

## RESPONSES TO THE RECOMMENDATIONS OF THE JSC

### Recommendation (a):

"The Committee also recommends that **greater efforts** should be made by the Police Complaints Authority (PCA) to complete its investigations in an **efficient** and **timely manner**, such that the **public interest is best served**" [Emphasis added]

Response to Recommendation (a) above:

Having carefully considered the recommendation, it appears that the JSC has concluded that the PCA is not currently operating at an optimal standard of efficiency and timeliness in the completion of its investigations.

Whilst the reason for this conclusion is not expressly stated by the JSC, it is presumably predicated, specifically, on the length of time taken by the PCA to complete its investigation into the day of "Total Policing" and, generally, on the existence of a backlog of complaints- investigations into which are yet to be completed by the PCA.

The PCA notes the recommendation of the JSC and assures both the JSC and the Public that the organization strives towards excellence and has, within the relatively recent past, employed various mechanisms to increase its level of efficiency in investigations. For the PCA, efficiency involves making the best use of resources or time. A manifestation of the PCA's level of efficiency can be found in the fact that the PCA was instrumental in the institution of criminal proceedings against a senior police officer against whom charges were laid on the conclusion of the PCA's investigation into allegations of assault and misconduct. The said matter was investigated in under six (6) months so as not to debar action due to the expiration of the statutory limitation period relative to the prosecution of summary offences. The PCA's ability to operate with alacrity in the said matter was due to its effective use of a categorization system whereby complaints are designated a level of priority based on a clinical consideration of multiple factors. Additionally, the PCA employs an action system where the focus is placed on the completion of key investigative actions which are inextricably linked to the constituent elements of the particular offence being investigated. Therefore based on this, and other similar successes, the PCA is compelled to respectfully disagree that its current level of efficiency and timeliness in investigations requires "greater efforts".

With specific reference to the PCA's investigation into the day of "Total Policing", it must be appreciated that that particular investigation was tremendous in scope as it spanned multiple police divisions and required the interview and recording of statements from police officers of varying ranks within each of

those divisions. Those factors considered the PCA completed its investigation in a reasonable time frame given challenges faced. For a considerable period the PCA's completed investigation is being assessed by a Senior Counsel who is yet to advise on how the PCA should proceed to dispose of the matter. Hence, the PCA's ability to close that particular matter is impacted directly by how expeditiously Senior Counsel is able to render advice and is not a reflection of the PCA's ability to operate efficiently and or in a timely manner.

With respect to the PCA's backlog of complaints, the PCA has been able to significantly reduce this. As at September 30, 2016 the PCA's record of active complaints for completion of investigations was approximately one thousand two hundred and fifty nine (1259). As at July 6, 2017 that figure was brought down to approximately eight hundred and twenty four (824). Thus, the PCA continues to work arduously.

However, the PCA urges the JSC to consider and appreciate the factors discussed hereunder each of which may lead to actual or perceived inefficiency and delay on the part of the PCA.

**-The teething process of a new entity-**

The existing complement of investigators are handling historical complaints or backlog (i.e. reports received before October 1, 2016) as well as current complaints (i.e. reports received on or after October 1, 2016). A backlog exists partially because the current PCA is a relatively new entity established under the PCA Act, No. 8 of 2006 but only constituted on December 29, 2010 with the appointment of its first Director and Deputy Director. It is expected that a new entity would undergo a teething process as it forges links with stakeholders and other bodies with whom it has to interact; sensitizes persons to its remit, functions and powers; creates an organizational structure; and fills vacancies and become fully au courant with its governing legislation. The current framework under which the PCA exists today therefore had to be developed including internal processes for the receipt of complaints, complaint handling and investigative procedures, standard operating procedures and the organizational strategic plan.

**-Rate of receipt of new complaints versus rate of turnover-**

The rate at which we receive new complaints for investigation is far greater than the rate of turnover. This reality is due, in part, to the fact that the staff complement is insufficient to completely eliminate

the backlog whilst focusing on current complaints for investigation. Therefore, the two activities are operating simultaneously.

**-Insufficiency of Investigative and Legal staff-**

The investigative and legal staff play a critical role in the completion of investigations and in the assessment of completed investigative files. Currently, both departments are operating with a complement which falls below that which is recommended for our purposes. Additionally, the Legislation Review Committee presently has a Police Complaints (Amendment) Bill 2017 before it, the provisions of which are intended, inter alia, to strengthen the PCA and to close legislative lacunae. Should the PCA succeed in obtaining the amendments proposed, it is not fanciful to suppose that there may be an increase in the PCA's workload. Unless the staff complement is also increased, the problems of insufficiency of staff are likely to continue.

The issue of insufficiency of staff is perpetuated by problems associated with a limited pool of suitable applicants from which to recruit and retaining suitably qualified staff. In order to recruit more staff and to retain them the Authority requires a greater appropriation of funds from Parliament in order to compensate a larger staff and to offer compensation packages which are competitive.

**-Issues beyond the PCA's control-**

One must also appreciate that the PCA has to contend with factors which are beyond its control and which may cause delays or protract the investigative process.

There may be instances of delays in the receipt of information and documentation from external entities such as the Trinidad and Tobago Police Service ("the TTPS"). This directly affects our timelines for completion particularly when the PCA is exercising its monitoring and auditing function under Section 21 (1) (c) of the PCA Act. For example, if the PCA decided it would not investigate a matter but would instead monitor the TTPS investigation into the matter and then audit the TTPS' investigation, it would be critical to obtain regular status updates and, at the conclusion of the TTPS investigation the PCA would require the TTPS investigative file for the purposes of completing its auditing exercise. If the TTPS delays in forwarding the completed investigative file the PCA's exercise cannot be completed. In the case of most investigations which require the powers, privileges, immunities and authorities of the police the PCA would have no choice but to monitor the investigation of the body conducting the investigation and therefore the PCA's ability to complete its audit of the body's completed investigation

in a timely manner is contingent on whether the investigative body operates with alacrity in its investigation.

There may also be instances of delays occasioned during the investigative process due to unavailability of persons for interviews can result in repeated rescheduling which protracts the process.

#### **-Differences in the scales being used to measure efficiency-**

While the time frame for completion of an investigation is important to the PCA, the current barometer used to determine efficiency is the action system. Actions for completion are laid out by Team Leads in the Investigations Department and efficient investigation of a matter requires that the assigned investigator completes each of the actions specified using all resources available.

The time frame for the completion of an investigation is dependent on the nature of the offences being investigated, the complexity of the given matter and other relevant factors. Therefore, it is impractical to apply a standard time frame for investigation in every matter.

#### **-The absence of the powers, privileges, immunities and authorities of the Police-**

The PCA is of the firm view that in order to operate at an optimal level of efficiency it requires amendments not only to its existing legislation but to other pieces of legislation which touch and concern the PCA's operations. Ideally, the PCA should be bestowed with the powers, privileges, immunities and authorities of the police ("coercive powers") and to justify this one may wish to ask: Can the PCA perform its oversight of law enforcement without being vested with the coercive powers commensurate with those possessed by the bodies it is expected to oversee?

The PCA has been advocating for coercive powers for approximately six (6) years- a goal endorsed by the JSC and supported, in principle, by present and past administrations yet this goal remains elusive. The PCA has been asked to consider the implications of constitutional imbalance which may be created as a result of bestowing a body of civilians with traditional police powers. Whilst the PCA still maintains that the provision of coercive powers as has been done in Jamaica, Barbados and the United Kingdom is ideally what the PCA also requires, we have agreed, at this stage, to scale back our proposals. This was based on the simple fact that in order to make our goals a reality a special majority would be required and due to the current tenor of Parliamentary debates that requirement is not likely to be met. For the current slate of amendments please see the attached document entitled "**AMENDMENTS TO THE PCA ACT AND THOSE CONSEQUENTIAL THERETO**"

## AMENDMENTS TO THE POLICE COMPLAINTS AUTHORITY ACT AND THOSE CONSEQUENTIAL THERETO

- To widen the definition of “serious police misconduct” to include the commission of a disciplinary offence under the Municipal Police Service Regulations which the Authority considers to be so serious as to bring the Municipal Police Service into disrepute. It would also define the term Assistant Commissioner.

[Prior to the passage of the Municipal Police Service Regulations 2014 (“MPSR”), the Police Service Regulations 2007 (“PSR”) applied to Municipal Police Officers (“MPO”). With the passage of the MPSR the PSR no longer applies to MPO therefore MPOs fall outside the definition of serious police misconduct which is defined as the commission of a disciplinary offence under the PSR which the Authority considers so serious as to bring the Police Service into disrepute”]

- To deem the Authority duly constituted where six months or more have passed without the appointment of a Director or a Deputy Director following the death, resignation or revocation of that Director or Deputy Director.
- To exempt the Authority from stamp duty, corporation tax, custom duty, value added tax, motor vehicle tax, and any other fees, charges, assessments, levies and imposts on any assets of the Authority.
- To amend section 44 of the Act by imposing a duty on the Commissioner of Police to provide a written decision with reasons to the Authority within three months of the Authority making a recommendation pursuant to that section.
- To provide for the Commission, the Commissioner of Police or the Assistant Commissioner to immediately inform the Authority of matters related to Section 21 (1) (a) of the Police Complaints Authority Act and to require each of them, where such information is given, to produce a written report thereon within three days of the date the information was provided to the Authority. Furthermore, to provide the measure(s) of recourse should either of the parties identified fail in their obligation.

- To provide that Regulations made under section 50 be subject to negative resolution of Parliament.

### Consequential Amendments

The Coroner's Act,  
Chap. 6:04

To ensure that the Authority receives notice from the Coroner in all cases where an inquest is being held into the death of a person who was allegedly killed by police

The Evidence Act,

To include the Authority under the definition of law enforcement agency so as to ensure its ability to utilize the Audio Visual Rules which guides and ensures the admissibility of statements taken by such means

The Special Reserve  
Police Act, Chap. 15:03

To make the Police Service Regulations applicable to SRPs for the purpose of dealing with matters of Serious Police Misconduct in relation to such officers. This is due to the fact that SRPs currently do not have their own regulations and the PSR does not, at this time, apply to them. A similar approach was taken with Municipal Police Officers to which the PSR applied until the making of their own Regulations.

The following was being pursued legislatively but following discussions with the Commissioner of Police (Ag.) it was agreed that same would form the subject of a Departmental Orders to be issued by the CoP:

- To permit the Authority to be immediately called to, and be on present on, the scene of an incident where a civilian is shot by a police officer and to be able to monitor/ observe police action at the said scene.

**Recommendation (b):**

"The Committee further recommends that the line ministry undertake an assessment of the resource needs of the PCA with a view to satisfying all critical needs in order to ensure that the work of the PCA is not hindered"

Response to Recommendation (b) above:

The PCA notes the reference to a "line ministry" and wishes to respectfully clarify this as follows:

Section 19 of the Police Complaints Authority Act states:

*"The Authority is not subject to the direction or control of any other person in the performance of its functions under section 21 and the exercise of its powers under section 22."*

The PCA does not have a line Ministry and is neither a department, division nor statutory authority of the Ministry of the Attorney General and Legal Affairs. The PCA is an independent, corporate body and is accountable to the Parliament of Trinidad and Tobago. The Minister's responsibility must be understood as limited to speaking on behalf of the Authority in accordance with Parliamentary custom or practice.

As far as the resource needs of the PCA are concerned, the PCA has already undertaken an assessment of such needs including:

- Amendments to the Police Complaints Authority Act, Chapter 15:05, and those consequential thereto;
- An increase in its staff complement particularly in the Legal Counsel, Compliance and Complaints Unit and Investigations Department;
- An increase in the funds appropriated by Parliament;
- Training for staff particularly the Investigative staff;
- Equipment; and
- A fit for purpose building.

The PCA would be happy to provide further details of the aforesaid to the Ministry of the Attorney General and Legal Affairs once requested.

