



**16TH
ANNUAL REPORT**

OF THE

**OFFICE OF THE
PUBLIC DEFENDER
OF JAMAICA**

CALENDAR YEAR 2016

TABLE OF CONTENTS

	Pages
Letters of Submission	1 - 2
Mission Statement, Motto and	3
Existing Organizational Chart	5
Introduction	6
History of the Office of the Public Defender	7

2016 Appendices

	Pages
Auditor-General's Report 2012/2013 - Still outstanding from Auditor-General	8
Statistics	9-11
Complaints handled by the Office of the Public Defender 2000 - 2016	
Breakdown of Complaints Received in 2016 Categorized by Parishes and External Complaints	
Specially-Investigated Reports	
Llandilo Storage and Distribution Plant and Block-making Plant Westmoreland	12-50
March 2015 Fire at Riverton City Dump/Disposal Site	51-102
Opening of Montego Bay Office	103-108
Randomly-Selected Case Studies	109-112

2016 Appendices

Official Travel Overseas

Panama	113-125
Geneva, Switzerland	126-131
Thank-You Letters	132-134
Radio Feature	135
Course of Study - Human Rights Law and Graduation	136-140
Commission of Enquiry - West Kingston	141-142
International Human Rights Day 2016 - Visit to Clifton Boys' Home	143-144

2016 Appendices

Outreach Programmes

145-151

Acknowledgement

152



OFFICE OF THE PUBLIC DEFENDER

“A Voice of the Voiceless... To Loose the Chains of Injustice”

January 30, 2018

The Honourable Pearnel Charles, C.D., M.P., J.P.
Speaker of the House of Representatives, and
Chairman of the Public Defender's Commission
Houses of Parliament
Gordon House
81 Duke Street
KINGSTON

Dear Speaker:

I have the honour to submit the **Sixteenth (16th) Annual Report** for the Office of the Public Defender for the period **January 2016 to December 2016**.

The Report is submitted pursuant to Section 23 (2) of the **Public Defender (Interim) Act 2000** of Jamaica.

Yours faithfully,

A handwritten signature in cursive script, appearing to read 'Arlene Harrison Henry'.

Arlene Harrison Henry
PUBLIC DEFENDER

rec 27, 2018



OFFICE OF THE PUBLIC DEFENDER

“A Voice of the Voiceless... To Loose the Chains of Injustice”

January 30, 2017

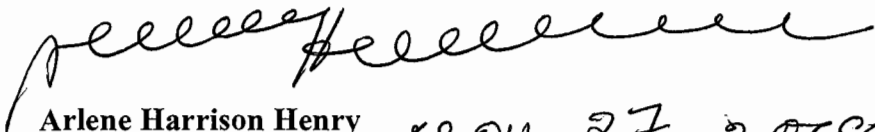
Senator the Honourable Thomas Tavares-Finson, C.D., Q.C., J.P.
President of the Senate
Houses of Parliament
Gordon House
81 Duke Street
KINGSTON

Dear President:

I have the honour to submit the **Sixteenth (16th) Annual Report** for the Office of the Public Defender for the period **January 2016 to December 2016**.

The Report is submitted pursuant to Section 23 (2) of the **Public Defender (Interim) Act 2000** of Jamaica.

Yours faithfully,


Arlene Harrison Henry
PUBLIC DEFENDER

NOV. 27, 2018

MISSION STATEMENT

The Office of the Public Defender will, in accordance with the principles of Natural Justice, and the Jamaican Constitution, investigate complaints brought by any member of the public against the State, seek redress for Constitutional and Administrative injustice and provide, where necessary and possible, the attorney's fees needed to pursue Constitutional remedies in court.

THE MOTTO

“A Voice of the Voiceless ... to Loose the Chains of Injustice”

NOTICE

To: All complainants and visitors to the Office of the Public Defender

“You have a RIGHT to prompt, courteous and
efficient attention and service.

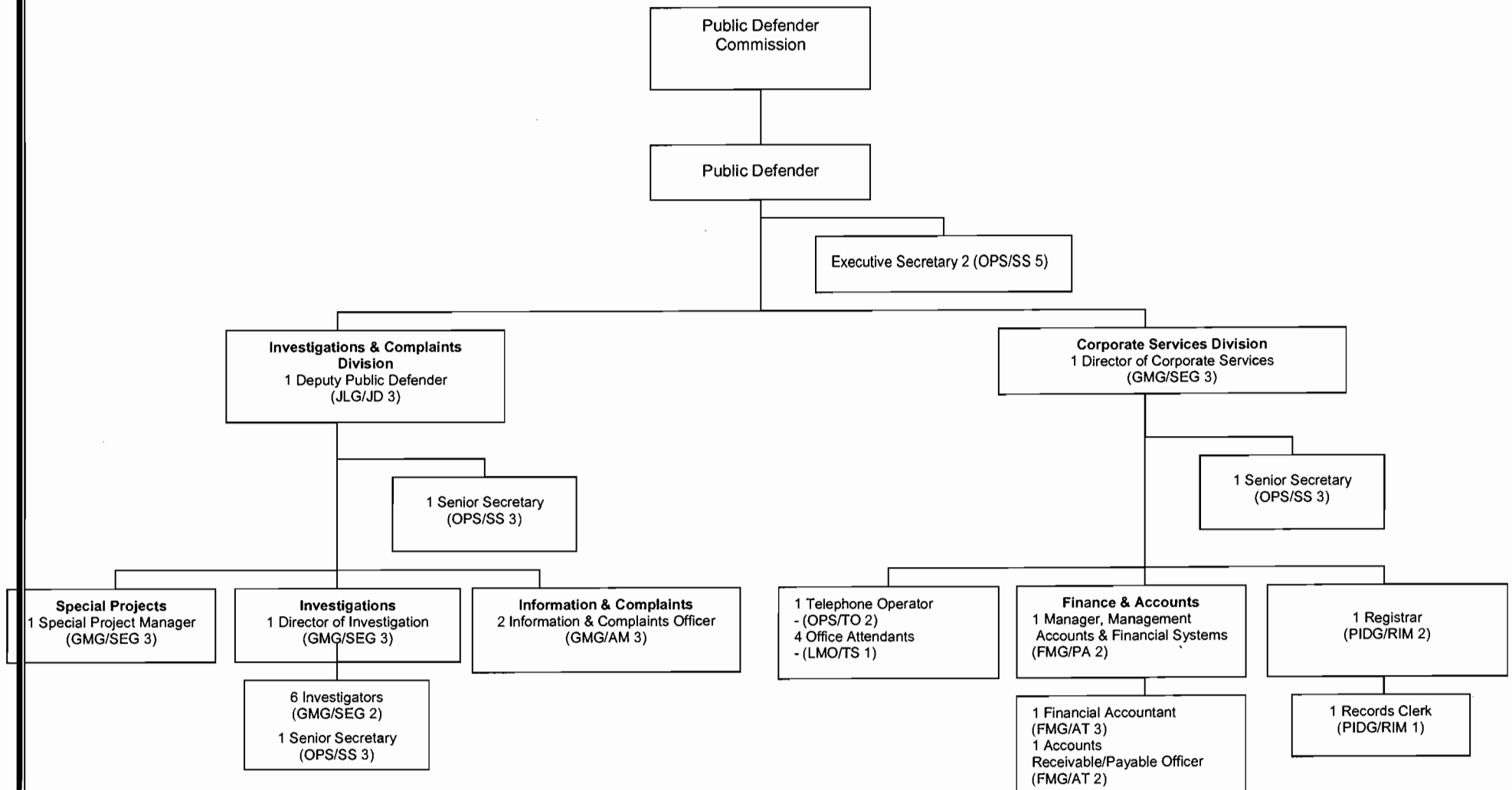
INSIST on it, POLITELY.

The Public Defender

Existing Organizational Chart

Office of the Public Defender

Existing Organizational Structure
Jan. – Dec. 2016



Organizational Review January 2016, the Office of the Public Defender

INTRODUCTION

This presentation marks the Sixteenth (16th) Annual Report to Parliament for the Office of the Public Defender. The Report spans the period January 1, 2016 to December 31, 2016, and in accordance with its statutory provision, includes the statistics for the number of complaints received, investigated and closed, under review over a two-year period.

The Public Defender, an independent Commission of Parliament, was established under the **Public Defender's (Interim) Act 2000**, which came into effect on April 16, 2000. This Commission is mandated to ensure that where any citizen suffers injustice, resulting from maladministration, appropriate redress is secured.

This Report also reflects case summaries of some matters in which we intervened and there are also a few highlighted cases for 2015. Included also are excerpts in regard to public relations. This was in an effort to create greater awareness of the role and function of the OPD service offered to the country.

The Office expresses its appreciation to all our valued complainants, and other stakeholders, for their continued support. Special regards to the resilient staff (officers), in their efforts to maintain an unyielding passion as we endeavor towards being "A voice of the voiceless . . . to loose the chains of injustice".

HISTORY OF OFFICE OF THE PUBLIC DEFENDER

The idea of having an Ombudsman in Jamaica came about through the inspiration of Mr. Dudley Thompson, Q.C., one of our legal pioneers, when he first spoke about it in 1966. The Ombudsman's Act was passed in Jamaica in November 1978 and the Office of the Ombudsman was located at 78 Harbour Street, downtown Kingston, until September 2014. Mr. Errington George Green (E.G Green), was the first Ombudsman to start the mission towards justice for all citizens who have suffered maladministration by the State or its agencies. He was appointed by the Governor-General, Sir Florizel Augustus Glasspole, to guide, protect and assist Jamaican citizens who thought they did not have a voice. Mr. Green took up the mantle from 1978 to 1990, acting as a guardian of the rights of the people, and held that office for 12 years, doing extraordinary work. Not long after, Mr. Green passed on the baton to Mr. Justice James Kerr, Q.C., who was referred to as a "giant of a man". Justice Kerr served as Ombudsman for Political Matters for 10 years and was Parliamentary Ombudsman from 1991 to 1998. He wanted this Commission of Parliament to achieve its full potential and to be renowned. Justice Kerr wrote to Governor-General Sir Howard Cooke and the Parliament suggesting that the name "Parliamentary Ombudsman" be changed to the "Office of the Public Defender". The name change was enacted on April 16, 2000 simultaneously with the provision of the **Public Defender (Interim) Act, 2000**. This Commission, with its new name, Office of the Public Defender, was now under the leadership of Mr. Howard R. Hamilton, Q.C. History was made in Jamaica when he became Jamaica's first Public Defender continuing the legacy that previous great men had passed on. He gave this Commission eight years of magnificent service from the period 1998 to 2006, two years as Parliamentary Ombudsman, and six years as Public Defender, and did nothing short of what the Commission was mandated to do. The line of service did not stop there, and on September 13, 2006, Mr. Windsor Earl Witter, Q.C. was sworn into office as Jamaica's second Public Defender by Governor-General Professor Kenneth Hall. Mr. Witter was very eager to begin his task in his new place of duty and vowed to carry out his duties confidently on behalf of the Jamaican citizens. Mr. Witter retired on April 7, 2014 and Mr. Matondo Mukulu, Deputy Public Defender, assumed office as the acting Public Defender on April 7, 2014. On January 16, 2016, Jamaica welcomed its first female Public Defender, Mrs. Arlene Harrison Henry. She was sworn in by the Governor General, Sir Patrick Allen. Mr. Mukulu, Deputy Public Defender, resigned on July 2, 2015 and was replaced by Mr. Herbert McKenzie on September 1, 2015.

**Auditor-General's Report 2012/2013; 2013/2014; 2014/2015/2015/2016 - Still
outstanding from Auditor-General's Department of Jamaica**

STATISTICS

STATISTICS
COMPLAINTS HANDLED BY THE
OFFICE OF THE PUBLIC DEFENDER
2000 - 2016

Particulars	Figures	Total
Number of complaints received from 2000 – 2015	12,440	
Number of complaints received in 2016	426	
Total number of complaints received from 2000 – 2016		12866
Number of complaints closed from 2000 – 2015	7653	
Number of complaints closed in 2016	1019	
Total number of complaints closed from 2000 -2016		8672
Number of complaints pending for 2015	1494	
Number of complaints pending for 2016	246	
Total number of Complaints pending as at 2016		1740

**BREAKDOWN OF COMPLAINTS RECEIVED IN 2015 CATEGORIZED BY PARISHES
AND EXTERNAL COMPLAINTS**

PARISHES	TOTAL COMPLAINTS FOR 2014	PERCENTAGES (%) FOR 2014
Clarendon	26	5.43
Hanover	4	0.84
Manchester	15	3.13
Portland	13	2.71
St. Andrew	13	2.71
St. Ann	18	3.76
St. Catherine	96	20.04
St. Elizabeth	21	4.38
St. James	11	2.30
St. Mary	5	1.05
St. Thomas	18	3.76
Trelawny	10	2.09
Westmoreland	10	2.09
Kingston	207	43.22
External Complaints		
England	2	0.42
USA	7	1.46
Other countries	2	0.42
Unspecified location	1	0.21

SPECIAL REPORTS

LLANDILO STORAGE AND DISTRIBUTION PLANT AND BLOCK-MAKING PLANT WESTMORELAND

INTRODUCTION

1. The Public Defender became aware of allegations that there existed in Llandilo, also known as Farm Pen, in the parish of Westmoreland, a petroleum storage and Liquid Petroleum Gas (LPG) dispensing facility and block-making plant immediately next door to a residential dwelling. The allegations were previously highlighted in the **Sunday Gleaner** of May 29, 2016. That story carried vivid photographs of huge cylindrical-shaped storage tanks mounted on concrete pillars. Thereafter, the owner of the dwelling house contacted the Public Defender and formally complained. He raised a number of concerns and issues that required investigation.
2. The Public Defender considered that the proposed development described above seemed to be an industrial development located next door to a dwelling house. On the face of that which was presented, issues of safety, zoning, transparency, community consultations, and property rights were engaged.

THE COMPLAINT

3. The complainant expressed his strong objection to the proposed use of the land located next door to his home in a letter to the Westmoreland Municipal Corporation which was hand-delivered to the Corporation in February 2016. The complainant goes further and says he handed his letter of objection directly to Mr. Bertel Moore, Chairman of the Municipal Corporation, and Mayor of Savanna-la-Mar,, “Dan Dan” Thomas, Councillor for the division, Mrs. Opal Beharrie, the Corporation’s Secretary/Manager, Mrs. Grace Whittle, the Director of Planning, and the Superintendent of Roads and Works. On the complainant’s account these letters were all signed for by the “...stated individuals to prevent future denials of non-receipt of same.”

4. Up to the time of preparing this report, the Westmoreland Municipal Corporation has not acknowledged receipt of his letters and has failed, refused, and or neglected to provide the complainant with a response.

5. In the complainant's words he contends that:
 - 1) there was a party who applied for approval to establish a block-making factory and a gas-refill depot at Farm Pen *"...located ATTACHED to my 3 properties, that were Approved over 20 years ago by the Westmoreland Parish Council as an Approved Residential Sub-Division."*

 - 2) *"...these lands to my certain knowledge were either "Farm Lands" or Residential Lands."*

 - 3) the noise nuisance is just one issue also; there was a promise given to the complainant by a Mayor that there would be no block-making factory in the Farm Pen community.

 - 4) there was a 60,000-square foot warehouse erected without approval, and reports of *"squatting"* and *"Unapproved Land Dumping and Settlement."*

 - 5) his land, in his opinion, is located in an area which is *"100%"* residential.

 - 6) the developer acted in a manner that suggested that he was above the law and was assisted and supported in that conduct by persons employed by the Westmoreland Municipal Corporation.

6. The Public Defender understands the complainant to be saying that:

- as a registered proprietor of lands, that is, three lots of land, he has a legitimate interest in any development which directly adjoins his registered properties and in particular the lot upon which he resides.
- he has an entitlement to be treated fairly and equally
- the legal description on each of his registered titles is residential, and any change of use to commercial or industrial, requires a process of consultation particularly where a change of use will affect his peaceful and quiet enjoyment of real property.
- any change in use of land or zoning will place limitation on his private property rights, and chip away at his autonomy and control over his lands and his interest therein.
- the change of use from residential or farm lands to commercial will not only change the character of the community but will devalue his dwelling house, and reduce his quality of living and peace of mind.
- he has a right to his properties. Equally, he argues, he owns the property in his rights.
- The Westmoreland Municipal Corporation has committed acts of maladministration resulting in an injustice, a violation of his rights in the conduct of their duties towards the complainant, and has treated him with scant regard, and discourteously.
- The Corporation has conducted its affairs without notice to the community and without transparency
- finally, the registered restrictive covenants on his titles and those on the developer's title and covenants on other lands represent an agreement among owners that restricts the use and enjoyment of land for the benefit of other lands.

JURISDICTION

7. The Public Defender is empowered by section 13 (1) of the **Public Defender (Interim) Act, 2000** to investigate any action where she is of the opinion:
 - (a) That any person or body of persons-
 - (i) has sustained injustice as a result of any action taken by an authority or an officer or member of such authority, in the exercise of the administrative functions of that authority;
 - (ii) has suffered, is suffering or is likely to suffer an infringement of his constitutional rights as a result of any action taken by an authority or an officer or member of that authority;
8. The aim of the investigation therefore is to ascertain / test whether the complainant has sustained an injustice as a result of an action of the authority or an officer or member of such an authority done in the performance of administrative functions. The authorities involved in this investigation are the Westmoreland Municipal Corporation and the National Environment and Planning Agency (NEPA).
9. The investigation is also to test whether the Westmoreland Municipal Corporation and the National Environment and Planning Agency acted not only pursuant to law but also whether procedural fairness embedded in law which offers protection to all parties including the complainant, were adhered to/applied in the processing of the developer's applications.

THE CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS

10. The Charter enjoins all of us to preserve for ourselves, our families and future generations, the fundamental rights to which we are entitled by virtue of our:
- inherent dignity as persons
 - and as citizens and
 - of a free and
 - democratic society
11. In articulating shared responsibility for the protection of these fundamental rights the Charter places a duty on each one of us to respect and uphold the rights of others, those rights being those enumerated in the Charter. Of relevance to this investigation is the statement that all persons are entitled to “inherent dignity as persons and as citizens living in a free and democratic society.”
12. The rights engaged in this investigation relate to:
- the respect for and protection of private and family life, and privacy of the home
 - the right to equality before the law
 - the right to equitable and humane treatment by any public authority in the exercise of any function;
 - the protection of property rights and
 - the right to be treated equally, fairly and with dignity.
13. This investigation reveals the existence of what appears to be a large informal settlement in the immediate vicinity of the proposed development. Those settlers’ rights may also be impacted by the proposed development or any development in the community. The rights of these citizens, the complainant’s and developer’s are considered with equal measure.

14. The Charter of Fundamental Rights and Freedoms does not contain a provision guaranteeing the right to housing or reasonable or adequate housing but that right is inferentially contained in the right to life. The right to reasonable housing is recognized in the South African Constitution wherein the right to adequate housing is regarded as one of the most important of all human rights.
15. In the landmark case of the Government of the Republic of South Africa v Grootboom, the Constitutional Court interpreted the right of access to adequate housing in the following words:

“Housing entails more than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all these, including the building of the house itself. For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, and there must be a dwelling. The right of access to adequate housing also suggests that it is not only the State that is responsible for the provision of houses, but that other agents within society, including individuals themselves, must be enabled by legislative and other measures to provide housing”

16. Jamaica is a signatory to treaties which protect an individual’s right to own and enjoy property, for example, Article 17 of the Universal Declaration of Human Rights, provides that:
“every person has the right to own property alone or in association with others.”
17. Several other human rights instruments not only protect the right to own property but also the right to use and enjoy one’s property.

METHODOLOGY OF INVESTIGATION

18. The complainant contacted the Public Defender by telephone. Several telephone interviews were conducted with the complainant, and the complainant's wife was interviewed when a site visit was made. The Public Defender interviewed the Chief Executive Officer of the National Environment and Planning Agency, (NEPA) Mr. Peter Knight, the Director, Legal and Enforcement Officer of NEPA, Ms. Morjorn Wallock, and Mr. Leonard Francis, Director of Spatial Planning, two officers of the Westmoreland Municipal Corporation, Mrs. Opal Beharie, the Secretary/Manager, and Mrs. Grace Whittley, Director of Planning. The developer and his wife attended on the Public Defender and presented their account. The developer's wife is an attorney-at-law engaged in private practice in the parish of Westmoreland. Her capacity at our meeting was that of a wife and business partner.
19. It was critical for the developer to attend not only for the Public Defender to hear his account but also because during the course of the investigations he called the Public Defender and reminded her that some time ago he, the developer, had consulted with her at the private bar. The Public Defender recalls the consultation but did not know that the developer in the instant investigation was one and the same person who consulted her previously.
20. This information was communicated to the complainant and to NEPA. At the onset of the interview of the developer, the matter of a conflict of interest real, perceived, latent or patent, was raised by the Public Defender and discussed both with the developer and his wife and business partner. Both expressed confidence in the process at the Office of the Public Defender and they expressed that they were comfortable in engaging in the investigative process with the Public Defender.
21. Articles in the print media were perused, correspondence were exchanged between the Public Defender, the Westmoreland Municipal Corporation and the National Environment and Planning Agency (NEPA). Minutes provided by the Westmoreland Municipal Corporation were perused. An examination was undertaken of the Westmoreland Development Order, the complainant's titles, the developer's common law indenture, other instruments, laws, protocols and standards.

22. The complainant also made complaint to the Ministry of Local Government.

VISIT TO THE LOCATION - OBSERVATIONS

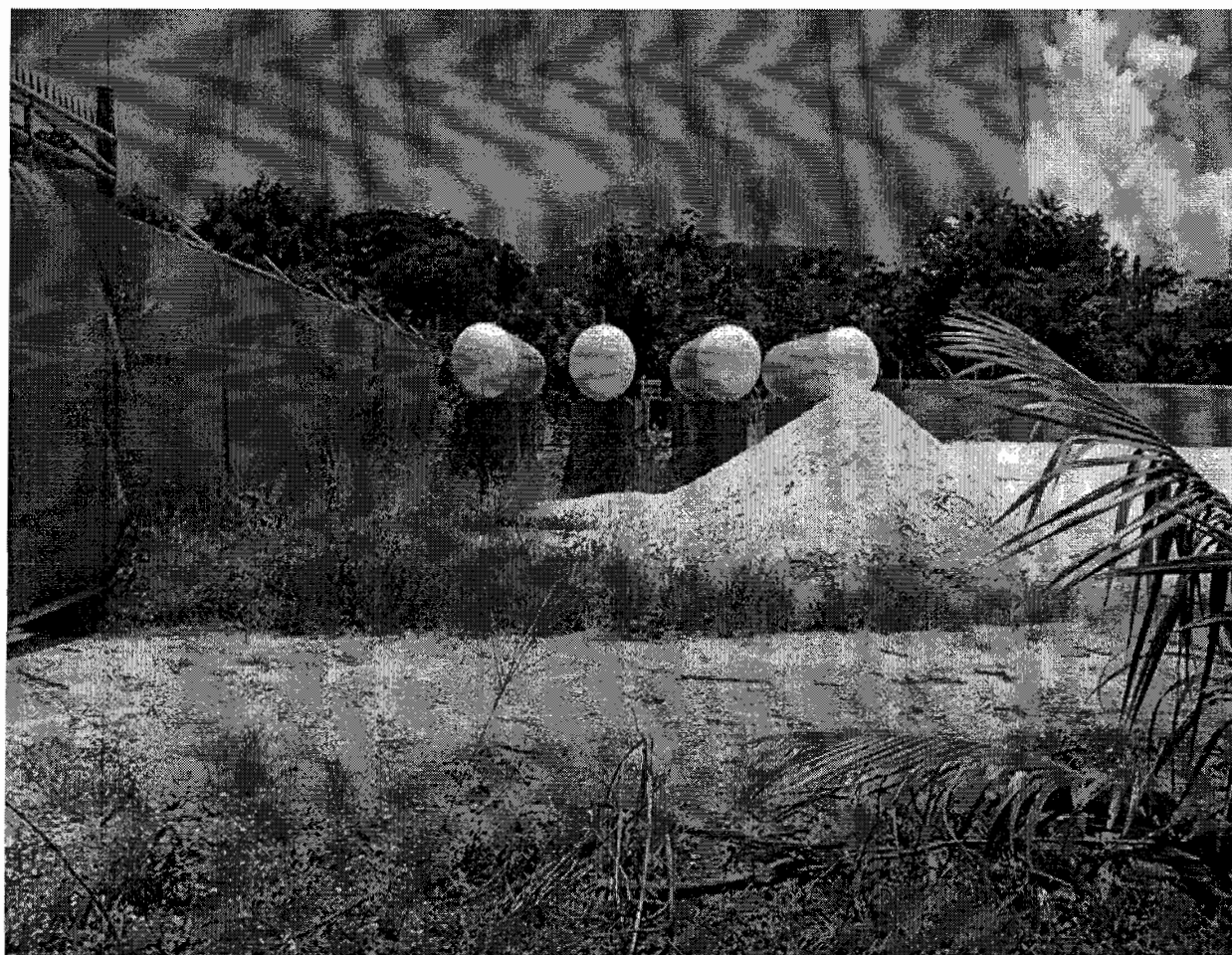
23. On arrival at the location of the development on June 2, 2016, the first observation made was that an extremely large tree, on what appeared to be road reservation, was felled. The destruction of the tree seemed to be a wanton act as the tree was outside of the fenced area. It did not appear to be in the way of any development or activity. In the interview with the developer, he expressed the opinion that the tree was on his land.
24. *It is recommended, if not already in operation, that the Westmoreland Municipal Corporation extends Tree Preservation Orders on all aged trees, clusters of trees and woodlands, to ensure their protection.*
25. The premises on which the development was taking place was enclosed with a chain-link fence and concrete wall. Visibility from the frontage of the property was blocked by blue tarpaulin or some screen behind the chain-link fence. The large aged old tree on the ground had to be climbed upon to gain visual access into the compound.
26. The Public Defender confirmed that massive industrial type cylindrical storage tanks were mounted horizontally on concrete pillars which were installed in the ground. In addition, there were pipings, fittings, valves and turn-off handles and other apparatus connected to the very large tanks. The other observation was of a concrete structure further back on the premises which appeared to be a block factory or a stone-work operation.
27. In an interview with Mr. Peter Knight, Chief Executive Officer of National Environmental Planning Agency (NEPA), printed in **The Gleaner** of May 29, 2016, Mr. Knight is reported to have said that on February 18, 2016 NEPA conducted a site visit and on that day LPG tanks were on the site but not installed.
28. *From the observations made at the location it appeared plain that the development on the land was far advanced. A commercial petroleum storage and LPG -dispensing facility was erected and was well on the way to opening for business.*

PHOTOGRAPHS

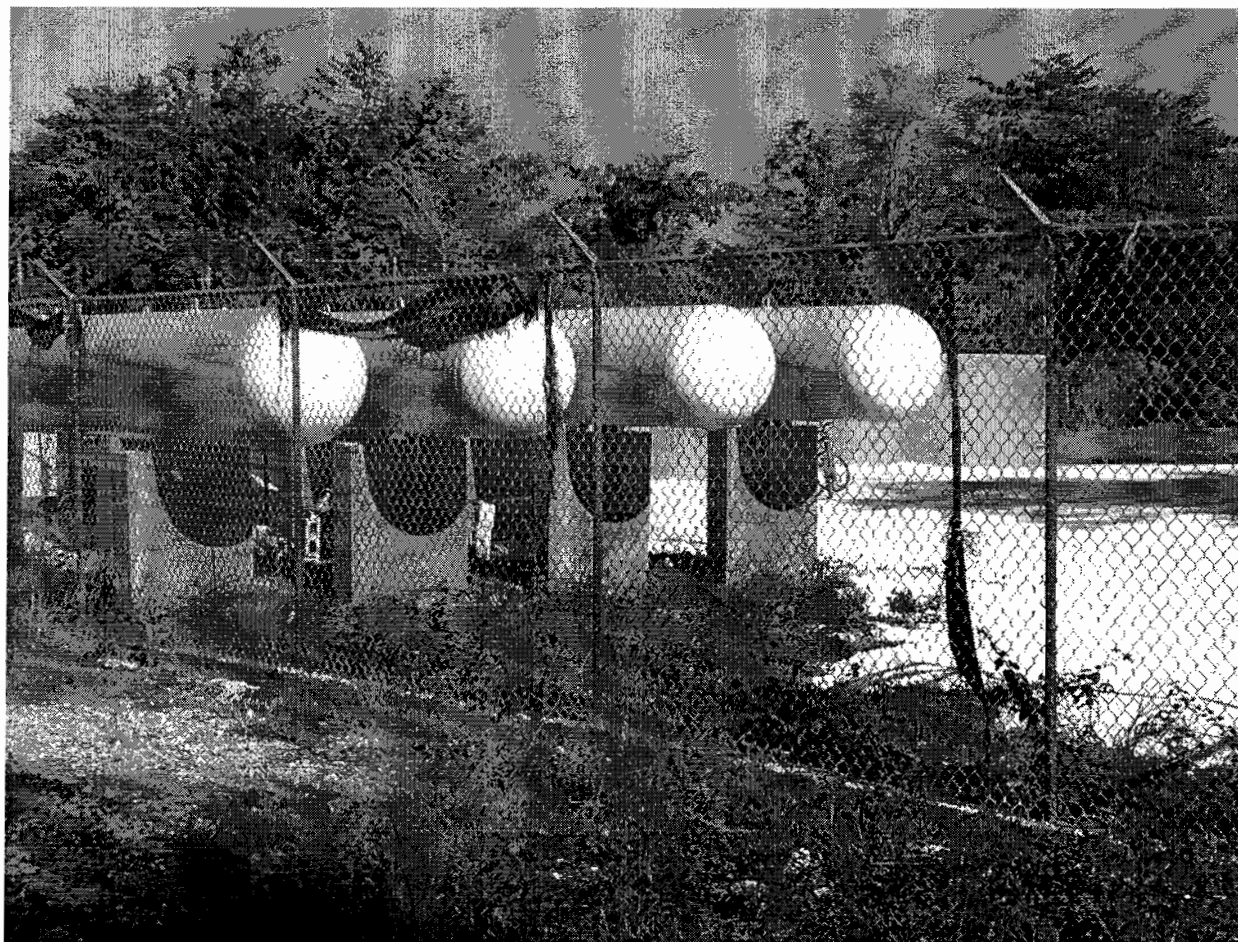
29. The images below represent what was erected on the land as at May 29, 2016 and the observations made on June 2 on the Public Defender's site visit.
30. Below shown in the foreground are portions of the tree outside of the fenced area.



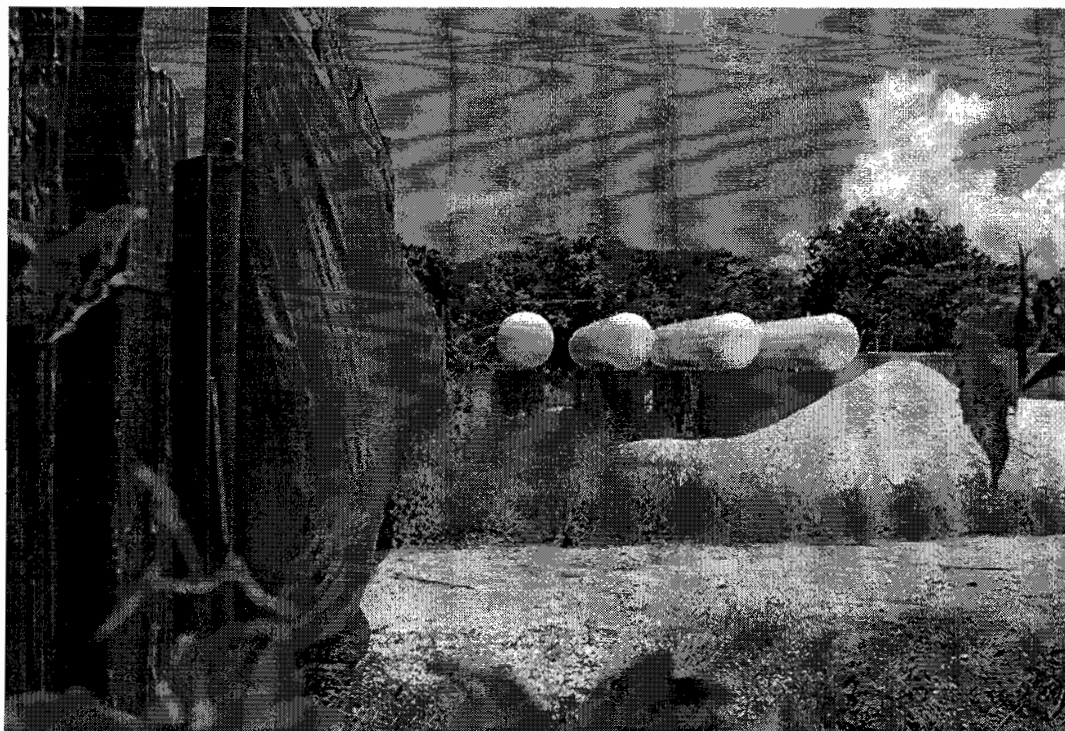
The frontage of the development property as described herein.



The four cylindrical tanks mounted on concrete pillars seen on the location.



A closer view of the cylindrical tanks mounted on concrete pillars.



31. At the location, the Public Defender met with the complainant's wife. It was confirmed that the complainant's land and dwelling house, where he lived, was immediately next door to this already-erected facility. The dwelling house is a substantial concrete block-and-steel building that appeared to be of a long-standing nature.
32. There is a dirt road off the Farm Pen main road leading to the development and also to the complainant's home and to homes of what appears to be multiple informal settlers occupying wooden houses, small concrete structures, and some, a combination of wood and concrete, two of which are directly in front of the development.
33. What seems clear from this visit is that the land used to accommodate the LPG storage facility and block-making factory businesses while sharing boundary with the complainant's land is located in a predominantly residential community. On a cursory

inspection of the community the proposed use of the land appears to be in conflict with the present usage of land in the specific location.

34. The development was well established and near being operationalized.
35. Development on the Farm Pen main road can be described as mixed, consisting of dwelling houses, shops, car-repair shops and other businesses. The site in question is not on this main road or any main road and does not share a boundary with any main road.

NEPA'S DESCRIPTION OF THE DEVELOPMENT

36. The material provided by NEPA's CEO Knight about the development, confirmed the visual observations made by the Public Defender on the site. CEO Knight provided the specific details of the development which included the installation of four (4) 2,000-gallon metal above-ground tanks for the storage, re-filling, stockpiling of and dispensing of LPG. Confirmation from NEPA related also to the infrastructure and pipelines necessary for the receipt of the LPG into tanks and subsequent filling of cylinders, the establishment of a loading bay, and otherwise.
37. The CEO also confirmed the developer's intention to establish a block-making plant. The developer proposed using a mechanical concrete pan mixer and "*...a mobile egg-layer block machine.*" It is said that this type of machine does not require pallets or racks.
38. In NEPA'S Technical Review Committee report dated 1 March 2016, there is reference to the existence of "*concrete slabs*" already on the location which replace the need for racks or pallets. The result is that the mobile egg-layer block machine is able to drive on the slab and lay down blocks.

39. The machine to be used in the plant has the capacity to manufacture 4,000 six-inch blocks every eight hours. The slab for storing blocks is 4,000 square feet and can accommodate 3,500 blocks.
40. It became clear that this facility already installed in the ground is for a large-scale storage, distribution and manufacturing operation including block-making to involve the use of a forklift, the storage and curing of blocks and the distinct likelihood of noise, dust and emission.
41. It is important to note that on the said visit to the location, material which appeared to be part of the block-making process was already stockpiled and stored on the ground. Of necessity, the operation immediately next door to the complainant's home is one that would be driven by traffic, human and vehicular, and would in and of itself cause a disturbance to the complainant's peaceful and quiet enjoyment of his private dwelling house and peace of mind.
42. On a broader note, it was noted that development in the town of Savanna-la-Mar, and adjoining communities, appeared to be somewhat mixed, in that, residential areas are mixed with commercial and industrial activities. While the Public Defender is not a planner and possesses little expertise in planning, it appears there is need for greater attention to be paid to zoning and the keeping of like activities together.
43. On the main road to the specific site there were business places and single dwellings. This particular site is off the main road and is located in an area which on a cursory examination is residential, in the main consisting of single dwellings used as private residences including a large number of informal settlers.

RESTRICTIVE COVENANTS

44. This investigation involves three registered titles and one common law indenture. All title instruments were examined. The developer is not the owner of land but has permission from his father in whose name the common law indenture is registered. Endorsed on each instrument of title are restrictive covenants. A **restrictive covenant** is an agreement between owners of land that restricts the use and enjoyment of land for the benefit of other lands. In applying that definition to the facts herein the restrictive covenants on the complainant's titles and the developer's title exist to offer protection one to the other and to the lands in the area in respect of the use of the land for the benefit of the other owners and ultimately the community.
45. The restrictive covenants recorded on the complainant's three registered titles prescribe that the development on his lots is solely for the *erection of a single dwelling house*.
46. Such a restriction is similarly recorded on the developer's title.
47. The restrictive covenants on the complainant's three registered titles are reproduced exactly as recorded on the titles:
- “1. The land above-described (hereinafter called “the said land”) shall not at any time be sold, let, demised, alienated, disposed of or the possession thereof parted with or otherwise dealt with in any manner except in its entirety as one lot.
 - 2. No school house, chapel, meeting house, or tenement house and no shop or other place for the carrying on of any trade or business of whatsoever nature or kind is to be erected on the land above-described (hereinafter called “the said land”) or any part thereof.**
 - 3. There shall not at any time hereafter be erected on the said land more than one dwelling house with the usual outbuildings to be used as a private dwelling only which shall be at a cost of no less than Two Thousand Pounds and except as aforesaid no detached outbuildings shall be erected thereon.**

4. No building shall be erected on the said land at a distance of less than One Hundred feet from the main road leading from Frome to Savanna-la-Mar.

5. All buildings shall be erected parallel to the direction of that portion of the main road aforesaid on which such building shall face.”

48. The complainant’s registered titles are dated 1st December 1992, and two dated 23rd January 2007.

49. The developer’s title is by way of a registered Indenture dated 3rd day of July 1970. Restrictive covenants 2 and 3 on the complainant’s registered titles are replicated on the developer’s instrument of Indenture at paragraphs 2 and 3 in the Second Schedule of the Indenture which reads:

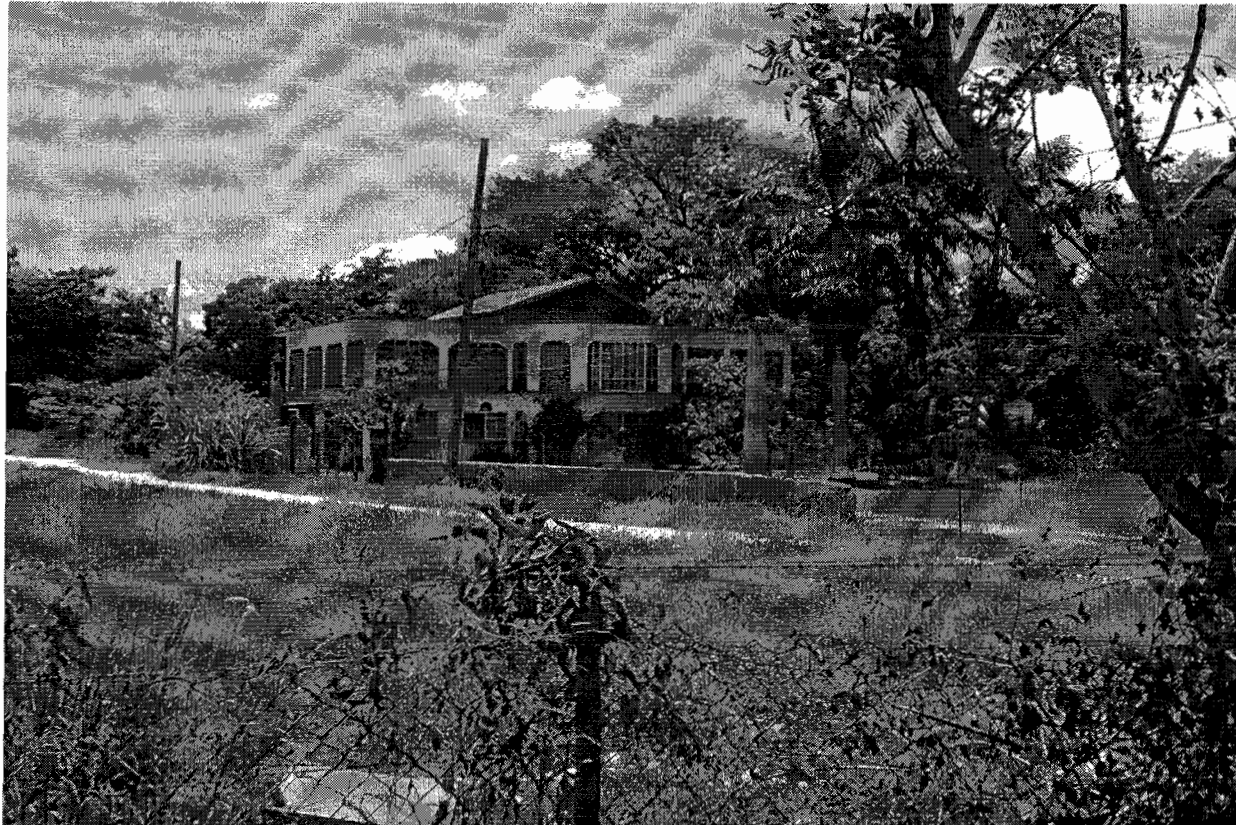
“ 2. No school house, chapel, meeting house or tenement house and no shop or other place for the carrying on of any trade or business of whatsoever nature or kind is to be erected on the said Lot or any part thereof.

3. There shall not at any time hereinafter be erected on the said Lot more than one dwelling house (with the usual out-buildings) to be used as a private dwelling only which shall be at a cost of not less than Four Thousand Dollars and except as aforesaid no detached out-building shall be erected thereon.”

50. In 2007 by an order of the Supreme Court of Jamaica the Local Planning Authority was empowered to vary the usage of lands described in complainant’s titles.

51. The restrictive covenants remain unchanged at the time of writing this report.

52. Covenants applicable to all the lands involve in this investigation specifically prescribe that there shall be no more than one dwelling house erected on each lot.
53. Words of the restrictive covenants are to be given their ordinary and everyday meanings. The agreement amongst owners announced by the covenant is that no more *than one dwelling house with the usual outbuildings is to be erected on each lot and such dwelling house is to be used as a private dwelling only*. A *single dwelling* covenant exists on the complainant's 3 registered titles as well as on the developer's registered Indenture. The covenants prohibit and restrict, inter alia, certain activities on all the lands in question such as trades, businesses church, schools etc. The restriction on the establishment of trades, schools, churches is confirmatory that activities on these lots are only for residential purposes limited to '*a private dwelling*' and a single dwelling on each lot.
54. In conclusion, the lands are for a specific type of residential purpose, that is, for *single dwellings*. Of this there can be no reasonable dispute.
55. Below is a photograph of the complainant's home and a dirt road leading to the development and informal settlement.



56. I find as a fact that the complainant has acted within the terms of the restrictive covenants and with due regard for the protection of other lands in the area to be used for the erection of single dwelling homes only, to be used as private dwellings.

CHANGE OF USE - DEVELOPER'S APPLICATION

57. The developer explained that on the advice of a friend he sought the assistance of NEPA'S Development Assistance Centre (DAC) in guiding him through the process of obtaining approvals in respect of the establishment of an LPG storage and dispensing facility and blocking-making factory.
58. Before approaching the DAC he was first advised to obtain a change of use of land in respect of the intended development. The developer offered as the existence of a change of use, a letter from the Ministry of Agriculture and Fisheries, Land Management Division, dated February 18, 2014 over the signature of Mrs. Joan Brown-Morrison, described in the letter as "a Director." According to that Director:
- "The Ministry of Agriculture and Fisheries has **no objection** to a request for a change of use concerning lots A and B. The site is located within the urban extent of Sav-La-Mar and is zoned as commercial / residential in the provisional Development Order, 1995."*
59. Prior to meeting with the developer and his wife/business partner, the Public Defender asked the Secretary/Manager of the Municipal Corporation to provide her with a copy of documents or otherwise, evidencing the existence of the change of use. The Secretary/Manager under a cover letter of 2016, May 30 provided a copy of the very same letter to the Public Defender. The contents of which were read in the verbatim notes of the proceedings at the OPD.
60. In the said cover letter addressed to the Public Defender the Secretary/Manager opined that the letter under the hand of Mrs. Joan Brown-Morrison, Director, was the document authorizing the change of use of the land owned by the developer's father.

61. The letter of February 18, 2014 from the Ministry of Agriculture and Fisheries was addressed to Mr. Errol Brooks, of Errol V. Brooks and Associates, Architect, Contractor of a Savanna-la-Mar address.
62. The opinion formed by the Public Defender is that Mr. Errol Brooks was making an enquiry on behalf of the developer or his father as to the Ministry of Agriculture and Fisheries' position in respect of a change of use.
63. The matter of the change of use in respect of the land to be developed was considered by the Westmoreland Municipal Corporation. Minutes of a Committee meeting of the Westmoreland Municipal Corporation shed light on this change of use, and how it is supposed to have come about. In a discussion in the Committee in June 2016 noted at item 26 at page 478 under the heading "Letter from NEPA –Re: Application for Environmental Permit for Petroleum Storage – Llandilo on an enquiry from Councillor M. Miles as to the location for the development, the Director of Planning responded to the enquiry thus:
“ it was located at Farm Pen, Llandilo. She explained that with this matter an application was made by Andrew Williams for a petroleum storage plant and block factory. She informed that the area was originally zoned for Agricultural purposes however Mr. William’s father had requested a change of use for the property to mixed use and there were no objections from Ministry of Agriculture.”
64. In the result, one individual, father of the developer and a former employee of the then Westmoreland Parish Council, requested a change of use and because the Ministry of Agriculture had no objection, a change of use was somehow given effect and was put into effect by the Westmoreland Municipal Council.
65. The full import of the letter from the Ministry of Agriculture is that the lands related to Lots A and B and the land is located within the urban extent of Sav-La-Mar and is zoned as commercial /residential. It is assumed that Lots A and B make up the lands belonging to the developer’s father.
66. This change of use was occasioned by a private application made by a private citizen.

67. The community was not notified of what the Director of Planning regarded as a change of use application brought by the developer's father. The community had no way of knowing that the opinion expressed by the Ministry of Agriculture and Fisheries was now regarded as the change of use by the Corporation. The Director of Planning, Mrs. Grace Whittley, explained thus:
- “This development, when Mr. Williams would have sent his application to NEPA, it will go before the T.P.C.A., which is the Town and Country Planning Authority, and on this virtue now they would be able now, with these no objection letters from Ministry of Agriculture they will now make a determination, whether or not they would be granting a change of use.”*
68. The complainant's woes started with this apparently covert application for a change of use made by the developer's father, the owner of the land.
69. The community was not notified of this application, no opportunity to respond, to object or to support the application, to make their voices heard, to participate in the process and the right of appeal allowed, thus denied. This was a matter involving the community whose voices had to be accommodated and heard in their community development.
70. It is to be noted that the Westmoreland Municipal Corporation in of itself had the power in law to receive and deliberate on an application for a change of use of the lands in question. Before approval could be given to such an application, notice of such an application had to be given to the community. It could not be conducted in secrecy as occurred in the instant case.
71. An exclusionary approach has no place in good and effective governance at any level.
72. *I find as a fact and law that the letter aforesaid under the Director's hand is not evidence of a change of use. The Director of the Ministry of Agriculture and Fisheries offered an opinion which could have started or be a part of the process of a change-of-use application. In addition, the Ministry of Agriculture is not vested with the jurisdiction, authority or otherwise to grant a*

change of use. The Ministry's duty is to offer an opinion as it did. The Ministry's duty is to ensure that worthy agricultural lands are not utilized for any purpose other than for agricultural development.

73. *I find as a fact that the purported change of use process utilized by the developer and accepted by the Westmoreland Municipal Corporation was contrary to law, privately initiated by an agent of the developer without notice to or knowledge of the community.*
74. *I find as a fact and law that the use of the said letter as the authority of a change-of-use is an act of maladministration that has caused harm and injustice to the complainant. I find that the Westmoreland Municipal Corporation sought to assist obtaining a change of use through the back door to be an act of maladministration.*
75. *I find that every procedural safeguard existing in law to protect not only the complainant but others in his situation were cut from underneath him without even the courtesy of notice.*
76. *I find that there was no community engagement, the process of natural justice excluded, indeed not contemplated.*

NO-OBJECTION LETTER ISSUED BY THE WESTMORELAND MUNICIPAL CORPORATION

77. The matters unearth in this investigation go well beyond questions surrounding the change of use which will now be addressed and which include an aged Development Order, a "*no objection*" letter issued by the Westmoreland Municipal Corporation, planning permission and a continued refusal to recognize that citizens are entitled to be engaged in discussions of development and to import and entrench principles of natural justice and transparency in governance.
78. Shortly after receiving what he regarded as a change of use, the developer submitted his applications for environmental permits to NEPA'S Development Assistance Centre (DAC) on 4th March 2014. The Public Defender accepts that the persons employed and engaged in the DAC are persons possessed of planning expertise and suitably qualified to express technical planning opinions.

79. The DAC which consists of independent technical personnel expressed reservation about the intended development at that location. The DAC'S position was that the intended use of the land was in conflict with the present use of surrounding lands which the DAC determined and assessed to be *“predominantly residential.”*
80. A director of the DAC stated plainly in the letter of March 19, 2016 to the developer that:
- “Having reviewed the proposal and examined it in the context of existing planning and environmental requirements, the DAC has identified the potential conflict with the existing surrounding land use, which is predominantly residential and the proposal which is an industrial use as an issue that may pose an impediment to the development as proposed.”*
81. Of note is the fact that this letter was copied to the Secretary/ Manager of the Municipal Corporation Mrs. Beharie, as was expected.
82. In the Public Defender's interview with both the Secretary/ Manager, Mrs. Beharie, and the Director of Planning, both surprisingly insisted that the *“no objection,”* letter was issued at the instance of the developer asking for it, and not as a requirement from the DAC. In fact, the Director of Planning, Mrs. Whittley, went further to say that such a letter, that is, a *“no objection”* , is issued only *“...when a applicant asked for an enquiry we would have issued that...”* and further such a letter is issued when an enquiry *precedes* an application.
83. The Public Defender finds that the Westmoreland Municipal Corporation had actual knowledge that the DAC had characterized the area in which the development was sited to be *“predominantly residential”* and this was regarded as an impediment to the nature of the intended development.

84. The DAC decided not continue to process the application without first receiving the opinion of the local planners, that is, the Westmoreland Municipal Corporation. The developer himself explained that the DAC insisted that he, the developer, present a *“no objection”* letter from the Westmoreland Municipal Corporation, otherwise, the DAC would not proceed with considering his application.
85. The developer explained that the DAC put him through a *“rigorous”* process and it was the DAC that demanded the *“no objection”* letter. In his own words he said:
- ”But the DAC is the one that gave us this rigorous - because in the response they wanted a no objection letter first of all from the Parish Council before they could have proceeded any further.”*
86. The developer was careful in his explanation that the DAC would not proceed any further with his application for developmental approval without the *“no objection”* letter.
87. The Municipal Corporation’s Director of Planning, Mrs. Grace Whittley, and the Secretary/ Manager, Mrs. Beharie, both gave a completely different account as to the origin of the *“no objection”* letter.
88. The Director of Planning said that the *“no objection”* letter under her hand for the Secretary/Manager was given to the developer on the instructions of the Physical Planning Committee. On the Director’s account this letter came about because the developer made an *“enquiry”* which preceded his application to the Westmoreland Municipal Corporation, as to its position about the intended development on the said land. The Secretary/Manager was present when these words were spoken and made no comment.
89. The Public Defender understands the Secretary/Manager to have adopted the account given by the Director of Planning. In fact, she was nodding approvingly when the Director of Planning was giving the explanation.

90. The Director of Planning in the presence and hearing of the Secretary/Manager stated plainly that she was unaware of the DAC'S characterization of the community as *"predominantly residential."*

She went further to say that:

"The D.A.C. did not send back a comment to us."

91. The Public Defender rejects the explanation of the Director of Planning and the Secretary/Manager as to the origin of the *"no objection"* letter. The Public Defender finds as a fact that both the Director of Planning and the Secretary/Manager were aware of the D.A.C.'s characterization of the community.

92. *The Public Defender understands what the Westmoreland Municipal Corporation calls a 'no objection' letter dated July 27 2015, is a green light for the development to proceed, and so finds.*

93. The Director of Planning, and the Corporation's Physical Planning Committee did not agree with the DAC's assessment, namely, that the area on which the development was to be located was *"predominantly residential"*, and contended that its investigations revealed that the usage of the land in the area was mixed.

94. By letter of July 27 2015 the Director of Planning, Mrs. Whittley, signing for the Secretary/Manager, advised CEO of NEPA, inter alia that:

- a) there are no current objections to the proposed LPG filling plant located at Lots A and B part of Llandilo in the parish of Westmoreland;
- b) the location of the intended development lies off the Farm Pen main road;

- c) *the area is currently of mixed usage, both residential and commercial with residential units directly in front of the property*
- d) nonetheless the property in question is approximately 6113.011 square meters in size; and
- e) there is no specific zoning.

The recommendations were that the developer provides:

- details of the proposed development and
- apply and adhere to the relevant development stipulations relating to the proposed development and
- it was also recommended that the developer consults with the community surrounding the proposed development.

95. NEPA was duly informed of the Municipal Corporation's opinion that the development could be considered "since the area is not specifically zoned in the TCP Westmoreland Parish Provisional Development Order (Conformation) Notification, 1978."
96. It is the Public Defender's opinion that the "*no objection*" letter was required by the D.A.C. from the Westmoreland Municipal Corporation because the intended development was not in conformity with the Development Plan, and the views of the local authority, that is, the Westmoreland Municipal Corporation was sought by the DAC in respect of planning permission.
97. The DAC then communicated the thinking of the Westmoreland Municipal Council to the developer by letter of August 5 2015. After receiving the blessing of the Westmoreland Municipal Corporation the DAC invited the developer to resubmit his

application along with a community survey. The community presumably was now to be engaged in consultation about the intended development and this was to be done by the developer.

98. The developer submitted applications for environmental permits to construct and operate a petroleum-filing station and another for the construction and operation of a mineral-processing facility.
99. The Director of Planning provided details of her visits to the site, along with the visits to site with the developer, the Superintendent of Roads and Works, and building officers. The developer's presence was necessary according to the Director of Planning, so that the officers from the Westmoreland Municipal Corporation could ask the developer "*...what do you intend to do? Where do you intend to site the plant?*" Elaborating further, the Director said the purpose of the developer's presence was to: "*... let him talk and express himself in terms of what he intends to develop there.*"

Finally, she said:

"His purpose was really to verbalize exactly what he intended to develop on the site"

100. On the Director's account it was after these visits that the "*no objection*" letter was issued.

COMMUNITY CONSULTATION

101. From the information given to the Public Defender, the developer commissioned a survey to be undertaken in the community. He hired a teacher and passed on the instructions given to him by NEPA as to how the survey was to be conducted. It is said that seven persons were "surveyed." The location of these persons and their connection to the community were not known.
102. Of greater importance however, is the nature of questions put; the extent of their interest in the community becomes hugely important in order to assess the level of the consultation. It is said that these person were from the "*surrounding area.*"
103. Though promised, the Public Defender was not provided with the samples of questions used in the "survey", whether those surveyed, lived on the road where the complainant lives, and where the development is erected, or the community in general. There is no information arising from the survey relative to gender, age, occupation or the like, and no analysis of information gathered or the findings of this survey. Predictably, those who were surveyed had no objection to the proposed development.
104. The Director of Planning, and the Secretary/Manager both say the results of the survey have never been provided to the Westmoreland Municipal Corporation. *This is not an accurate statement.* The Public Defender accepts that the developer did provide the Westmoreland Municipal Corporation with the results of the community survey. In addition to which, NEPA is in receipt of the results which exhibit the stamp of the Westmoreland Municipal Corporation.
105. It is to be noted that the "*no objection*" letter called for the developer to consult with the community surrounding the location. In the interview the Director of Planning explained that at least 10% had to be included in such consultations. However, despite these requirements only seven persons were consulted.

106. The Westmoreland Municipal Corporation did not engage in any community consultations, interviews or public consultations meetings in respect of the establishment of the LPG filling station and block factory in the community. That responsibility, it placed on the developer.
107. NEPA was not satisfied with the community consultation conducted by the developer and *“...did undertake public consultation in accordance with the Agency’s public consultations guidelines.”* This time a sum total of nine persons were interviewed by NEPA’s agents, one of the nine objected to the development for health and safety reasons.

THE COMPLAINANT

108. In neither of the two surveys/consultations conducted, was the complainant interviewed. The fact that the complainant was not consulted is not disputed by the Westmoreland Municipal Corporation and NEPA. In its letter to the Public Defender dated 14 June 2016, the Director, Legal and Enforcement Division of NEPA wrote:

“Having reviewed the files within the Agency, there is no indication that Mr. Pitt was consulted and/or that any correspondence regarding Mr. Pitt was forwarded to the Agency.”

109. At a meeting of a committee of the Westmoreland Municipal Corporation in March 2016 Mr. Pitt’s letter was read into the minutes. It is reported that:

“The Director of Planning informed the Committee that they were currently in dialogue about the matter with NEPA.”

110. In email correspondence of September 30 2016 to the Public Defender Mrs. Opal Beharie J.P., Secretary/Manager, admits that up to that date, September 30, 2016, a response had not been sent to Mr. Pitt:

“...as the matter is still being dealt with at the Council’s Physical Planning Meeting.”

111. In addition she informed that:
“No approval had been given by the Westmoreland Parish Council.”
112. The then Westmoreland Parish Council from at least February 2016 became aware of Mr. Pitt’s objection. The Corporation has treated him with discourtesy, in that he has not received even an acknowledgement of that letter, much less a response to address his objection. This state of affairs remains unchanged as at today’s date.
113. When the Secretary/Manager and the Director of Planning were confronted by the Public Defender on this matter in the presence and hearing of each other, the Director of Planning offered that there was **“no particular reason”** for not answering Mr. Pitt’s letter of objection. When taxed further, the Director offered that Mr. Pitt had been in dialogue with herself, the Mayor, the Secretary/Manager and the Superintendent, and that his objection was under investigation.
114. The failure to answer Mr. Pitt’s letter has to be contrasted with the treatment given to the developer by the very same Westmoreland Municipal Corporation, and its officers, to include visits to the site and the issuance of the **“no objection”** letter. The Westmoreland Municipal Corporation allowed the developer full citizenship in his journey to see through his applications. On the other hand, Mr. Pitt was apparently not worthy of even an acknowledgement from this local government entity. The treatment of Mr. Pitt must also be assessed in the context where the Director of Planning has admitted that the development sited next door to Mr. Pitt’s land will devalue his real estate and where, in her own words, she admitted that Mr. Pitt and those citizens/residents in the immediate vicinity of the development will carry the risks associated with the development. These reasons seem not to have been adequate for the local authority to engage Mr. Pitt in discussions and or consultations.
115. The Public Defender finds that Mr. Pitt was not treated equitably and humanely by the Westmoreland Municipal Corporation in the exercise of their functions. The Public Defender finds also that Mr. Pitt was not accorded equal treatment by the

Westmoreland Municipal Corporation. Further, that having obviously taken a decision not to answer the letter or to ignore Mr. Pitt, agents and officers of the Westmoreland Municipal Corporation also took a decision not to share with NEPA the fact of the existence of an objection letter, that may highlight other factors before any approval was given. Further, in assessing the material presented, the Public Defender accepts the statement of *the* Director, Legal and Enforcement Division of NEPA who has denied that the Westmoreland Municipal Corporation is in dialogue with NEPA about Mr. Pitt's objection, as no letter of objection from Mr. Pitt has been forwarded to NEPA.

116. *I find as a fact that NEPA was not informed of Mr. Pitt's letter of objection and I find as a fact that the Westmoreland Municipal Corporation has not forwarded a copy of Mr. Pitt's letter to NEPA and that NEPA became aware of the existence of Mr. Pitt's letter through correspondence from the Office of the Public Defender. I find as a fact that NEPA was not informed of the fact that the developer's father was once employed by the Westmoreland Parish Council, now the Westmoreland Municipal Corporation.*
117. *I find that the act of the Westmoreland Parish Council in not responding to Mr. Pitt's objection to be a deliberate act of maladministration.*

AMBIGUITY

118. There appears to be some ambiguity as to the zoning of the area of Llandilo also known as *Farm Pen* in which the complainant's lands are located as also the developer's land. Restrictive covenants on the registered titles and the registered indenture, create a private law regime or agreement amongst the owners of land and neighbours. That agreement is that the lands shall remain residential as previously described.
119. What is clear is that the Development Order for the parish has lagged behind the growth and expansion of the parish.
120. Documents presented in the investigation have described the area of the proposed development in different ways, for example, the Director of the Ministry of Agriculture and Fisheries informed that the land in question was zoned commercial / residential pursuant to the Development Order 1995, the DAC determined that there was no specific zoning for the site though the area was "predominantly residential." Mrs. Grace Whittely, in the "no objection" letter, adopted the DAC's description when she advised CEO Knight:
- "....as per development order there is no specific zoning."*
121. The complainant himself expressed that the lands in the area are for residential or farming activities and the Farm Pen community was a natural water runoff with sinkholes.
122. With proper effective and fair leadership at the local level many of the issues which have arisen could have been resolved.

WESTMORELAND DEVELOPMENT ORDER

123. There exists Development Orders for each parish. The Westmoreland Development Order was considered by NEPA's Technical Review Committee. The Public Defender was referred to Policies S UE 3 and S UE 5, the contents of which were described as material factors in the deliberations leading to NEPA's approval in March 2016. The approval has not been issued.
124. **Policy S UE 3** provides that:
"Planning permission will be given for the development of additional medium and large-scale industrial development in appropriate locations identified on the Savanna-la-Mar Land Use Proposal Map."
- Policy S UE 5** reads:
"Development proposals for any use which would result in a significant number of people living or working in proximity of any hazardous industry or storage site will not be permitted."
125. It appears that the aims of the Westmoreland Development Order recognize the urgent need for economic development and growth. The need to identify lands in appropriate locations in the Savanna-la-Mar Land Use Proposal Map it seems has to be a priority for the Westmoreland Municipal Corporation.
126. Importantly, the Development Order identifies that manufacturing and industrial type enterprises are located within Savanna-la-Mar and "*...are concentrated mostly along the main road traversing the area.*" There is therefore a need to meet the demands of such enterprises.
127. The Public Defender shares the position articulated in the Westmoreland Development Order that it is "*imperative*" that land should be identified to meet the demands of development.

128. There are however provisions of the Development Order which speak more directly to the specific development which was contemplated by the developer. Reference is made to Policy SP UE 21 which is amongst the policies particularly designed to treat with *“hazardous industrial processes or storage facilities.”* The Development Order states that industrial activities are normally located in an area based on the availability of raw material, labour and transportation.
129. Further, Policy SP UE 21 states that:
“Hazardous industrial processes or storage facilities will only be permitted in locations where they will have no adverse impacts on the site to be developed or on neighbouring sites or developments in the area.”
130. The Development Order amplifies and makes plain that development proposals for any use which would result in a significant number of people living or working in close proximity of any hazardous industry or storage site will not normally be permitted.
131. It appears that these latter orders and policies should also have been considered when deliberating on this application and before the granting of approval. From the material provided these policies enunciated in the Development Order, prohibit the contemplated development at the particular location. The Development Order supports the idea that the development should not have an adverse effect on the character of the neighbourhood or the environment and is not supportive of a significant number of persons living or working in close proximity to any hazardous industry or storage facility.
132. These are some of the very issues raised by the complainant in his unanswered letter.
133. The policies contained in the Development Order protect him from the contemplated development.
134. It appears, that notwithstanding the power of the Westmoreland Municipal Corporation to change the use of the land pursuant to the orders of the Supreme Court and other laws, there appears to be need for certainty in the use of land in Jamaica, in that, a

purchaser of land is entitled to rely on covenants registered on titles to secure the nature and character of his environment and investment in real estate.

FINDINGS

1. The complainant has been treated unfairly and his rights were violated.
2. The Westmoreland Municipal Corporation has committed acts of maladministration in the handling of the complainant's letter of objection and the treatment of the complainant.
3. The Westmoreland Municipal Corporation its agents and officers and employees acted without transparency, bypassed processes and procedures which provide protection to all citizens equally. The lack of adherence to processes and procedures has fuelled allegations of corruption.
4. The failure of the Municipal Corporation to answer the complainant's letter of objection is a dereliction of duty.
5. The complainant has been treated with disrespect and has not been treated with equality nor has he been treated fairly.
6. The developer acted with impunity as he established his development on the land without approval. He expended money in the development at his risk.
7. The Municipal Corporation, the local planning authority, failed to meaningfully engage the community in discussions whether about the current development or any change of use.
8. The delivery of tanks on the developer's land in late January or early February 2016 was the first notice to the complainant of the intended development.
9. There is no evidence of a change of use having been made.
10. The restrictive covenants recorded on the registered instruments of titles have been ignored.
11. The safety of the community has not been carefully considered and stands to be greatly compromised as the development has inherent hazardous features.

12. The complainant and his family are not the only ones adversely affected and exposed to potential danger of this hazardous operation in close proximity to their dwellings. There is also an entire community of informal settlers, the numbers of those persons are not known.
13. There is nothing which is assuring about the structural integrity of the tanks.
14. Priority has to be given to making Development Orders current and relevant. Development Orders should be built with the consensus of the community. Municipal Corporations exists to serve the community. Consultations and engagements are critical components in local governance.
15. The processes of law and procedure offered the complainant protection but each one was bypassed. Requirements for the posting or serving of notices, public engagement all circumvented.
16. The Westmoreland Municipal Corporation withheld material information from NEPA.
- 17.

RECOMMENDATIONS FOR A SOLUTION

1. The complainant be allowed the quiet enjoyment of his home and his community without any noise, dust, traffic and potential danger to him, his family and the wider community.
2. The informal settlers too, be themselves protected from any potential harm.
3. That the developer removes the development and finds a more suitable location away from a residential community.
4. That a study be conducted in relation to the informal settlers to ascertain:--
 - (a) legitimate land owners/occupiers
 - (b) contributors to the National Housing Trust
 - (c) squatters
5. No approval be granted, advanced or issued for this development until all the impediments to such a development are removed, and all legal and procedural requirements satisfied.

6. The officials at the Westmoreland Municipal Council be called upon to formally account for their conduct in this application process, and in particular for their failure to respond to Mr. Pitt's letter of objection, or to even forward it to NEPA for that agency's evaluation of the said objection.

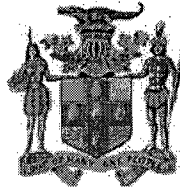
The Public Defender is prepared to enquire into the allegations raised by the developer's wife once the material promised by her in that regard, is provided.

Finally, though this Report was completed on December 9, 2016 copies were sent to NEPA and the Westmoreland Municipal Corporation and had to await a response from the Municipal Corporation. The Public Defender is not moved by the response from the Westmoreland Municipal Corporation

ARLENE HARRISON HENRY

PUBLIC DEFENDER

DECEMBER 9, 2016



**PUBLIC DEFENDER'S INVESTIGATIVE REPORT
INTO MARCH 2015 FIRE AT RIVERTON CITY
DUMP/DISPOSAL SITE**

**OFFICE OF THE PUBLIC DEFENDER
March 2016**

CONTENTS

	PAGE
INTRODUCTION	1
JURISDICTION	4
METHODOLOGY	6
TABLE OF FIRES (1996 – 2015)	9
GRAPHS	10
MARCH 2015 FIRE REPORT	13
LEGAL FRAMEWORK	15
EVIDENCE	30
SUMMARY OF COMPLAINTS	56
FINDINGS	67
RECOMMENDATIONS	70

INTRODUCTION

On the morning of March 7, 2015, a little less than one half of Jamaica's population in Kingston and St. Andrew, and parts of St. Catherine and St. Thomas woke up to a cloud of dark smoke blanketing the skies. We later learnt, and it became clear to see, that the Riverton City disposal site off the western section of Spanish Town Road, was once again on fire. This time the entire Riverton disposal facility of approximately 120 acres was on fire.

Citizens of these parishes have suffered annually with at least one large fire and a number of smaller ones. This fire, however, was of an unprecedented scale, intensity, and effect.

Alarms were made — one man saw fire and called the police. Thereafter, the fire brigade arrived and began to extinguish the blaze, which proved to be overwhelming. Efforts continued for days to contain the fire, and when it was extinguished, the smoke, dust and putrid smells continued for days.

There was no abatement in sight. The conditions of smoke, dust and a foul odour grew progressively worse day by day. According to statistics provided by the Ministry of Health, more than 1,000 citizens fell ill and had to seek medical help. Clinics and hospitals opened special facilities to care for those suffering ill effects of what can only be described as a catastrophic event.

A large section of the Jamaican community suffered from diverse respiratory conditions during this period and struggled with inhaling smoke which saturated the air for most of the month of March 2015.

The Ministry of Health reported that the majority of persons who sought medical assistance from the public health facilities were children. Businesses and offices were closed, and staff sent home; schools also had to be closed, and children sent home. Sixty-three schools were closed in Kingston, St. Andrew and St. Catherine. Of this number, 30 were high schools and 33 were primary and infant schools. The closure of schools affected over 61,447 students and 3,137 teachers. This figure does not include students attending preparatory schools and privately-operated schools that had to close because of the air pollution resulting from the smoke which the fire generated..

Ultimately, the Ministry of Education was forced to reschedule the GSAT examination, a decision which affected about 40,000, 10-12 year-old children across Jamaica. From the material collated by the Public Defender, without question, children were the most affected group impacted by the fires. There was very little, if anything, that the citizen could do or could have done to protect himself and family from the onslaught of the stifling smoke during the period. In some instances persons were forced to leave their homes and headed to the country to escape the ill effects of the smoke and foul air caused from the fires at the Riverton Disposal Site.

According to a National Environmental Planning Agency (NEPA) report, approximately 808,553 persons residing within those parishes were affected by the fire. Over 80 per cent of persons living in Kingston and St. Andrew and over one half of the population of St. Catherine were adversely affected by the fire. The NEPA report determined that 257,567 persons or 10 per cent of Jamaica's population reside in the area it described as "very high health risk", while another 60,398 persons or 5 per cent of the citizenry reside in areas identified as "high health risk". The fires brought the metropolis of the country to a grinding halt. While the Public Defender did not receive any complaints from major businesses in the Corporate Area of Kingston and St. Andrew, it is known that the Riverton disposal site is located in an important industrial community that would have endured the brunt of the smoke, smell and emission of noxious fumes and dust.

Never had this country witnessed such a fire of the magnitude and proportions which affected about a half of the Jamaican population over a period of 21 days. So, the Public Defender was outraged by yet another fire, and the evident negative impact of it on the health and wellbeing of citizens, especially children and the elderly, and the consequences for their immediate and long-term health, caused her to commence an investigation.

In addition, costs to business and production appeared alarming. The Public Defender issued a statement and took a decision that it was her duty to initiate investigations.

The entities responsible for the primary management of the Riverton Disposal Facility dump were identified as National Environment Planning Agency and National Solid Waste Management Authority, with statutory duties for the proper governance and management of the Riverton Disposal Facility.

Jurisdiction of the Public Defender to Investigate

It is necessary to offer clarification in respect of the Public Defender's jurisdiction as there appears to be a misapprehension as to the Public Defender's jurisdictional investigative remit. These few words are intended to elucidate the Public Defender's jurisdiction in relation to investigations undertaken by her.

There appears to be a fundamental misunderstanding that the Public Defender in conducting an investigation under section 13 (1) of the Public Defender (Interim) Act, must proceed either by sub-paragraph (a) (i) or sub-paragraph (a) (ii).

The Provisions read:

13-(1) subject to this section, the Public Defender shall investigate any action taken where she is of the opinion-

(a) That any person or body of persons -

- (i) Has sustained injustice as a result of any action taken by an authority or an officer or member of such authority, in the exercise of the administrative functions of that authority or

- (ii) has suffered, is suffering or is likely to suffer an infringement of his constitutional rights as a result of any action taken by an authority or an officer or member of that authority

Sub –paragraphs (a)(i) and (a)(ii) do not create categories of jurisdictional exercise for the Public Defender: rather they refer to different legal foundations in which complaints can be grounded. Put another way, those provisions create the foundation for complaints. For example, when the Public Defender undertakes an investigation she does not have to choose to proceed under section 13 (a) (i) or 13 (a)(ii) but can proceed under both sub-sections because the provisions give her power to deal with matters of bad management and constitutional violations.

The process conducted by the Public Defender is inquisitorial as distinct from adversarial. The intent is to uncover the truth where possible and to find solutions, and finally, to make recommendations where appropriate.

Methodology

The Public Defender utilized the power vested in her under section 17 of the **Public Defender (Interim) Act 2000**. This provision vests in her, legal authority to commence and carry out investigations. She is clothed with the authority to seek the audience and co-operation of persons who may be able to give assistance in the investigation of any matter.

By section 17 of the act the Public Defender may at any time summon:

“...any officer or member of an authority, or any other person who, in her opinion, is able to give assistance in relation to the investigation of any matter....”

Such persons summoned can also be required to furnish "...such information and produce any document or thing in connection with such matter and which may be in the possession or under the control of that officer or member or other person."

These officers are obliged under law to submit to the Public Defender's request for assistance in the conduct of the investigation. The Public Defender is empowered to summon such officers or members to provide assistance to the Public Defender in the pursuit of an investigation.

Because of the scale and magnitude of the fires and the harmful effect on the citizens, the Public Defender saw it fit and necessary to issue summons to the leaders of the bodies with statutory duties for the effective management and governance of the Riverton Disposal Site. The Public Defender not only issued summons but called on a number of persons and agencies to assist in the investigations.

At her request the fire department furnished copies of all fire reports in its possession relative to the Riverton Disposal Facility. The Public Defender is appreciative of the co-operation received from the Jamaica Fire Brigade.

Below is a table received from the Fire Brigade of recorded fires at the Riverton Disposal Facility for the period 1996 to 2015..

RIVERTON CITY LANDFILL FIRES 1996 – 2015

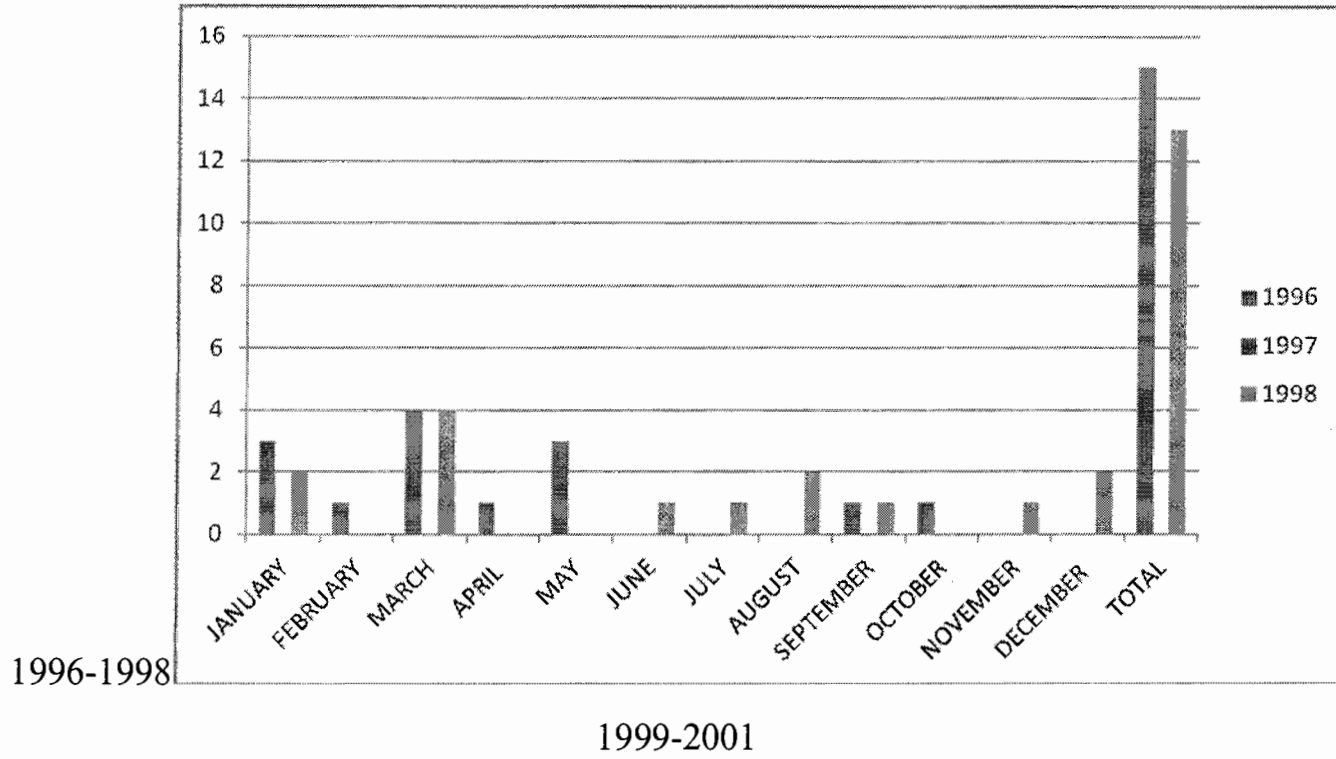
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT.	OCT	NOV	DEC	TOTAL
1996	3	1	4	1	3	1	0	0	1	1	0	0	15
1997	0	0	0	0	0	0	0	0	0	0	0	0	0
1998	2	0	4	0	0	1	1	2	1	0	0	2	13
1999	3	1	5	2	2	2	2	8	0	0	0	1	26
2000	0	0	0	0	0	0	0	0	2	1	0	0	3
2001	0	0	2	0	0	5	6	0	3	0	0	0	16
2002	2	1	4	4	0	0	0	0	0	0	0	0	11
2003	0	0	1	0	0	0	1	6	1	1	0	0	10
2004	0	1	0	1	1	3	0	4	0	0	1	1	12
2005	1	2	0	3	1	1	0	0	0	0	0	0	8
2006	4	1	0	0	0	0	0	0	0	0	0	1	6
2007	7	0	6	0	0	0	0	0	0	1	0	1	15
2008	0	1	4	4	6	5	9	0	0	0	0	1	30
2009	0	3	1	3	0	0	1	2	1	0	1	2	14
2010	3	2	0	0	1	0	0	0	4	1	0	0	11
2011	1	0	0	0	2	4	5	4	0	3	2	4	25
2012	4	19	3	1	2	1	4	2	0	0	3	2	41

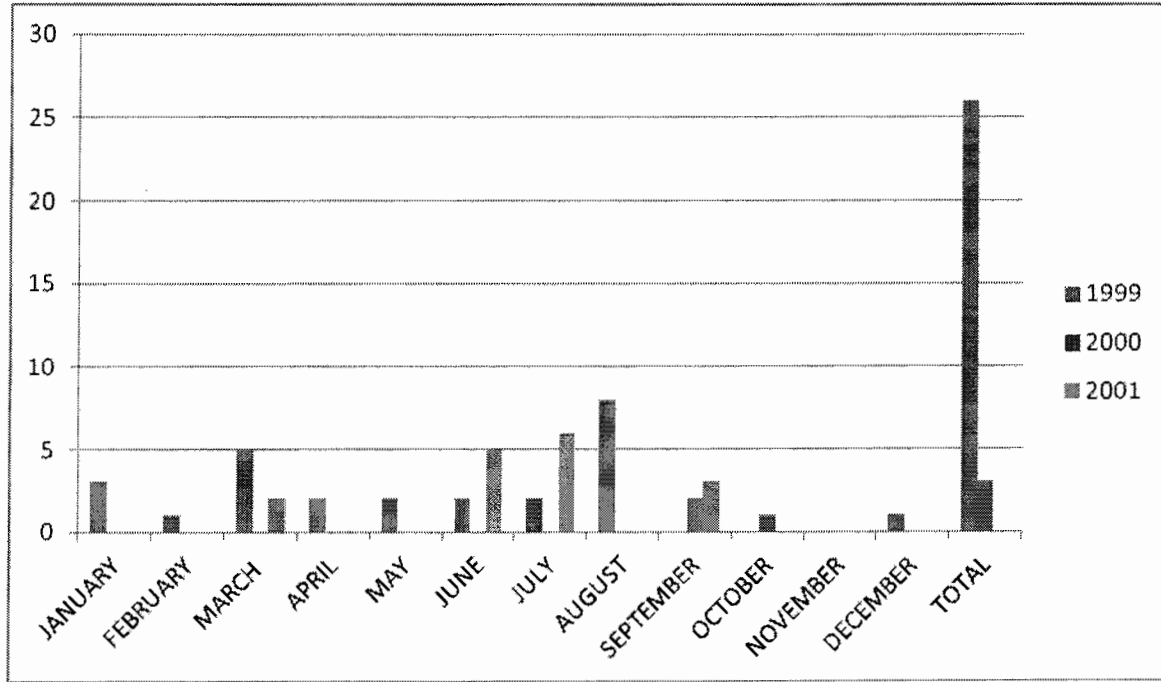
2013	2	0	0	0	7	7	13	9	4	0	5	10	57
2014	12	0	0	16	2	5	7	0	3	7	2	2	56
2015	4	0	5	15	5	6	3	3	4	1	0	0	46
TOTAL	48	32	39	50	32	41	52	40	24	16	14	27	415

On a perusal of the individual fire reports the origin of many of the fires was noted as “unknown” while several were recorded as a result of “burning bush,” “discarded light” and some were due to “direct burning.” Very few of the fires over the period were attributed to “spontaneous combustion,” typically associated with waste sites.

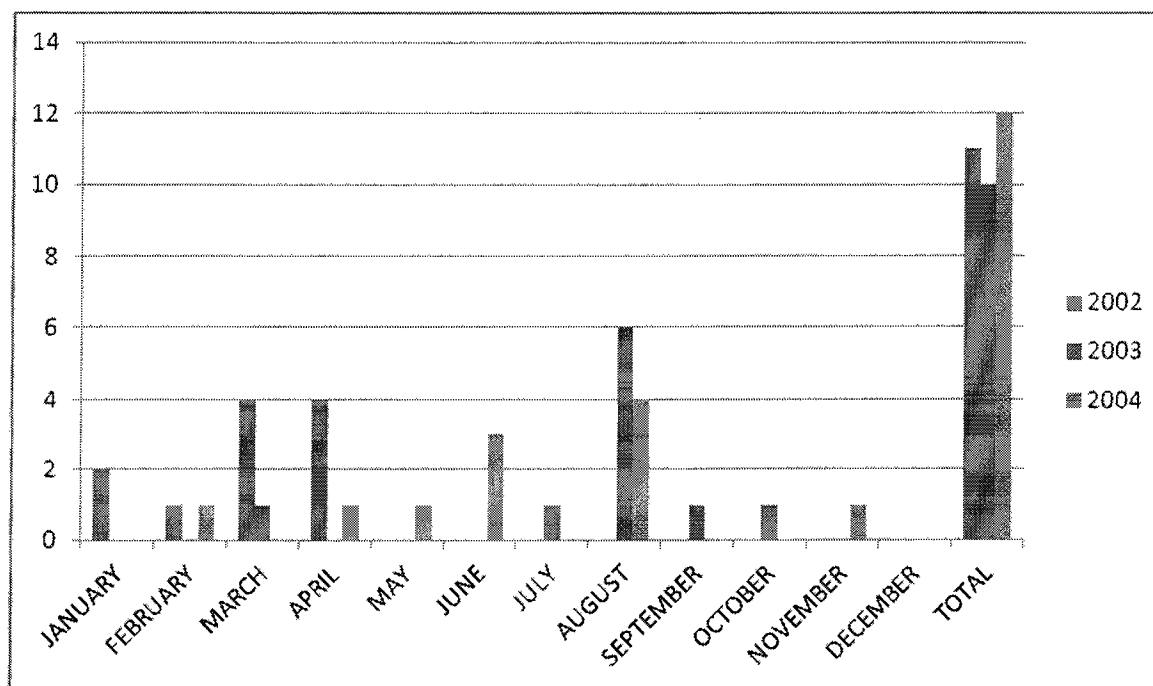
The graphs following show the number of fires to which we have been captives as a result of the happenings of Riverton.

RIVERTON CITY DISPOSAL FACILITY

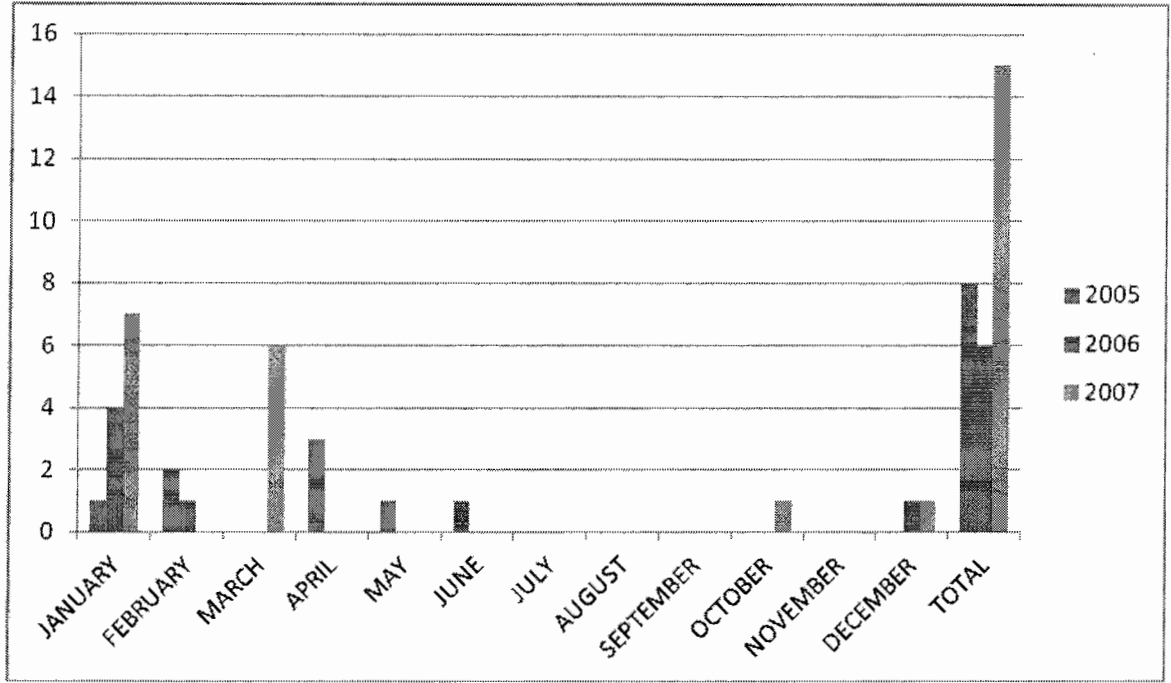




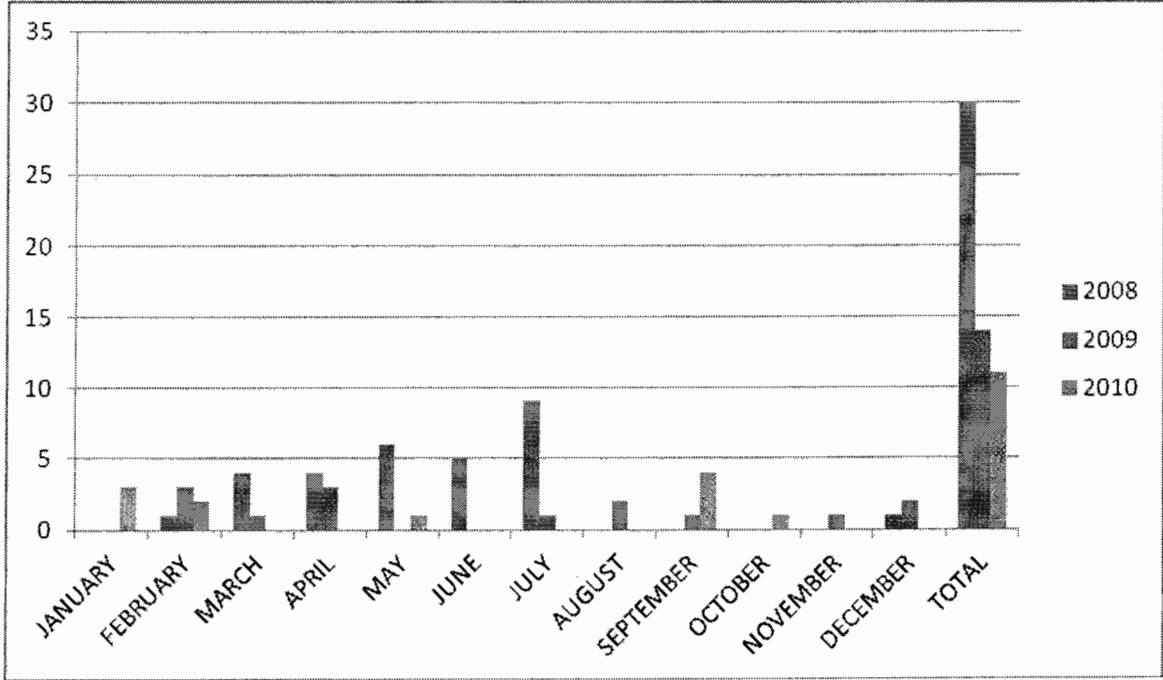
2002-2004



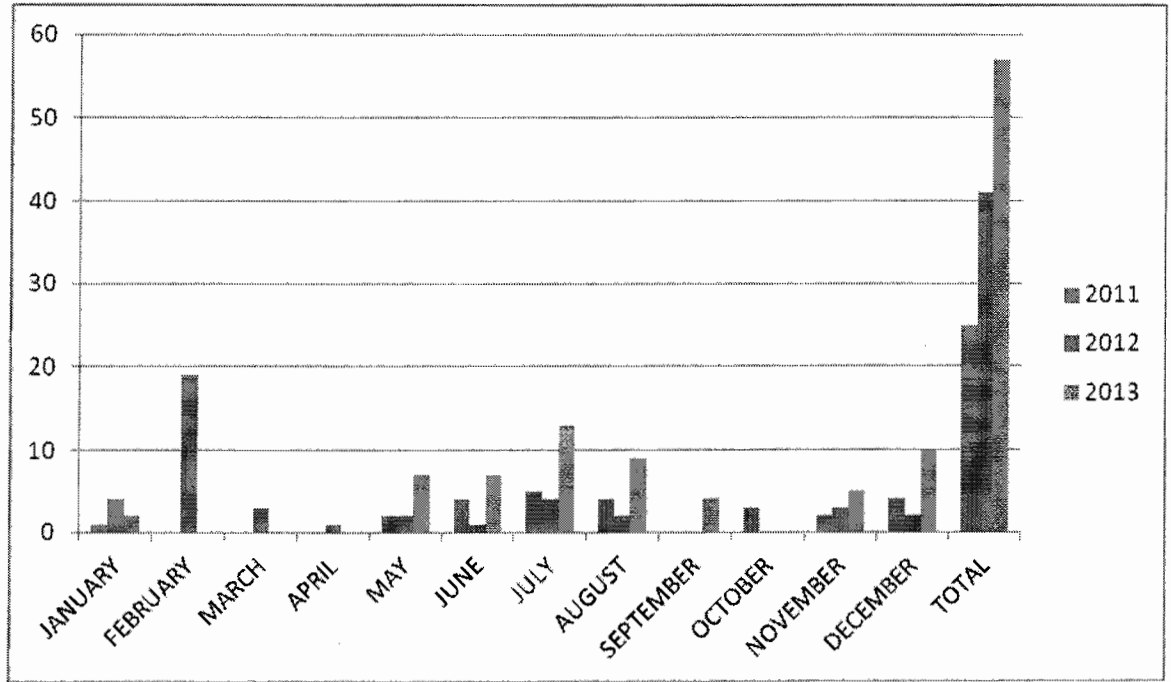
2005-2007



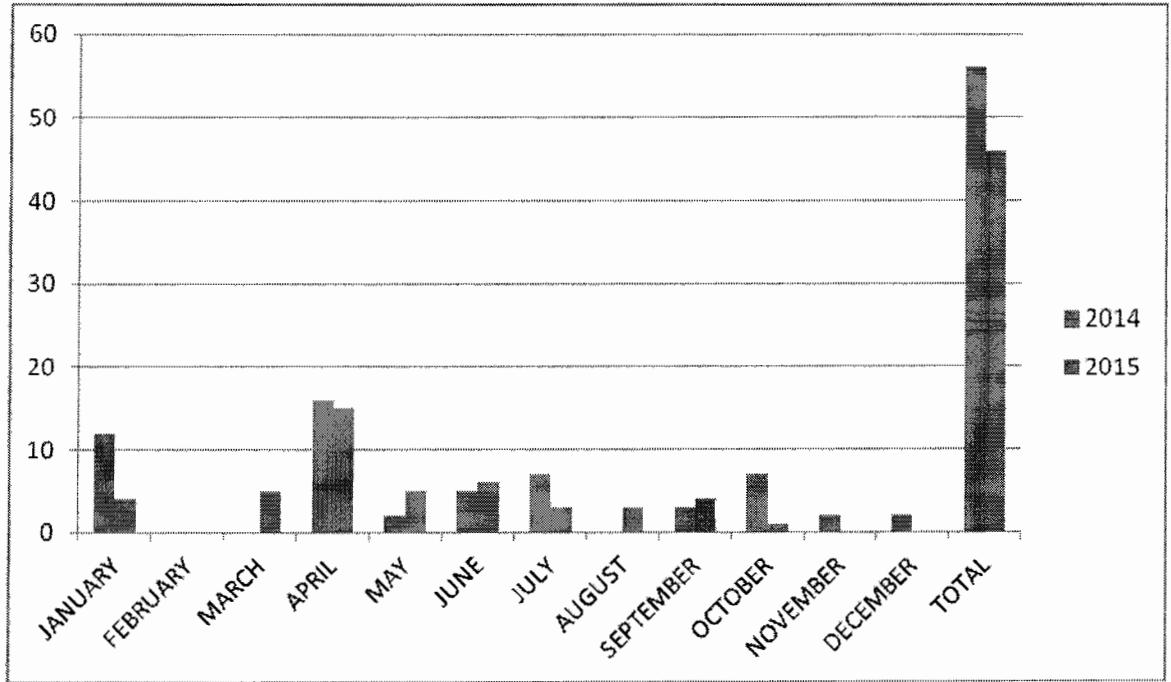
2008-2010



2011-2013



2014-2015



March 2015 Fire Report

The fire report, in respect of the March 2015 fire under the hand of P. Gooden, Acting Senior Deputy Superintendent, provides insight into the extent and intensity of the March 2015 Riverton Fire. It took the consistent effort of Commissioner E. Mowatt, head of the Jamaica Fire Brigade, with a crew of 231 firefighters, 45 fire units, seven utility vehicles, water tankers and nine tractors over the period of early March to March 29 to put out this fire. Nine thousand five hundred (9,500) truckloads of dry earth were applied to extinguish the fire.

The Acting Senior Deputy Superintendent concluded that the brigade:

”... was unable to find any definitive clue or evidence to indicate how the fire started, therefore the cause of the fire is listed as ‘undetermined.’ The brigade was unable to determine the cost of damage that was done or the value of the involved risk.”

While firefighting efforts continued and included cooling down operations between March 11 to March 29, the smoke, smog, fumes, smell created havoc for about 47 % of Jamaica’s population.

In summary, over this period, 1996 to March 2015, a total of 3,399 firefighters have risked their lives and health in putting out fires at the Riverton Disposal Facility according to the information supplied by the Fire Brigade. Plainly, fires at the Riverton have disproportionately consumed the resources of the fire department.

As the occurrence of fires appeared as an almost natural consequence of the Riverton Disposal Facility, there was urgent need to examine on oath those persons with statutory responsibility for the governance and management of the facility. Summons were issued to Mr. Peter Knight, the Chief Executive Officer of National Environmental Planning Agency (NEPA), Ms. Jennifer Edwards, then Executive Director of the National Solid Waste Management Authority, (NSWMA) and Mr. Steve Ashley, former Chairman of the NSWMA. Mr. Ashley’s evidence was recorded on November 10, 2015. The management/governance structure of the Riverton Disposal Site, the terms and conditions of the licence under which the disposal facility operated, the level of compliance with NEPA’s conditions had to be reviewed.

In addition, an examination of the existing legal framework was necessary to determine whether the laws are robust enough to offer Jamaicans environmental protection from repeated fires which seem to have become a part of normal national life.

Legal framework

The Jamaican Parliament enacted several pieces of legislation to provide environmental protection for Jamaica. These include The Charter of Fundamental Rights and Freedoms, The Executive Agency Act, The Natural Resources Conservation (Authority) Act, The Town and Country Planning Act, The Land Development and Utilization Act, The Beach Control Act, The Wildlife Protection Act, The Watershed Protection Act, The Endangered Species Protection Conservation Regulations Trade Act.

The Charter of Fundamental Rights and Freedoms is by far the most important legal instrument in Jamaica's arsenal for environmental protection. The Constitution and other legislation set the national standard, as determined by Parliament, for environmental integrity and protection for all Jamaicans, others on the island and for our national territory.

Charter of Fundamental Rights And Freedom

By the enactment of the Charter of Fundamental Rights and Freedoms the Jamaican Parliament elevated the right "...to enjoy a healthy and productive environment..." to a constitutional right for all the citizens of Jamaica.

This is described in the charter as:

"The right of enjoy a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage;"

The inclusion of the environmental right expanded and created a new human right for Jamaicans and in so doing protected such a right in our supreme law, the Constitution.

The Jamaican Parliament saw this as a developmental strategy, one of the cornerstones for building a nation, economic, social and cultural prosperity. The inclusion of the provision in the charter elevates the importance of environmental protection to the level of a human right and puts a duty on the state and agencies of the state acting under ordinary legislation to meet a higher standard as set out in the Charter in making policy and decisions and managing operations such as the Riverton Disposal Site.

The right to enjoy a healthy and productive environment is a positive entitlement. This suggests that the right is concerned with more than just overt environmental threats, which Riverton Disposal Site is, but seems to mean that people are entitled to a high standard of environmental integrity.

The first aspect of the right appears to be more individual in nature in that a person is protected from the threat of injury, injury and damage from environmental abuse. Importantly, constitutional protection reaches to the “**threat**” of “**injury**” or “**damage.**” One does not have to await actual injury to seek protection under this right as protection is offered in the face of a threat of “**injury**” or “**damage.**” the right is preventive in nature. Where potential injury or damage can be shown, protection under this provision of the Charter appears to be available.

The second limb of the Charter provision has conservation implications in that we are protected from damage from environmental abuse and degradation of the ecological heritage.

The passage of the Charter of Fundamental Rights and Freedoms brought a new day to Jamaica in terms of environmental protection in that the Constitution set the high standard which must be met by Agencies of Government with a statutory obligation to protect the environment.

National Solid Waste Management Authority Act

In the conduct of this investigation the National Solid Waste Management Act came under scrutiny particularly how the provisions of the act have been construed and implemented since its origin was necessary to determine whether the laws are robust enough to offer Jamaicans environmental protection from repeated fires which seem to have become a part of normal national life.

Enacted on April 1, 2002 the legislation created a corporation (NSWMA) .The statutory functions of the NSWMA are set out at section 4 of the above named act:

“the authority shall

- (a) Take all such steps as are necessary for the effective management of solid waste in Jamaica in order to safeguard public health, ensure that the waste is collected, stored, transported, recycled, reused or disposed of, in an environmentally sound manner and promote safety standards in relation to such waste;
- (b) Promote public awareness of the importance of efficient solid waste management and foster understanding of its importance to the conservation, protection and proper use of the environment;
- (c) Advise the Minister on matters of general policy relating to Solid Waste Management in Jamaica;
- (d) Perform such other functions pertaining to Solid Waste Management as may be assigned to it by the Minister or by or under this Act or any other enactment.

PARLIAMENT CLOTHED THE NSWMA WITH WIDE POWERS AND DISCRETION TO DISCHARGE THE FUNCTIONS LAID OUT IN THE ACT. THUS THE AUTHORITY MAY:-

- (a) Convert existing dumps into sanitary landfills;
- (b) Designate, develop and manage new sanitary landfills and other solid waste disposal; operations;
- (c) Provide facilities for the collection, treatment and disposal of solid waste;
- (d) Institute measures to encourage waste reduction and resource recovery;
- (e) Introduce cost-recovery measures for services provided by or on behalf of the authority; a licensing system for persons and entities wanting to engage in the business of solid waste.
- (f) Over the many years of its existence the National Solid Waste Management Authority has never acted as a regulatory body, but has itself engaged in the collection of waste, establish procedures and develop, implement and monitor a national plan and other plans and programmes relating to solid waste management;
- (g) Formulate standards, guidelines and codes of practice relating to solid waste management and monitor compliance with such standards, guidelines and codes;
- (h) Initiate, carry out or support, by financial means or otherwise, research which, in its opinion, is relevant to any of its functions;

- (i) Conduct seminars and provide appropriate training programmes and consulting services and gather and disseminate information relating to solid waste management;
- (j) Define the minimum specifications of equipment used for solid waste management;
- (k) From time to time, designate any person (whether employed by the authority or not) possessing the prescribed qualification to be an authorised officer; and
- (l) Do anything or enter into any agreement which, in the opinion of the authority, is necessary to ensure the proper performance of its functions.”

By this legislation Parliament created a legal framework under which solid waste operations are to be conducted across Jamaica.

By section 23 of The National Solid Waste Management Authority Act, Parliament established the authority as a regulatory body with power to grant licences, to refuse the granting of a licence, to renew, modify, suspend and revoke licences to those person or entities who operate or propose to operate a Solid Waste Facility, or to provide or propose to provide solid waste collection or transfer services or otherwise engage in solid waste.

This authority is statutorily charged to appoint inspectors, to carry out inspections of the proposed site and before issuing a license the authority is required by law to seek the comments of bodies such as-

- The Natural Resources Conservation Authority
- The Water Resources Authority
- The ministry responsible for health
- The relevant local authority and
- Such organization as the authority thinks appropriate.

Under law, it is this authority that has the legal duty to grant or to refuse the issuance of a licence, to determine the terms and conditions of the licence, including the provision of financial assurance or insurance, to vary the terms and conditions of a licence, also the power to suspend or revoke any licence and to determine the fee to be charged for the issuance of such a licence. The legislation also provides for a review tribunal wherein anyone aggrieved by a decision of the authority may appeal that decision.

Parliament laid out a comprehensive regime for the operation and management of Jamaica's solid waste and placed in the hands of the NSWMA the management of the nation's solid waste as its primary duty.

The enabling legislation imposed a duty on the authority to prepare and file Annual Reports to the Minister and Parliament, the keeping of proper accounts and the operation and management of disposal facilities. In short, the authority has acted contrary to the terms of the Act and the intention of Parliament remains unrealized.

The interpretation given to the terms of the Act, administration after administration, is narrow and short-sighted, plainly incorrect and contrary to Parliament's specific intent.

Parliamentary Debate - Consensus

The debate in Parliament, as reported by Hansard, showed that Parliament was united in the establishment of the National Solid Waste Management Authority in recognition that the lack of cleanliness was a general feature and problem across the island and further, there was need for a more central system for the collection and disposal of waste.

There was agreement on both sides as to the necessity for the passage of this legislation.

According to Hansard, one speaker on the matter said:

“... What we see from this piece of legislation, Mr. Speaker, which I welcome is that the Authority is really intended to be an authority that will deal with matters of policy, standards and guidelines which is very important to get into this new statute because at the moment even if there are some standards and policies and guidelines, they really exist in a scattered sort of way and whenever you have this sort of scattering of guidelines and standards, there are many instances when there is not only confusion but it also imposes and causes the regulatory authorities not to be able to carry out their functions to the level of efficiency and effectiveness that is required.”

He went on to say:

“So what we are moving from, Mr. Speaker, is what used to be a role of 14 parish councils or indeed 13 administrative districts since KSAC, Kingston and St. Andrew, is actually one administrative district encompassing two parish councils. From that to the parks and markets companies to what will now be the National Solid Waste Management Authority.”

This contributor added:

“... it must be understood, Mr. Speaker, that the law provides, not that it is going to be The National Solid Waste Management Authority itself that is going to be managing and operating these sites but the opportunity that is given here by this piece of legislation, Mr. Speaker, is to have private sector participation and this is important because you will be now able instead of relying on one authority or parks and markets companies to collect the waste that is generated, to have private sector participation and private sector participation that I am referring to does not necessarily come from what I have seen in the legislation refer just to big companies but to persons who are interested in doing something in terms of solid waste management so that you can have persons operating landfills, persons recycling, persons collecting....”

In the premise, Parliament laid out a comprehensive regime for the operation and management of Jamaica's solid waste and placed in the hands of the NSWMA the management of the nation's solid waste as its primary duty. The enabling legislation imposed a duty on the Authority to prepare and file Annual Reports to the Minister and to Parliament. The Authority was specifically empowered to treat with litter and to provide trash cans and other disposal receptacles where needed.

In summary, the Authority was established by Parliament to regulate the industry of waste disposal and to provide a regime for the collection, disposal, recycling, converting of existing dumps into sanitary facilities. The legislation did not and does not permit the authority itself to engage in garbage collection of waste as its core function.

Natural Resources Conservation Authority Act

Prior to the right to a healthy and productive environment being elevated to a constitutional right the above-named act was the flagship for the protection of our national resources.

It remains an important foundation block for securing environmental governance and integrity.

By section 3 of the Natural Resources Conservation Authority Act, Parliament in July 1991 established an authority charged with the legal duty to:

- to take such steps as are necessary for the effective Management of the physical environment of Jamaica so as to ensure the conservation, protection and proper use of its natural resources;
- To promote public awareness of the Ecological Systems of Jamaica and their importance to the social and economic life of the island;
 - To manage such national parks, marine parks, protected areas and public recreational facilities as may be prescribed;
- To advise the Minister on matters of general policy relating to the management, development, conservation and care of the environment; **and**

- To perform such other functions pertaining to the natural resources of Jamaica as may be assigned to it by the Minister or by or under this act or any other enactment.

In the performance of its functions Parliament vested wide powers in the Authority and mandated it to:

- Develop, implement and monitor plans and programmes relating to the management of the environment and the conservation and protection of natural resources;
- Construct and maintain buildings and other facilities for public recreational purposes;
- In relation to prescribed national parks, marine parks, protected areas and public recreational facilities
- Carry out or cause to be carried out such improvements as it thinks fit; and provide for the zoning thereof for specified purposes and for the licensing of persons carrying on any trade or business therein;
- Formulate standards and codes of practice to be observed for the improvement and maintenance of the quality of the environment generally, including the release of substances into the environment in connection with any works, activity or undertaking;
- Investigate the effect on the environment of any activity that causes or might cause pollution or that involves or might involve waste management or disposal, and take such action as it thinks appropriate;
- Undertake studies in relation to the environment and encourage and promote research into the use of techniques for the management of pollution and the conservation of natural resources;
- Conduct seminars and training programmes and gather and disseminate information relating to environmental matters;
- Do anything or enter into any arrangement which, in the opinion of the Authority, is necessary to ensure the proper performance of its functions.

This Authority has the responsibility for the protection of Jamaica's natural resources on its citizens' behalf and stands in a fiduciary position to Jamaica's citizens in respect of the protection and preservation of the environment.

It seems that the elevation of environmental rights and protection as described in The Charter of Fundamental Rights and Freedoms was a natural progression, albeit, twenty years later. It seems also that the Jamaican Parliament embraces that environmental governance at the national level is imperative for environmental sustainability and ultimately sustainable development.

By section 9 of this Act certain activities cannot be undertaken except with a permit. The operators of the Riverton Disposal Facility require a permit pursuant to this provision and regulations made under the Act. There are many criminal offences for the failure to operate without a permit and for engaging in activities that are potentially dangerous to the environment or have implications for the environment.

National Environmental Planning Agency (NEPA)

There is no legislation which creates National Environmental Planning Agency (NEPA). It is an executive agency and underpinned by the provisions of the Executive Agency Act.

NEPA's duty is to provide administrative and technical assistance to the Natural Resources Conservation Authority, the Town and Country Planning Authority and the Land Utilization Commission.

Evidence

Ms. Jennifer Edwards was appointed Executive Director (ED) of the NSWMA by way of a three-year contract starting on February 27, 2012. Her immediate predecessor was Mrs. Joan Gordon-Webley. Ms. Edwards described the functions of the NSWMA thus:

“The functions of the National Solid Waste under the National Solid Waste Act (*sic*) is to ensure the collection, transportation, storage and disposal of waste, it does so to advise the Minister on various solid waste issues, to provide public education on solid waste management and there is a fourth one which I do not honestly remember off the top of my head.”

On taking office Ms. Edwards was aware of the history of fires at the Riverton Disposal Facility. She stated that to her knowledge the research showed that since 2007 there was a major fire at the Riverton Disposal Facility every year with the exception of 2013.

In fact, shortly before she assumed office there was a fire in about February 2012, the cost of which to extinguish, on her recollection was \$62,000,000. On that occasion about 17 acres of the Riverton Disposal Facility had burnt in February 2012.

On taking office she prepared a Strategic Plan and an Annual Operational Plan as a guide for the effective management of the Riverton Disposal Facility. Also, regular advisories were given to the Minister. She gave evidence that although the NSWMA has:

“... the overarching responsibility each of the region is managed by a company, limited liability company that is responsible for – to whom the work is delegated then.”

She explained that the Riverton Disposal Facility:

“...is managed by the Metropolitan Parks and Markets and the Riverton City Dump and the collection of waste is done by them but they report to us.”

The ED went on to say that NSWMA is comprised of:

“Six entities, MPM which is St. Thomas, Kingston and St. Andrew and St. Catherine, SPM that has Clarendon, Manchester and St. Elizabeth; WPM that has Westmoreland, Hanover and Trelawny, and NEPM that has St. Ann, St. Mary and Portland. In all there are 4 parks and markets companies and 4 public cleansing limited...’

Each entity has almost the same kind of structure and arrangement, such as a regional manager, accountants, public cleansing manager etc. The Board of the “entities” is the same as the National Solid Waste Management Authority.

She went on to say that the Ministry of Finance provides the six entities with four hundred million dollars (\$400,000,000) to pay for administrative expenses while the Ministry of Local Government provides one thousand eight hundred million dollars (\$1,800,000,000) for the collection of garbage and related matters. The NSWMA employs about three thousand (3,000) persons.

Ms. Edwards said that the financial arrangements between the entities are very loose. The minutes of a board meeting, however, gave meaning to this “loose” situation when it was reported that related party receivables were:

“... - MPM owes the NSWMA \$302m; WPM owes \$268m, SPM \$235m and Parks \$79m.”

Mr. Ashley, in explaining the impact of the crisscrossing of financial transactions, the common directorship over all the “entities” and the general “loose” financial state of affairs said:

“If I can recall the responses were so ridiculous that — they tried to tell us that there were some differences between one company and the other, and that one company would spend money for the other company; it was a convoluted explanation.”

Mr. Ashley said further, that he did not receive this “convoluted” explanation in writing, and added that for the last four years:

“...we tried our best to find a way to disaggregate this thing over the last four years and we were never being (*sic*) able to do it.”

It was Mr. Ashley’s opinion that this state of affairs was as a result of the association between the ED and the Director of Finance. It was his opinion that it is a sort of a “lock-shop” and that it is impossible to get information.

Support for Mr. Ashley’s position was found in minutes of board meeting of March 4, 2015 where Mr. Ashley is quoted as having said that he:

“...found it particularly troubling that the Director of Finance’s contract would have been approved by the Executive Director without his knowledge.”

Mr. Ashley’s evidence was that the Director of Finance’s contract was not to be renewed. He said:

“... his contract was not to be renewed, because they specifically told her not to renew his contract and it was done behind the board’s back, we did not know it was done and it was not supposed to happen.”

It was Mr. Ashley’s opinion that the contract of the Director of Finance should have come to the board for its approval. Ms. Edwards admitted that there has been intermingling of the affairs of the Authority with the “entities” both financially, human and physical resources.

She said:

“It has operated as one entity and in some instances and in some instance (*sic*) as separate and distinct entity (*sic*).”

Despite prior knowledge of frequent fires at the Riverton Disposal Facility, NSWMA had no mechanism on site to put out a fire but for one water pump acquired in 2014, the purpose of which was to fill fire trucks. The Authority invested in the acquisition of one water truck.

It was Ms. Edwards’s evidence that once there is a determination that the fire is a national emergency, the ODPEM “takes responsibility for the management of the fire.”

Ms. Edwards explained:

“...and the NSWMA and Jamaica would be aware that this fire was probably three times the size of any other fires we have had at the disposal facility.”

Ms. Edwards admitted that the Riverton Disposal Facility was possessed of “very little” fire-fighting capability and as a precaution against fires and the spread of fires she said that the Riverton Disposal Facility was divided into five cells, plus the tyre cell. The cells were created in “12/13 sometime after Hurricane Sandy.”

In describing how the cells were created she said:

“You essentially cut roadways between the, within the disposal site, so that a vehicle can access this area, so you establish designated areas. ...so there are five designated areas with roadway between them that the waste is taken to...so the roadways are established on top of waste that is there already,...so that trucks can drive on top of the dirt.”

The Public Defender understood that the idea was to use only one area at a time for the disposal of waste. The cutting of the roadways was also to create access to other areas of the site. This was also to allow for the coverage of the “entire area” and then only utilize one area at a time for the disposal of waste.

Further, Ms. Edwards said:

“So if there was a fire at that area it would not easily get to the rest of the disposal site.”

Ms. Edwards explained that at the time of the March 2015 fire, garbage was being “tipped” on one cell, three were uncovered and one was covered.

On her account, the fire started in one of the three uncovered cells and quickly spread to all the others. At the time the fire started only one cell was covered.

When asked how it was that she ensured that only one cell was being used at any given time, she expressed herself:

“By the presence of persons at the disposal site. The landfill manager, the landfill supervisor, the landfill attendants, persons who we call ‘spotters’ are employed and work on a 24-hour basis....so there are persons who work at the disposal site on a 24-hour basis and their job is to direct the trucks as to where to go and dispose of the waste on any given occasion.”

Mr. Ashley, however, offered a different account. He stated that though there was agreement that the Riverton Disposal Facility was to be divided into five cells, each cell was not maintained and garbage was dumped on any cell throughout the entire period that he was Chairman.

The then Chairman explained that a part of the fire-suppression strategy was the cutting of roads through the garbage. The roads demarcated one cell from the other. Mr. Ashley explained that roads were cut in between the mounds of garbage. He went further to say:

“We started it, as a matter of fact, after the first major fire, we got some money and decided to cover most of the landfill. “

This money was from the Ministry of Finance. He continued:

“....And we covered most of the landfill and started creating these cells; I thought everything was in good shape but I could not afford to go down there every day. But I had to go down there a year later after that and everything was back to normal, unfortunately.”

Mr. Ashley explained further:

“They started throwing the garbage into the roads that were cut.” He emphasized that once the cells were built the roads which demarked the cells were “filled with garbage again.” Continuing, Mr. Ashley said:

“...They keep covering and they keep throwing the garbage on what is covered. And I was very upset and you will probably see a letter I sent to the ED. When I went down there on my own and saw that they had gone back to normal and I don't know what they were doing all along, even though we had made that decision that the cells should have been made and it should have been maintained. But they said they had no funding.” It was management who said they had no funding to maintain the cells which were created.

In further clarifying the matter of the cells and how they were kept, Mr. Ashley explained that on the morning of the March 2015 fire he reached the Riverton Disposal Site before the fire brigade and it was his observation that:

“It was obvious that the cells were not maintained, and the garbage was thrown all over the place rather than being compacted.”

He agreed that:

“...As a consequence it was therefore easier for the fire to spread from one location to the other...”

When asked whether the creation of the cells was a requirement of the NEPA permit, Mr. Ashley did not answer the question put to him, but responded by saying that cells are used “...all over the world.”

Money was provided by the Ministry of Finance for the covering of the cells in the latter part of 2012 to 2013. For this reason, it seems, there was no fire in the year 2013.

Mr. Peter Knight, Chief Executive Officer of NEPA was clear, in that, though condition 8 (see NEPA's conditions pgs 39 – 46) of NEPA's environmental permit required the NSWMA to work in one particular cell at a time, instead:

“.. They were working all over.”

Mr. Knight explained that working in a specific location at a time gives: “better control” as the solid waste is contained to a specific location around which a barrier is erected. He went on to say that containing solid waste in a specific location makes the operation more manageable, especially in the event of a fire as the fire could be better contained in that specific location.

The Chief Executive Officer of NEPA was unhesitating in his evidence that NSWMA did not comply with that condition of the permit, that is, the creation and maintenance of cells.

Mr. Knight in his evidence identified that the greatest safeguards of public health and the environment are:

- “Operating in manageable area, in the dedicated cell;”
- “Compacting and covering the waste;“
- “Conduct of internal monitoring;”
- “The use of a vent pipe to release gases in the solid waste;”
- “No burning on the site;”

It was Mr. Knight’s unambiguous evidence that there was little control and policing of the Disposal Facility. Ms. Edwards described how, during her tenure, the cells were used:

“So you tip here for a month, next month you go to the other place and allow this one to settle because it has not been covered and we go around like that every month we are moving.” The rotation of cells occurred “literally as the need arises.” Ms. Edwards explained that during the summer, Christmas, and any period during which there was some natural disaster there were large volumes of garbage that were tipped from one cell to the other.

On the other hand, specific condition 8 of the environmental permit mandated the designation of active and dormant cells, quarterly rotation of the use of cells and the separation of different types of garbage. From Ms. Edwards’s own mouth, this condition was ignored under her management.

In respect of condition 15 of the environmental permit to inform NEPA of the reactivation of a cell, Ms. Edwards answered that this condition was not fulfilled as:

“...There really was no dormant cell.” Specific condition 15 required the NSWMA to “...notify the manager, enforcement branch, ...the planned activation of a dormant cell at least two (2) weeks prior to the activation of the dormant cell.”

When Ms. Edwards was asked about steps taken by the NSWMA to safeguard public health, as statutorily required by the provisions of the National Solid Waste Management Authority Act, she said:

“I know you spoke about fire as a part of public health, but public health for us at the NSWMA is the exposure of the citizens at home to fly nuisance and health-related issues as a result of garbage collected. So we have been, our primary focus is to remove the waste from the individual’s home to the disposal site and to spread and compact the waste at the disposal site.”

The ED confirmed that, under her stewardship, NSWMA’S primary public health concern was the mere removal of garbage from homes and from communities to a confined location. Though there was no supporting documentation it was Ms. Edwards’s evidence that there was agreement between the Board and Management of the NSWMA that the removal of garbage from the homes and communities was their priority. As a consequence and for a number of reasons, the conditions imposed by NEPA were not adhered to.

NEPA’s Permits/Conditions

On July 25, 2004 NEPA issued an environmental permit to the Ministry of Local Government which was not acted upon. In 2012 the NSWMA was forced to apply for an environmental permit when NEPA brought court proceedings against it for operating a waste disposal facility without the required permit. The applications for two environmental permits were made in the year 2012 and granted in 2014. Permit numbered 2012-02017 ep-00176 related to hazardous waste storage, transportation, treatment and disposal. The second permit 2012-02017 ep 00145 was for the operation and management of the solid waste treatment and disposal facility.

Ms. Edwards was explicit when she said:

“The application came as a result of NEPA taking us to Court because we were operating without a permit.”

According to the ED, the court action brought against NSWMA was: “right after the 2012 fire. I think it was.” The NSWMA had operated from its inception in 2002 to April 2014 without an environmental permit from NEPA. For these great many years, NSWMA under administration after administration, acted contrary to the provisions of law.

When asked why it was that the NSWMA had not applied for an environmental permit Ms. Edwards said that the authority suspected that it could not meet NEPA's conditions:

"...So they didn't apply; it is better they didn't have a permit than apply and in breach."

The ED went further to say:

"We were forced to apply for the permit and having applied we indicated, we also indicated in writing and in meetings that we knew we would have a challenge meeting the requirements because of one, of the existing conditions of the disposal sites, and two, the resource constraints that we were working with."

Mr. Knight was lucid in his understanding that the NSWMA was non-compliant in several conditions of the permit under which NSWMA operated and failed to introduce essential steps required by the environmental permits that would have offered the public safety, particularly from the many fires.

Mr. Knight said:

"Yes the NSWMA has been operating without an environmental permit." This was in respect of the period prior to April 2014. The permits were applied for in 2012 and granted in April 2014. Prior to that, there was no permit and NSWMA acted contrary to the provisions of law.

This state of affairs existed despite the fact that an Environmental Impact Study (done by Environmental Solutions in the 1990s) set out in plain language how the Riverton Disposal Facility was to be operated and managed, and was a technical road map for the creation of a landfill over time.

Mr. Knight explained that NEPA placed NSWMA's operations on a special monitoring list because NEPA's assessment was that the NSWMA activities were "**high risk**" with incalculable potential for negative impact on the environment and public health. Five sections of NEPA were intimately involved in the monitoring of the permits granted to NSWMA.

After diplomacy and dialogue failed to achieve compliance or steps towards compliance, all avenues of persuasion exhausted, NEPA tightened its monitoring and prepared a compliance report on the Riverton operations. Three field visits were conducted, and the Riverton Disposal Facility inspected on July 28, 2014, August 27, 2014 and February 3, 2015. The level of compliance was 50% in July, 48% in August and 33% in February, in relation to the disposal facility. In respect of the hazardous waste-storage and transportation, compliance was 64%, 53% and 50% respectively for the dates previously stated.

The low levels of compliance attracted the issuance of on-site breach notices in July 2014 and August 2014, warning notices, letters and emails.

The areas of non-compliance were noted as:

1. The buffer zone earmarked is inadequate. Solid waste is deposited close to the boundaries of the property.
2. Security of the property to prevent unauthorized access of individuals and animals is inadequate. The findings are that; security personnel on duty are not active on the disposal area, the presence of unauthorized sorters, the drop-bar was short in length and the wire fences were cut down.
3. Authorized personnel are not attired in personal protective equipment
4. Tipped material is not covered
5. Tipped material is not compacted in several areas
6. Absence of the stipulated signage
7. Tyres are not baled and stacked
8. Tyre cells are not properly demarked
9. Safety procedures are not made available to on-site members of staff'

Additionally, NEPA pointed out the deficiency of NSWMA in providing documentation relating to specific terms of the environmental permit including:

- Information about cover material
- Cell rotation schedule
- Landscape plan
- Water quality monitoring plan
- Air quality monitoring plan
- Fire monitoring and prevention programme

to name a few.

NEPA's report for the period July 2014 – February 2015 concluded:

“It is evident that subsequent to the receipt of the permits, the NSWMA has achieved a very low level of compliance with the conditions of these permits, despite the enforcement efforts undertaken by NEPA to achieve compliance. The non-compliance with the conditions defeats the underlying purpose of these permits which are aimed at mitigating negative environmental impacts.”

Ms. Edwards admitted that the compliance rate was low. She did not disagree with NEPA's assessment. In her own words she described the situation thus:

“...This would be about 17 per cent compliance with the hazardous waste permit. With regard to the General Waste Management...we were woefully lacking compliance.” Specific conditions 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the permit related to the use and management of the cells. In essence, these conditions required the designation of active and dormant cells; quarterly cell rotation; the compacting of waste daily; the covering of waste every two weeks; monthly reports to NEPA of cell coverage; and cells should remain dormant for six months before reactivation, unless authorized by NEPA. These conditions were flatly ignored.

To meet NEPA's coverage requirement, Ms. Edwards proposed that NSWMA would seek funding to do "**one off**" coverage of the entire disposal site and as soon as that was done NSWMA "...would move to monthly coverage of the tipping phase that we were working on from time to time."

The cost to cover the entire disposal facility was one hundred and fifty-five million dollars (\$155,000,000). On her estimate fifty million (\$50,000,000) was needed every month to cover 25 acres, the approximate area of one cell.

Ms. Edwards was adamant that:

"...There was no sense covering the active cell on a weekly basis that you are working on, when the rest of the site is exposed. So we needed to cover the site and then go to the situation where you are managing just the cell."

It appears from Ms. Edwards's evidence that it was all or nothing. The result being also that because NSWMA was not covering, it made no report to NEPA about its failure to cover. Instead, NSWMA's stance was to submit to NEPA the cost to accomplish this "one off" coverage of the entire disposal facility. Ms. Edwards went on to say:

"We did not submit information on a monthly basis, we submitted one general information on what was required to cover the disposal site; because we were not doing monthly coverage we did not supply that information."

Specific condition 35 mandating the development of a fire-fighting and emergency response, a critical plan it seems, if only because of the history of fires, was flatly disregarded. Indeed, Ms. Edwards said that no such response was prepared, as the NSWMA had one from 2007 and that was the S.O.P. for the Riverton Disposal Facility plus two fire warders had been employed. In its report NEPA noted that NSWMA's documentation on this issue was inadequate and related to a landfill, and not a garbage-collection site.

Specific condition 21 relative to the baling of used tyres was ignored as the baler was simply broken. Tyres were therefore not baled and not stacked as required by the environmental permit. On Ms. Edwards's evidence a fire in the tyre cell in 2012 cost forty -two million dollars (\$42,000,000) to be extinguished.

The specific condition 31 requiring the collection of air emissions for the preparation of the emissions inventory that would form the basis for the preparation of the air quality monitoring due on January 15, 2015 was not forthcoming.

Apart from the lack of funding, Ms. Edwards offered several reasons that prevented the NSWMA from complying with the conditions of the environmental permits. These related to the physical condition of the disposal facility which, in her estimation, was already in breach. Ms. Edwards opined that NEPA's requirements were "**inappropriate,**" "**impractical,**" "**very difficult,**" and in at least one case she regarded that NEPA was "**being a little bit disingenuous.**" A technical team between the two organizations was established. Finally, in April 2015 NEPA suspended both permits.

Funding

According to Ms. Edwards the lack of adequate funding was a major factor in the operation and management of the Riverton Disposal Facility. She attributed that to NSWMA's inability to comply with NEPA's conditions. In answer to a question, Ms. Edwards expressed the view that if all the money used to extinguish fires were added up and given to NSWMA it could have met NEPA's conditions:

"...If we have gotten those monies up front"

But she said that the amount would have been insufficient for the establishment of a sanitary landfill. Ms. Edwards also stated the lack of regulations prevented the NSWMA from discharging its statutory mandate. Though the production of the draft regulations were promised to the Public Defender from May 10, 2015 these were received on January 28, 2016.

Ms. Edwards went further to explain that while she agreed that the legislation is comprehensive she insisted that the failure to have regulations prevented the NSWMA from carrying out all the mandates of the Act and what did not come with the Act was "**...the resource.**"

Mr. Ashley said:

"There were a lot of conditions that were not met and were not satisfied...but one of the reasons for that is 'finance.'"

The lack of finance as told to the Public Defender was the explanation offered for the failure to cover the garbage, to maintain the cells, the roads that separated one cell from the other, to erect signs, to self-report, and just about everything else. Both Ms. Edwards and Mr. Ashley admitted that the auditors could not give “**clean**” audit statements of the financial records of the NSWMA for countless years.

Under Mr. Ashley’s watch as Chairman from December 2011 to April 2, 2015, there was no audited statement for the authority. This was despite his request for same from the ED. The last audited financial statements for MPM and WPM was 2007. The then chairman accepted that the Audited Financial Statements were “**not clean**” or expressed another way were “**qualified.**”

Minutes of board meetings demonstrate that the difficulties the auditors faced were monumental indeed, insurmountable, in that, the NSWMA and related entities failed repeatedly for several years, administration after administration, to provide Parliament with Annual Reports and Audited Financial Statements.

The last Audited Statement and Annual Report were tabled in Parliament over 10 years ago. The minutes speak to several grave problems /weaknesses within NSWMA relating to its accounting procedures and the disastrous consequences of “**qualified**” financial statements.

At the board meeting of March 4, 2015 this matter was again discussed and one director noted:

“... That the challenge with the 2005 Audit was that it was qualified; PWC had not expressed an opinion on it. He added that based on the minutes of the January meeting, PWC has again indicated that all the accounts up to 2013 will be similarly “qualified”.

This director went on to say:

“For MPM and WPM the last audited statements were for the year 2007: and were also qualified. SPM’s accounts were audited up to 2011, and for NEPM the last audited statements were for the year 2008”. He reiterated that all the accounts were **qualified** and **no clean accounts** have ever been rendered to the best of his knowledge.

On a closer examination of the minutes some of the issues were identified. In reporting on the 2007 consolidated accounts the auditors noted in the minutes of March 4 that:

“The consolidated accounts and regarding the fixed assets, the auditors were not able to verify the fixed assets for the group. He noted that certain fixed assets were purchased for which the auditors were not able to find supporting documentation: thus there were unable to conclude whether the balance being carried for fixed assets was accurate. “In respect of payables the auditors advised that they: “...were unable to find invoices or supporting documentation for the \$44m of the \$324m in payables. In addition to this there was a balance of \$71m for inventory which the auditors were also unable to substantiate.”

Those matters above are only some of the issues the auditors faced. A similar situation existed in respect of the regional companies. MPM came in for mention in that it maintained no proper fixed asset register so the auditors were unable to verify that the amount of \$8.5m being carried by the company was accurate. The auditors could not substantiate the amount of \$9.6m in payables. The auditors were unable to source information on related party disclosures, such as key management compensation and payroll taxes; so those disclosures were missing from the financial statements. What seems to have happened is that the NSWMA instead of taking on Parliament’s clearly defined charge merely took over the companies that pre-existed NSWMA and operated all companies as one, with the very same Directors, and not as separate companies individually registered under The Companies Act.

As a result related party receivables were “... MPM owes the NSWMA \$302m, WPM owes \$268m, SPM \$235m and Parks \$79m.”

Mr. Ashley, in his attempts to explain the crises-crossing of financial transactions and the general unhappy state of affairs offered:

“If I can recall the responses were so ridiculous that – they tried to tell us that there were some differences between one company and the other, and that one company would spend money for the other company it was a convoluted explanation.” Mr. Ashley explained that he did not receive this ‘convoluted’ explanation in writing. He went further to say that for the last four years: “...We tried our best to find a way to disaggregate this thing over the last four years and we were never being able to do it.”

It was Mr. Ashley’s opinion that this was as a result of the association between the ED and the Director of Finance, “...it is a sort of a lock-shop, it is impossible to get information.” The minutes reveal that there were real difficulties in paying garbage-haulage contractors, that approximately \$200m would become payable by the NSWMA as a result of IDT awards for wrongful dismissals for a previous

period; some legal issues arose over a Pension Fund started by MPM, millions of dollars were owed to the Tax Administration, National Housing Trust, failure to reconcile bank statement for a great many years back to 2009.

Ms. Edwards conceded that there were serious problems surrounding the Financial Statements and Audited Accounts. She explained that she inherited the situation and in so explaining, mentioned a major fire which occurred at NSWMA headquarters under the watch of her immediate predecessor Mrs. Joan Gordon Webley. According to Ms. Edwards, quite a bit of the records was destroyed by this fire. She said:

“When I got there, we had just had a fire on the second floor of the building where all the accounts and all of the record (*sic*) were held, major fire that destroyed quite a bit.”

Ms. Edwards said that the auditors could not even find an opening balance for the year 2007. In her testimony, Ms. Edwards explained that her predecessor Mrs. Joan Gordon Webley told her that when she (Mrs. Joan Gordon Webley) took office, accounting documents were missing or not available. Such was the state of the financial affairs that the auditors found it necessary to issue a **disclaimer** on all of the accounts. It seems to have been a historical problem, one which appeared to have characterized the running of the NSWMA through successive administrations. Ms. Edwards’s proposal for rectifying the obviously undesirable situation was to have the board sign off on the “**unclean**” and “**qualified**” financial reports and thereafter seek to have Parliament’s approval. This idea did not find favour with the ministry with portfolio responsibility.

OPD’s Complainants

It is no wonder that some persons took time out to record complaints with the Public Defender. Below is a summary of each complaint.

Complaint No. 1

The complainant is an elderly man who resides to the south of the Riverton Disposal Facility in Gregory Park in the parish of St. Catherine. On a morning in the middle of March 2015 he was awakened to an unusual foul odour. He went outside to investigate. There he observed that his house and community were covered in thick smoke and a foul smell. Persons in the community told him the smoke and smell were coming from the Riverton City Dump. He was forced to seek medical care as he developed a persistent and excessive coughing and a sore throat. The complainant found it difficult to pay for his medical expenses. He reported that the cost of filling the first prescription was \$1,889.89. This complainant was not able to buy all of the medication prescribed at the same time.

His illness prevented him from engaging in his employment of driving his truck and as result he lost income. A medical report for the complainant revealed that he visited the health centre with a complaint of a two-day history of dry cough. He was diagnosed as having an uncontrolled blood pressure and a cough secondary to possibly acute viral illness.

Complaint No. 2

A resident of Duhaney Park, Kingston 20, which is approximately 2km north of the Riverton Disposal Facility. In 2006 she was diagnosed with sinusitis and thereafter had to visit the doctor often to seek treatment for her condition. In February of 2010 she was affected by a fire at the Riverton Disposal Facility. She became sick again in March 2015 on account of the smoke and smog from the Riverton Dump. She experienced discomfort, felt pain in her throat and ear, and her eyes and nose burned. Her medical report confirms a diagnosis of sinusitis and upper respiratory tract infection.

Complaint No. 3

On March 18, 2015 this complainant, a middle-aged female, was outside her home at New Haven, Kingston 20, when she observed smoke in the community. She went about doing her household chores then she began to cough and sneeze and developed a runny nose. Her condition persisted despite her best efforts to fight it using home remedies. This complainant's condition worsened and ultimately she sought medical care from a private medical practitioner. The medical report revealed that she had a pre-existing sinus condition and on the day of presentation she complained of shortness of breath, sore throat, and a cough with productive sputum. She was diagnosed as having an upper-airway irritation, inflammation and infection secondary to inhalation of toxic vapours.

The doctor opined that:

“... In light of the potentially poisonous nature and the uncertain composition of the vapors (*sic*) the long-term effects of the toxic vapors (*sic*) inhaled are undetermined at present.”

Complaint No. 4

Lime Edge District, Mount James in rural St. Andrew, is where the 59-year-old house wife complainant resides. On March 15, 2015 she saw a mist in the air and attributed it to the onset of rainfall. However, after midday the mist thickened and the complainant began to smell smoke. Her sinuses became irritated and she sneezed and coughed. Her five-year-old granddaughter began to sneeze and cough, and developed a runny nose. The complainant's condition grew progressively worse and she had to seek treatment at a health centre having lost her voice completely. Eventually, she learnt that the smoke which caused her illness emanated from the Riverton Dump. According to the medical report, the complainant presented with a five-day history of cough and yellow sputum, with hoarseness of voice and sneezing. She was assessed as having an upper-respiratory tract infection and treated with antibiotics and cough syrup.

Complaint No. 5

This 61-year-old complainant has had a history of illness relating to sinusitis and migraine headaches. He resides in Seaview Gardens, Kingston, from where the smoke and smog from the Riverton Disposal Facility was plainly within his sight. By March 12, 2015 his entire house, yard and community were engulfed in smoke. Initially, he became stuffy. His efforts at using over-the-counter drugs proved futile as the symptoms grew progressively worse. He explained in his complaint to the OPD:

“My headaches became more severe, my nose started to run, my throat became sore, I had (*sic*) pain in my joints and I developed a high fever.” He went to the hospital where he was treated and given a prescription. When he returned home the smoke continued to cover down his home, yard and community. The situation lasted for two weeks.

Although he followed his doctor’s advice and remained indoors the smoke penetrated his house and his illness persisted. It was only after the smoke cleared that he started to recover. According to his medical report the complainant presented with weakness, joint pain, a sore throat and headache. He was assessed as having a pharyngitis and sinusitis. Although he was prescribed medication and expected to make a full recovery according to the attending doctor, the illness could be recurrent.

Complaint No. 6

The complainant has lived in Washington Gardens, Kingston 20, since her birth in 1973, and has always had problems with the Riverton Disposal Facility. At the age of 19 she was the President of the Citizens’ Association and problems were experienced with the dump at that time, and over the many years. On March 10, 2015 she reported: “The dump began to burn.” It caused her to have a dry cough, runny nose, sore throat, sore neck and she became hoarse. As the fire at the dump got worse and the smoke thickened she was forced to abandon her property and sought refuge at a friend’s home “...where the smoke problem was less severe”. She visited the doctor as her symptoms persisted. According to her medical report she complained of a dry cough and post nasal drip, and was diagnosed as having acute sinusitis. She was given two days’ sick leave and prescribed medication.

The complainant laments that since that time she has been trying to rent the small side of her house but prospective tenants lose interest after seeing her home’s proximity to the Riverton Disposal Facility. The gravamen of this complaint is that the frequent fires prevent her from securing a tenant and that the fires have depreciated the value of homes in her neighbourhood.

Complaint No. 7

Since birth this male complainant has been living in Seaview Gardens and has experienced firsthand the effects of one fire after another at the Riverton Disposal Facility. He is 34 years old and is employed as a medical technician. On March 12, 2015 the smoke came through a gap in his closed windows and enveloped his entire home. He awoke and was unable to breathe. This complainant panicked and began shouting:

“I can’t breathe I can’t breathe.”

He used his asthma pumps to no avail. He then lost consciousness. The complainant was rushed to a private doctor who immediately had him taken by ambulance to the University Hospital of the West Indies. In his report to the OPD the complainant explained that he was admitted to the intensive care unit where he was a patient. He recounted that his lungs collapsed and that he was placed in a medically-induced coma. According to him:

“My lungs were collapsed and infected.”

He was treated and placed on a ward to recover before being discharged. Because the smoke persisted in Seaview Gardens the complainant had to relocate to Clarendon temporarily. Although he was given seven days’ paid sick leave, he had to take another three days’ unpaid leave which resulted in loss of income. He is unable to pay the bill at the University Hospital. According to the medical report the patient upon arrival was noted to have laboured breathing and unresponsive with a reported Glasgow Coma in that he did not open eyes, verbalize/make sounds, nor did he respond to stimuli. He was diagnosed as asthmatic with type ii respiratory failure precipitated by atypical pneumonia. He was treated in the intensive care unit for three days and was discharged to the main medical ward on day four.

Complaint No. 8

This complainant is an elderly and completely blind man. He lives in Greater Portmore, St. Catherine which is located south of the Riverton Disposal Facility. On March 15, 2015 his nostrils began to burn and he developed a dry cough. His neighbour told him that he saw a lot of smoke that seemed to have been coming from the direction of the Riverton Disposal Facility.

He had to attend the Greater Portmore Medical Centre where received medical treatment. His medical report states that he presented with a history of dry cough and chest congestion caused by smoke in the area. He was diagnosed as having a possible smoke-induced allergic rhinitis and was prescribed medication.

Complaint No. 9

This complainant is a female vendor who sells in downtown Kingston. She lives at Ferry District, St. Andrew, which is close to the border with St. Catherine. A bronchitis patient of many years, she says that she is affected by even small fires lit by neighbours. On Saturday March 14, 2015 she opened her door to leave for work when she noticed that thick smoke blanketed the community. This prevented her from leaving the house and by nightfall she fell ill as her throat began to hurt and she became hoarse. She heard on the radio that the Spanish Town Health Clinic was open; so she put on a dust mask and used a wet towel to leave home to go there. On her journey many persons ridiculed her. She was treated at the health centre and returned home. According to her medical report she visited the health centre complaining of pain in swallowing for one day and a cough-producing white sputum. The complainant was diagnosed as having pharyngitis, possibly secondary to smoke inhalation.

Complainant No. 10

This female complainant is a resident of Duhaney Park, Kingston 20. In March 2015 she fell ill as a result of the smoke from the fire at the Riverton Disposal Facility. She sought medical attention due to her illness and the doctor prescribed medication. Based on receipts provided, it is evident that she spent a great deal of money on medication. No medical report has been provided due to her inability to pay for it.

Complaint No. 11

This 77-year old complainant had never been affected by asthma. However, on March 14, 2015 she was getting ready for church when she began to have shortness of breath and wheezing. She soon realized that it was the smoke which had engulfed her community which was causing her to wheeze and have shortness of breath. Upon visiting the doctor she was immediately nebulized and given medication to help her cope with the wheezing. She now has to use an inhaler and take the medication prescribed for her. No medical report is available.

Complaint No. 12

This complaint is a resident of South Camp Road in Kingston, aged 52 years. On March 16, 2015 she saw smoke cover down her community and because she is asthmatic she took action to prevent the smoke from entering her house. Despite closing her windows and doors the smoke invaded her house. Her eyes and nose became runny and her throat became sore accompanied by wheezing. The smoke persisted for days and she was forced to go to the Kingston Public Hospital where she was admitted. The complainant was treated at the hospital for two days before being discharged. She narrated that, in hospital she was put on the “drip” and was nebulized continually. After her discharge she still was exposed to the smoke and had to be taking medication to alleviate the symptoms. No medical report is available.

Complaint No. 13

This complainant owns and operates a business in Nanse Pen, Kingston 11. Due to the smoke caused by the Riverton Dump Fire in March 2015, he was forced to close his business for three days.

The closure of the business was necessary as the smoke resulted in the employees falling ill. Many of his staff complained of feeling ill, increased sinusitis and one member suffered an asthma attack. Although the business was closed he was obliged to pay his staff whilst not earning revenue, as they were not able to transact business with customers. He therefore suffered financial loss. The OPD has not been furnished with proof of lost income or medical reports.

Findings

1. The allegation of lack of resources has not been made out in that the billions of dollars provided for the Riverton Disposal Facility, and other disposal sites have not been accounted for, nor have the earnings of the Parks and Markets.
2. The NSWMA operated with impunity, in that, it disregarded / ignored the terms and conditions of NEPA's environmental permits and made little effort to be compliant, always raising issues as to why it could not comply.
3. The NSWMA failed to fulfil its legal duty to safeguard public health of Jamaicans. From its inception to 2014 it operated and managed the Riverton Disposal Facility without an environmental permit contrary to the provisions of the Natural Resources Conservation Authority Act.
4. The NSWMA acted at large without any or adequate sense of fidelity or understanding of the enabling legislation and demonstrated no, or scant appreciation for the constitutional provisions guaranteeing persons a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage and repeatedly violated the provision of the charter.
5. The Executive Director also, it seems, operated as an Executive Chairman of the Board without sufficient/if any check and balance.
6. NSWMA managed its financial affairs without a sense of duty and accountability to the people of Jamaica.
7. It has not submitted to Parliament neither Annual Reports nor Audited Financial Statements in over 10 years.
8. The NSWMA has breached section 3 of the Public Bodies Management and Accountability Act.
9. The costs of putting out the fires over the very many years far exceed the cost of establishing a sanitary landfill so urgently needed.

10. Under Ms. Jennifer Edwards's leadership/stewardship, the Authority ignored or disregarded or failed to appreciate the absolute necessity for observing all NEPA's conditions.
11. The creation and maintenance of cells, is an effective means of reducing the possibility of fires, the cost of which is manageable and within budget.
12. That the financial resources of the NSWMA were managed with far less care than was required in The Management of Public Funds. The authority breached many basic and established accounting practices to govern its resources.
13. Despite the widespread and frequent fires the NSWMA did not have a fire-suppressant system but relied exclusively on the Jamaica Fire Brigade as first responders.
14. The NSWMA'S attention to "public health" of Jamaicans related solely to the removal of garbage from homes and communities.
15. There exists at Riverton a multitude of mini dumps of various sizes and material dispersed all over.
16. A report on Riverton would not be complete without mentioning the existence of perhaps the largest piggery in the county, if not the island, creating a stench which is as offensive as it is invasive.
17. It was not Parliament's intention that garbage truck after garbage truck should attend on the disposal site and deposit the garbage and repeat that action to the extent that sections of the Riverton Disposal Site is now "over 80 feet above sea level" as told to the Public Defender.
18. Parliament's intention when enacting the NSWMA remains unrealised, unfulfilled.

19. NEPA was slow to act and started to pursue NSWMA after the permits were issued.

Recommendations

1. That persons who had to receive medical attention as a direct result of the March 2015 fire be identified and monitored by the Ministry of Health, to determine the long-term effects, if any, at no cost to such persons.
2. Any person appointed, employed or otherwise engaged to manage public bodies ought to be possessed of the necessary formal training, experience and demonstrable expertise before such appointment is made.
3. Public bodies should make public their quarterly reports and half-yearly reports which are prepared for the ministry with responsibility.
4. That the conditions stipulated by NEPA in its environmental permit and all other material legislation be strictly adhered to.
5. That the NSWMA takes legal advice on its functions, organizational and operational structure from the Attorney General and steps be taken to fulfil Parliament's mandate.
6. That a forensic audit be conducted on the accounts of the NSWMA and its affiliate entities/subsidiary companies.
7. That the Contractor General investigates the circumstances under which the NSWMA has come to be indebted to former employees in a sum in excess of two hundred million dollars (\$200,000,000) as a result of IDT awards arising from dismissals in a previous period.

8. That the Contractor General also investigates the allegations raised in Parliament by Member of Parliament, Mr. Desmond McKenzie, now Minister of Local Government and Community Development, that the contractors engaged by NSWMA are People's National Party loyalists.

Finally, the Public Defender notes that several of the shortcomings disclosed in the investigations have since been addressed following the changes which were implemented in the aftermath of that March 2015 inferno.

ARLENE HARRISON HENRY
MARCH 2016



THE MONTEGO BAY OFFICE

This Commission of Parliament, Office of the Public Defender, opened our temporary office in the city of Montego Bay, St. James, on January 22, 2016 to facilitate complaints in the interim until arrangements were in place for a permanent office.

It was decided that the opening hours would be on Fridays from 8:30 a.m. to 4:00 p.m. This was made possible by the Consumer Affairs Commission for the use of whose building we had an occupancy agreement for approximately six months which was extended for a further six months to December 31, 2016.



ADDRESS OPENING OF OPD MONTEGO BAY JANUARY 22 2016

WE ARE HERE TODAY TO DISCHARGE OUR COMMITMENT TO JAMAICA, GIVEN LAST YEAR THAT OPD WOULD ESTABLISH AN OFFICE IN MONTEGO BAY.

TODAY, JANUARY 22 2016, MARKS THE OPENING OF OFFICE OF THE PUBLIC DEFENDER IN MONTEGO BAY.

WE ARE EXCEEDINGLY PLEASED TO BE HERE AND TO SAY WE REGRET THAT THIS STEP WAS NOT TAKEN EARLIER.

WE ACKNOWLEDGE WITH THANKS THE HELP GIVEN TO THE OFFICE OF THE PUBLIC DEFENDER BY THE CONSUMER AFFAIRS COMMISSION, IN ESTABLISHING THIS OFFICE. THE CONSUMER AFFAIRS COMMISSION HAS KINDLY AGREED TO ALLOW US TO SHARE THEIR SPACE FOR A PERIOD OF 3 MONTHS DURING WHICH TIME WE WILL SEEK A HOME FOR OURSELF.

EVEN THOUGH OFFICERS PRESENT HAVE ALREADY BEEN INTRODUCED I WANT TO EMPHASISE THAT THESE PERSONS ARE IMPORTANT MEMBERS OF THE TEAM AT THE OPD. REGRETTABLY NOT EVERYONE COULD BE HERE TODAY BUT OVER TIME THE MONTEGO BAY COMMUNITY AND THE WIDER WESTERN JAMAICA WILL MEET OTHERS FROM THE OFFICE.

SO ON THIS DAY OF THE OPENING OF THE MONTEGO BAY OFFICE I TAKE THIS OPPORTUNITY TO REMIND US OF WHAT OUR WORK IS ALL ABOUT.

SO THOUGH A SINGLE INDIVIDUAL IS APPOINTED AS PUBLIC DEFENDER, THE PUBLIC DEFENDER IS A COMMISSION OF PARLIAMENT ESTABLISHED BY THE PUBLIC DEFENDER (INTERIM ACT) 2000.

OUR RESPONSIBILITIES ARE SERIOUS, IN THAT, THIS COMMISSION OF PARLIAMENT IS CHARGED WITH THE LEGAL DUTY OF **'PROTECTING AND ENFORCING THE RIGHTS OF CITIZENS'**

THE COMMISSION IS NOT A DEPARTMENT OF GOVERNMENT OR AN AGENT OF GOVERNMENT AND IS NOT SUBJECT TO THE DIRECTION OR CONTROL OF

GOVERNMENT. WE ARE INDEPENDENT OF OUR CREATORS, NAMELY, THE EXECUTIVE AND LEGISLATIVE ARMS OF GOVERNMENT.

WE DO NOT REPORT TO A MINISTER OR A MINISTRY. WE REPORT TO THE PEOPLE OF JAMAICA BY SUBMITTING ANNUAL REPORTS TO THE DEMOCRATICALLY ELECTED PARLIAMENT CONSISTING OF MEMBERS OF THE PEOPLES NATIONAL PARTY AND THE JAMAICA LABOUR PARTY.

IT IS OUR STATUTORY DUTY IS TO INVESTIGATE ALLEGED VIOLATIONS OF HUMAN RIGHTS AND ALLEGATIONS OF MAL ADMINISTRATION.

THE PUBLIC DEFENDER IS DESCRIBED IN THE LEGISLATION AS AN INVESTIGATOR OF COMPLAINTS RECEIVED BY HIM/HER.

IT IS OUR DUTY IS TO:

- GIVE A VOICE TO CITIZENS TO COMPLAIN
- INVESTIGATE AND RESOLVE INDIVIDUAL COMPLAINTS.
- ACT AS A SAFEGUARD, OF CITIZENS RIGHTS AND A SAFETY NET BETWEEN THE CITIZEN AND GOVERNMENT ACTIONS THAT MAY ADVERSELY AFFECT THE CITIZEN AND
- UNDERTAKE OUR OWN INVESTIGATIONS ON OUR OWN INITIATIVE.

IN OUR LEGISLATIVE SCHEME THE PUBLIC DEFENDER IS AN INSTITUTION TO PROVIDE ACCESS TO JUSTICE TO CITIZENS AND IT IS A NATIONAL AUTHORITY CAPABLE OF PROVIDING A REMEDY.

WHILE RECOGNISING THAT OUR COURTS ARE THE FINAL ARBITERS, IN SOME INSTANCES THE NON - JUDICIAL REMEDY WHICH WE CAN PROVIDE IN APPROPRIATE CASES IS CHEAPER AND QUICKER THAN GOING TO COURT.

WE MUST THEREFORE BE READILY ACCESSIBLE TO ALL OF JAMAICA HENCE OUR PRESENCE NOW IN WESTERN JAMAICA. WE ACKNOWLEDGE WITH THANKS FINANCIAL SUPPORT THAT ALLOWS US TO ESTABLISH A WESTERN OFFICE AND LATER AN OFFICE IN CENTRAL JAMAICA.

I AM VERY PLEASED THAT THE STAFF IS AS ENTHUSIASTIC AS I AM ABOUT EXPANDING OUR SERVICE TO JAMAICA AS IT IS NOT SATISFACTORY THAT WE OPERATE ONLY OUT OF KINGSTON; OUR SERVICE MUST BE AVAILABLE TO ALL.

THERE IS NO FEE CHARGED AT OUR OFFICE AND THERE IS NO DEDUCTION MADE FROM SETTLEMENTS OBTAINED FOR OUR CLIENTS.

THE RIGHTS WHICH THE COMMISSISON IS CHARGED WITH PROTECTING AND ENFORCING ARE THOSE CONTAINED IN THE CONSTITUTION, THE CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS.

THE EXTENT AND SCOPE OF THE COMMISSION IS DEFINED BY THE ACT WHICH MANDATES THE PUBLIC DEFNDER TO UNDERTAKE **INVESTIGATIONS IN COMPLAINTS** WHERE THE PUBLIC DEFENDER IS OF THE OPINION THAT:-

'(a) that any person or body of persons-

- (i) has sustained injustice as a result of any action taken by an authority or an officer or member of such authority, in the exercise of the administrative functions of that authority; or
- (ii) has suffered, or is suffering or likely to suffer an infringement of his constitutional rights as a result of any action taken by an authority or an officer or a member of that authority'

Authority is defined to mean Ministries, agencies and departments of Government including the JCF.

The rights to be protected and enforced are those found in the Charter of Fundamental Rights and Freedoms and include:

- the right to life hence our investigations in the Tivoli Incursion and participation in the Commission of Enquiry
- protection from arbitrary arrest
- protection of the freedom of movement
- protection of religious freedoms and expressions
- protection of privacy of the home

among several others.

ON THE CONCLUSION OF ANY INVESTIGATION THE PUBLIC DEFENDER MAY MAKE RECOMMENDATIONS AS SHE THINKS FIT TO THE AUTHORITY.

CONCLUSION

WE ARE A NATIONAL INSTITUTION HELP MAINTAIN AND IMPROVE THE QUALITY OF OUR DEMOCRACY, TO MAKE A DIFFERENCE IN LIVES BY PROMOTING ACCOUNTABILITY, ACTIVE CITIZENSHIP AND REINFORCING THE LAWS OF OUR COUNTRY, PARTICULARLY THE SUPREME LAW THE CONSTITUTION OF JAMAICA.

THE CONCEPT OF THE PUBLIC DEFENDER IS PREMISED IN PRINCIPLES OF OBJECTIVITY IN THAT THE PUBLIC DEFENDER NOT BEING A PART OF GOVERNMENT ADMINISTRATION HAS NO INTEREST IN PROTECTING ADMINISTRATIVE FUNCTIONARIES.

IMPARTIALITY AND NON PARTISANSHIP ARE CRITICAL IN THE PERFORMANCE OF OUR DUTY.

RANDOMLY-SELECTED CASE STUDIES

C206/15

The Office of the Public Defender received a complaint from a citizen whose grouse was against the National Insurance Scheme (NIS). The nature of the complaint was that the citizen retired and was having difficulties obtaining records of NHT and NIS contributions from the Post and Telecommunications Department for the processing of a pension application.

Contact was made with the Post and Telecommunications Department and they immediately responded to us. We were able to obtain all the records in a reasonable time frame and it was subsequently forwarded to the complainant. We were later informed that information received was acceptable and the application for pension benefits was being processed.

In light of the above-mentioned the file was closed due to the fact the matter was resolved.

C477/10

The employees of Bodles Research Station, St. Catherine, sought the assistance of the Public Defender resulting from a robbery, by way of letter dated October 23, 2009.

The matter was previously brought to the attention of the Ministry of Agriculture; the Ministry then referred the matter to the Attorney General's Chambers seeking compensation for the aggrieved staff. However, the Attorney General's reply was not acceptable and so this Office intervened.

After numerous follow-ups with the Legal Officer at the Attorney General's Chambers, this Office decided to bring the matter to the attention of the Deputy Solicitor General for a more expedient result. In a letter dated January 24, 2014 from the Attorney General it was stated that the Ministry of Finance had granted approval for *ex gratia* payments for eight persons. Compensation was disbursed in February, March and July of the year 2015.

Since the aggrieved staff had received compensation, we went ahead and closed the file as no further investigation was necessary.

C121/15

A complaint was submitted to the Office of the Public Defender by way of letter dated March 27, 2015, by a disgruntled complainant, who had expressed dissatisfaction with the Ministry of Education.

She complained that since September 2014 when she was appointed to replace the previous teacher whose services were terminated, she was not paid the salary stipulated from the Ministry of Education.

We immediately began to probe the matter and directed allegations raised by the complainant to the Permanent Secretary, Ministry of Education, in a letter dated March 30, 2015. A letter was also penned to the Early Childhood Commission, Region Two, within the Ministry of Education. An email correspondence was received further to update from the Early Childhood Development Services dated June 30, 2015. The content of the email was favorable, as it mentioned that the citizen's application was processed and approved and payments were made retroactively from September 2014.

Subsequently, we made a decision to close the file based on the fact that a payment voucher and cheque were prepared in the amount of two hundred and seventy-six thousand and thirty-seven dollars, thirty-two cents (\$276,037.32).

OFFICIAL TRAVEL OVERSEAS

OFFICIAL TRAVEL OVERSEAS TO PANAMA CITY

The Public Defender was invited by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to attend a Seminar: “Strengthening Specialized Equality Bodies’ capacity to implement the Programme of Activities of the International Decade for People of African Descent” in Panama City on July 19-20, 2016. The funds were borne from the approved budget for 2016/2017, The United Nations, Office of the High Commissioner for Human Rights.

The International Decade for People of African Descent, to be observed from 2015 – 2024, constitutes an auspicious period of history when the United Nations, member-states, civil society and all other relevant actors join together with people of African descent and take effective measures for the implementation of the programme of activities. It recognizes that the Durban Declaration and Programme is a comprehensive United Nations Framework and a solid foundation for combating racism, racial discrimination, xenophobia and related intolerance, and represents a new stage in the efforts of the United Nations and the international community to restore the rights and dignity of people of African descent.

The Durban Declaration and Programme of Action acknowledged that people of African descent were victims of slavery, the slave trade and colonialism, and continue to be victims of their consequences. The Durban process raised the visibility of people with African descent and contributed to a substantive advancement in the promotion and protection of their rights as a result of concrete actions taken by States, the United Nations and other International and Regional bodies and civil society. Regrettably, despite the above-mentioned advances, racism and racial discrimination, both direct and indirect, continue to manifest themselves in inequality and disadvantage.

"People of African Descent: recognition, justice and development"

Claiming indemnity for a historical injustice

By Arlene Harrison Henry, Public Defender - Jamaica

Jamaica is a country in the northern Caribbean with a population of approximately 2.7 million people (STATIN 2013).

It has a tragic history of occupation and colonization stretching back over 500 years; and those who already called the island home at the time of so-called discovery had settled in the region for thousands of years prior to the alleged discovery.

Jamaica's history is one of harsh cruelty, unfathomable beauty, and the indomitable spirit of a people determined to succeed.

Howard Pyle said of Jamaica in an 1890 edition of Harper's New Monthly Magazine:

"She has suffered earthquake, famine, pestilence, fire and death: and she has been the home of cruel merciless slavery, hardly second to that practiced by the Spaniards themselves. Other countries have taken centuries to grow from their primitive life through the flower and fruit of prosperity into the seed time of picturesque decrepitude. Jamaica has lived through it all in a few years."

The effects of this brutal history still linger in present day Jamaica and we the descendants of Africans who were forcibly removed from our native lands and enslaved and forced to labour for European business interests have still not recovered our legacy after it was obliterated, robbed and exploited by the slave trade.

In Jamaica, as well as much of the Caribbean, people of African descent are not in the ethnic minority, in fact, over 90% of Jamaicans are of West-African heritage and a further 6% are of mixed (largely African) ancestry. The other 4% of the population consists of whites, Chinese, East Indians, and other mixtures.

A breakdown of our population is:

Blacks - 2,471,946

White Mixed - 162,718

East Indians - 20,066

Not reported - 17,486

Chinese - 5,228

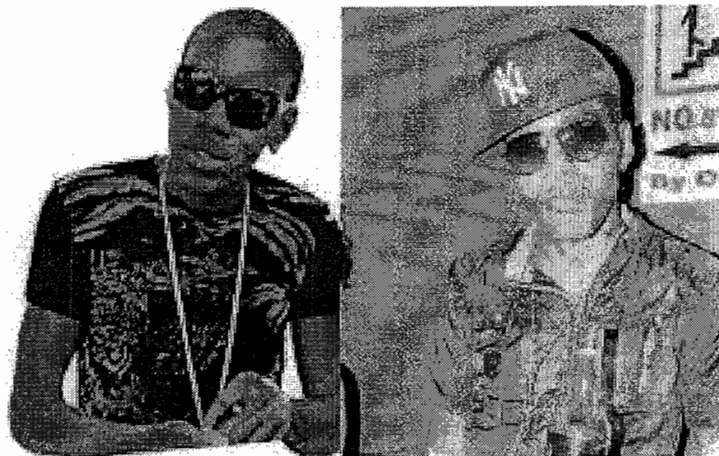
White - 4,365

Other - 1,898

Despite the predominance of African people in Jamaican and Caribbean societies there have been very long periods of our history when Africans had limited rights and were ruled over by a numerically small group of whites.

Colonial powers brainwashed our people in believing that black skin and other African features were inferior. Denigration and self denial continue in Jamaica where skin bleaching is currently popular. Below are photographic evidence of the bleaching epidemic that is pervasive across the island.

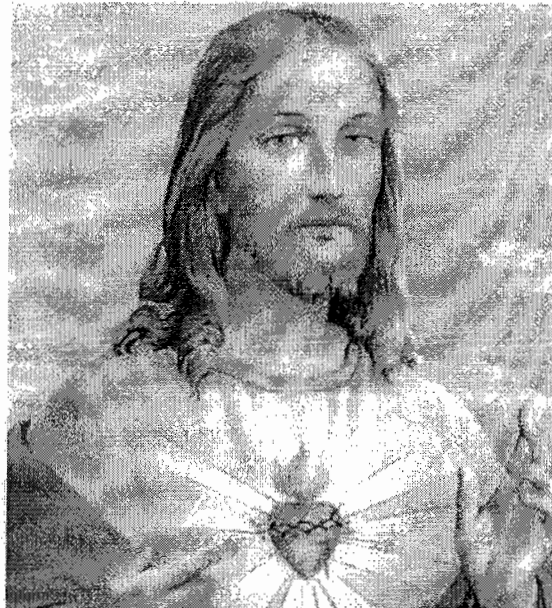






Despite cultivated policies, including Christian teachings, to subjugate Africans in accepting that we are lesser people, indeed inferior, we have had the benefit of great leaders of vision such as Sam Sharpe, Paul Bogle, Nanny of the Maroons, Leonard Howell, Marcus Garvey, and Bob Marley, all of African descent.

The ultimate was the teaching that Jesus was white as depicted in the picture below which hung in many Jamaican homes.



Nonetheless, it is because of our recent history of subjugation and exclusion that we must forever be vigilant to ensure the words of our motto permeates our system of governance and our way of life: **Out of Many, One People**, a motto which is largely aspirational.

The theme of recognition, justice and development for African descendants is particularly poignant for us in Jamaica given our peculiar historical context and contemporary political realities.

To this day the poorest of Jamaicans are overwhelmingly people of African descent who still live in circumstances not far removed from the squalor and poverty their great-grandparents experienced as slaves. Despite

improvements there is still lingering inequity that results in pain, disenfranchisement, and injustice

It therefore is clear that much more needs to be done to protect the most vulnerable Jamaicans and that despite our shared heritage and marked improvements hundreds of thousands have been left behind with little hope of rising from poverty.

It is therefore of critical importance that we examine our history in order to assess the applicability of the Resolution in its fullness.

For the purpose of this discussion let us consider the theme as follows:

Recognition: Reversing the historical invalidation of pre-colonial African civilization & African identity.

Justice: Accountability for crimes against humanity & reparation for victims.

Development: Concerted efforts by descendants of the beneficiaries of the slave trade to improve the lived realities of people of African descent.

Recognition

Part of the challenge facing us in the Caribbean and in Jamaica particularly is the lack of consensus on the need for the human dignity of people of African descent to be restored after the trauma of the slave trade and slavery. Many still perceive Africa as an unenlightened and uncivilized continent prior to European colonization and therefore misunderstand the impact of these past events on the lives of people of African descent, even into the present.

In his seminal work 'How Europe Underdeveloped Africa' (1973), Guyanese academic Walter Rodney posited:

"African and Asian societies were developing independently until they were taken over directly or indirectly by the capitalist powers. When that happened, exploitation increased and the export of surplus ensued, depriving the societies of the benefit of their natural resources and labour. That is an integral part of underdevelopment in the contemporary sense."

Central to this concept of development, and especially the seeming lack of development of Africa, is a series of questions Rodney and others have contemplated and which if considered carefully are instructive for this dialogue we are now engaged in:

- (a) What was the nature of development in Africa before the trans-Atlantic slave trade?
- (b) What was the nature of development in Europe before colonialism?
- (c) What was Africa's contribution to Europe's present 'developed' state?
- (d) What was Europe's contribution to Africa's present 'underdeveloped' state?

Considering these questions is necessary in order for us to appreciate the extent and scale of injury to the psyche, culture, and economy of the continent of Africa after 10 million of its residents were captured and forced to work on plantations for 300 years, creating the labour force that contributed heavily to the industrialization and development of powerful and prosperous empires in Europe.

As outlined in the UN Resolution, recognition of the vulnerabilities of people of African descent must involve states taking concrete and practical steps at the national level to combat racism and related intolerance through information gathering, public education, and the creation of a framework conducive to participation and inclusion, undergirded by the right to equality and non-discrimination.

The National Commission on Reparations was established by the Government of Jamaica in 2009 to consider and make recommendations on proposals seeking compensation from countries formerly engaged in the slave trade and the slave trade. It gathers information with an ultimate objective to examine available remedies for the descendants of African slaves in Jamaica. In July of this year Jamaica's Culture Minister announced the formation of a National Council on Reparations to once more look seriously into the issue of reparations for slavery, a move which has been warmly received.

Justice

Sir Hilary Beckles, Vice Chancellor of the University of the West Indies (UWI) and Chair of the Caribbean Community (CARICOM) Reparation Commission

augment the work of existing commissions and councils and also serve as an institutional hub for human rights issues in Jamaica guided by an ethos of Participation, Transparency, and Accountability. This is a matter I strongly believe in.

In specific response to the guidelines provided as to our country's system of documentation of the conditions of Africans living in Jamaica our comments are:

PARTICIPATION

With a population of approximately 2.7 million people, Jamaica has a history of maximum participation in the data collection process.

Data collected in surveys such as population census done every ten (10) years provides information that is critical to national development. In 2011, it was reported in the *Jamaica Observer*, "*Importance of census to national development*", that with the intense public education programme of the Statistical Institute of Jamaica (STATIN), this method of data collection is effective and attracts a high level of public education and participation.

Population census provides facts critical to governments for policy-making, planning and administration and as a democratic society, this signifies meaningful participation.

With the advancement in technology and widened access to the information across the island, participation has been encouraged. National agencies involved in data collection exercises have over the years invest in public massive education programmes targeting relevant stakeholders. The proliferation of radio stations have assisted greatly in capacity strengthening and have increased statistical literacy enforcing the importance of data collection.

TRANSPARENCY

For the year 2015, Jamaica was ranked 69/168 countries on the Corruption Perceptions Index. This is representative of a score of 41/100. For 2010, Jamaica was given a 45% ranking with a score of 0.369706579.

The Access to Information Act, 2005, provides the general public with a right to access official documents which would otherwise be inaccessible. Further, with the proliferation of radio stations, the communications base has been widened.

Agencies such as STATIN and PIOJ produce and publish annual reports which are also accessible to the public. These reports relate to the Social and Living Conditions of Jamaicans. These annual reports guide policy and has led to the introduction of programmes for the most needy especially children and the elderly.

The legislative framework of each statistical entity addresses transparency in their operation, especially as to the method of appointment of officers, the technical competency of persons to be appointed, emoluments and security of tenure of officers.

Acts to be examined are the Statistics Act, Planning Institute of Jamaica Act, etc.

PRIVACY

The Statistics Act under which agencies operate requires that information is published in an aggregated format that prevents the publication of information that will identify individual or businesses involved in the data collection process.

The first population census was done in Jamaica in 1943 and since that time, confidentiality concerns were raised. In addition to the stipulations of the Act, each employee in the field collecting data is required to take the oath of secrecy.

The information collected is used for the intended purposes, as contrary usage will and can result in the application of the Defamation Act, 1963, criminal charges and dismissal.

ACCOUNTABILITY

Statistics gathered are free from political interference as the governing statutes of the various entities ensure that appointments of the staff are transparent. Various publications ensure that relevant and disaggregated indicators are published and accessible. These include, the survey of social

and living conditions, public education campaigns, as well as, annual reports from statistical entities.

In the Jamaican society, the organization of the public sector in particular is structured in a way so as to ensure that marginalized groups are represented and participate in the data collection process. For example, within the Office of the Prime Minister, there is a Bureau of Gender Affairs which addresses and handles gender related matters. There is presently and has been for some time a campaign regarding HIV/AIDS awareness. In relation to public health, the focus presently is on the ZIKA virus and its far reaching effects. The Jamaica Foundation for Lifelong Learning addresses those marginalized through lack of education. All the aforementioned initiatives represent Jamaica's approach to undertake data collection for marginalized groups while strengthening data collection methods.

Development

The promotion of personal, cultural, and economic development for people of African descent is part of wider goal of restoring value to a people that have suffered great indignity over centuries of exploitation and humiliation.

The specific objective and focus of the International Decade for People of African descent is on strengthening national, regional and international action in relation to the full enjoyment of economic, social, cultural, civil, and political rights by people of African descent and their full and equal participation in all aspects of society.

As we have seen across all the former colonies this is not so, and the descendants of African slaves are disproportionately represented amongst the poor, unhealthy, homeless, and uneducated due to discrimination and exclusion at a systemic level.

States must therefore recognize the inequity that perpetuates the vulnerability of people of African descent and act to address it through the implementation of mechanisms and special measures that can alleviate or remedy the disparities which negatively affect the full enjoyment of human rights and fundamental freedoms in our societies.

As we have seen demonstrated over the past few weeks, injustice anywhere is a threat to justice everywhere.

Let us work together to right the wrongs of history.

One Love!

OFFICIAL TRAVEL OVERSEAS TO GENEVA, SWITZERLAND

Mrs. Kayla Beckford Harrison, Director of Investigations, was appointed by the Public Defender to attend the Office of the High Commissioner for National Human Rights' (OHCHR) Inaugural Sessions of the Forum on Human Rights, Democracy and Rule of Law, in Geneva, Switzerland on November 21-22, 2016. The funds were borne from the approved budget for 2016/2017.

The forum examined the myriad of issues prohibiting optimum youth participation in governance worldwide. Just to sum up the discussion, consideration was given to:

- factors of discrimination and inequalities impeding meaningful participation of young women and girls in public decision-making,
- legal and institutional framework required to enable youth to contribute to the formulation/ influence public policies,
- human rights without discrimination, challenges faced by youth in achieving meaningful participation in policy-making,
- access to resources as well as, mechanisms to secure access of young people/participation in the electoral system among other issues.

The Deputy Secretary General of the UN acknowledged that over time, young people have turned human rights into their reality and the general message has been recognized to be that of one creating a widening democratic space which helps to promote the socioeconomic space, "*Leaving no one behind.*"

As one of the main international bodies on Human Rights, the UN has accepted that ways need to be found to regain the trust of the young people. As most of us would agree, we live in a society filled with inequality. This is heightened by the rise of **demagogues**, who continue to engage and preach messages of hate and selfishness. For those who are unclear as to what is a demagogue, put simply, a demagogue is *a political leader who seeks support by appealing to popular desires and prejudices rather than by using rational argument.*

By perception, many of you may not be interested in this issue; however, the message needs to be driven home that the energy and advocacy of young people needs to be encouraged in this democratic climate. The benefits of democracy need to be shared and it is young people's courage that will endorse and support inclusion, equality and dignity.

Let's take a brief look at how today's society view and understand democracy. As it relates to elections, young people do not participate as much as the older generation. Young people are interested in politics but not in governance. You may ask yourself, why is this so? The first response that comes to my mind is, it is not accessible and their interests are not taken seriously.

Research has shown that young people have expressed that politicians do not represent their views. If we scrutinize this matter, we realize that as young people we belong to an online generation, yet when it comes to voting, we are expected to stand in line for hours to vote.

The society has and continues to take the talents of young people for granted, not providing them with the chance to impact decision-making. Many country representatives placed their suggestions on the table as to how we can increase youth participation. Suggestions included:-

1. Reducing age participation in the political process, "Not too young to run." campaign, we need to buy into this.
2. It was said that there is a disturbing trend of discussions around "*youth issues*". We need to change the narrative. The world needs to come to the realization that youth are a part of the solution and as it relates to Human Rights, there should be no exception.
3. Discrimination on the basis of age needs to be a thing of the past. Failure to recognize the vast contribution youth will bring to the table can and should be seen as a form of discrimination. It's time for us to make youth the drivers in governance and not merely spectators.

Creating an enabling Environment for effective youth participation in decision-making (How can we do this?)

- The approach of minimal consultation with youth is what is causing the problems. In that, the interests of youth are sidelined instead of mainstreaming them to legislation. There is no visible impact of consultations or sufficient evidence of them being integrated into decision-making.
- We should look at young people's participation as a tool of accountability; instead what exists is a culture of limited and in some countries no public policy which truly promotes youth participation.
- The financing of youth participation is almost never a consideration in democracy.
- Disability among the young is another area given minimal attention and not everyone likes discussing this topic. The lack of participation of disabled young people is quite evident and screams discrimination. The stigma attached to disabled youths is as a result of the lack of information available. The language used to address issues related to disability is not encouraging. Words such as "*economic burden*" are not pleasant. In this regard, educating the population will improve people's understanding of the role and rights of disabled youth.
- Many are not seeing the bigger picture that young people's inclusion drives development. The message need to be spread that youth participation is a right and rights are interdependent and interrelated. States are the duty bearers to ensure youth rights. As such, they need to create training opportunities, accessible resources, monitoring systems and not only recognize formal education.
- The focus of states should be towards sustainable development.

The Jamaican context: Role of the Office of the Public Defender

As “guardians” of the Constitution/ Charter of Fundamental Rights & Freedoms, our attention should be brought to the preamble of the Charter. It speaks specifically to us as individuals preserving our rights for future generations. This in essence speaks to sustainability of human rights. If we look back in history, we realize that Jamaica’s independence is celebrated as we move away from inequalities, whether it be gender, income, age or otherwise.

Youths represent the age group 15-24 years, this is 21.13% of the Jamaican population (male: 315,190 & female: 312,362).

Challenges

Underrepresentation ties in with discrimination. The youth population is thought to be incapable of making decisions on their own. This discriminatory view threatens the future of youth participation in society. The Human Rights concept does not resonate with young people, as they live in the real world and are concerned with tangible things. Therefore, Human Rights are interpreted as strategies for their survival.

Lack of interest among our young people is among the problems being faced. Older persons fail to understand that there needs to be a right blend in the governance structure of a country. In other words, we need intergenerational cooperation.

Poor Training & Education- The knowledge and expertise required for meaningful participation in most cases is not part of the formal curriculum taught in schools.

Inability to access finances – For involvement in the political process, access to financial resources is a deterrent to young people.

The Charter speaks to discrimination on the basis of being male or female, race, place of origin, colour, social class, religion or political opinions. There is no mention of age; from this perspective the OPD observes the deficiency in this clause as the youth cohort is not protected from discrimination on the basis of their age. This gives rise to the recommendation of legislative reform to ensure maximum protection for youth, enabling them to actively participate in the decision-making process.

Recommendations

We continuously speak of wanting a better Jamaica, have we ever thought of enabling a culture of inclusion; that is including our youths more? Participation of our young people will strengthen a commitment and understanding of human rights and democracy. Studies have indicated that there is a need for young people to experience the implications of democratic decision-making and respect for human rights. These values have to come from practical experience. In this regard, youth need to be understood as part of the solution and active agents of change. In the legal framework to bring about change, we need to promote the introduction of **quotas** in electoral laws. As is, we find that laws are made for youths and not by youth, which underpins the problem being faced. A revision of the political structure will lead to the strengthening of youth capacity.

The **Registration of youth-led organizations** will emphasize and ensure that policies do not reinforce bias or discrimination. More investments in these organizations will strengthen the capacity of the youths. When youths start their involvement at the community level it prepares them for more meaningful contribution to decision-making.

Emphasizing Literacy, according to the present Minister of Education, Youth & Information, the literacy level stands at 86.7% at the primary level. We need to understand that literacy is the main means of upward mobility. Getting young people to understand the happenings of the past, will prepare them to want to play an active role in writing the future. One such means of securing a meaningful future is by playing their role in the governance/ policy-making process of their country.

Strengthening democracy through the political empowerment of youth can drive development. This can be done by creating more space for young people in Parliament through collaboration with the political parties. This can be even stronger if we seek to collaborate with international actors breaking the barrier of exclusion of the youth population.

Though we can come up with very good recommendations to foster youth participation in the promotion of human rights and governance that is not enough. Information regarding youth needs to be readily available and widely disseminated in a user-friendly format. This will enable young people to play a greater and more effective role in the decision-making process. There needs to be commitment to working towards shared principles and the willingness to identify young people as partners of change as we move towards sustainable development. We do not want a space in which traditional models of governance are duplicated by the youth population.

THANK YOU LETTERS

289/13

Constabulary Station
Malvern
St. Elizabeth

March 22, 2016

The Office of the Public Defender

Attention: Mrs. Curtis and the entire staff at the Office of the Public Defendant

I #95531, District Constable [REDACTED] Jones attached to the Malvern Police Station do express my sincere thanks to you and all the staff at the Public Defender's Office who took the time out their busy schedule to assist me with my case, especially Mrs. Curtis, in which I was more than satisfied with the outcome.

Again, myself and my family are expressing sincere thanks to you all.

Continue to do the good work in assisting the most fortunate ones who need assistance.

Yours truly,

Nadine Mills Jones
Nadine Mills-Jones (Mrs.)
#95531,D/C.

Beverly Campbell

From: jewliet22 [jewliet22@yahoo.com]
 Sent: Wednesday, May 04, 2016 6:49 PM
 To: bcampbell@opd.gov.jm
 Subject: Re: Non-receipt of Pension
 Attachments: IMG-20151221-WA0002.jpg

Good evening Ms. Campbell,
 Thanks for your investigation and response. I now realise that it was your office's intervention why I was paid.

Yes I received my arrears and payment in february, 2016. I am now awaiting the statement explaining payment.

I must also draw your attention to refund of Widows and Orphan of which letter from MOF attached reffers from November, 2015. I have not received.

Please use your able office to investigate.

Thank you.

Juliet Sewell-Wilson
 May 4th, 2016

Sent from my T-Mobile 4G LTE Device

----- Original message -----
 From: Beverly Campbell <bcampbell@opd.gov.jm>
 Date:05/04/2016 7:11 PM (GMT-05:00)
 To: jewliet22@yahoo.com
 Cc:
 Subject: Re: Non-receipt of Pension

Good Day Mrs. Sewell-Wilson,

Please see the attached letter. (The hardcopy will follow). Could you please confirm receipt of the payment?

Grateful for your early response.

Regards,

OFFICE OF THE PUBLIC DEFENDER
RADIO FEATURE

Office of the Public Defender (OPD) has a weekly segment titled “*Constitutionally Speaking* “ which is aired live every Thursday at 1:15 p.m. for fifteen (15) minutes on RJR 94 FM during the talk show *Hotline*. During 2016, topics on law were discussed and at times, issues which were not strictly constitutional law, were discussed, as those topics impacted persons at a national level.

The lack of knowledge was a major concern to this Office, that majority of our citizens were not aware of their rights and as such we took the initiative to explain in details the Charter of Fundamental Rights to change that knowledge gap. Through this programme, we have managed to change the perspective of some of our citizens in relation to how they now approach agents of the State in a matter of maladministration and constitutional breach.

COURSE OF STUDY - HUMAN RIGHTS LAW

The staff of the Office of the Public Defender completed a course of study in all aspects of Human Rights Law over the past six months under the tutelage of Dr. Birgit Gerstenberg, Senior United Nations Human Rights Adviser. This course of study was necessary to assist us in sharpening our understanding and to better prepare us to respond to the needs of the citizen.

We sat our final exams on Friday, April 8, 2016 and we were successful. There were distinctions, credits and varying achievements obtained.

Our closing session saw us feted with cakes and drinks and also small tokens of cups from our hard-working facilitator, Dr. Gerstenberg. We did enjoy the course of study and we indeed looked forward to graduation.

Graduation-planning began soon after and was sponsored mainly by the United Nations Development Programme (UNDP). The team from this Commission did an excellent job in collaboration with the (UNDP). The Planning Committee consisted of the following individuals:

Audry Jones Chong – Director, Corporate Services

Kaydian Nicholas (nee Jack) – Secretary to the Director, Corporate Services

Kayla Beckford – Director of Investigations

Petgayle Clarke – Secretary to the Director of Investigations

Lorna Palmer – Executive Secretary

Suzannie Banner – Investigator

Victoria Brown – Investigator

Special mention must be made of Mrs. Kerry Ann Smith, Accounts Receivables/Payables Officer, who assisted with choir practice and also Miss Yvonne Smith, Investigator, who deputized during Mrs. Smith absences.

Graduation was scheduled for May 28, 2016 at the Hotel Four Seasons, Ruthven Road, Kingston 5. Invitations were sent to our specially-invited guests and their spouses.

The invitations, programmes and certificates were created in-house and printed by Paper Boy Limited.

Special recognition was also made to employees who have given between nineteen (19) years and thirty-six (36) years of service to this Commission of Parliament. These honourees were presented with plaques on which were emblazoned their years of service and which were quite admirable.

The honourees were:

Mrs. Dorothy Reid – 36 years

Miss Pauline Patterson – 30 years

Miss Beverly Campbell – 26 years

Mrs. Ruth Lim Newman – 25 years

Mrs. Audry Jones Chong, J.P. – 24 years

Mrs. Gloria Alexander Cross – 23 years

Mrs. Inez Neita-Scott – 23 years

Miss Claudette Findlay – 19 years

Mr. Wayne Robinson – 19 years

There were also Special Awards issued at the function.



*The Office of the Public Defender
in collaboration with the
United Nations*



UN JAMAICA

Invite

.....
*To
Our 1st Human Rights Graduation Ceremony and Dinner*

*On May 28, 2016
At the Four Seasons Hotel
At 4:00 p.m.
(Please be seated by 3:45p.m.)*

Dress: Business Suit

*R.S.V.P. by May 18, 2016
Lorna Palmer—922-4159
Kaydian Nicholas—922-8254*

PLEASE BRING THIS CARD WITH YOU

SPECIAL AWARDEES

- Miss. Claudette Findlay
 Willingness to learn & flexible team player
 Mr. Kaseem Ricketts
 Willingness to learn & flexible team player
 Mrs. Loveta Dunkley
 Exceptional Performance—Human Rights Training
 Mr. Victor Hemmings
 Outstanding contribution to the investigations of the Tivoli Invasion
 (May 2010)

NAMES OF GRADUATES

- | | |
|-----------------------------|----------------------|
| Mrs. Gloria Alexander Cross | Mr. Michael Ferguson |
| Ms. Suzannie Banner | Mr. Anthony Houghton |
| Miss Kayla Beekford | Mr. Victor Hemmings |
| Miss Beverly Campbell | Mr. Gasedon Jones |
| Miss Petagyle Clarke | Mr. Kaseem Ricketts |
| Mrs. Loveta Dunkley | Mr. Dudley Stokes |
| Miss Claudette Findlay | Mr. Wayne Robinson |
| Ms. Hayden Jack | Mr. Lloyd Williams |
| Mrs. Audrey Jones Chung | |
| Miss Victoria Brout | |
| Mrs. Ruth Lim-Neuman | |
| Mrs. Inez Nello-Scott | |
| Miss Leina Palmer | |
| Ms. Pauline Patterson | |
| Mrs. Dorothy Reid | |
| Miss Yvonne Smith | |
| Mrs. Kerry-Ann Smith | |

DINNER

**Office of the Public Defender
 In collaboration with
 The United Nations in Jamaica**

Presents
 Its 1st
 Human Rights Graduation Ceremony

&
 Dinner

At
 Hotel Four Seasons
 18 Ruthven Road
 Kingston 10

On
 Saturday, May 28, 2016
 At 4:00 p.m.



WEST KINGSTON COMMISSION OF ENQUIRY

Four years after more than 70 persons were killed in the West Kingston incursion, the Commission of Enquiry into the incident commenced on December 1, 2014. The three-member Commission, chaired by former Chief Justice of Barbados, Sir David Simmons, is to investigate the circumstances under which persons were killed during the operation in May 2010. The Commission will also investigate whether the rights of West Kingston residents were violated by members of the security forces in their pursuit of Christopher "Dudus" Coke, whose extradition was requested by the United States Government on charges of drug racketeering and conspiracy to commit assault.

For the Public Defender, the year 2016 started with the West Kingston Commission of Enquiry entering the final phase of its hearings. With fewer than 20 of the 73 deaths established on evidence, the Commission, at the request of the Public Defender, set aside one whole week for the Office of the Public Defender to continue its efforts to get citizens of Western Kingston to attend and give evidence.

In that regard, the Public Defender deployed staff members to West Kingston and in particular Tivoli Gardens, to canvass and to persuade persons who witnessed killings and shooting by the security forces, or otherwise, or persons who had family members or relatives taken away or killed by security forces, to attend upon the Commission of Enquiry. In the Public Defender's quest to get persons to attend and testify, a meeting was set for the 12th January 2016. The Public Defender, her support staff, and their lead attorney, Lord Anthony Gifford, Q.C., were present at the appointed place and time. However, only three persons showed up. The meeting was therefore rescheduled for the 15th January; but on that date, nobody turned up. The meeting was again rescheduled; this time for the 21st January, but only seven persons were present. Their presence was due not so much to the Public Defender's arranged meeting, but rather a community meeting previously set for the same venue.

In the final analysis the efforts did not bear much success, as persons took the view that "*nutten nah cum outa it*". This was presumably in reference to the Government being administered by the political party which they historically did not support.

West Kingston Incursion Compensation Committee

Acting on the recommendations of the Commission of Enquiry, the Government established a Committee to hear the complaint of citizens of western Kingston who suffered loss and damage in the May 2010 joint police-military operations.

The committee became known as the West Kingston Incursion Compensation Committee; and was chaired by Mr. Justice Seymour Panton, retired President of the Court of Appeal. The other members were the Reverend Rennard White and the Reverend Herro Blair, Jr.

The Compensation Committee commenced its hearings in November; and held its sittings at the Ministry of Justice building for the rest of 2016, and into 2017. For all the sittings, the Public Defender provided attorneys-at-law to represent citizens who appeared before the Committee. Similarly, a representative of the Office of the Public Defender was present at all the sittings.

Sittings in 2016 at which the Public Defender was present and provided legal representation, were:-

22nd November

14th December

16th December

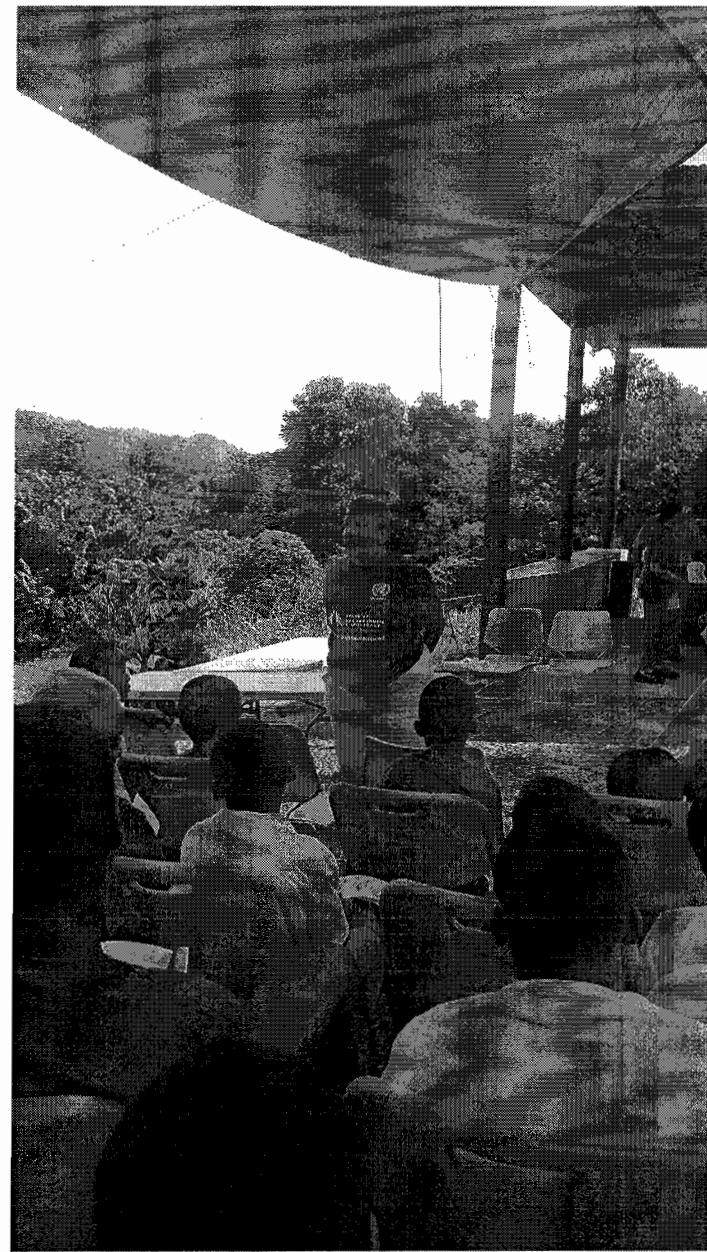
INTERNATIONAL HUMAN RIGHTS DAY 2016 - CLIFTON BOYS HOME

December 10th is celebrated as International Human Rights Day. The United Nations (UN) theme for 2016 was “Stand Up For Someone’s Rights Today”. Our intention was to focus on the topic of children under their theme. The Office of the Public Defender celebrated International Human Rights Day in Darliston, Westmoreland with the Clifton Boys’ Home. An interactive presentation was done by a representative of the UNICEF, Child Protection Officer on the “Convention and Rights of the Child”; the boys were engaged in the discussion and answered questions that were asked. Reading materials were handed out to each boy to be more familiar with the Rights of the Child and several books were donated to their Library by the Kingston Book Shop to edify them.

Mr. Leachim Semaj, motivational speaker, did a presentation which sought to motivate and inspire each of the 28 boys, who range in ages from six to 18. He spoke about growing from a boy to manhood and told them that their present situation does not determine their future. He gave a short synopsis of his life so that they could identify some similarities and encouraged them to pursue their dreams and aspirations.

In keeping with the Christmas spirit, we brought each boy personal gifts along with a care-package that included: rags, toothbrush, toothpaste, and school stationery, among other things. Food, drinks and dessert were prepared for each person at the Clifton Boys’ Home and the OPD staff.

The day’s activities were successful as we accomplished what we had set out to do. We brought Christmas cheers to the boys and at the same time, made it an educational experience and encouraged them to be good citizens.



OUTREACH PROGRAMMES

CONSULTATIONS and NON-INVESTIGATORY INTERVENTIONS

COURT, TRIBUNALS, AND COMMITTEES ATTENDED

There were a number of days in 2016 when the Public Defender had to be, or had to be represented in various courts and tribunals.

Court of Appeal

In 2016 the Public Defender had occasion to be in the Court of Appeal. It was in the matter of *Public Defender v The Attorney General*, SCCA No. 70 of 2016. This was an appeal against the Supreme Court decision denying the Public Defender's application to be joined as an interested Party in a Constitutional motion brought by a homosexual man.

The appeal was heard in the week of the 20th February 2017. (At the time of compiling this report the judgment was still pending).

Supreme Court

The Public Defender applied to be joined as an Interested Party in the proceedings in the Supreme Court brought by Maurice Tomlinson, challenging the constitutionality of the buggery laws (*i.e.* provisions of the Offences Against the Person Act and the Sexual Offences Act.) Along with the Public Defender, several religious and civic groups, also applied for Interested-Party status in the case. It was the case of *Maurice Tomlinson v The Attorney General*.

The Attorney General mounted a vigorous opposition only to the Public Defender's application. On the 26th July 2016 the Supreme Court (Mr. Justice K. Laing) granted all the applications, except that of the Public Defender. (The appeal against that decision has taken the Public Defender into the Court of Appeal as earlier indicated.)

Resident Magistrate's (RM) Court

The Office of the Public Defender was present in the Corporate Area Parish Court (formerly Resident Magistrate's Court) Civil Division at Sutton Street on the 4th and 10th November 2016 for the civil suits for false imprisonment brought on behalf of the approximately 30 citizens of West Kingston, arising out of the May 2010 joint police-military operation there.

All these Parish Court matters were set down for mention on the 23rd February, 2018.

Internal Hearings

Under the statutory powers the Public Defender conducted hearings into complaints under investigations. In some of the cases, summonses were issued in order to secure the attendance of persons in authority.

These hearings arose out of complaints lodged by the persons/entities listed below, against the authorities indicated. The hearing in each matter was held over several days; in some instances there were site visits by the Public Defender, while in others, on-site meetings were held with the parties involved.

- (a) Bedford Park Citizens' Association, against the KSAC
- (b) Loveta Dunkley against the NWC
- (c) Mandeline McIntosh against the JUTC
- (d) Harbour View Citizens' Association against the NWA; KSAC; NWC; ODPEM; NEPA; *et al.*
- (e) Sharon Denny-Tomlinson against Ian Pitter, Bailiff, Manchester RM Court
- (f) Arthur Stubbs against Police Traffic Department

- (g) Ashton Pitt against Westmoreland Parish Council
- (h) Hill Run Farmers against National Irrigation Commission
- (i) Denise Crosdale against the KSAC
- (j) Catherine Green against the Strata Commission

In 2016 the Public Defender continued the elaborate investigation which was started in the previous year, on the complaint of the Negril Chamber of Commerce against NEPA, for that Agency's approval of the Breakwater Project. Several meetings were held with members of the Executive of the Negril Chamber of Commerce, and with representatives of NEPA, jointly and severally. And representatives of the Office of the Public Defender made multiple visits to the proposed site of this breakwater.

However in 2016, following the change of administration in February, the government discontinued the project.

OTHER ACTIVITIES

(a) Outreach Programmes

- (i) Participation in the opening ceremony of, and public education day, at the Restorative Justice Centre at 119 Olympic Way, Kingston 11, on the 3rd February 2016.
- (ii) The Public Defender delivered presentation to the Lay Magistrates' Association on 6th January 2016
- (iii) The Office lent its support to the Office of the Children's Advocate's 10th anniversary commemoration service held at Boulevard Baptist Church on 7th January.

- (iv) Nyabingi Symposium at the Trench Town Community Centre on 14th February.
- (v) The launch of the Jamaica Aids Support media campaign “*Our Vision for Women by Women*”, a Knutsford Court Hotel on 2nd March.
- (vi) Presentation at seminar at MIND at 28 Old Hope Road on the subject of “*Strengthening Communication with the Deaf in the Justice System*”.
- (vii) UWI Faculty of Law 2nd Annual Symposium on Law Governance & Society, held at Half Moon Rose Hall, Montego Bay over the week end 3rd – 5th June 2016. The theme was “*Safeguarding Ethics, Justice and Ideas*”.
- (viii) Court Management Services Public Education Day expositions on –
 - (ix)
 - 7th June at Half Way Tree RM Court
 - 9th June at Montego Bay RM Court
 - 30th June at Westmoreland Family Court
 - 15th September at St. Ann’s Bay RM Court
 - 25th October at Portland RM Court
- (x) Event staged by the NGO *Stand-up Jamaica* at Fort Augusta Adult Correctional Centre, St. Catherine, on 10th June.
- (xi) Department of Correctional Services’ annual 4-H Achievement Exposition at St. Catherine Adult Correctional Centre on 22nd June.

- (xii) The Public Defender participates in a webinar of the Association of Ombudsman of the Caribbean on the topic of DNA Law v Human Rights in Jamaica. This took place on 7th July 2016.
- (xiii) Girls' Brigade and Young Leaders' training seminar at Shortwood Teachers' College on 16th July
- (xiv) A contingent from the Office of the Public Defender attended and observed at a seminar at Swept Away Hotel in Negril on 10th August 2016. The seminar was staged by the Negril Chamber of Commerce and the presenters were an array of well-accomplished scientists versed in environment management; coastal ecosystems; marine biology and related disciplines.
- (xv) Between the 16th and 18th August 2016, the Office of the Public Defender was invited to, and did participate in a seminar at Holiday Inn, Montego Bay, conducted by the Jamaica Aids Support for Life (JASL).
- (xvi) Presentation on the role and function of the Public Defender in the provision of redress in HIV-related discrimination. This was at the invitation of the National Family Planning Board at a workshop at Knutsford Court Hotel on the 29th September 2016.
- (xvii) The Public Defender participated in the Legal Aid Council Justice Education Fairs, staged on:--
 - 30th September in May Pen, Clarendon
 - 7th December at Vauxhall Secondary School in east Kingston
- (xviii) A representative from the Public Defender's Office at the invitation of the Moneague College participated in a panel discussion on 10th November, on the issue of solutions to the *On-going Crime Problem in Jamaica*.
- (xix) On the 9th August, and again on the 11th October, the Public Defender and her representative respectively participated in the **Gleaner's** Editors' Forums at the Gleaner Company, 7 North Street Office.

- (xx) The Public Defender was invited to deliver a presentation at the Symposium of the Caribbean Association of Forensic Sciences. The invitation was accepted and the presentation was made at UWI on 20th July at Mona UWI Faculty of Medicine.

(b) External Meetings

- (i) Separate meetings were held with the several parties which had competing interests in the land at Pinnacle, in St. Catherine.
- (ii) The Public Defender necessarily became involved in meetings with counsel who appeared at the Commission of Enquiry.
- (iii) Meetings with citizens of Tivoli Gardens which failed to get off the ground because of non-attendance by the said citizens
- (iv) Meetings were held with the Town Clerk with respect to the regularity and frequency of complaints by citizens.
- (v) The Public Defender was invited to, and participated in meeting at Jamaica Conference Centre, with out-going and in-coming Chairman of the GLC, and the staff who administers the CLPD programme.
- (vi) On more than one occasion, the Public Defender and the Administrator General met as part of the Public Defender's effort to obtain grants of administration in the estates of persons unlawfully killed by security forces in the May 2010 joint police-military operation in West Kingston.

- (vii) At the request of JFLAG (as it was then) the Public Defender hosted the principals of that organization in a meeting to discuss rights of members of that group, and in particular treatment by the police, and citizens opposed to views of JFLAG.
- (viii) There was a meeting with the Minister of National Security on 16th May 2016 for the purpose of the Minister's granting of an extension of the time in which citizens of West Kingston can bring proceedings for compensation for the occupation and use of their real property by the government security forces, during the May 2010 state of emergency in West Kingston.
- (ix) The Public Defender was invited to a meeting/presentation on human rights, put on by the Inter-American Commission on Human Rights, at the UWI Faculty of Law on 19th May 2016.
- (x) There was a meeting with National Integrity Action (NIA) to discuss the feasibility of NIA's overseas partner(s) funding specific project(s) undertaken by the Officer of the Public Defender.
- (xi) The Public Defender and the Political Ombudsman met and discussed areas of common interests under their respective statutory responsibilities.
- (xii) NEPA was also called to a meeting with the Public Defender to discuss issues raised by communities affected by construction works on the North-South Highway. The communities which had complained about the effects of blasts and explosions on the walls of houses were Fort Bay, Angels, and Chalky Hill.
- (xiii) Throughout the year, the Public Defender attending meetings with the other Commissions of Parliament to discuss approaches to issues and common administrative issues.
- (xiv) As a prelude to its investigation, the Public Defender and supporting staff journeyed to Portland to meet with resident of Golden Vale regarding issues of ancestral land ownership.

ACKNOWLEDGEMENT

The Public Defender, Officers/ Agents wish to express our profound appreciation, to all our stakeholders and especially to our citizens who have given us the opportunity to serve them.

In garnering public awareness, this Office ventured into varying activities such as Community Outreach Programmes, Radio Features, Human Rights Training and special reports. We must say a special thank you to all our sponsors and we look forward to your continued support in the future.

We are extremely grateful to all, for your contributions in allowing us to continue to be **“A VOICE OF THE VOICELESS... TO LOOSE THE CHAINS OF INJUSTICE”**.