

ANNUAL REPORT

2020

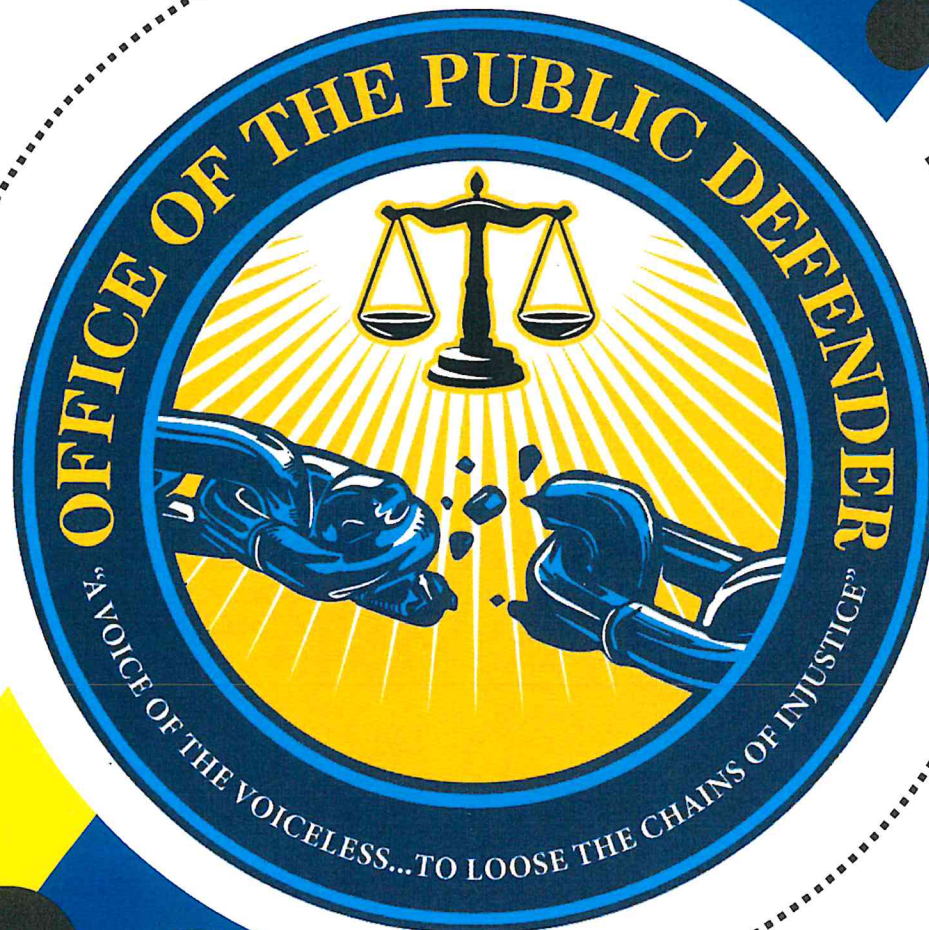


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ANNUAL REPORT – CALENDAR YEAR 2020

INTRODUCTION

1. This the twentieth (20th) Annual Report in the history of the Office of the Public Defender prepared for the Parliament of Jamaica. This Report outlines the activities in which the Public Defender was involved during the period January 1st 2020 to December 31st 2020.
2. The year 2020 was significant in more ways than one. Globally, it marked the first time in a hundred years that the world experienced a pandemic. It was the COVID-19, and the World Health Organization (WHO) declared it a pandemic on the 12th March. Locally, the first COVID-19 death in Jamaica occurred on the 18th March. The victim was a 79-year-old man who had previously arrived from New York. The man was admitted to the Lionel Town Hospital in Clarendon. He was transferred to the Mandeville Hospital, but died enroute, during a further transfer to the Kingston Public Hospital. In the wake of the WHO's declaration, Jamaica was effectively placed on locked-down for the next three months. Monday the 1st June, 2023 marked the official resumption of nationwide activities. Amidst the setback caused by the pandemic, a general election was called in 2020. It was the eighteenth general election since Universal Adult Suffrage in Jamaica in 1944. It was held on the 3rd September. The Jamaica Labour Party won.
3. Within the first thirty days of 2020, criminal activities in the eastern side of the capital caused a state of public emergency to be declared in the Police Kingston East Division. The declaration was made on Sunday the 26th January 2020. The information on persons detained was not shared with the Office of the Public Defender (OPD).
4. The pandemic aside, perhaps the most memorable feature of the year 2020 was the popularization of electronic mode of holding conferences and meetings. After March, Jamaica, like the rest of the world, migrated to various meeting platforms, thereby abandoning in most instances, the old face-to-face method, to which everybody had become inextricably attached over the years prior. For the OPD, the most commonly used platforms were **ZOOM** and **Teams**, with the trusted **WhatsApp** always as a last resort. The overall effect was that the activities, and primarily the outreach programmes in which the OPD would have normally been engaged, were significantly reduced, for the most part of the year.

5. At least two members of staff had had to be quarantined because of the display of COVID-19 symptoms. The Office adopted all the measures implemented under the Disaster Risk Management Act, as well as all the measures recommended by the Ministry of Health, to curtail the spread of the corona virus.

COMPLAINTS AND INVESTIGATIONS

Investigations

6. A total of one hundred and seventy-six (176) complaints were received in 2020. Appendix 1 shows the complaints disaggregated on the bases of Authorities (against which complaints were made); geographical origin; gender; and other social factors.

CONSULTATIONS AND NON-INVESTIGATORY INTERVENTIONS

7. During the period, two hundred and thirty (230) matters were handled by the Office. These matters are referred to as *advisories*. These were cases which were resolved by the OPD without full-blown investigations, hence obviating the need for the compilation of written reports.

COURT, TRIBUNALS, AND COMMITTEES ATTENDED

8. In 2020, the number of occasions on which the Public Defender had to be represented, or had interests, in matters before the various courts and tribunals, were at a minimum. Notable involvements included the following:

- (a) the constant observation of the activities of the Emergency Powers Review Tribunal convened for the states of public emergency; and
- (b) the OPD's continued support for the displaced sugar workers in Eastern St. Thomas, during which time the prospect of court action loomed ominously.

Court of Appeal

The OPD had no matters in the Court of Appeal during the year 2020.

Supreme Court and Parish (formerly RM) Court

- (a) There were no matters in the Supreme Court in which the OPD had any vested interest during 2020. The OPD did, however, participate in the Court Management Services Public Education Day Exhibition staged in January.
- (b) In the Sutton Street Parish Court the OPD continued to pursue the false imprisonment cases filed on behalf of residents of the Tivoli Gardens, and arising out of the May 2010 joint police-military operations in Western Kingston. The State eventually settled the cases.
- (c) The OPD continued its efforts to locate relatives of persons incarcerated for years due to their unfitness to plead. The relatives sought were those who would be willing to take and accommodate the incarcerated individuals, based upon the inclination of the Courts to release them. In the majority of the cases, the period spent in custody was far longer than the sentence which the court could have lawfully imposed, had the person been convicted of the offence for which he/she had been charged.
- (d) A number of cattle trespass cases were filed in the St. Thomas Parish Court on behalf of the sugar workers from Eastern St. Thomas.

Internal Hearings

- (a) Under her statutory powers the Public Defender conducted hearings as part of her investigations into complaints against state entities which failed to produce documents/material requested, or which failed for whatsoever reason(s) to respond to the OPD.

(b) The following persons representing the entities indicated, were summoned during the year 2020:

(i) Executive Director of National Works Agency in relation to a complaint against that entity.

(ii) CEO of St. Catherine Municipal Council regarding the expansion of Dovecot burial ground.

OTHER ACTIVITIES

(a) *Outreach Programs*

(i) Court Management Services Public Education Day exposition on 22nd January at Morant Bay.

(ii) OPD's presentation to Jamaica Council for Persons with Disabilities on 31st January.

(iii) OPD's presentation to the Coffee Industry Board on 14th February.

(iv) On 1st April the OPD made a presentation to the National Parenting Commission.

(v) The Public Defender was part of a panel discussion staged by PROMAC (a group convened by renowned psychiatrist Dr. Wendel Abel) on the 15th July, at the Alhambra Inn Hotel. Another such outreach program of which the OPD was a part, was held in Mandeville on the 25th July.

(vi) The Western Regional Office delivered a presentation on the rights and responsibilities of young men and the roles and functions of the Public Defender, to the Western Regional Health Authority. The presentation was done on the 15th August at the Altamont West Hotel, in Montego Bay.

(b) ***External Meetings***

- (i) The Public Defender attended the Law Conference at the UWI Regional Headquarters, as part of International Women's Day celebrations.
- (ii) Meetings with Jamaica Aids Support for Life (JASL) at their request to discuss Policy Paper for Anti-Discrimination; and subsequently to discuss the draft legislation against discrimination. Later in the year (in November) the Public Defender appeared as a panelist in a JASL staged public discussion on "*Access to Justice*".
- (iii) Throughout the year, the OPD had several meetings with e-Gov in the OPD's quest to digitize the filing system at the Office. These were carry-over engagements from the previous year, when the OPD had moved to achieve that goal through the use of private service providers.
- (iv) At least three meetings were held with the National Family Planning Board (NFPB). As partners, the OPD and the NFPB discussed matters of mutual interests.
- (v) A team from the OPD journeyed to Portland to visit the site of a complaint made by a citizen against the National Works Agency.
- (vi) The Public Defender met with the citizens of Bull Bay who had previously been under lock-down when the entire community was quarantined. The residents had complained that the distribution of food was done on a political partisan basis. A similar meeting was held with citizens of Corn Piece District in Clarendon. That community was also under quarantine, and the complaint of the residents was identical to that of the residents in Bull Bay.
- (vii) Between July and August, the OPD convened several meetings in Golden Grove, St. Thomas, with sugar workers who had received eviction notices from the Sugar Corporation of Jamaica (SCJ) Holdings Limited, the government's sugar plantation divestment company. The farmers had sent a petition to the Public Defender.

- (viii) Meetings were held with NEPA and OPD's team in September and October, regarding issues surrounding the bauxite red dust, and its effect on residents in St. Elizabeth.
- (ix) Meeting was held with representatives of the NWA to discuss the road rehabilitation in Broadgate, St. Mary. Particularly the landslide and the wholesale dislocation of the residents in the area.
- (x) The OPD participated in a meeting in October, organized by the Political Ombudsman to assess, and to make recommendation for the eradication of undesirable campaigning practices borne out by the September 3, general elections.
- (xi) On 10th September, the OPD participated in a webinar organized and staged by CARICAD. It was titled "*Transitioning to Full Remote Working Arrangements – The case Study of the eastern Caribbean Central Bank.*"
- (xii) The Public Defender and her team met with residents in Green Pond, St. James, in the wake of a complaint by homeowners in a housing development, that the houses were handed over to them without the essential infrastructure being in place. The residents asserted that their plea to the government had fallen on deaf ears.
- (xiii) The Public Defender and a team visited the St. Catherine Adult Correctional Centre in December, following reports of hunger strike and a call for the Public Defender to intervene.

(c) Media Programme

- (i) The OPD continued the 15-minute weekly radio program titled "*Constitutionally Speaking*". It was aired on RJR 94fm, on Thursdays.
- (ii) The Public Defender made several appearances as guest on various programs in the different media outlets.

PROCUREMENT

9. In 2020 the OPD continued its bid to digitize the entire filing system at the Office. To that end, presentations and demonstrations were obtained from three service providers. In the end, the cost quoted by the provider selected was such that it had to be put through the government's procurement procedure. Once the matter entered the government's domain the OPD was advised that the service which the office sought, could be provided by the government. Hence the OPD was directed to e-Gov. To that end, several meetings were held with representatives of e-Gov. Those meetings were the continuation of OPD's engagement with e-Gov from the previous year.

FINANCIAL MATTERS FOR THE FINANCIAL YEAR 2020/2021

STATUTORY

10. The original statutory estimates of expenditure for the financial year 2020/2021 was \$14,175,000.00. However, there was an increase by way of the third supplementary estimates of \$560,000.00 which was granted to accommodate the shortfall in salaries. The total budget is now \$14,735,000.00.

Original Budget	Third Supplementary	Revised Budget	Expenditure	Savings
(M\$)	(M\$)	(M\$)	(M\$)	(M\$)
14,175	560	14,735	14,711	.24

Savings resulted from the projected salary amount requested being less than the actual salary amount paid out.

RECURRENT

11. The original recurrent estimates of expenditure for the financial year 2020/2021 was \$116,921,000.00. There was a reduction in the first Supplementary Estimates due to the restriction imposed on overseas travel as a result of the COVID19 pandemic. However, in the second and third Supplementary Estimates there were increases in the budget for local travel, legal fees and salary payments. The total budget rose to \$137,136,000 for the financial year.

Original Budget	First Supplementary	Second Supplementary	Third Supplementary	Revised Budget	Expenditure	Savings
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(M\$)	(M\$)	(M\$)	(M\$)	(M\$)	(M\$)	(M\$)
116,921	-11,011	25,228	6,000	137,136	137,107	-31

Savings resulted from the projected travel expense that was requested being less than the actual travel paid out.

CONCLUSION

12. A most notable event in the life of the Office during 2020, was the opening of the Central Regional Office. It is intended to cater to people in Middlesex County who are not able to travel to Kingston or to Montego Bay to lodge complaints to the Public Defender. The office is situated at Shop G10 Annex Plaza, 7 Caledonia Road, Mandeville in Manchester.

13. All in all 2020 was a very busy year and a year marking the beginning of transformation, Jamaica having entered a new paradigm with the advent of the COVID 19 virus.

STATISTICS

OFFICE OF THE PUBLIC DEFENDER
2000 - 2020

Particulars	Figures	Total
Number of complaints received from 2000 – 2019	13,817	
Number of complaints received in 2020	176	
Total number of complaints received from 2000 – 20		13,993
Number of complaints closed from 2000 – 2019	9,531	
Number of complaints closed in 2020	51	
Total number of complaints closed from 2000 - 2020		9,582
Number of complaints pending as at 2019	2,229	
Number of complaints pending for 2020	125	
Total number of Complaints pending as at 2020		2,354
Total Non-Investigatory and Consultation Cases for 2020	230	
Total Number of Cases Closed for 2020 including Consult.		281

Registry January to December 2020 Report Cases by Agency and Advisories

Agencies	Amount
Commissioner of Lands	1
Creative Production Training Centre	1
Electoral Office of Jamaica	2
Firearm License Authority	2
Foreign Affairs	1
Housing Agency of Jamaica	3
Inland Revenue Department	1
Jamaica Customs	1
Jamaica Information Service	1
Jamaica Urban Transit Company	1
Kingston & St. Andrew Municipal Council	1
Min of Science Energy & Technology	1
Ministry of Agriculture & Fisheries	1
Ministry of Education	13
Ministry of Finance & Public Service	14
Ministry of Health	14
Ministry of Housing	2
Ministry of Justice	5
Ministry of Labour & Social Security	18
Ministry of Local Government	19
Ministry of National Security	37
Ministry of Science Energy & Technology	1

Ministry of Transport and Works	3
Ministry of Health	2
National Water Commission	1
National Energy Solution LTD	1
National Environmental and Planning Agency	6
National Housing Trust	2
National Water Commission	3
National Work Agency	2
Non-Authority	2
NROCC	1
Office of Utility Regulation	2
Passport & Immigration Agency	1
Public Service Commission	1
Registrar General Department	1
Strata Commission	1
Westmoreland	3
Grand Total	176

230 Advisory cases

Registry January to December 2020 Report
Cases by geographical location

Parish	Amount
Canada	3
Cayman Island	1
Clarendon	7
Email	2

England	1
Hanover	3
Kingston	21
Kingston 2	3
Kingston 3	2
Kingston 5	2
Kingston 6	5
Kingston 7	1
Kingston 8	4
Kingston 10	3
Kingston 11	4
Kingston 12	1
Kingston 13	1
Kingston 14	1
Kingston 16	2
Kingston 17	1
Kingston 19	2
Kingston 20	3
Manchester	7
Mandeville	3
Portland	5
St. Andrew	6
St. Ann	9
St. Catherine	23
St. Elizabeth	3
St. James	17

St. Mary	7
St. Thomas	2
St. Andrew	1
St. Catherine	5
St. Elizabeth	1
St. Thomas	1
Trelawney	1
Trelawny	4
USA	5
Westmoreland	3
Grand Total	176

**Registry January to December 2020 Report
Cases by gender**

Gender

Female	78
Male	91
<u>Other</u>	<u>07</u>
Grand Total	176

Status	Amount
Open	176
<u>Closed</u>	<u>51</u>
Pending	125

RANDOMLY SELECTED CASE STUDIES

C41/19- National Environmental Planning Agency (NEPA)

A complainant living in Corn Piece Settlement for over 35 years complained that in early February 2019, New Fortress Energy Company started clearing an area in the community to build a liquefied natural gas pipeline. The work caused a lot of dust to enter her house and it caused great discomfort and inconvenience to her family. Members of her family had respiratory problems, itchy eyes, runny nose and running belly. The complainant stated that it would be a good idea if National Environmental Planning Agency (NEPA) could relocate her family or compensate them. She sought the assistance of the Public Defender in getting NEPA to get rid of the nuisance.

On February 26, 2019, our office wrote to NEPA on the matter. Having not received a response we wrote to the Agency again on August 28, 2019. Eventually, NEPA responded to say that technical assessments were done to ensure that the environmental risk was minimal. Also, that the Permittee has complied with the permit requirements by doing regular monitoring and has employed several dust control methods.

As it regards the concern about the danger the pipeline may have on the community, the pipes were laid six feet underground and were insulated and pressure controlled. The Agency also indicated that they recommended that the Permittee increase the frequency of dust suppression activities. The Agency also indicated that the relocation request was outside of its current scope.

Subsequently, the complainant was contacted on January 15, 2020 and she was advised that the work on the pipelines was completed and that she was compensated for the dust nuisance. She stated that the company has also sponsored one of her children college.

She expressed her appreciation for the assistance received from the Office.

CA220/19 (K)-National Works Agency (NWA)

We commenced an investigation into your complaint of August 21, 2019, on which we were copied, relating a client Peppa Thyme Limited Restaurant & Bar. In the complaint, it was outlined that the National Works Agency (NWA) and China Harbour Engineering Company (CHEC) had expanded the section of the Constant Spring Main Road, where the retaining wall and perimeter fence were damaged. Also, the water was causing soil erosion whenever it rains, and that efforts to have the matters corrected, proved futile.

NWA was contacted and long after the replacement commenced. After much back and forth we contacted back NWA on November 3, 2020, and he stated that the perimeter fence was completed, the fence was replaced, and some of the backfilling was done. We also spoke with an officer at Peppa Thyme who also corroborated the foregoing. The complainant stated that the backfilling was still not completed, as the septic tanks needed to be tied into the main system, but that is not their responsibility. However, they were trying to see how they can assist.

Finally, all the requests made was resolved and the file was closed as the matter was justified and remedied.

C187/18- Ministry of Labour and Social Security (MLSS)

We received a complaint from a citizen who resides overseas by way of a letter dated June 25, 2018. The letter highlighted the difficulty the complainant was experiencing in contacting the Ministry of Labour & Social Security (MLSS); an

d a request was made for our office to investigate the conditions under which two (2) outstanding pension cheques, allegedly sent to the citizen in 2016 by MLSS, and not received by the citizen, will be replaced. Another concern was the payments for the latter part of 2017 and the first half of 2018, which stated that they had not received at the time of the letter from the Office of the Public Defender (OPD).

During the process of investigation, we were informed by the MLSS-National Insurance Scheme (NIS) office, on September 25, 2018, that payments for September 2015 to September 2016, September 2016 to March 2017, and March 2018 were disbursed. On September 25, 2018 receipt of payments were confirmed excluding the payment for September 2015 to September 2016. Consequently, we wrote to the Ministry on September 27, 2018 outlining the information obtained from both the complainant and the NIS and requested that the requisite steps be taken to ensure the receipt of payments for September 2015 and September 2016. After numerous communications thereafter, we were finally informed by the Ministry, on February 13, 2020, that having received the bank's confirmation that the previous cheque was not encashed, a new bank draft #113753 dated January 24, 2020, in the sum of US\$1,147.30, was sent to the citizen by registered mail on January 28, 2020. This transaction was confirmed on February 17, 2020 by way of a telephone conversation.

In light of the foregoing, this matter was closed as there was nothing further to investigate.

C248/18- National Housing Trust (NHT)

Our office received a letter dated October 16, 2018 against the National Housing Trust (NHT). The contents of this letter stated that the complainant was on his way to purchase phone cards in his scheme on June 28, 217, when he stumbled over pieces of pipes which were placed in the complex, and sustained injuries to his right foot, right hand and lower back.

Since the injuries, he has been visiting his doctor regularly for treatment, as he stated that the pains were constant and unbearable. Our office wrote to the NHT and after careful discussions, they accepted liability and offered a full and final settlement of One Million Five Hundred and Eighty Thousand Dollars (\$1,580,000.00), which the citizen accepted in writing.

On December 9, 2020, the citizen reached out to our office, confirming that payment was uploaded to his account.

On this note, we closed the file as the matter was justified and remedied.

Special Investigations

There were several special investigations carried out by the Office of The Public Defender. However, due to the impact of Covid19 and other factors, these reports have not yet been completed.

THANK YOU LETTERS

300 Hayward Ave. #34
Mt. Vernon, NY 10552,
U.S.A.

February 17, 2020

Ms. Arlene Harrison Henry
Public Defender
22-24 Duke Street
KINGSTON
Jamaica, W. I.

Dear Ms. Harrison Henry:

Re: NIS Ref - 0623363 C - Self

This letter is to thank you, your Office, and more so
Ms. Yvonne Smith, for the wonderful work that has been
done in respect of my case for the replacement of lost/stolen
cheque reported to the NIS office in 2016.

Ms. Smith was diligent, courteous, and followed up with me
on a regular basis regarding this matter.

Finally, I received the Replacement Cheque on Friday,
February 14, 2020.

I am very happy for an office like yours and wish for
you and your staff God's blessings.

Thanks again.

Respectfully yours,

Coben D. Hogesheide Tel. 914-648-1473

ACKNOWLEDGEMENT

The Public Defender, Officers and Agents express our sincere appreciation to the citizens of our country, our partners, other stakeholders and staff of the Public Defender.

We thank you for allowing us to serve you, for partnering with us, consulting with us, sharing and advising us. Special thanks to the hard-working, dedicated, committed and resilient Staff of the Public Defender who endeavour to serve you at the highest level. We do acknowledge that “You have a RIGHT to prompt, courteous and efficient attention and service” and therefore we provide just that.

The Office of the Public Defender is extremely thankful for all your participation and contribution. We have the resilience; we are astute and we remain committed to serving you to ensure redress for all those who have suffered mal-administration or violation of your constitutional rights.

We stand by our Motto, “A Voice of the Voiceless...to Loose the Chains of Injustice.”