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Country Profile – Jamaica Preliminary Findings on Best Practices

Jamaica Background

In its recent history, Jamaica has had many issues with police misconduct. Three agencies were previously mandated to receive and investigate these types of complaints: the Police Public Complaints Authority (PPCA), the Bureau of Special Investigations (BSI) and the Office of Professional Responsibility. The BSI and the Office of Professional Responsibility are institutions within the Jamaican Constabulary Force (JCF) – the police – while the PPCA is a State-funded independent body.

The PPCA was established in 1992 as an independent body to monitor and supervise investigations by the police regarding complaints against the police. However at the time reports said that “PPCA had limited effectiveness and independence as it could not conduct its own investigations and relied on the police force to conduct some of its investigations. It lacked the authority to make final determinations on criminal charges and to obtain statements from police officers if they were not willing to co-operate. The PPCA was understaffed and under-resourced. It therefore enjoyed a very low level of public confidence.”¹

The failure to hold people responsible for violent crime and to hold to account police officers accused of involvement in unlawful killings or extrajudicial executions, combined with widespread corruption, eroded confidence in the institutions of the state over many years. To try and address this, the government set up the Jamaican Justice System Reform project in 2007 to review the justice system and develop strategies and mechanisms for its modernization. The Task Force said that the current structures in place for the independent investigation of police were inadequate and not sufficiently independent and highlighted the Special Investigation Unit (SIU) of the Ministry of the Attorney General of Ontario, Canada as a possible model.²

The Independent Commission of Investigations (INDECOM)

In June 2008, a police (JCF) strategic review recommended disbanding the PPCA and replacing it with INDECOM. The JCF review states “For some time, the MNS (Ministry of National Security) and the Ministry of Justice have expressed concern regarding a general lack of integrity, increasing corruption and misuse of public funds across the public service ... The ICI will benefit from greater resources and improved capacities and neutral investigation arrangements, as well as bring further assurance of independence in the oversight process.”³ The Jamaican Parliament passed the INDECOM Act in March 2010, repealing and replacing the PPCA. The Governor General assented in April, and in August 2010 the Independent Commission of Investigations (INDECOM) began its operations as a Commission of Parliament to investigate actions by members of the security forces and other agents of the state resulting in death or injury or abuse of rights.⁴

Structure

INDECOM Commissioner is appointed for a five year term by the Prime Minister, after consultation with the Leader of the Opposition, and should possess the qualifications to hold office as a Judge of the Supreme Court. The Act envisioned five ‘Directors of Complaints’ to lead five regional offices, though only three regional offices presently exist. Though INDECOM may appoint and employ employees as needed, under the Act, the terms and conditions of employment must be approved by a Committee.⁵ For its first year of activities

¹ Amnesty International. “Jamaica: A Long Road to Justice? Human Rights Violations under the State of Emergency,” 2011.

² Jamaican Justice System Reform Task Force, Final Report, June 2007, http://www.cba.org/jamaicanjustice/pdf/jjsrtf_report_final.pdf. See <http://www.siu.on.ca/en/unit.php> for more information about the Special Investigation Unit (SIU) of the Ministry of the Attorney General of Ontario, Canada.

³ 6.2.2.7: “The future of the PPCA,” http://pcoa.gov.jm/files/jcf_strategic_review_2008.pdf.

⁴ INDECOM ACT, http://indecom.gov.jm/ici2010_act.pdf; INDECOM was then called ICI.

⁵ The Committee includes (a) the Speaker, as chairman, (b) the President of the Senate; (c) the person designated by the Prime Minister as Leader of Government business in the House of Representatives (d) the person designated by the Leader of the Opposition as Leader of Opposition Business in the House of Representatives; and (e) the person designated by the Prime Minister as Leader of Government business in the Senate; (f) the person designated by the Leader of the Opposition as Leader of Opposition business in the Senate and (g) the Minister responsible for the public service.

INDECOM received \$86 million Jamaican Dollars, which is roughly equivalent to \$USD 900,000. The majority of INDECOM's budget (\$63.8 million Jamaican dollars) comes from the Bureau of Special Investigations with the remainder from the Ministry of Justice's budget that covered the Police Public Complaints Authority (PPCA).⁶ In its following year, INDECOM received roughly \$200 million Jamaican dollars.⁷ According to a submission by the NGO Jamaicans for Justice, the INDECOM 2012-2013 budget allotted has increased to 288 million Jamaican Dollars (about \$USD 3 million).⁸

Powers

Under the Act, INDECOM investigation powers include inspection of "relevant public body or relevant Force, including records, weapons and buildings,"⁹ and to "take such steps as are necessary to ensure that the responsible heads and responsible officers submit to the Commission reports of incidents and complaints concerning the conduct of members of the Security Forces and specified officials."¹⁰ Articles 4.2 and 4.3 provide INDECOM access, following receipt of a warrant, to any reports, documents and all other evidence, including any weapons, photographs and forensic data, and to retain any records, documents or other property for as long as reasonably necessary. In addition INDECOM is provided access and may enter any premises or location. INDECOM also has the power to take charge of and preserve the scene of any incident.¹¹

The Commissioner and the investigative staff have the investigatory powers, authorities, and privileges of a constable. INDECOM may at any time require any member of the Security Forces, a specified official or any other person who, in its opinion, is able to give assistance in relation to an investigation, to furnish a statement or produce any document or thing in connection with the investigation that may be in the possession or under the control of that member, official or other person. When conducting an investigation, INDECOM has primary responsibility for preserving the scene of an incident, and may issue directions to the police. Intentionally false or misleading statements or failure to comply with INDECOM's investigations is subject to a fine or term in jail.

The INDECOM Act also requires any member of the Security Forces or an official who either becomes aware of or is involved in any incident, to take the necessary steps to ensure that a report is made to INDECOM. Purposefully, the duty of reporting incidents to INDECOM extends lower down the hierarchy of the security forces and correctional system than did previously. This duty is clearly designed to break the culture of silence.¹²

INDECOM has used various strategies to further its work, including by citing rules and legislation to press Parliament and Government Ministers to coax action by security forces. INDECOM has also made direct recommendations to the police and other security forces on certain policies (with a focus on ending the vetting and collusion of statements, identity concealment during operations, and observing procedure following the use of force). The responses from the police and army have suggested they are frustrated with INDECOM's work. INDECOM, however, continues as a follow up to this strategy by publicizing the responses and countering with public polling that finds support for INDECOM positions and generates pressure. INDECOM's investigations also focused on analyzing patterns of abuse provide policy guidance and recommendations for future prevention.

INDECOM's public reports between August 2011 and March 2012 explain that a total of 103 investigations were completed and various methods of case closure employed. These methods include referral to police for charges to be laid; referral to the Director of Public Prosecution for a ruling; referral for a Coroner's Inquest; and referral for informal resolutions. In about 20 percent of cases, INDECOM investigations have concluded that the allegations were unsubstantiated.¹³

The views expressed herein do not necessarily represent the views of the European Union

⁶ Jamaica Gleaner, "INDECOM Gets Millions," December 1, 2010, <http://jamaica-gleaner.com/gleaner/20101201/lead/lead81.html>.

⁷ RJR News, "Shaw defends tripling INDECOM's budget," April 20, 2011, <http://rjmnewsline.com/local/shaw-defends-tripling-indecoms-budget>.

⁸ Jamaica: Follow Up Report to CCPR, Jamaicans for Justice, Jamaica Forum for Lesbians, All-Sexuals and Gays, November 2012.

⁹ Article 4.1.b.i of the INDECOM Act.

¹⁰ Article 4.1.C of the INDECOM Act.

¹¹ Articles 4.2 and 4.3 of the INDECOM Act.

¹² Claim No: 2011 HCV 06344, 2012-05-25, Case Number: 2011HCV06344,

<http://supremecourt.gov.jm/sites/default/files/judgments/2012/Williams.%20Gerville%20et%20al%20v%20The%20Commissioner%20of%20the%20Independent%20Commissioner%20of%20Investigations.%20The%20Attorney%20General%20and%20The%20Director%20of%20Public%20Prosecutions.pdf>, Paragraph 142.

¹³ For INDECOM's most recent full quarterly report, see <http://indecom.gov.jm/Release/Report%20to%20Parliament.pdf>.