

ATTACKS ON JUSTICE- JAMAICA

Highlights

Although an independent judiciary largely functions in practice, it operates within an overburdened system with inadequate resources. The government has launched a three-year reform plan to modernize and improve the court system and the effectiveness of the judiciary. Legislation was enacted in 2004 to abolish appeals to the Judicial Committee of the Privy Council and make the Caribbean Court of Justice Jamaica's highest appellate authority. The Privy Council declared this legislation unconstitutional in February 2005 on procedural grounds. New legislation was under discussion as of April 2005. In March 2004, the Social Conflict and Legal Reform, a five-year-long initiative to foster mediation and alternative dispute resolution methods at both the institutional and community levels, came to an end. It succeeded in establishing mediation centres in several deprived areas. Budgetary and political constraints have severely undermined the effectiveness and impartiality of the Police Public Complaints Authority (PPCA) in investigating alleged abuses by state security forces.

BACKGROUND

Jamaica is a constitutional parliamentary democracy that achieved full independence from the United Kingdom in 1962. During the 1970s, this Caribbean island state suffered depressed economic conditions, which contributed to recurrent societal and politically motivated violence.

The 1962 Jamaican *Constitution*¹ proclaims itself the supreme law of the land and declares any law that is inconsistent with it to be, to the extent of the inconsistency, void. It is worth noting, however, that section 26(8) of the Constitution precludes any law that was in force before 1962 from being subsequently declared unconstitutional. This provision, known as a "savings-clause", is to be found in several Commonwealth Caribbean constitutions and may sometimes influence judicial constitutional interpretation. The Constitution is rooted on the separation of powers between the three branches of government, namely the executive, the legislature and the judiciary. Executive authority is vested in the Prime Minister and, subject to constitutional restrictions, may be exercised either directly or through subordinate officers. The legislative power resides in a bicameral Parliament, which comprises the Prime Minister, an upper house called the Senate and a lower house called the House of Representatives.

Politically, the Jamaican electorate has shifted allegiances between two legislative parties, the People's National Party (PNP) and the Jamaica Labour Party (JLP). The PNP has been in power since in 1989. The current Prime Minister and PNP leader,

¹ Constitution of Jamaica of 1962, updated through Amendment Act 18/1999: <http://www.georgetown.edu/pdba/Constitutions/Jamaica/jam62.html>

P.J. Patterson, has held power since 1992. At the 2002 national elections, the party gained 34 of the 60 available parliamentary seats. The PNP also secured 13 of the 21 available seats in the Senate.²

Although general elections in Jamaica had until the late 1990s been marked by aggression and politically motivated killings, the trend towards reduced voter intimidation and violence during the 2002 election continued. There were, however, reported instances of killings, gunfire and assaults on candidates, party workers and voters on Election Day.³

With notable exceptions, the Jamaican Government generally respected the human rights of its citizenry. However, serious problems persisted with security force members who arbitrarily and unlawfully detained, beat and, in a few cases, murdered citizens in the course of their duties. Although the government has moved to punish some law enforcement officials engaged in such unlawful activities, continued impunity for the security forces remains a serious problem. There were 119 cases of fatal shootings of Jamaican civilians by the police (known as the Jamaica Constabulary Force) in 2004. Although this figure is lower than in previous years, it remains one of the highest per capita rates in the world for 2004. Between 1993 and the beginning of 2005, more than 1,600 civilians have been fatally wounded by police, an average of 139 victims per year. It should be noted that 28 police officers were murdered in Jamaica between 2003 and 2004.⁴

JUDICIARY

The Jamaican judiciary and legal system are based on English common law and practice. Three courts handle criminal matters at the trial level. Resident magistrates courts, established not by the Constitution but by the *Judicature (Resident Magistrate's) Act*, are empowered to deal summarily with less serious civil and criminal matters as well as with mutual assistance and extradition cases. The Jamaica Bar Association has voiced concern about the lack of constitutional protection of the resident magistrates courts. The Supreme Court tries all felonies except those involving firearms, which are tried before a judge from the Gun Court. Defendants have the right to lodge an appeal against conviction by any of the three trial courts before the Court of Appeal, the highest Jamaican court. At present the Constitution allows the Court of Appeal and the Parliament to refer cases to the Judicial Committee of the Privy Council in the United Kingdom as the final court of appeal. However, there is a desire, in the context of constitutional and legal reform, to replace the Privy Council with the newly established Caribbean Court of Justice (see below).

Guarantees of judicial independence are to be found in Chapter VII, sections 97(3) and 103(4), of the Constitution. These include prohibiting abolition of the office of Judge of the Supreme Court or Court of Appeal while someone is holding that office. The grounds on which judges from the Supreme Court or Court of Appeal may be removed from office are: (a) an inability to discharge the functions of the office

² Jamaica Election 2002: <http://www.jamaicaelections.com/election2002/index.php>

³ The Carter Center, Post election Statement on Jamaica Elections, 18 October 2002.

⁴ *Watching The Watchdogs: A Jamaican Ngo's Experience With Lobbying For Policing Oversight And Accountability*: www.jamaicansforjustice.org; Amnesty International Report 2004: Jamaica.

(whether due to a physical or mental disorder or another cause) or (b) the inability to understand the English language. Section 20 of the Constitution further guarantees judicial independence.⁵

Although an independent judiciary largely functions in practice, it exists within an overburdened system operating with inadequate resources, both human and material. Trials in many cases are delayed for years. Numerous cases have been dismissed because files cannot be located. This situation stems from a court administration system that employs archaic practices that prevent justice from being dispensed efficiently. The lack of judicial resources further aggravates the problem.

In recent years, the government has engaged in an ongoing process to modernize and improve the court system by means of computerization and improving court-reporting methods and staff. In 2004, more than 21 courts nationwide benefited from government-sponsored improvements, such as enhanced access to IT facilities. During the Throne Speech of 31 March 2005, inaugurating the legislative year, Jamaica's acting Head of State, Governor General Sir Howard Cooke, announced a series of reforms to improve the effectiveness of the judiciary that are due to take place during 2005-2006. These reforms include the installation of case management software in 12 magistrates' courts, new rules for case management in magistrates' courts to improve efficiency and the completion of a Restorative Justice Policy. Moreover, bills dealing with aspects of justice such as plea-bargaining, fitness to plead, children's courts and child maintenance will be introduced in Parliament.⁶

The Social Conflict and Legal Reform Project

The Social Conflict and Legal Reform Project (SCLRP), which ran from 1999 until 29 April 2005, was intended to enhance the capacity of both the civil legal system and the Jamaican public to manage societal conflict. Assistance for the state legal system included: establishment of a court-annexed system for alternative dispute resolution; improved access to up-to-date legal information; better court record-keeping; judicial sensitivity training to enhance the benches' understanding of social context, especially gender issues; and increased awareness of the rights of children and youth.

At the community level, the project focused on improving collaboration between groups such as the police, educators and social service professionals. The SCLRP also supported communities in their efforts to develop their own solutions to local problems using conflict management. By the end of the six years, the project had trained 200 community members in conflict resolution and as mediators. Two peace and justice centres to which people in dispute can go for mediation were also established in two pilot communities: one in Trench Town (Kingston) and one in Flankers (Montego Bay).

The SCLRP should enhance the Jamaican legal system's capacity to resolve civil disputes. At the judicial level, it has encouraged the issuing of practice directions by the Chief Justice, as a result of which civil cases can now be settled through

⁵ Constitution of Jamaica of 1962, updated through Amendment Act 18/1999: <http://www.georgetown.edu/pdba/Constitutions/Jamaica/jam62.html>

⁶ Throne Speech 2005-2006 delivered by Governor General, His Excellency The Most Hon. Sir Howard Cooke, 31 March 2005; Supreme Court of Jamaica, Court Computerization Project: <http://www.sc.gov.jm/>.

mediation. The project has been remarkably successful at community level. Deprived areas such as Flankers in Montego Bay have particularly benefited from the mediation training. Since its mandate expired, many of the SCLRP's functions have been transferred to the Dispute Resolution Foundation, a private voluntary foundation created under the auspices of the Ministry of Justice.⁷

The Caribbean Court of Justice

There have been several recent legislative and judicial developments with regard to the Jamaican Government's intention to replace the Judicial Committee of the Privy Council, based in London, with the Caribbean Court of Justice (CCJ) as Jamaica's final Court of Appeal. Following ratification of the *CCJ Agreement* in 2001 (see *Attacks On Justice 2002*), the Jamaican Parliament enacted legislation, which came into effect in September 2004, to recognize the CCJ's original jurisdiction in relation to Caribbean Community (CARICOM) treaties and amend the Constitution to replace the right of appeal to the Privy Council with a right of appeal to the CCJ. In response, political opposition parties and Jamaican civil society organizations, which oppose giving the CCJ appellate jurisdiction, asked the Privy Council in late 2004 to rule on the constitutionality of this legislation.

On 3 February 2005, the Privy Council examined whether the legislation introduced in pursuance of the *CCJ Agreement* was compatible with the Jamaican Constitution.⁸ From the outset, the Board asserted that the issue at stake was not whether the Jamaican Government has the power to replace the Privy Council with the proposed regional court, which it clearly does, but whether the legislative procedural means which Parliament employed to this effect in the present case were constitutionally appropriate. The Privy Council also emphasized that it had no vested interest in the outcome of the appeal despite the obvious implications for its status as Jamaica's highest court of appeal.

The Privy Council had to evaluate three pieces of interconnected legislation, all of which had been approved by a simple majority in Parliament. The first was the *Caribbean Court of Justice (Constitutional Amendment) Act* of 2004, intended to amend section 110 of the Jamaican Constitution which enshrines the Privy Council's status as Jamaica's highest court of appeal. The amendment sought to delete all references to the Privy Council and replace them with references to the CCJ. The second statute under review was the *Caribbean Court of Justice Act 2004*, whose primary purpose was to give domestic effect to the CCJ Agreement. The third law to be examined was the *Judicature Appellate Jurisdiction (Amendment) Act 2004*, which sought to remove from the Director of Public Prosecutions the authority to submit a case to the Privy Council and instead give him similar powers of appeal to the CCJ.

The Privy Council's analysis of the three Acts focused on the procedures that need to be invoked in order to amend the Jamaican Constitution, of which there are three:

⁷ The Social Conflict And Legal Reform Project: <http://www.sclr.org.jm/index.html>; Canadian Inter-Development Agency, *Mediating Conflict in Jamaica*, Jamaica Gleaner, *Mediation cools hot tempers - "We're an asset to our communities now"*: <http://www.jamaica-gleaner.com/gleaner/20011225/lead/lead5.html>.

⁸ Independent Jamaica Council for Human Rights (1998) Limited and Others v. (1) Hon. Syringa Marshall-Burnett and (2) The Attorney General of Jamaica (Appeal No.41 of 2004) <http://www.privycouncil.org.uk/output/Page495.asp>

“deeply entrenched provisions”, referred to in section 49(3) of the Constitution; “entrenched provisions”, referred to in section 49(2); and “non-entrenched provisions”. Whereas “non-entrenched provisions” may be amended by way of ordinary legislation passed by a simple majority of the legislature, “entrenched provisions” require a two-thirds majority. Amendment of “deeply entrenched provisions” requires both a two-thirds parliamentary majority and approval by the electorate via a referendum. Section 100 of the Constitution, which governs the appointment and dismissal of Supreme Court judges, and sections 104-106, which perform the same function for Court of Appeal judges, are both “entrenched”. These clauses provide a number of safeguards that are designed to insulate the judiciary from executive interference.

Although at first sight the *Caribbean Court of Justice Act 2004* introduces similar guarantees with regard to the security of tenure of judges, section 5(1) empowers the Minister of Justice to unilaterally amend the Act by way of executive order whenever any amendment to the *CCJ Agreement* is ratified by the contracting parties. Consequently, the Minister of Justice could deprive the CCJ, which would become Jamaica’s highest appellate court, of the constitutionally entrenched protection given to lower courts like the Supreme Court or Court Of Appeal. On account of this, the Privy Council ruled that the three Acts together had the effect of undermining the protection given to the people of Jamaica by provisions enjoying entrenchment in the Constitution, and that therefore the procedure for amendment of “entrenched provisions” had not been followed.

The Privy Council also had to decide whether to strike down all three statutes in whole, or whether some parts in them could be retained. The Court found that the three Acts were bound together and could not be separated from each other. It concluded that the intent of the legislators when adopting the three Acts in question was not just to abolish appeals to the Privy Council but also to replace the Council with a regional judicial body, and replacement of the Privy Council by the CCJ requires a two-thirds majority in Parliament. Consequently, all three pieces of legislation were invalidated in their entirety.

The Privy Council’s ruling was welcomed by the Jamaican Bar Association and local human rights NGOs. The President of the Bar Association believes that the establishment of a Caribbean regional court is premature, as Jamaica first needs to address other issues within its own under-resourced justice system, such as “sub-standard” conditions in police stations, courts and prisons.⁹ Some other sectors of the legal profession have expressed their disagreement with the Privy Council’s ruling.¹⁰

The proposal for the CCJ to exercise original jurisdiction over CARICOM agreements has not been judicially challenged. On 12 April 2005 the Jamaican Government enacted the *Caribbean Court of Justice (Original Jurisdiction) Act 2005* establishing the regional court as a court of original jurisdiction with the power to consider and rule on critical trade matters that intrinsically deal with member countries of

⁹ Jamaican Bar Association, *JAMBAR welcomes Privy Council Ruling on Caribbean Court of Justice*, 3 February 2005; Jamaicans For Justice, *Donovan Jackson Privy Council Wins Appeal?* <http://www.jamaicansforjustice.org/>; Jamaica Observer, *The Way Forward for Jamaica to set up the CCJ*.

¹⁰ Caribbean Net News, *Privy Council Decision should not halt Caribbean Court*, 8 February 2005; Jamaica Observer, *Coore Criticizes Privy Council Ruling*, 24 March 2005.

CARICOM. New legislation seeking to grant the CCJ appellate jurisdiction is being drafted. Members of the government have suggested a two-stage approach: firstly, to abolish appeals to the Privy Council by means of ordinary legislation, and then, after a brief lapse, to introduce implementing legislation relating to the CCJ. The CCJ was inaugurated in Port-of-Spain, Trinidad and Tobago on 16 April 2005.¹¹

ACCESS TO JUSTICE

Impunity

Following a visit to Jamaica in February 2003, the Special Rapporteur on extrajudicial, summary or arbitrary executions concluded that the number of civilians being killed by the state security forces was “alarming”. Furthermore, she highlighted the inadequacy of the systems currently in place for the investigation by the Department of Public Prosecutions and the Police Public Complaints Authority of possible extrajudicial executions committed by police. Local and international NGO sources have alleged, *inter alia*, that civilians injured by the police have been denied medical treatment and witnesses have been intimidated. Lack of access to justice for women, predominantly in cases of domestic violence, is reportedly a pervasive problem.

There is also mounting concern about the incidence of police and mob violence being inflicted on individuals on grounds of sexual orientation, gender identity and HIV status. LGBT activists, as well as social workers, nurses and other people working closely with them, have reportedly been unlawfully detained and ill-treated.¹²

In response to increasing international criticism in relation to police abuses, the Jamaican Government has adopted a series of measures to tackle the problem and enhance the accountability of state security officials. Most notably, in June 2003, Prime Minister Patterson disbanded the Crime Management Unit (CMU), a police paramilitary squad set up by the executive in September 2000 to crack down on drug trafficking and other forms of violent crime. Since its creation, the CMU had been criticized by civil society organizations because of its alleged involvement in more than 40 deaths. Many of these were reportedly unlawful killings, including the “Braeton Seven” case and the four people killed during a police operation in Crawle in May 2003. Several members of the disbanded CMU, including its former head, Superintendent Reneto Adams, have been charged and prosecuted for murder and manslaughter since the unit’s disbandment.¹³ (See below)

¹¹ Caricom, *New CCJ Bill to be tabled Next Week*, 21 February 2005: http://www.jis.gov.jm/special_sections/CARICOMNew/newCCJBill.html; *House Of Representatives Passes CCJ Bill*, 13 April 2005: http://www.jis.gov.jm/special_sections/CARICOMNew/houseOfRepresentatives.html.

¹² *Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic*, November 2004: <http://hrw.org/english/docs/2004/11/16/jamaic9674.htm>; Amnesty International, *The Wire, Jamaica: ‘Let us kill him’*; Amnesty International: *Jamaica The killing of the Braeton Seven- A justice system on trial*: <http://web.amnesty.org/library/index/engamr380052003>; Report of the Special Rapporteur, Asma Jahangir, submitted pursuant to Commission on Human Rights Resolution 2003/53, E/CN.4/2004/7/Add.2, 26 September 2003.

¹³ BBC News, *Jamaica acts over police abuse*, 9 June 2003: <http://news.bbc.co.uk/1/hi/world/americas/2975722.stm>; Amnesty International: *Welcome Developments: Is an end to police impunity in sight*, 25 June 2003: <http://web.amnesty.org/library/Index/ENGAMR380152003?open&of=ENG-JAM>; BBC News, *Jamaica wrestles*

Several internal control mechanisms are in place to investigate alleged police misconduct, namely, the Bureau of Special Investigations, which was set up in May 1999 exclusively to investigate complaints involving the use of firearms, and the Complaints Division of the Office of Professional Responsibility, which is tasked with investigating all other allegations. Both units are accountable to the Commissioner of Police.

The Police Public Complaints Authority (PPCA) is an independent body which was established in 1992 under the *Police Public Complaints Act*.¹⁴ It comprises a team of about 15 investigators headed by a three-member board. It is empowered to initiate investigations into allegations of misconduct by the Jamaican police and its auxiliaries and also to monitor and review investigations of misconduct carried out internally by the aforementioned police units in order to ensure they are conducted effectively. The PPCA reports annually to the Minister of Justice and Attorney General. According to the PPCA's executive chairman, the institution is chronically under-funded and under-staffed. According to the PPCA 2002-2003 annual report to the Ministry of Justice, it only investigates a small fraction of fatal police shootings each year, of which only a very small percentage result in criminal prosecutions.

After concluding an investigation, the PPCA can only recommend measures to the Commissioner of Police and does not have the power to enforce or monitor them. The PPCA's powers to search premises and review documents (subject to obtaining a warrant) are seldom exercised. The ability of the PPCA to function independently has been adversely affected by the fact that until August 2004 it was located in a building that also houses a police department, thus deterring potential complainants. In April 2004, Prime Minister Patterson announced his intention to reform the PPCA by allocating more resources to it but no concrete action has yet been taken. One possibility being considered by the executive is to merge the PPCA with the two internal police oversight bodies mentioned above.¹⁵

Since the government's disbandment of the Crime Management Unit (CMU) in May 2003, several of its members, including its former head, Superintendent Reneto Adams, have been investigated and, in some instances, prosecuted in connection with alleged unlawful killings carried out in the course of duty. Some regular members of the Jamaican police have also faced prosecution. None of these cases has yet resulted in the conviction of a police officer. Reportedly, this is due to a climate that favours impunity for police killings, coupled with an ineffective and tardy prosecution system.

with police violence, 14 May 2004: <http://news.bbc.co.uk/1/hi/world/americas/3674251.stm>; Independent Jamaican Council For Human Rights, Press Statement On the Crawl Killings.

¹⁴ www.humanrightsinitiative.org/programs/aj/police/legislation/jamaica/police_public_complaints_act.pdf

¹⁵ Amnesty International, *Killings and Violence by Police: How many more victims?* <http://web.amnesty.org/library/index/engamr380032001>; *Watching The Watchdogs: A Jamaican Ngo's Experience With Lobbying For Policing Oversight And Accountability*: www.jamaicansforjustice.org; Jamaica Observer, *New agency to probe police*, 28 April 2004 http://www.jamaicaobserver.com/news/html/20040428t000000-0500_59132_obs_new_agency_to_probe_police.asp;

Jamaica Observer, *Police complaints body relocated*, 18 August 2004: http://www.jamaicaobserver.com/news/html/20040817t220000-0500_64708_obs_police_complaints_body_relocated.asp

Several cases have been marred by allegations of intimidation and harassment of witnesses.¹⁶

Cases

The Janice Allen Case

In April 2000, 13-year-old Janice Allen was allegedly killed by a policeman during a shoot-out. Eyewitnesses, including the victim's sisters, contend that the killing was intentional. Following a preliminary inquiry, the officer allegedly responsible for the shooting was brought to trial in March 2004. However, the case was settled within an hour and a not-guilty verdict returned after the prosecution announced at the start of the trial that three crucial pieces of evidence were missing. The whole proceedings were reportedly "marred by witness intimidation, official incompetence and delay". There were numerous allegations of coercion and intimidation against key witnesses. The prosecution and local NGOs have indicated that they may attempt to bring the case before the Inter-American Court of Human Rights.¹⁷

The 'Braeton Seven' Case

The deaths of seven youths in the Braeton area during a CMU operation in March 2001 prompted one of the most publicized investigations into police killings to date. In October 2002, a Coroner's Court inquest ruled, after months of investigation, that the six accused police officers were not criminally responsible for the deaths. NGO and media sources have said that the Coroner's Court inquiry was marked by irregularities. Allegedly, crucial pieces of evidence from the crime scene (including the victims' bodies) were tampered with, autopsies were not conducted in accordance with internationally accepted standards and eyewitnesses were intimidated. The trial itself was marred by allegations of unprofessionalism and lack of experience. The judge did not allow the jury to hear evidence from the policemen whose bullets were found in the seven bodies and in the house. International observers who attended the proceedings also criticized the absence of defined rules of evidence and procedure and said that the magistrate showed explicit bias towards the police's version of events.

In light of these allegations, the Director of Public Prosecutions reviewed the case in November 2003 and decided that there was enough evidence to charge the officers with murder. The trial commenced on 17 January 2005. The six defendants all claimed they had acted in self-defence. After receiving the testimonies of 24 witnesses, including ballistic experts, the court found the defendants not guilty on 12 February 2005.¹⁸

¹⁶ Jamaica Observer, *Adams Gets Help*, 3 May 2004: www.jamaicaobserver.com/news/html/20040503T000000-0500_59315_OBS_ADAMS_GETS_HELP.asp

¹⁷ Amnesty International, *Jamaica: Janice Allen case demonstrates lack of political will to end police killings*, 14 March 2004: <http://web.amnesty.org/library/index/ENGAMR380052004>.

¹⁸ Jamaica Gleaner, *Law slaps 13 cops*, 6 November 2003: <http://www.jamaica-gleaner.com/gleaner/20031106/lead/lead1.html>;

Jamaicans For Justice, *Pattern Of Impunity*: <http://www.jamaicansforjustice.org/>; BBC News, *Jamaica wrestles with police violence*, 14 May 2004: <http://news.bbc.co.uk/1/hi/world/americas/3674251.stm>; Jamaica Gleaner, *ACQUITTED-Cops charged with Braeton Seven murders freed*, 12 February 2005.

The Crawle Case

The trial of four CMU officers, including Superintendent Adams, accused of killing four individuals during a raid in the town of Crawle in May 2002, is scheduled to continue in September 2005, after having been adjourned. To date, the inquiry and trial process have suffered from a number of shortcomings. For instance, the Department of Public Prosecutions failed to put together a team of prosecutors for the case, which contains more than 100 witness statements. Furthermore, despite having had two years to prepare the case, as of April 2005, the prosecution was lacking seven witness statements that are deemed vital. This is symptomatic of the delays affecting the Jamaican criminal justice system. Forensic and ballistic tests carried out by overseas experts indicate that the defendants “planted” bullets at the crime scene to support their argument that the killings were carried out in self-defence. There were also allegations that violence was being used against witnesses after an eyewitness who had agreed to testify in the case was murdered by unknown assailants in October 2004.¹⁹

LEGAL REFORMS DURING THE PERIOD

2004: *Caribbean Court of Justice (Constitutional Amendment) Act of 2004* (Invalidated on February 2005)

Caribbean Court of Justice Act 2004, (Invalidated on February 2005)

Judicature Appellate Jurisdiction (Amendment) Act 2004 (Invalidated on February 2005)

2005: *Caribbean Court of Justice (Original Jurisdiction) Act 2005* (Invalidated on February 2005)

¹⁹ Jamaica Observer, *Adams, five former CMU cops get Sept 19 trial date*; AP Press Release, *Witness in murder case against the police is slain in Jamaica*, 31 June 2004.

Jamaica Observer, *Cops Planted Evidence At Crawle: Prosecutor Says*, 22 April 2005: http://www.jamaicaobserver.com/news/html/20040422T000000-0500_58877_OBS_COPS_PLANTED_EVIDENCE_AT_CRAWLE_PROSECUTOR_SAYS.asp