

JAMAICA

The judiciary has been hampered by inefficient practices, a severe backlog of cases due to limited resources and a lack of political resolve to institute reform. These barriers to the dispensation of justice are situated within a context of high national poverty, politically motivated violence and a security force that routinely ignores the rule of law in the exercise of its duties.

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 Jamaican Constitution declares itself the supreme law of the land and provides that all laws inconsistent with it are void to the extent of such inconsistencies. It is rooted in 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 is composed of the Prime Minister, an upper house called the Senate and a lower house called the House of Representatives.

Politically, the Jamaican populace has shifted allegiances between two legislative parties, the People's National Party, (hereinafter PNP), and the Jamaica Labour Party (hereinafter JLP). The PNP, under Prime Minister P.J. Patterson, has held power since 1992, with the 1997 national elections granting this party 50 of 60 available parliamentary seats. Significantly, in the weeks preceding the 1997 election, it was reported that while there was a degree of voter intimidation, such infringements were significantly less violent than during previous general election campaigns.

In April 2001, violence with political undertones was triggered by the drive-by shooting of a man in an area affiliated with the ruling PNP. The murder triggered gang violence in surrounding areas, which by July 2001 had claimed the lives of an additional 40 persons. On June 12, 2001 alone, 19 Jamaicans perished in clashes between supporters of the two opposing political parties. Compounding this societal chaos, in the capital city of Kingston violent riots broke out between the Jamaican security forces and inner city residents.

HUMAN RIGHTS BACKGROUND

With notable exceptions, the Jamaican Government generally respected the human rights of its citizenry. However, serious problems continue to exist with members of the security forces, who arbitrarily and unlawfully detain, beat and, in some cases, murder citizens during the course of their duties. In this connection, although the Government has moved to punish some law enforcement officials engaging in such illegal activities, continued impunity for the security forces remains a serious problem.

Numerous legal safeguards, found in the Constitution and subsidiary rules have been erected to protect the Jamaican citizenry from arbitrary and illegal actions committed against them by security officials. However, Jamaica has a poor record of protecting its citizenry from the extrajudicial and

illegal actions perpetrated by its security forces. Indeed, the incidence of fatal shootings of Jamaican civilians by police, 140 in the year 2000, was the highest per capita rate in the world. This figure is compounded by official statistics evidencing that during the preceding 10 years, some 1,400 civilians had been mortally wounded by the police, for an average of 140 victims per year. Given the country's relatively small population, 2.65 million, these figures are alarming. It is not simply the rank and file population that suffers at the hands of the Jamaican security establishment. As alleged by an October 2000 public media report, the police unlawfully wiretapped the telephones of the Prime Minister, two Cabinet members and other senior officials. It must be recognised also that the police themselves suffer among of the highest rates of death in the world.

Under the PPCA, the police must investigate and discipline themselves, and this process has not inspired the confidence of the Jamaican citizenry. The independence of this body has been hampered by understaffing, under-funding, a lack of effective enforcement mechanisms and a dependence on questionable PPCA police investigations. These questionable investigations stem from the fact that investigators are generally disinclined to investigate crimes allegedly committed by members of their own profession in an impartial or thorough manner. The aforesaid factors result in a high degree of impunity for illegal actions committed by the security establishment against the Jamaican citizenry, further contributing to a trend towards vigilantism and socio-political violence.

In recent years Jamaican human rights organisations have endured an increase in the level of threats and harassment, sometimes with the explicit or tacit support of the Jamaican security forces and Government. For example, in May and June of 2000, two members of the organisation, Jamaicans for Justice, received death threats in a series of anonymous phone calls. A spokesperson for the Jamaican Police Federation lent its implicit support for the harassment by labelling this organisation as "suspicious", stating that the Federation would monitor the group "closely." Attacks against human rights defenders continued during the 2001 funeral of a police officer, when the Minister for National Justice and Security, K D Knight, stated that the members of human rights organisations were "wimps" who sympathised with criminals.

THE JUDICIAL SYSTEM

Structure

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 try lesser misdemeanour offences, while a Supreme Court judge tries felonies other those involving firearms, which are tried before a judge of the Gun Court. Defendants have the right to appeal a conviction of any of the three trial courts to the Court of Appeal, which is the highest Jamaican court. 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 a final court of appeal.

Guarantees of judicial independence are found in the Constitution, Chapter VII, sections 97(3) and 103(4). These include a prohibition on the abolition of the office of a Judge of the Supreme Court (the Court of first instance) or Court of Appeal while there is a substantive holder of that office. The grounds upon which a judge of the Supreme Court or the Court of Appeal may be removed from office are: (a) an inability to discharge the functions of the office (whether due to a physical or mental disorder or another cause); or (b) inability to understand the English language.

Certain provisions of the Constitution further guarantee judicial independence:

20(1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. (2) Any court or other authority prescribed by law for the determination of the existence of the extent of civil rights or obligations shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time. (3) All proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public.

While an independent judiciary largely functions in practice, it is situated within an overburdened system operating with inadequate resources, human and material. Trials in many cases are delayed for years, for example in the case against brothers Kenneth and Floyd Myrie who have spent more than five years in custody awaiting trial for murder. Further, numerous cases have been dismissed because files cannot be located. This predicament owes itself to a Court administration system that employs archaic practices that hinder the efficient rendering of justice. As an example of such inefficiency, the spoken words of witnesses continue to be recorded by the sitting justice in his or her own handwriting.. When a witness is finished testifying, the justice reads back his or her statement, amendments are duly made and the piece of paper on which the testimony has been recorded is handed around for those in authority to sign and to initial any and all changes. The lack of judicial resources combined with administrative inefficiencies creates such situations.

Assistance for the Jamaican Legal System

In 1995, the Jamaican Government initiated a night court system, which has had limited success in reducing the backlog of cases. In addition, in February of 2000, the salaries of state appointed defence counsel were increased, while, recently, the donation of computers for judicial use has assisted the courts in dispensing more efficient justice.

The Social Conflict and Legal Reform Project (hereinafter SCLRP), which runs from 1999 through 2004, is a five million dollar Canadian initiative intended to enhance the capacity of both the civil legal system and the general Jamaican public to manage societal conflict. The major components of assistance for the state legal system include the 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 focuses on improving collaboration between groups such as police, educators and social service professionals. The SCLRP also supports communities in their efforts to articulate their own solutions to local problems using conflict management. At the end of the five-year period, the project should result in 200 community members trained in conflict resolution and as mediators. Furthermore, two peace and justice centres will be established in two pilot communities, which persons in dispute will attend for mediation. Taken together, the SCLRP should contribute to the improvement of the Jamaican legal system's capacity to resolve civil disputes.

Prospectively, there are increasing calls for a Caribbean court of final appeal to be based in the region, which would replace the British Privy Council, which presently acts as the final court of appeal. The Caribbean Court of Justice is the proposed regional judicial tribunal to be established by the Agreement Establishing the Caribbean Court of Justice. It has had a long gestation period commencing in 1970, when the Jamaican delegation at the Sixth Heads of Government Conference proposed its establishment. Whether this initiative will come to fruition is uncertain.

CASES

Dahlia Allen {Lawyer}: During 2000, Ms Allen represented some twenty inmates of the St. Catherine Adult Correctional Centre who had been the alleged victims of ill-treatment by correctional officers. She also represented homeless people allegedly abducted and or ill-treated by the police in the Montego Bay area. Taking up these causes during hearings of a Commission of Inquiry called to investigate said claims, Mrs. Allen reported that she received telephone death threats and was the subject of surveillance and illegal wiretapping by agents of the Jamaican security authorities. Ms. Allen was said to have been intimidated and harassed solely as a result of her human rights work in representing clients who, under domestic and international legislation, possess the right both to legal representation and to having their allegations of abuse investigated by a competent authority. The pattern of continuous intimidation and harassment prompted Ms. Allen to leave Jamaica in August 2001.

Hilarie Sobers {Lawyer}: A lawyer, human rights activist and journalist, Mr. Sobers received a death threat in August of 2001 that appeared to emanate from a current Jamaican Government supporter. Mr. Sobers is an outspoken critic of the Government's human rights record and these views are reflected in a weekly column that he pens for the *Jamaica Observer* newspaper. He has particularly attacked the failure of the authorities to prevent extrajudicial executions by the Jamaican security forces. The August death threat, received through the post and delivered to the Jamaica Observer's office addressed to Mr. Sobers contained a picture of a gunman raping and shooting the lawyer with an M16 rifle. Referring to his work and the letter read, "When we ready wi a go shoot all a oonu like Perkins, Wignal and all oonu lawyer in a oonu rass hole... Fire in a yu batty." (When we are ready we are going to shoot all of you like Perkins, [a renowned radio journalist], Wignal, [another journalist working for the Jamaica Observer], and all of you lawyers in the arsehole... Fire in your arse). The day before the death threat was delivered, Mr. Sobers and representatives from a human rights organisation had gone to a police station in the Jamaican capital city of Kingston to provide legal assistance to several young men who had been arrested. When questioned, the police refused to say why the detainees had been arrested. Questioned further, an officer grabbed one of the representatives, put her under arrest and charged her with using abusive language and obstructing an officer. At this time, another of Mr. Sobers' party was threatened and the group was evicted from the premises of the police station.