

**REPORT OF THE JOINT SELECT COMMITTEE OF PARLIAMENT ON THE
REVIEW OF THE INDEPENDENT COMMISSION OF INVESTIGATIONS ACT**

**1. ESTABLISHMENT, COMPOSITION AND TERMS OF REFERENCE OF THE
COMMITTEE**

Members of the Honourable House are reminded that on the 1st day of May, 2013, the House of Representatives on a motion moved by the Minister of Science, Technology, Energy and Mining and Leader of the House passed the following resolution:

BE IT RESOLVED that, notwithstanding Standing Order 76(1), this Honourable House of Representatives appoint a Special Select Committee comprising the following Members:

Hon. Sharon Ffolkes Abrahams

Mr. Raymond Pryce

Mr. Jolyan Silvera

Dr. Dayton Campbell

Mr. Andre Hylton

Mr. Delroy Chuck

Mr. Derrick Smith

to sit jointly with a similar committee to be appointed by the Senate to consider and report on the operation of an Act shortly entitled "*The Independent Commission of Investigations Act*" relative to the review of the legislation in accordance with the provisions of the Act.

Members of this Honourable House are also reminded that on the 10th day of May, 2013, the Senate on a motion moved by the Minister of Foreign Affairs and Foreign Trade and Leader of Government Business, passed the following resolution:

BE IT RESOLVED that, this Honourable Senate appoint a Special Select Committee comprising the following Members:

Senator the Honourable Mark Golding, Chairman

Senator Norman Grant

Senator Lambert Brown

Senator Wensworth Skeffery

Senator Arthur Williams

Senator Thomas Tavares-Finson

to sit jointly with a similar with a similar committee appointed by the House of Representatives to consider and report on the operation of an Act shortly entitled "*the Independent Commission of Investigations Act*" relative to review of the legislation in accordance with the provisions of the Act.

Members of this Honourable House are further reminded that on the 4th day of June, 2013, the name *Peter Bunting* was added thereto. Also, on the 28th day of February, 2014, the name *Arthur Williams* was deleted and the name *Alexander Williams* added.

Members are also reminded that, by virtue of a resolution approved by the House of Representatives on the 25th day of March, 2014 and again on the 10th day of February, 2015, the composition of the members of the House of Representatives represented on the Committee was made to continue in force for the 2014/2015 and 2015/2016 sessions of Parliament and the Committee empowered to proceed with matters that were before it from the stage reached at prorogation.

Members are also reminded that, by virtue of a resolution approved by the Honourable Senate on the 28th day of March, 2014 and again on the 13th day of February, 2015, the composition of the members of the Senate represented on the Committee was made to continue in force for the 2014/2015 and 2015/2016 sessions of Parliament and the Committee empowered to proceed with matters that were before it from the stage reached at prorogation.

2. EXECUTIVE SUMMARY

The Memorandum of Objects and Reasons of the Independent Commission of Investigations Bill, 2008 that eventually led to the Independent Commission of Investigations Act states,

“the existing system of investigations into public complaints concerning misconduct by Members of the Security Forces has been found to be ineffective and lacking in integrity.

“In response to the recurrent complaints from Members of the public regarding the shortcomings of the present system, the Government has decided to replace the existing system with a new Independent Commission which will be empowered to hold the Security Forces accountable to the public and ensure that human rights are protected”.

Consequently, the “Independent Commission of Investigations Act, 2010 (Act 12 of 2010)”, repealed the Police Public Complaints Act and provided for the establishment of a Commission of Parliament to be known as the Independent Commission of Investigations to undertake investigations concerning the actions by members of the Security Forces and other agents of the State that result in death or injury to persons or abuse of the rights of persons; and for connected matters.

Importantly, it should be noted that section 37 of the Act requires that the Act be reviewed by a Committee of both Houses of Parliament, which is appointed for that purpose. Additionally, the provision stipulates that the first review *“shall be conducted not later than three years after the date of commencement of the Act”*. The Act was brought into effect in August, 2010. In light of the foregoing, the Committee was established to undertake the necessary review of the said Act.

Your Committee commenced its examination of the Act on the 27th day of June 2013 and held twenty-three (23) meetings (*Appendix*). During the period, written and oral submissions were received from:

- Jamaica Constabulary Force (hereinafter referred to as JCF);
- Office of the Director of Public Prosecutions (hereinafter referred to as ODPP);
- Jamaica Defence Force (hereinafter referred to as JDF);

- Independent Commission of Investigations (hereinafter referred to as INDECOM or Commission);
- Dr Winston Dawes;
- Norman Manley Law School;
- Jamaica Police Federation/Police Representative Groups;
- Forensic Laboratory Services; and
- Jamaicans for Justice (hereinafter referred to as JFJ).

3. FINDINGS AND RECOMMENDATIONS

From the submissions received, the hearings conducted, as well as the Committee's deliberations, your Committee is pleased to submit its findings and recommendations on the matter.

Your Committee did not recommend any changes to the sections listed below:

1, 3, 6, 7, 8, 9, 12, 13, 18, 19, 23, 25 – 28, 30 – 40 and the First, Second and Third Schedules.

Section 2 – Interpretation

This provision provides the definitions of the words and terms used in the Act. Your Committee carefully considered the terms below, which were highlighted during the hearings for review and amendment, and wishes to make the following recommendations:

“incident”

Your Committee agrees that the current definition of the word “*incident*” could be interpreted as meaning that there must be proof of misconduct before INDECOM may investigate the matter. In light of that, it recommends that the word “*misconduct*” be replaced with the words “*an act or omission*”.

Your Committee concurs with the concern raised by INDECOM that it is not clear whether the Act applies to members of the Security Forces and Specified Officials who are involved in incidents while “off-duty”. As such, it accepts the proposal that the definition of “incident” should make it clear that in relation to members of the Jamaica Constabulary Force, the acts or

omissions are those occurring while those members are “*on or off-duty*”. In relation to other Security Forces or public bodies, the acts or omissions are those occurring only while those members or officials are on-duty.

Section 4 – Functions of the Commission

Sub-section (1)

To clarify INDECOM’s entitlement to prosecute, your Committee accepts the recommendation that a new subsection 4(1)(d) and (e) should be inserted as follows:

(d) institute and undertake criminal proceedings, which appear to the Commissioner on reasonable grounds, to relate to an incident or to an offence under this Act; and

(e) the Commissioner may give written authorization to any person qualified to practise as an Attorney-At-Law in Jamaica to institute and undertake criminal proceedings brought pursuant to subsection (d).

Sub-section (2)

To clarify the requirement for a warrant, your Committee is in agreement with the recommendation that the words “*without a warrant*” should be inserted before the word “*have*” in subsection 4(2)(a).

To clarify INDECOM’s authority to conduct its own forensic examinations, your Committee recommends that the following words be inserted at the end of subsection 4(2)(a):

“, for examination and analysis by, or on behalf of, the Commission.”

Sub-clause (3)(a)

Your Committee is in agreement with the views of INDECOM that a better structure for the legislation would be for subsection 4(3)(a) to be deleted and the provisions proposed for section 21 to be added.

Insertion of new sub-sections (5), (6) and (7)

Your Committee recommends that the subsections below be inserted:

(5) For the purpose of giving effect to the provisions of subsection (2)(a) in so far as it relates to the examination of weapons by or on behalf of the Commission, the Commission shall be permitted to purchase and possess ammunition of calibers similar to that used by the Security Forces and Specified Officials.

Provided however that any such ammunition purchased and possessed by the Commission for the purpose of discharging its function under subsection (2)(a) shall be kept in quantities and under conditions approved by the Firearm Licensing Authority.

(6) The member or members of the Security Forces involved in an incident, where there was reasonable suspicion of the use of alcohol, shall provide a specimen of breath for a breath test to the investigator on request.

*(7) A member or members of the Security Forces, involved in an incident while on duty, where there is reasonable suspicion of the person being under the influence of alcohol or substance which under the **Dangerous Drugs Act**, the possession of which is punishable by a term of imprisonment, shall comply with such regulations as may be prescribed in relation to the taking of samples, not including DNA samples.*

Regulations may be made by the Commission under this subsection subject to affirmative resolution.

For the purpose of giving effect to the provisions of subsection 2(a), as it relates to the examination of weapons by or on behalf of the Commission, your Committee recommends an amendment to the Firearms Act to allow the Minister, by notice published in the *Gazette* to designate any person as a ballistic expert.

Section 11 – Reports to Commission

Insertion of a new sub-section (4)

To bring the internal review processes of the Security Forces and public bodies in compliance with the right to life, your Committee recommends that the Act be amended as follows, by inserting a new subsection (4):

“Where an incident involves conduct that results in the death of, or injury to any person and a review is to be held in accordance with the policy of the relevant Force or public body, the panel convened for such purpose shall—

(a) advise the Director of Complaints in charge of the investigation as to the holding of the review; and

(b) seek the advice of the Director of Complaints in charge whether the member of the relevant Force or specified official of the relevant public body involved in the incident -

(i) is under suspicion of unlawfully using force; or

(ii) has failed to comply with a lawful requirement of the Commission,

before the return of that member or official to full operational duties.”

Section 15 – Informal Resolution of Complaints

Insertion of a new subsection (2)

To provide for consent to proceed by way of informal resolutions of complaints, your Committee recommends that a new subsection (2) be inserted as follows:

Where the Director of Complaints is directed by the Commission to attempt an informal resolution of a complaint pursuant to subsection (1), he shall, before such attempt, obtain the consent of the responsible Security Force or relevant public body to dispose of the complaint informally.

Section 16 – Dispute Resolution

Sub-section (2)

Your Committee accepts that the same mechanism that would be used for informal resolutions as suggested in section 15 could also be applied in relation to mediation and other alternative dispute resolution procedures in section 16. In that regard, it recommends that the consent of the Chief of Defence Staff must be obtained before the Commission proceeds under section 16(1) of the Act with respect to a member of the Jamaica Defence Force.

Section 17 – Formal Handling of Complaints

Subsection (3)(a)

The ODPP submitted that section 17(3)(a) should be amended to state, “*Notwithstanding subsection 17(3), while a matter is sub judice, the usual restrictions as to reporting cases should be applicable*”. Your Committee agrees with the proposal and recommends that subsection (3)(a) be amended to specifically recognize the *sub judice* rule.

Sub-section (3)(b)

Your Committee considered the current realities where INDECOM is unable to fulfill its current obligation to give information to the parties involved at intervals not exceeding sixty days. Your Committee recommends an amendment to subsection (3)(b) in an effort to ensure that the duty placed on the Commission is realistic. The proposed wording is as follows:

“(b) subject to subsection (4), take such steps as are necessary to inform–

- (i) the complainant at intervals of not more than sixty days; and
- (ii) the concerned officer or concerned official and the members of the public of the status of the investigation at intervals of not more than one hundred and twenty days,

of the status of the investigation.”

Sub-section (3)(c)

Your Committee considered the fact that the Commission has not been able to implement the requirement in subsection (3)(c), which requires that a report on each investigation is to be submitted to Parliament at intervals not exceeding six months. It was recognized that this obligation on the Commission was unduly burdensome and impractical. Your Committee decided that this obligation should be removed and therefore recommends the deletion of subsection (3)(c).

Your Committee noted the importance of ensuring that the Commission be accountable to Parliament in relation to reporting on its portfolio of matters being investigated. Your Committee therefore recommends that the Act be amended in Part IV to insert a provision

requiring the Commission to submit to Parliament a report on the matters being investigated at intervals of not more than six months.

Sub-section (10)

During the deliberations, the Commissioner informed your Committee that the Commission was seeking greater flexibility as to how the report under subsection (10) should be furnished. Your Committee was told that it was recognized that at times, there were concerns regarding the sensitivity of the information. Additionally, your Committee learnt that the Commission had a practice in which it shared the report with persons listed in that sub-section without redacting potentially sensitive information. In that regard, your Committee recommends that a provision should be inserted, to make it clear that in relation to the furnishing of a copy of the report to the persons listed in subsection (10), if the Commission is satisfied that the interests of justice so require, portions of the report that contain confidential or sensitive information should be redacted prior to the release of the report.

Additionally, your Committee recommends that where the Commission forms the view that the contents of the report may affect matters of national security or other issues of public interest, the Commission shall consult with the Police Service Commission (where the incident involves the misconduct of a member of the Jamaica Constabulary Force, the Rural Police or the Parish Special Constables), the Public Service Commission (where the incident involves the misconduct of a specified official); and the Chief of Defence Staff (where the incident involves the misconduct of a member of the Jamaica Defence Force); and may in carrying out its obligations under subsection (10) take the views into account.

Insertions of new sub-sections (13), (14) and (15)

Your Committee agrees with INDECOM's submission to include provisions that will ensure that the dissemination of the Commission's reports will not affect the right to fair trial or impact national security, defence or international relations of Jamaica. Your Committee therefore recommends that Section 17 be amended by inserting the following provisions as subsections (13), (14) and (15), respectively:

(13) *Without prejudice to the provisions of subsection (10) the Commission may, if the interests of justice so require, redact parts of a report prepared pursuant to subsection (9) from one or more of the persons designated to receive a report under subsection (10) thereof.*

(14) *Where the Commission determines that a report under subsection (9) may contain information prejudicial to the national security, defence or international relations of Jamaica, the Commission shall, before the release of any such report to a person listed in subsection (10), cause a copy to be sent to (a) the responsible head of the relevant Force where issues of national security or defence arise or (b) the minister with responsibility for foreign affairs, where issues affecting the international relations of Jamaica arise.*

(15) *Where the responsible head of the relevant Force or the Minister receives a copy pursuant to subsection (14), the responsible head shall cause his objections to the release of any parts of the report to be sent to the Commission within fifteen days of receipt.*

Section 20 – Powers, Authorities and Privileges

Renumbering of the subsection

To clarify the powers of a constable under the Act, your committee accepts INDECOM's proposal that the Act should be amended by:

- a) *renumbering section 20 as subsection 20(1) and inserting as section 20(2) the following:*
- b) *“The powers, authorities and privileges granted pursuant to subsection (1) include:*
 - (a) To arrest as is given by the law to a constable;*
 - (b) To lay criminal charges and to serve summonses as are given by law to a constable;*

(c) To conduct an identification parade or identification procedure as conferred by law upon specified ranks of the Jamaica Constabulary Force; and

(d) Immunity from the application of the Firearms Act as is enjoyed by a Constable.

Your Committee recommends that the Chief Parliamentary Counsel consider whether the proposal regarding immunity from the application of the Firearms Act should be included in the INDECOM Act or be addressed as an amendment to section 20 of the Firearms Act.

Section 21 – Evidence

Proposed new subsection (2)

Your Committee accepts the proposal to insert a new subsection (2) with suggested wording as follows:

“(2) Where on information on oath laid by an investigator, a Justice of the Peace is satisfied, in relation to any document or thing, that there are reasonable grounds for believing that –

(a) without prejudice to Section 33 of the Act, a member of the Security Forces, specified official or other person has failed to comply with an obligation under section 21(1)(b) to produce them;

(b) it is not practicable to serve a notice under subsection (1)(b); or

(c) the service of such a notice in relation to them might seriously prejudice the investigation,

(d) the document or thing is on premises specified in the information.

he may issue a warrant authorizing any investigator to –

(i) enter (using force as is reasonably necessary for the purpose) and search the premises; and

(ii) take possession of any documents appearing to be documents of the description specified in the information.”

Current Subsection (2) (which is to be renumbered as Subsection (3))

The Commissioner of INDECOM informed your Committee that the Commission was aware that at times, police officers had difficulties locating a Justice of the Peace in a timely manner to witness the statement, as INDECOM required the statements promptly. As such, the Commission requested that current section 21(2) (which is to be renumbered as subsection (3)) be amended to include that statements may be witnessed by the Commissioner of INDECOM or a member of the Commissioner's investigative staff.

As regards the current Section 21(2) and the Committal Proceedings Act, your Committee accepts INDECOM's suggestion that the INDECOM Act specifically allows statements collected pursuant to Section 21 to be admissible for the purposes of Section 6 of the **Committal Proceedings Act**. Your Committee agrees with the proposal and recommends an amendment to the INDECOM Act to indicate that statements taken in accordance with section 21 shall be admissible for the purpose of committal proceedings and considered to be compliant with Section 6 of the Committal Proceedings Act.

Subsection (5)

Your Committee agrees with INDECOM's proposal that in the current subsection (4) (which is to be renumbered as subsection (5)), the words "*or things*" should be inserted after the word "*document*".

Insertion of a new subsection (6)

Your Committee considered INDECOM's proposal for the insertion of a new subsection 21(6), with the following proposed wording:

Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing imposed on any person by or under the Official Secrets Act 1911 to 1939 of the United Kingdom (or any Act of the Parliament of Jamaica replacing the same in its application to Jamaica), subject to any other law (including a rule of law) shall not apply in relation to the disclosure of information or the production of any document or thing by a member of the Security Forces, Specified Official or other person to the Commission for the purpose of an investigation under this Act."

Your Committee learnt that the said recommendation, would give INDECOM the power to request information or documents to support its investigations, which would supersede the Official Secrets Act. However, during consideration of the proposal, it was suggested that instead of naming a specific legislation such as the **Official Secrets Act**, a general provision could be included in the Act, which would state,

“Notwithstanding anything to the contrary under any law or any other restriction on disclosure....”

After careful consideration your Committee agrees that a new sub-section 21(6), along the line of section 18(4) of the **Contractor General’s Act** and section 17(4) of the **Public Defender’s Interim Act** should be inserted in the Act.

Insertion of a new section 21A

During the deliberations, your Committee learnt that the Commission had problems garnering information from Members of the Security Forces and Specified Officials, to aid in its investigations. Your Committee notes INDECOM’s request for the consideration of a compellable disclosure, in which a single question, would be asked of a person who has not been charged, with the answer being admissible at trial. Importantly, any further question(s) asked would not be admissible.

Some of your Members were not in agreement with the proposal, as it was felt that it was the creation of legal discrimination against agents of the State that did not apply to every citizen. After careful consideration, your Committee accepts the proposal, noting that since an officer is on duty and is armed by the State to serve and protect the population, the proposal is acceptable. Your Committee further noted that once the provision is not applicable to a person who has been charged with a criminal offence it will not be infringing the guaranteed fundamental rights of the member of the Security Forces or Specified Official to due process. Information as to the way other jurisdictions treat the matter was presented to the Committee by the Attorney General’s Chambers.

Your Committee therefore agrees with INDECOM’s suggestion to insert a new section 21A to provide:

- (1) "A member of the Security Forces or a Specified Official, shall, when required by an investigator, disclose whether, he or a colleague, in his presence, shot at, injured or otherwise used force on any person or at a particular place in execution of his duty.*
- (2) A failure to answer any such question pursuant to sub-section (1) shall amount to a disciplinary offence.*
- (3) Notwithstanding any law to the contrary, any disclosure made pursuant to sub-section (1) shall be admissible at any trial of the member of the Security Forces or Specified Official who made the disclosure.*
- (4) Where in any proceedings against a member of the Security Forces or Specified Official for an offence, evidence is given that at any time, before he was charged with the offence, on being required to make the disclosure pursuant to subsection (1), he failed to make the disclosure, the Court or jury, as the case may be in determining –
 - (a) whether there was a case to answer or*
 - (b) whether the member is guilty of the offence charged,*draw such inferences from the failure to disclose as appear proper.*

Your Committee agreed that the proposed language may need to be appropriately adjusted by the Chief Parliamentary Counsel.

Insertion of a new section 21B

Your Committee learnt that there was a proposal to enshrine in the legislation that INDECOM needed the assistance of the members of the Security Forces when taking other members of the Security Forces into custody and serving notices. We questioned whether such a provision should be placed in the Act, as it seemed merely an administrative issue. We further learnt that INDECOM had previously tried the administrative route, but to no avail. We accept an advice that was given that it was unusual to have such specific directions in the law as to the type of assistance required, particularly in relation to another entity, which has its own Commissioner.

In that regard, we accept a suggestion that it would be useful to have a general obligation to provide assistance.

Your Committee recommends that there should be a general provision in the new section 21B to state that the head of the relevant Security Forces and the Commissioner of INDECOM should use their best efforts to agree protocols to guide and facilitate cooperation on operational matters concerning the functions of INDECOM in relation to those Security Forces.

Section 22 – Duty to Preserve Evidence

Your Committee accepts the proposal that it is the responsibility of INDECOM not just to preserve but to process crime scenes. Your Committee therefore recommends an amendment to section 22(1) to ensure that there is no misunderstanding regarding INDECOM’s role at a crime scene by inserting the words “and processing” after the word “preservation”.

Section 24 – Review of the Commission’s Decision

Insertion of new sub-sections (2) and (3)

Your Committee accepts INDECOM’s proposal to insert the following sub-sections to allow INDECOM to seek the aid of the Court in obtaining relevant information, where there has been non-compliance with a request made under the Act:

(2) Without prejudice to section 33 of this Act, the Commission may, in its discretion, refer for inquiry, any of the following matters to the Supreme Court (i) the failure of any person or responsible head to make a report to the Commission pursuant to section 4(4) and section 11 (1) of this Act; or (ii) the failure of a member of the Security Forces or any person to furnish a statement⁴ or answer questions pursuant to section 21 of this Act.

(3) Where the Commission makes a referral under sub-section (2), the court may thereupon: (a) inquire into the matter; (b) hear the evidence of any witnesses produced against or on behalf of the responsible head, member of the Security Forces or, other person; (c) hear any statement offered in defence; (d) compel the responsible head, member of the Security Forces, or other person to make the required report,

furnish the statement, attend to answer questions, or otherwise; (e) punish or take steps for the punishment of the responsible head, member of Security Forces or, other person in the manner as if he had been guilty of contempt of the court.

Part IV of the Act

New section 27A – Public Interest Immunity

Your Committee is in agreement with the submission from the JDF that the Act should recognize public interest immunity. **In that regard, your Committee recommends that a new section be inserted in Part IV of the Act (as a new section 27A) to provide as follows:**

“Nothing in this Act shall affect the law in relation to public interest immunity.”

OTHER RECOMMENDATIONS

Collusion

INDECOM raised concerns about the risk of collusion among members of the Security Forces after incidents, owing to current practices in the JCF, and had proposed an amendment to the Act to include a provision to protect against the possibility of collusion. In considering the proposal, your Committee was informed of the common law position regarding collusion, and it was noted in particular that the Courts in considering the issue, had considered the fine distinction between collusion and collaboration. Your Committee was further informed that in England, there was a Manual of Rules, where officers are asked to adhere to the code of conduct guidance. The suggestion was then made for INDECOM to address the matter in regulations with oversight from Parliament and after consultation with stakeholders because it was felt that the matter was better suited for regulations.

Your Committee recommends that the Constabulary Force Act should be amended to allow regulations to be made pursuant to section 26(a) to address this issue.

Access to Data pursuant to the Telecommunications Act

Your Committee learnt from the Commissioner that it was very important to have telecommunications data in an investigation. He told your Committee that the Commission did

not want the content of the call, but rather information that a call was made at a specific time and the device from which it was made using a cell site.

The Supreme Court has adjudicated the issue of whether INDECOM is entitled under the Telecommunications Act and the Interception of Communications Act to request call data and subscriber details or to compel a telecommunications provider to disclose call data and subscriber details. The Court found that INDECOM was not entitled under either Act to request or receive telecom's data or to compel disclosure of same but that a telecommunications provider may exercise its discretion in favour of a request from INDECOM if INDECOM specifies the purpose for the request. The case was appealed by INDECOM and the Court of Appeal allowed the appeal in part and declared that INDECOM is entitled to the subscriber information if it had properly specified the purpose for which the request was made, that is, the investigation of a criminal offence.

In light of the Court's ruling and INDECOM's concerns the majority of the members of your Committee accepts INDECOM's proposal to add the Commissioner to the list of persons under the Telecommunications Act to which telecommunications data shall be disclosed.

Your Committee also recommends that the Interception of Communications Act be amended to give INDECOM powers similar to that of the Executive Director of the Financial Services Commission to issue a notice to a relevant telecommunications provider regarding traffic data as is currently set out in the schedule to the Act, as well as to amend the Act to allow INDECOM to apply for a warrant in the same way that the JCF does to get the interception done.

Legal Personality

On giving INDECOM its own Legal Persona, the Norman Manley Law School suggested as follows:

"The Act should be amended to reflect INDECOM's status – it should be given its own legal persona with the power to sue and be sued in its own name".

The Commissioner informed your Committee that there was a debate regarding INDECOM having the power to sue or be sued in its own name; whether it could contract, or mention prosecution or a matter in Court in its own name.

Your Committee accepts the proposal to give INDECOM body corporate status and recommends that the Act be amended accordingly. The amendments should include the provisions similar to sections 19A, 19B and 19C of the **Public Bodies Management and Accountability Act**. Your Committee also **recommends that provisions should also be added to allow them to purchase indemnity insurance.**

Consequential Amendment to the Coroner's Act

The Commissioner requested your Committee to consider giving an investigator working with INDECOM the same authority that a Constable has in a Coroner's inquest, where the circumstances require INDECOM to investigate a death that is the subject of the inquest. This would authorize INDECOM investigators to request the holding of a post mortem examination.

Your Committee accepts the recommendation which would involve an amendment to section 5 of the Coroner's Act. The suggested amendment is as follows:

"5(3) Where a death is alleged to have been caused by a member of the Security Forces, Specified Official or other agent of the State, the Commissioner of the Independent Commission of Investigations shall-

(a) in respect of each parish, assign an Investigator to carry out functions in like manner as a designated police officer under this Act;

(b) give written notice of such designation to the Coroner; and

(c) cause a designation to be published in the Gazette."

Your Committee also accepts the recommendation that there should be an amendment to the Coroner's Act. The suggested wording is:

"Where an Investigator designated under the provisions of section 3 is informed or discovers that a dead body or part thereof is lying within the parish of his designation as a

result of the act or omission of a member of the Security Forces, Specified Official or other agent of the State, it shall be lawful for the designated Investigator, in his discretion, to direct any duly qualified medical practitioner to conduct a post mortem examination of the dead body and, said designated Investigator shall be responsible for collecting and submitting to the Commission or other competent authority, any evidence required to facilitate further forensic, ballistic or other scientific analysis.”

Your Committee accepts a recommendation for the Commissioner to be specially included in the definition of interested parties in section 21(3) of the Coroner’s Act.

Amendment to the Justice Protection Act

Your Committee was advised that under the Justice Protection Act, the only persons who can make applications for individuals to be taken into protection are the Commissioner of Police and the Director of Public Prosecutions. The Commissioner requested an amendment to the Justice Protection Act to allow the Commissioner of INDECOM to be authorised to make an application for a person to be afforded protection under that Act.

Your Committee accepts the suggestion that the Justice Protection Act should be amended. The mechanism accepted by your Committee is to amend the Justice Protection Act to allow the Minister, by Order, to expand the categories of entities that can apply on behalf of persons for admission into the program. The Minister will then be able to make an Order to include the Commissioner and any other appropriate person or entity to the list.

SPECIFIC RECOMMENDATION – GOVERNANCE STRUCTURE

In your Committee’s deliberations it was noted that INDECOM is a body which exercises significant investigative and prosecutorial powers with respect to the Security Forces, and based on our recommendations its prosecutorial powers are to be further underpinned. With such extensive powers being vested in this organization by statute, the issue of adequate checks and balances arises. In order to provide INDECOM with an internal governance structure that will provide the necessary checks and balances, **your Committee recommends the establishment of a non-executive Board within the structure of INDECOM. This Board would provide oversight on internal governance matters affecting the organization, including input on policies with respect to human resources, public relations, budgeting, et cetera. The day-to-**

day operation of the organization would remain the purview of management, headed by the Commissioner of INDECOM. The establishment of such Boards is a well established governance mechanism for ensuring internal accountability and oversight of the management of organizations, and hence our recommendation in this regard.

INCORRECT REFERENCES

Your Committee **recommends that the opportunity should be taken to correct the following incorrect references that now appear in the Act:**

- (i) Section 27(1) refers to section to 34(c) but there is no section 34(c) in the Act. The Correct reference should be section 33(c)**
- (ii) Section 29(1) refers to section 31 but should instead refer to section 30(2).**

5. ACKNOWLEDGEMENTS

Your Committee wishes to express sincere gratitude to all those individuals and organizations that made written submissions and oral presentations or participated in the deliberations. In particular, your Committee wishes to thank the Jamaica Constabulary Force, the Office of the Director of Public Prosecutions, the Jamaica Defence Force, the Independent Commission of Investigations, Dr Winston Dawes, the Norman Manley Law School, the Jamaica Police Federation/Police Representative Groups, the Forensic Laboratory Services and Jamaicans for Justice for their submissions.

A special recognition to the staff of the following entities: the Office of the Parliamentary Counsel, the Attorney General's Chambers and the Legal Reform Department for the technical guidance given to the Committee throughout its deliberations.

Your Committee is also grateful to the media, who ably covered the meetings and reported the proceedings to the public. To the Clerk to the Houses and her staff, a special thank you for the invaluable assistance and kind courtesies extended during the meetings.

October, 2015

Appendix


ATTENDANCE RECORD

| | Present | Absent | Apology |
|--|----------------|---------------|----------------|
| Senator the Honourable Mark Golding, Chairman | 23 | - | - |
| Sen. Norman Grant | 4 | 19 | 8 |
| Senator Lambert Brown | 23 | - | - |
| Senator Wensworth Skeffery | 18 | 5 | 4 |
| ♣ Senator Arthur Williams | 9 | - | - |
| Senator Thomas Tavares-Finson | 12 | 11 | 1 |
| ♠ Senator Alexander Williams | 6 | 5 | - |
| Hon. Sharon Ffolkes | 10 | 13 | 8 |
| Mr. Raymond Pryce | 12 | 11 | 4 |
| Mr. Jolyan Silvera | 1 | 22 | 7 |
| Dr. Dayton Campbell | 6 | 17 | 5 |
| Mr. André Hylton | 12 | 11 | 3 |
| Mr. Delroy Chuck | 14 | 9 | 5 |
| Mr. Derrick Smith | 11 | 12 | 4 |
| Hon. Peter Bunting | 18 | 5 | 2 |


♣ Member could possibly attend 9 meetings

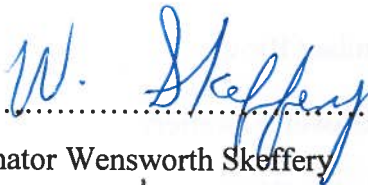
♠ Member could possibly attend 11 meetings

SIGNATURES

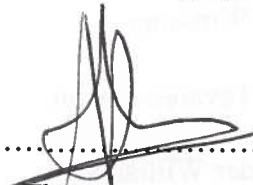

.....
Senator the Honourable Mark Golding,
Chairman


.....
Senator Norman Grant


.....
Senator Lambert Brown

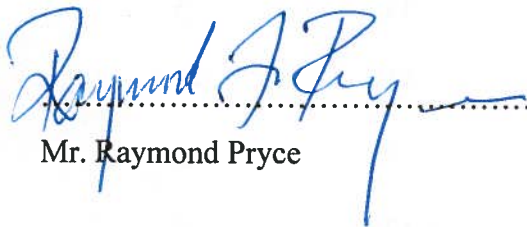

.....
Senator Wensworth Skeffery

.....
Senator Alexander Williams


.....
Senator Thomas Tavares-Finson

.....
Hon. Peter Bunting

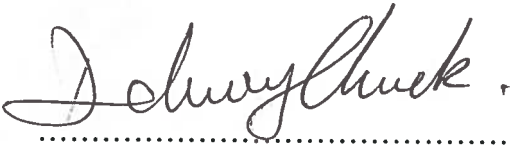
.....
Hon. Sharon Ffolkes Abrahams


.....
Mr. Raymond Pryce


.....
Mr. Jolyan Silvera

.....
Dr. Dayton Campbell


.....
Mr. André Hylton


.....
Mr. Delroy Chuck

.....
Mr. Derrick Smith