

MINISTER CHUCK'S OPENING PRESENTATION – INDECOM – Amendment
to INDECOM Act

Mr. Speaker,

I commence debate on the Motion regarding proposals for amendments to the Independent Commission of Investigations Act, 2010 contained in the Joint Select Committee Report which was tabled in this House and for which notice given on May 27, 2020.

Mr. Speaker, INDECOM was established to take over the role of the Police Public Complaints Authority (PPCA) and to respond speedily to the cry for justice, sustained public protest and demonstrations alleging security forces excesses.

INDECOM has performed its role admirably and its achievements and successes have been endorsed locally, regionally and internationally.

MS, even though there is tension and friction between members of the JCF and INDECOM, no one can deny that INDECOM has been vigilant and thorough in its investigations of alleged police misconduct and excesses. There is no doubt that INDECOM has contributed positively to the reduction of extra judicial killings by the security forces.

From its inception INDECOM operated on the premise that it had powers to arrest, charge and prosecute members of the security forces, until in 2013 when the Jamaica Police Federation challenged this practice in the Full Court, at which point INDECOM desisted from so charging and prosecuting. In its judgement, the Full Court ruled that INDECOM did have the power to arrest, charge and prosecute members of the security forces.

The Police Federation appealed the Full Court's ruling and in 2018 the Court of Appeal ruled that INDECOM did not have the power to arrest, charge and prosecute members of the security forces. The Privy Council confirmed this ruling in May 2020.

MS, this House will recall that in 2015, a Joint Select Committee of Parliament was established to review the INDECOM Act and its operations. Among other things, the Committee recommended consistent with the ruling of the Full Court that the INDECOM Act be amended to explicitly give INDECOM prosecutorial powers. Steps were taken to amend the Act however, with the further court challenges, this was placed on hold pending the outcome of the hearings.

In light of the Privy Council's ruling and the recent increase in the numbers of prosecutors in the DPP's Office, the present Administration reconsidered the Joint Select Committee's recommendation to vest INDECOM with prosecutorial powers and thought it no longer necessary for such prosecutorial powers to be given to INDECOM. The DPP's Office has been strengthened in the past 4 years with the addition of 17 prosecutors amounting to a total of 58 prosecutors, improved physical infrastructure towards first world standards and shortly to benefit from the unification of the Clerks of Courts with the DPP's Office – an increase of approximately 70 additional prosecutors.

Mr. Speaker, it is important to note that a MOU was arrived at in March 2018 between the ODPP and INDECOM whereby, among other things, two prosecutors were assigned specifically to liaise directly with and treat with INDECOM matters. Indeed, if more prosecutors are needed to deal with INDECOM matters in a timely manner, I am assured by the DPP that one or more prosecutors can be so assigned. In fact, Mr. Speaker, the DPP has always been amenable to issuing INDECOM with fiats to enable the private prosecution of matters and this practice continues even

after the Court of Appeal decision in 2018 and I strongly believe that in appropriate cases the DPP will not resist an application for a fiat from INDECOM.

Mr. Speaker when INDECOM pursued arresting, charging, and prosecuting of the members of the security forces it did so in good faith as can be demonstrated when it desisted in 2013 upon the institution of proceedings by the Police Federation.

Upon the judgement of the Full Court in 2014, INDECOM resumed exercising prosecutorial powers but desisted again when the Court of Appeal ruled in 2018 that they did not have those powers. Accordingly, Mr. Speaker it is intended to bring to Parliament shortly, a validation Bill to validate and indemnify the actions taken by INDECOM during those periods.

MS. this Government remains committed to strengthening the investigative powers and capabilities of INDECOM. As such, this Honourable Parliament is being asked to note and support the Joint Select Committee Report and adopt the remaining recommendations in the Report. In fact, in strengthening the investigative powers and capabilities of INDECOM, it is also proposed to, among other things:

- (a) Expand the functions of INDECOM to facilitate the sharing of information with other parties such as Government agencies, Special Coroners, Commissions of Inquiries and the Security Forces; this amendment is necessary as the Privy Council in its decisions of May 2020 ruled that INDECOM could not share material gathered in its investigations with any other party. Section 28 will therefore be amended to allow INDECOM to share appropriate information.

- (b) Section 31 of the act will be amended to allow for the Commission to initiate or continue any investigation notwithstanding any criminal proceedings relating to the subject matter of the investigation.

(c) Section 28 of the act will be amended to expressly compel members of the security forces or specified officials to serve notices.

(d) Section 21 of the act will be amended to expand the provision for delegation to allow the Commission to delegate any person the performance of his functions excluding a member of the security forces or specified official and that such delegation shall not preclude the performance of that function of the Commission.

(e) The privy council decision noted that INDECOM is a quasi-corporation it is intended to amend the Act in support of the recommendation included in the report of Joint Select Committee to give INDECOM a body corporate status.

These recommendations plus others in the Report will be introduced in a Bill to amend the INDECOM Act and drafting instructions will accordingly be provided to OPC at the close of this debate and after further consideration by Cabinet. I hope that the proposed amended Bill will be tabled in Parliament during this fiscal year.

Mr. Speaker, on behalf of the Parliament, we thank the outgoing Commissioner for his service and his efforts in ensuring the success of INDECOM in carrying out its mandate. The changes he has championed will enure to the benefit of the incoming Commissioner and INDECOM itself.

I am confident that the strengthening of INDECOM's investigative powers will ensure that INDECOM will become more efficient and effective in performing its mandate.

I now ask that the floor be opened to my fellow parliamentarians on this matter.

July 17, 2020

