

1.0 Purpose of the Ministry Paper

The purpose of the Ministry Paper is to inform Parliament and the public of the reports of the Third and Fourth Quarterly Reports of the Independent Commission of Investigations (INDECOM) for the periods 1st July 2015 to 30th September, 2015, and 1st October, 2015 to 31st December, 2015.

2.0 The INDECOM

INDECOM was established to offer effective and independent investigations of allegations of the abuse of the rights of citizens by members of the Security Forces – the Jamaica Constabulary Force (JCF), Jamaica Defence Force (JDF), and Department of Correctional Services (DCS). The Independent Commission of Investigations Act 2010 repealed the Police Public Complaints Authority Act, and made provisions for the establishment of the INDECOM effective August 16, 2010. Subsequent to this, the organizational structure of INDECOM was established and approval was given for the operation of posts on a phased basis effective January 1, 2011.

INDECOM operates from three (3) regions, namely Kingston, Montego Bay and Mandeville. On July 27, 2015, Mr. Terrence Williams was sworn in as Commissioner of INDECOM for a second term.

3.0 INDECOM's Report

2.1. New Complaints

During the Third Quarter, INDECOM received a total of one hundred and eighty-four (184) complaints. The most frequent complaint related to Assault, which

accounted for fifty-seven (57) complaints. This was followed by thirty-eight (38) complaints regarding the Discharge of Firearm. Nineteen (19) Shooting Injury and twenty-one (21) Fatality complaints were also received.

During the Fourth Quarter INDECOM received one hundred and ninety-three (193) complaints. As was the case during the Third Quarter, the most frequent complaint was related to Assault, which accounted for seventy-six (76) complaints. This was followed by thirty-four (34) complaints regarding the Discharge of Firearm. Complaints relating to Shooting Injury and Shooting Fatalities together accounted for thirty-eight (38) incidents.

2.2. Incident Response

The Operations Unit comprises of investigators and forensic examiners. When an incident occurs, a team of investigators and forensic examiners is activated. During the Third Quarter INDECOM responded to a total of eighty-five (85) incidents. The Jamaica Constabulary Force's Technical Services Department was also asked to process three scenes during this quarter. During the Fourth Quarter the INDECOM team responded to a total of seventy-nine (79) incidents, nine of which were fatalities. Six test fires were also conducted during the Fourth Quarter.

During the Third Quarter the Commission also recorded twenty-eight (28) security force-related fatalities which were all related to the Jamaica Constabulary Force. The Commission also recorded fifty-eight (58) non-fatal shooting incidents during the period. In collating the data, the Commission considered whether the shootings occurred during a planned operation, are unplanned / spontaneous shootings, or deaths in custody. INDECOM's data indicates that in the 28 months between July 1, 2013 and October 31, 2015 it had recorded three

hundred and twenty (320) deaths of which one hundred and twenty-one (121) deaths resulted from one hundred and seventeen (117) planned police operations. The Commission also noted that 40 percent of the fatalities were not from spontaneous events, but arose from planned police operations. INDECOM also noted, from its examination of the events occurring in 2015, that such planned police operations occurred between the hours of midnight and 6:00 a.m.

During the Fourth Quarter, the Commission recorded twenty-six (26) security force-related fatalities including two deaths in custody that were related to the Department of Correctional Services (DCS) and the Jamaica Defence Force. Twenty-four (24) of the fatalities recorded were related to the Jamaica Constabulary Force, including three involving off duty police officers.

2.3. Resolved Complaints

INDECOM's Legal Department completed a total of sixty-three (63) Commission's Reports in the Third Quarter and fifty (50) Reports in the Fourth Quarter. These together bring the total number of reports completed to one hundred and thirteen (113). Of this number, fifty-four (54) files were related to allegations of Assault, eighteen (18) were for Fatal Shooting incidents, while eight were for non-fatal shooting incidents.

In forty-six (46) of its reports INDECOM concluded that the allegations made were unsubstantiated, resulting in no charges laid or no disciplinary actions taken. Criminal charges were recommended in eleven (11) reports and disciplinary actions were also recommended in eleven (11) reports. Twenty-four (24) complaints were withdrawn, while nine reports recommended that the matter be sent to the Coroner's Court.

2.4. Lessons Learnt

INDECOM's Third Quarter Report highlighted that a significant number of casualties arose from the police use of firearms during "Pre Planned Operations." INDECOM's research revealed that the vast majority of the pre-planned firearm operations since 2012 were "cordon and breach". In such operations the JCF and JDF form an outer cordon and a small armed team from the JCF entered the building by force and engaged the alleged suspect(s) directly.

The Commission, in its investigations of these incidences, took into consideration the ongoing decisions in the Strasbourg Courts in relation to human rights and the use of firearms. These decisions provide that there should be a range of available tactics and options, specialist advisors, and negotiators available, extensive record keeping, operational orders and risk assessment for accountability and highly experienced staff used in such operations.

In highlighting the lessons learnt, INDECOM presented a case study of the forced entry into a single room building by a team of three police officers, supported by members of the JDF, to apprehend a wanted suspect. This incident resulted in the death of the suspect in a "hail of bullets". INDECOM cites this as an example of a poor police operation in which little thought was given to planned containment and human rights.

The Commission recommends that firearm tactics should form an important and integral part of transparent police planning. Better planning and tactical approaches may involve containment with negotiation, allowing the suspect time to surrender, surveillance then arrest and other more sophisticated and managed approaches which are all available to JCF. This, INDECOM

concludes, would greatly reduce loss of life to alleged suspects and reduce risk to police officers. Continuing transparency in these actions is vital to win public support for actions undertaken and continue the downward trend in police related firearms death.

In its report for the Fourth Quarter, INDECOM highlighted the results of its limited analysis of 50% of the 145 reports of Discharge of Firearm incidents (DFI) to 2015. The Commission reported that each of the FDI examined represented the use of deadly force. It noted that the use of such deadly force is intended only where one's own life or that of another is at immediate risk of death and injury. The Commission also noted that the use of such force should be proportionate and necessary in the circumstances.

The Commission cited the JCF's Human Rights and Police Use of Force & Firearms Policy that sets out guidance and instructions for the following situations:

- Firing at or from a moving vehicle; Section 102
- Firing at a vehicle which has simply failed to stop at a road check; Section 103
- Firing in the air; Section 104

INDECOM's review found that recent examples where a discharge of a firearm occurred had failed to meet the necessary high standard expected of police officers.

INDECOM's analysis revealed that 14 FDIs (19.3%) were at fleeing motor vehicles. This action, without more justification, was not an approved use of a firearm. The Commission presented the case of a police officer who discharged his

firearm seven times in an attempt to prevent the theft of his private motor vehicle. Although no fatalities occurred, the potential to harm other persons was highlighted as a risk. INDECOM concluded that the JCF's own policy is sound and all officers needed to comply with it.

2.5. Cases in Court

As at December 2015 INDECOM had a list of fifty-three (53) cases in the Resident Magistrates, Supreme Court Circuits, and the Coroner's Courts. This number included thirty-one (31) cases, relating to allegations of murder. Of this list, six matters have been concluded, leaving an active list of 47 cases in court.

2.6. Public Information

During the Third Quarter INDECOM issued seven press releases. There were nine awareness exercises from which approximately three hundred (300) police officers of various ranks benefitted from presentation on the INDECOM Act.

During the Fourth Quarter INDECOM issued seven press releases and held eight sensitization exercises where three hundred and forty-six (346) police officers were reached.

During both quarters four meetings with the JCF High Command were held where several issues were discussed.

A handwritten signature in dark ink, appearing to read 'Delroy Chuck', written in a cursive style.

Delroy Chuck, QC, MP
Minister of Justice
January 25, 2017