration or dismissal of the PSec.

9. Making additional resources available for the government-owned Public Broadcasting Corporation to provide live and/or recorded sittings of the PAC. At a minimum, reports from the AG that have provoked higher than usual public interest and debate, should be broadcast and recorded. The use of social media outlets, such as YouTube and/or Vimeo is an option for increasing public access, awareness and demand for accountability. By way of example, see the Trinidad and Tobago Parliamentary coverage.

The Financial Secretary

Section 93(3) of the Constitution deems the Financial Secretary, the Permanent Secretary of the Ministry of Finance. The FAA Act accords the Financial Secretary the power to levy surcharges, to ensure that the operations of MDAs are compliant with government policy, rules and regulations and to ensure that the decisions of the respective Permanent Secretaries are in keeping with that of sound financial management of the public purse.

Acting on the recommendation of the AG that surcharges be made against an officer, the

Financial Secretary conducts an investigation and is given 3 years under the FAA Act to sanction via a surcharge. However, for the period 2010/11 and 2012/13, two of the six years covered by this research, the Ministry of Finance recovered only **$3,218,077.99** (14%) of the **$22,385,983.37 in** losses incurred. Challenges to the effectiveness of surcharges include officers' inability to repay, the closure of the three year window before the AG identifies the loss and attempting to recover losses through the courts where costs to the Attorney General can exceed the amount being recovered.

Measures that can be taken to strengthen the role of the FS and the application and effectiveness of sanctions include:

10. The Financial Secretary exercising his/her authority under the FAA Act to more effectively garnish the wages of public officials in order to recover losses to the State.
11. Granting the Financial Secretary as PSec of the MOF, a higher level of authority than Permanent Secretaries in other Ministries which would be more in keeping with the functions required of the office. Embedding this in legislation should provide a greater degree of authority in protecting the assets of government.
12. Making greater use of the deterrent effect of Section 25 of the PBMA Act which sets out the enforcement powers of the Court and applicable sanctions of a fine not exceeding a million dollars or an injunction restraining officers from continuing actions deemed in breach. Over the 6 years of the research period, the Attorney General received 15 instructions from the Financial Secretary in July 2014 to take legal action on the strength of Section 25. No cases were put before the Court, however, as on receipt of the notice, signalling impending court action, **all agencies** became compliant.

The Public Accountability Inspectorate

Very few stakeholders in the accountability environment are familiar with the PAI, what it was established to do and what it actually does. The research process included the review of fifteen reports that were generated from investigations conducted by the PAI during the six year period of the study. The PAI, like the AuGD, is an investigative body with no powers to sanction. The findings and recommendations contained in its reports, guide the Financial Secretary and Minister of Finance in determining appropriate action(s) to take, For example, three PAI investigations, have led to the separation of heads of agencies from their assigned positions within the period of review.[3] The role of the PAI could be deepened as follows.

3 Bank of Jamaica Governor (2009), Student Loan Bureau's Executive Director (2010),and UTech's President (2014)

13. Returning the PAI to its original mandate, to treat with the follow up of the matters put before the PAC. The value to be gained from such monitoring should be greater than the cost to properly resource the Inspectorate.

Chief Executive Officer, Public Bodies

The public bodies commit the most significant offences against the public purse when compared to ministries and executive agencies. The PBMA Act which sets out what the consequences of breaches are, its provisions lack clarity on where sanctioning authority lies between Boards and the CEO. Stakeholders of the level of former AG, Financial Secretary and the Cabinet Office have also indicated that regulations need to be provided for the Act to clarify sanctioning options.[4] The development of regulations for the PBMA Act has been undertaken twice since its 2001 enactment (in 2012 and as recently as January 2015) but neither effort addressed the issue of sanctions. These anomalies need to be addressed and can be by means of the following actions.

14. Correcting the ambiguities that exist in the PBMA Act that leaves uncertainty about who is to initiate sanctions. Providing regulations for the Act to guide the administration will also increase clarity and improve its use as a deterrent.

15. Expanding the recourse under the Law beyond the Courts as first option. At present the Law provides for legal action as the first and only resort. The finalisation of regulations will be an important step.

Public Services Commission

The Office of the Services Commissions (OSC) which serves as the administrative arm of the Public Services Commission is required to submit reports on Human Resource Audits, to the responsible Permanent Secretary, and the Cabinet Secretary as Head of the Public Service. In instances of continuous or extreme breaches, the report is submitted to the Chairman of the Public Service Commission with recommendations for sanctions.

4 For commitments of the Cabinet Office see www.cabinet.gov.jm/areas_responsibility/public_sector_transformation_and_modernisation/resource_management_and_account_3

These Human Resource reports are also intended to serve as a reference for the performance evaluation of CEO's and Permanent Secretaries. The OSC however, faces challenges in terms of its ability to cover the 35 entities it has responsibility to audit. On average its team conducts 4 audits per year.

15. Providing additional resources for the PSC to more efficiently and effectively carry out human resource audits. The losses sustained yearly by the public purse in the category of human resource infractions is the justification for allocation of additional resources to the OSC to cauterise the abuse.

The Cabinet

The PAC is mandated to submit its report to the House of Representatives for discussion and following such discussions the report would be considered by the Cabinet. Despite there being a Public Financial Management Reform Action Plan, and Public Financial Management Reform Programme, there is no indication that the Cabinet discusses the report of the PAC in order to be guided in making appropriate policy responses, budgetary allocations or demands for accountability. This is a major failing. The Cabinet can rectify this by:

16. Ensuring Parliamentary discussions of PAC reports and scheduling Cabinet discussions of same.

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9. The Research Takeaways

"Ministries Guilty of Poor Financial Control", "Bonus Breaches and Gracious Gratuities", "Auditor General Dissatisfied with National Accounts", "No Accounts Ever From Regional Hospital Boards", "Private Sector Groups Want Sanctions for JDIP Breaches", "AG Finds No Approval for $200M Disbursed", "$8.6Billion Spent, No Value for Money", "496 Houses for Victims Unaccounted For……".

These headlines and others have blared from the pages of the national newspapers spanning decades. They are always greeted by public outcry which tends to be short-lived as life resumes 'normalcy' and citizens return to the immediacy of tasks before them. The many questions that remain formed the basis for this research.

Questions such as who is responsible for calling public officials to account, who is responsible for actually holding them accountable? What are the sanctions available? Are there any gaps in the accountability framework and if yes, how can it be filled? Can citizens assist in the process?

The research has brought several things into much clearer focus.

1. Beyond the Auditor General, the **Permanent Secretary** and the **Financial Secretary** are sufficiently empowered with the authority to investigate or cause to be investigated, circumstances that suggest maladministration and/or malfeasance. Neither has to await the report of an Auditor General as they have access to information from internal audits and other sources.
2. There are a number of accountability gaps from a policy, legislative and operational perspective for which recommendations exist in reports such as those submitted to the Parliament by the Public Accounts Committee and in the GOJ's Revised Corporate Governance Framework (2012). This brings into question the issue of political will and provides strong justification for the need of greater awareness and capacity building of citizens in order to increase effective demand for improvement.
3. Breaches are widespread and are especially pronounced among public bodies and three ministries namely, Ministries of Labour and Social Security, Education and Health.

The situation is one of systemic, poor accountability practices that speak to the need need for a drastic and deep cultural shift.

4. Active citizenship requires ease of access to information on the activities of Government. Therefore, one easily identifiable risk to the research effort was the level of responsiveness of public officials to requests for information under the Access to Information Act. Of the nine institutions (41%) that provided answers, only the Development Bank of Jamaica, responded within the **30 day limit** prescribed by the law and only the Electoral Office of Jamaica provided an answer within the additional **30 days extension** accommodated under the law. The Access to Information Act is a powerful tool in improving transparency and accountability but its true potential is defeated if MDAs are not incentivised to respond.

5. Greater interaction between the AuGD and civil society organizations can translate into strengthening Jamaica's governance framework and ultimately the effectiveness and efficiency of our wealth creation (anti-poverty) initiatives. This argument is supported by the many examples of pioneering interaction in other developed/developing countries, as well as the demonstrable development of CSOs and citizens in Jamaica in terms of both their interest and capacity to offer such public service.

   The identification of a participatory model appropriate for Jamaica would be the next step.

"It is not only what we do, but also what we do not do for which we are accountable"

John Baptiste Moliére