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# **The Rule of Law in Jamaica**

**A Study on how the Efforts of Civil Society may serve to strengthen the Rule of Law in Jamaica**

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# Abstract

In this essay we discuss the importance of the rule of law for upholding fundamental rights within the liberal democratic state formation. The case in point is that of the Jamaica state and its longstanding record of arbitrary human rights practices. Under the rule of law all parts of the state apparatus is subject to the principals of legality and accountability, this entails testing the legality of suspected arbitrary practices and holding agents accountable in accordance with the law. However, the Jamaican states inability or unwillingness to live up to these principals suggests certain malfunctions in the institutions that uphold the rule of Law.

In this light, the aim of the thesis is to explore how the efforts of civil society may serve to affect the rule of law by bolstering certain features of its composite elements. This is done by analyzing civil society's role in improving state practices by means of its constituent functions. Specifically, the analysis looks at how civil society may use various mechanisms of societal accountability. This type of accountability lacks the legal power to sanction state actions but may none the less be of pivotal importance for pressuring the state into reevaluating arbitrary practices that threaten to infringe upon the rights of the citizenry.

Key words: Jamaica, The Rule of Law, Human Rights, Civil Society, Societal Accountability

## List of Acronyms

DPP	Director of Public Prosecution
DG	Daily Gleaner
JCF	Jamaica Constabulary Force
JDF	Jamaica Defense Force
JFJ	Jamaicans for Justice
PSOJ	Private Sector Organization of Jamaica

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# 1. Introduction

## 1.1 Outline of the empirical problem

As the twenty first century has commenced and progressed well into its first decade there are, at this point, few real indicators that suggests forthcoming changes in the longstanding trend of state violence that has been prevalent in Jamaica. Acts of suspected human rights violations are alleged to be carried out by agents of the state on a frequent basis, and the mechanisms of the rule of law have failed to address these violations in ways that have been constitutionally guaranteed to the citizens of Jamaica. Specifically, the rule of law requires that the principles of legality and accountability be upheld as means of safeguarding the fundamental rights that have been extended to the Jamaican people through their inscription in the Jamaican constitution and in international agreements that have been ratified by the Jamaican state (Mars, 1998, p. 465).

This paper looks at the issue of arbitrary human rights practices in its relation to the rule of law in Jamaica. The approach to the problem rests on the notion that under the rule of law the state is obliged to act in accordance with the notions of legality and accountability. This requires that the legality of state actions can, and will, be tested and that its agents may be held accountable for them. It also requires an institutional structure that is dedicated to supporting and upholding the rule of law by performing checks and balances on the other branches of state. However, this does not appear to have been the case. Instead the institutions that serve to uphold the rule of law have been incapable of protecting Jamaican citizens from arbitrary abuses of state power, and also failed to hold state agents accountable by testing the legality of allegedly extra judicial human rights practices. In many cases they even appear to lack the interest to do so.

The inability of state institutions to provide justice for victims of human rights abuses, as they are constitutionally<sup>1</sup> entitled to, has led various sectors of civil society to pursue the

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<sup>1</sup> Constitution of Jamaica, Chapter 3 provides that

Every person, regardless of race, place of origin, political opinions, colour, creed or sex, is entitled to certain fundamental rights and freedoms. These include right to life; the right to personal liberty; freedom of movement; freedom from inhuman treatment; enjoyment of property; freedom of conscience; freedom of association; respect for private and family life; and freedom from discrimination.

The enjoyment of these rights and freedom is "subject to respect for the rights and freedoms of others and for the public interest".

In the public interest, individual rights may be also suspended in a manner prescribed by the Constitution (e.g. in the event of war, calamity or threat of subversion). (<http://www.nlj.org.jm/docs/constitution.htm>)

cause of seeking justice on their own. As most of the victims of alleged human rights abuses are members of the impoverished and crime ridden urban communities, they often have no where to turn for help. Without economical – or practical – means, the prospects for vindication in accordance with the law are often slim. In this light, organizations and members of civil society have been seen as the last strand of hope for many of the individuals fighting for recognition of their fundamental rights. These organizations have subsequently played an important role in the struggle for justice and vindication against an unapologetic state and its agents.

## 1.2 Aim and Research Questions

The overall purpose of the paper is to study civil society's role in strengthening the state's regard for the rule of law in the Jamaica. The Jamaican states overall failure to enact a system of accountability that prevents agents from systematically violating the human rights that have been granted to all its citizens (both by the constitution and through a multitude of international agreements), has put civil society at the forefront of the struggle to increase the states adherence to the rule of law. Subsequently, the aim of this paper is to: *explore how the efforts of civil society may serve to affect the rule of law* in Jamaica. Specifically, it looks at how these efforts may affect the various elements that comprise the rule of law and thereby serve to improve the status quo of arbitrary human rights practices in the country. This is done by utilizing a theoretical framework that outlines the approaches to the rule of law and the functions of civil society.

Subsequently, the main research questions guiding this analysis are:

- How is civil society working to improve or change the human rights practices of state agents?
- How may the efforts of civil society be understood to affect the rule of law in Jamaica?

To answer the main question, I have chosen to analyze the work – and importance – of a various actors within civil society as opposed to simply looking at the role of human rights organizations. The issue of arbitrary human rights practices in Jamaica is one that is believed to have been brought about by an array of political conditions and issues, which are moreover part of the somewhat discouraging socioeconomic structure. Therefore, civil society's role, as a whole, in promoting the rule of law cannot easily be analyzed by focusing on one particular segment e.g. human rights organizations. Different parts of civil society are exerting public pressure in order change the status quo of various political conditions and practices that may serve to affect the issues of human rights violations and the disregard for the rule of law that has been prevalent in Jamaica.

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## 1.3 Method and Material

The chosen method of analysis has been to conduct a qualitative case study of the Rule of law in Jamaica. This has been done by outlining a theoretical framework that has guided the approach to the empirical problem, and that has also served to guide the analysis and the conclusions drawn from it. Since there has been no attempt to conduct any form of comparative study, the content of the analysis has been derived from variables that have been identified and explained through the use of theory and with the purpose of shedding light on the empirical context of the single unit.

The material that has comprised the foundation of this paper has been derived both from primary and secondary sources. Considering the limitations of this humble study, the theoretical chapter is almost entirely based on secondary material in the form of political scientific literature. This secondary material then serves to guide the analysis. However, this part of the paper is based on material almost entirely from primary sources, which has been the cause of several factors.

Despite many weeks of material accumulation in the form of academic literature, and articles (secondary sources), there was very little academic research that could be found on the issue of human rights in Jamaica. Surprisingly, there was even less to be found on civil society in the country, which made it increasingly important for me to anchor these issues in theoretical discussion. However, in the days of internet no material is impossible to find, it is simply a matter of selection. The importance of this selection process cannot be stressed enough in the case of primary material resources. As opposed to secondary material where the author has had an academically prescribed responsibility to present matters as unbiased and truthful as possible, primary sources of material seldom live up to these standards. This has placed an immense responsibility on me, as the author, to discard any material that appears tainted and only include material from sources that have been deemed reliable.<sup>2</sup> For this purpose I have done my utmost to corroborate information from different sources as a means of ensuring their reliability.

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<sup>2</sup> One of the main sources of primary material has been the human rights organization Amnesty International. Even though it may be imperative to bear in mind the ideological persuasion of any given source when evaluating its findings, Amnesty International does appear to be a quite credible source and have been recognized for their research (Tuijl, 1999, p. 6).

## 2. Theoretical Considerations

This part of the paper aims at presenting the theoretical considerations that serve to guide the forthcoming analysis. Since the purpose of this limited study is to; analyze *how* the efforts of civil society may serve to affect the rule of law, a number of theoretical considerations must be made in order to conduct a fruitful analysis. First and foremost, conceptual clarity must be made pertaining to the notion of the rule of law, since it is the concept that is most closely linked to the empirical problem of human rights violations. For this purpose, the rule of law is discussed in conjunction to different theoretical aspects that are of interest and relevance to this paper, and which are capable of illuminating the relationship between human rights and the rule of law.

The second main theoretical consideration to be made is that of civil society. In order to fulfill the stated purpose it is imperative to clarify the relations between civil society and the institutions that serve to uphold the rule of law. This is done by focusing on civil society's role within the liberal democratic state formation, and the functions that have been ascribed to the concept.

### 2.1 The Rule of Law: What is it and what does it comprise of?

As is the case for most academic concepts, the rule of law is by no means a unified and unequivocal concept that is evenly applied throughout the world of empirical research. It is a disputed concept simply because it means different things to different people. Some scholars may ascribe slightly different attributes and understandings to the rule of law, while others simply differ on the level of importance that they place on the various dimensions that comprise the concept. Whatever approach that is undertaken to explain and conceptualize the rule of law, will inevitably never be entirely compatible with the array of literature that is available in this field of research. For this reason it is imperative to define and discuss these dimensions from a theoretical standpoint as a means of aiming for conceptual clarity, at this stage of the paper, and analytical clarity in analytical chapter. The following parts of the discussion outline the theoretical approach to the rule of law that has been instrumental in understanding the complex relation between the states adherence to the rule of law and human rights practices. This is done by focusing on what the rule of law is (i.e. dimensions) and what it comprises of (i.e. institutions).



Drawing on the work of Guillermo O'Donnell a minimal understanding of the rule of law presumes that: whatever laws exist within a polity are applied fairly and by relevant institutions, which include the judiciary as well as other state institutions (O'Donnell, 2004, p.33). This understanding entails that existing laws apply to all legal persons, without exceptions, and that failure to adhere to established legal codes should be addressed by the relevant state institutions regardless of who the perpetrator is (O'Donnell et al. 1999, p.308). Furthermore it implies formal equality before the law to all individuals considered to be legal persons. This equality is most often constitutionally regulated and results in universal rights and obligations that are granted to all individuals of legal age and that should be respected by government under the rule of law (ibid: Anderson, 1978, p. 14).

Besides being constitutionally obliged to respect and uphold the rights of its citizens, the rule of law entails that the state itself is subject to legal restraint and control (Dicey, 1960). Simply put; if the state is not obliged to adhere to the constitution and the laws of the land, then there is no assurance that the constitutional rights of individuals will be protected or respected by the state and its agents (Ungar, 2002, p. 1). This is an important aspect of the approach to human rights violations that is undertaken in this study. Namely; that in order for human rights to be respected and protected by the Jamaican state – as the rule of law entails– the Jamaican state must, itself, act in ways that have been constitutionally prescribed.

The above mentioned points – of constitutionality, and legal restraint and control of the state – highlight the two main principles of the rule of law: legality and accountability (Mars, 1998, p.465). These principles require that agents of the state act within the legal parameters of their mandate, and imply that democratic governments have the responsibility to ensure that the constitutional rights of their citizens are respected in accordance with the law (ibid). This understanding brings into question the human rights practices of the Jamaican state, with regards to both legality and accountability.

Firstly, the legality of the actions of states agents are questioned by the overwhelming numbers of suspected human rights violations that have been reported for many consecutive years. According to leading human rights watchdogs over one hundred and sixty people lost their lives in 2005 in incidents involving the security forces of Jamaica, and similar numbers have been reported for previous years (Amnesty International, 2006 country report on Jamaica). In accordance with both the Jamaican constitution and international agreement ratified by the state, state agents do not have the legal right to deprive citizens of their life unless in self defense or out of absolute necessity. This implies that suspected cases of human rights violations must be tried through the due process of law in order to establish the legality or illegality of such actions, and as a means of holding state agents accountable.

Secondly, the mechanisms of accountability are questioned due to the extremely limited number of suspected human rights violations that have been pursued and tried by the public prosecutors (DPP). Out of the alarmingly high annual figures of about one hundred and fifty estimated incidents resulting in civilian deaths from police fire arms<sup>3</sup>, only a handful of these are pursued by the DPP – sometimes despite overwhelming evidence of police misconduct. This failure to prosecute suspected human rights offenders has led to a system of impunity that has served to undermine the entire notion of accountability in Jamaica. It also indicates the judicial systems inability to fulfill its mandate of holding state agents accountable for suspected acts of misconduct.

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<sup>3</sup> This estimation is relevant for the years between 1999 and 2006, which is the temporal period that the empirical material has been based on.

Having established that the rule of law entails (among other things) equality before the law, respect for constitutional and legal rights on behalf of the state, and a legally constrained state; it is important to emphasize that the rule of law is not an independent source of power and justice that extends across space and time. Instead, the rule of law should be understood as a concept comprising of several instrumental features that work together to create this rule of law. Specifically, the rule of law can be understood to comprise of three institutions, which are of equal importance and relevance for upholding it. Namely: An independent effective judiciary; state accountability to the law; and citizen accessibility to conflict-resolution mechanism, also known as judicial access (Ungar, 2002, p.1).<sup>4</sup> In other words, all three of these institutions must exist in order for the rule of law to be realized within a democratic polity. Without an independent judiciary nothing in the constitution, not even the most fundamental rights (such as human rights) are guaranteed to be respected. Similarly, laws are useless if the state is not willing to uphold them through measures of accountability.

One critical point that must be made before we explore the various roles of the constituent elements of the rule of law; is that adherence to the rule of law – or lack thereof – should not be seen as a struggle that is exclusive to newer democracies such as Jamaica. On the contrary it is a struggle that exists in every democracy, new and old, and that can never be completed. As O'Donnell points out, the legal systems aim at yet never fully achieve completeness (O'Donnell, 2004, p.34). Established democracies, though committed to upholding the rule of law, may differ radically from one another pertaining to e.g. the level of accountability, or the effectiveness of the judiciary. Take for instance the case of the United States Supreme Court, where judges are most often appointed on the basis of their ideological approach to the law. This does not constitute in the judiciary being less independent, but it may provide for highly individualized interpretations of the law that are based on the political convictions of the judge. Moreover, the problematic lays in the fact that the President personally appoints these judges in the hope of gaining allies in the Supreme Court. This may have an effect on the quality and level of accountability, inherent in the rule of law, since it is the task of the judiciary (and ultimately the Supreme Court) to hold the executive branch of government legally accountable for their actions.

The example of The United States Supreme Court is simply an attempt to illustrate the fact that even established democracies have systems and procedures that may affect the elements of the rule of law in different ways. In other words, no country can be said to have achieved a politico-legal system that is capable of upholding all elements of the rule of law with equal prominence and success. Instead, there will always exist different factors that may bring into question the independence of the judiciary, the level of accountability or the access to justice that comprise the rule of law. This being said, the task of creating an acceptable balance between the various elements of the rule of law is something that many new democracies are struggling with on a daily basis, as is the case for the Jamaican state. In order to understand this balance we must explore the role of each constituent element of the rule of law, beginning with the role and of an independent judiciary.

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<sup>4</sup> From this point on the latter feature will be referred to as access to justice, both for simplicity's sake and also because the author uses the term himself in reference to this feature.

### 2.1.1 Independent Judiciary

As it has been mentioned the rule of law entails that constitutional rights, such as human rights, be upheld and respected by the state and its various agencies. Subsequently the main body to ensure that the state adheres to these principals is the judiciary (O'Donnell, 2004, p.32; Finkel, 2004, p.57). However, the mere existence of a judiciary is not satisfactory for upholding the rule of law. Instead, it is of pivotal importance that the judicial branch of government be independent in order to fulfill its own constitutional obligations, such as performing checks and balances on the executive branch of government (Ungar, 2002, p. 2). These checks and balances are of paramount importance for ensuring the legality of state actions and cannot easily be carried out if the judicial branch of government is politicized as opposed to independent, which has been the case in several of the world's new democracies (Ungar, 2002, p. 6; Dodson & Jackson, 2004, p.2).

In order to hold state agents accountable, the judiciary depends on multiple actors to realize this ambition. Among others the judiciary relies on the work and investigations of prosecutors, police officers, pathologists and other officials in order to fulfill its mandate to perform checks and balances on the executive branch of state. These officials provide the judiciary with much of the necessary information that is needed to reach decisions pertaining to the legality – or illegality – of actions performed by the state and its agents (Ungar, 2002, p.17). When offices fail to perform their duties of enquiry and investigations into alleged human rights abuses, serious restraints are placed on the judiciary's ability to uphold its duty of performing checks on the constitutionality of the government actions.

Besides relying on numerous institutions, the judiciary's ability to perform in an effective way is above all highly dependent upon how the executive branch of government chooses to use its powers. This has been a problem of many Latin- and Central American countries, where numerous governments have used their enormous powers to curtail and overstep the judiciary, crippling its ability to uphold its constitutional mandate (Finkel, 2004, p.63). This threat, along with the reality of insufficient resources has in recent years led to the international donor community showing profound interest in implementing reform programs aimed at strengthening the judicial system in structurally dependent countries. These kinds of reforms have been seen as imperative steps toward creating a favorable investment climate for foreign investors, but have had limited success according to some of the research on the subject (se e.g. Brody, p. 233).

### 2.1.2 Accountability

The notion of accountability is one that is indispensable in the maintenance of a liberal democracy. Without mechanism and institutions of accountability there is no way to ensure that a democratic state will adhere to the laws of the land, and refrain from using its powers to infringe upon the rights of its citizens. The literature distinguishes between three types of accountability that are necessary for maintaining and upholding the liberal democratic state formation: Vertical, societal, and horizontal. The first of these is realized through the institution of the electoral process and is understood to fulfill the bottom up approach of the populous holding the executive branch accountable either by instatement or removal from office (O'Donnell, 1998, p. 112). Secondly, societal accountability is a non-coercive form

that may none the less be able to exert sufficient political pressure for the state to reevaluate potentially unconstitutional procedures and practices. This form of accountability will be discussed further in the theoretical approach to civil society that is outlined below. But for now we will focus on the institution of horizontal accountability.

Horizontal accountability relies on a network of state agencies that are factually able and legally empowered to perform checks and balances on the executive as a means of holding this branch of government accountable under the rule of law (O'Donnell, 1998, p.117). This is based on functions of oversight and investigation. Even though the judiciary has the principal role of holding state agent accountable with reference to constitutional standards, it is this network of state agencies that is responsible for implementing these standards into their daily routines (Ungar, 2002, p. 17). However, the willingness of state institutions and agencies to implement such standards is also highly dependant on the existence of actual sanctions should they fail to do so. In other words, there is little incentive for the executive branch to adhere to the law if there are no real prospects for impeachment or other sanctions.

### 2.1.3 Judicial Access

The element of judicial access refers to the availability of “impartial mechanism of conflict and grievance resolution, primarily but not exclusively in the judiciary, to all the individuals” (Ungar, 2002, p. 2). Access to justice is not a simple question of state providing courts that may handle cases put before them in an impartial manner. It holds within it the whole function of the investigating, prosecuting and trying cases of alleged or suspected human rights violations.

For Access to justice to function properly all three stages must function (Ungar, 2002, p.191). If investigations – normally conducted by the Police – are closed without a conclusive finding, access to justice will be harder or impossible for the individual, regardless if this is for lack of will or lack of resources. If cases leave the investigative stage, there must be sufficient evidence collected in the manner prescribed by law to make a prosecution possible, and then prosecutors who like the police force itself must be willing and able to impartially assess the investigations handed over to them. For these two stages of legal reaction to violence the process is the more delicate as the general public usually has little insight in what happens. When a case finally passes the two first hurdles and arrives in court, cases are usually open to public and therefore the risk for unfair trials smaller. If finally a case is not brought to court by state authorities, the individual usually has a right to private prosecution. The cost of such a procedure is usually forbidding, especially if even a verdict in favor of the plaintiff will not involve the possibility of economic compensation from the state.

Legal Aid must be available in some form or other for the mechanisms of the judicial system to be reached in all its details. Since the Law of Procedure is usually very complicated, an individual would not be in a position to properly represent him or her self before a court or even at the stage of investigation. Legal aid thus includes not only being represented by a barrister, but also provides for allowing an independent medical observer to attend at autopsies, and when examining evidence that is planned to go before the court, just as well as the right for a complainant to appoint an observer or a forensic technician to take

part in the investigation of the crime site. These more rigorous demands apply with all the more force when the police work is substandard.

## 2.2 Civil Society: An Overview of the Conceptual Debate

A review of the literature on civil society quickly reveals the multitude and complexity of meanings that have been ascribed to the term over the years. Since its revival – about two decades ago - the concept has been invoked to suit numerous purposes and contexts, which has made it almost impossible to give a coherently unified account of the actual meaning of civil society. Some scholars treat civil society as a distinguished empirical realm of political life, while others emphasize its interconnectedness to other spheres. Similarly some scholars may include certain actors in their conceptualization of civil society, while the very same actors may be excluded from the equation by others. However one chooses to interpret the concept, its illusive nature has enabled its use in an array of ideological contexts and has also been the cause of its harshest critique.

The notion of civil society is most closely linked to the liberal democratic understanding of the social contract. The ideal of this contract is to attain a state formation that does not threaten to dismantle the fundamental features of universal rights and freedoms that are inherent in the liberal strand of modern liberal democracies (Beckman, 2001, p.51). However, such a state formation has yet to be successfully attempted by man. For now, most societies including those with the longest histories of democratic rule, experience states actions and procedure that threaten the rights and freedoms of their citizens in one way or another. This threat of the state using its powers arbitrarily has partially been relieved, at least in theory, by the carving out of civil society as a realm of political action that is beyond that of the state.

This conceptualization has been used to legitimate the necessity of an independent and autonomous civil society, as one of the most important means of countering excessive state power. However, such an understanding of the relationship between civil society and the state has also led scholars to question the apparent dichotomization of the two democratic realms of political engagement (see e.g Sjögren 2001: 38, Chandhoke 2001). The reason behind the critique is the dichotomy's potential to obscure the existing and interdependent relationship between the state and civil society (as well as other spheres for that matter), which can ultimately lead to unrealistic assumptions of existing patterns of interaction (Beckman, 2001: 50). Even though a certain level of autonomy is clearly an important pre condition for a democratic civil society, it is equally relevant to consider the interconnectedness that inhibits this autonomy from ever becoming omnipotent or extreme.

In this light, civil society does not simply oppose and resist the state in order to maintain the polity's democratic features. By playing by the rules of the political game civil society also grants consent to the status quo, and has thereby accepted its given place in a liberal democracy. This consent functions as a legitimizing force of state power<sup>5</sup> that is based on an intricate network of institutional and legal arrangements between civil society and the state and are designed to maintain the current mode of political operations (Chandhoke 2001: 150). The intimate relationship between civil society and the state questions the extent of civil

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<sup>5</sup> Obviously there are other legitimizing factors that are equally important, such as electoral outcomes, and electoral and political participation among others.

society's autonomy and its possibility to exclusively determining its own agenda since the latter has the power to determine who it chooses to cooperate- and form a dialogue with. This grants the state with an opportunity to define the the rules of engagement for civil society by disabling, as well as enabling the political influence of various groups. In other words, in the same way that the survival of a democratic state is dependant upon the existence of civil society (as discussed above), civil society is dependant upon the states support in order to make valuable contributions in the world of politics (Chandhoke 2001: 152).

## 2.3 Who and What Constitutes Civil Society?

In this paper civil society includes forms of association that are separate from all branches of the state. Separate, in this sense does not refer entirely to the above mentioned dichotomy between the state and civil society, but more to the notion of autonomous and voluntary association that is not subject to agenda setting by any part of the state. This entails that many forms of organization can claim membership in civil society for any number of purposes and reasons. It also entails that these members may serve to further their interests in various ways. Some may aim at challenging the state, while others may attempt to defend it as means of protecting their own constituent interests.

This type of broad and inclusive understanding of civil society can admittedly be the cause of well grounded critique as it has a tendency to overstretch the concept to the point that it may be rendered useless as an analytical tool. It has a tendency to include far too many variations of civil society, which makes it difficult to distinguish this realm of association from other contemporary locus of engagement. For this purpose, a few points need to be made pertaining to the characteristics of groups that claim membership in the realm of civil society.

Diamond refers to a number of features that can be identified to distinguish civil society as an autonomous locus of political engagement. Firstly civil society is distinguished from society at large as a realm of association that is concerned with public, rather than private ends. Is it also distinct in the sense that it encompasses forms of association that are collectively pursued with the aim of, inter alia, placing demands on the state and holding state officials accountable (Diamond, 1994, p. 5). In this light, only groups and individuals that engage with the state on one level or another are included in the concept. This excludes inward looking activities and separates civil society from private spheres of engagement such as the family. It also excludes those forms of association that are not publicly or politically oriented. Secondly, civil society can be distinguished from the realm of political society, which mainly encompasses political parties including those in office and those in opposition. This is based on the understanding that civil society does not seek to monopolize the political space in ways such as those of political parties seeking to gain office (Diamond, 1994, p 7).

## 2.4 Civil Society: The source of Societal Accountability

Civil society has been ascribed a number of different functions over the years, depending on the regime type and level of democratization that exists within a given polity. Among other things this political platform can be understood to function as a two way transmission belt between society and state, as well as constituting a disciplinary role in politics (White, 2004, p.14). A commonly held understanding among civil society theorists is that one of civil society's main functions is to use its powers to hold the state and its agents accountable. However, this has not prevented institutionally orientated political scientist from excluding civil society from their understanding of accountability all together. Mainwaring even goes so far as to explicitly state that civil society does not belong in his equation of accountability (Mainwaring, 2003, p. 7, 8, et passim).

Traditional approaches to accountability have tended to define the concept as a matter of vertical or horizontal, thus excluding the consideration of alternative forms of political accountability. Particularly, much attention has been paid to institutions of horizontal accountability and their role in controlling the executive branch of government. However, it has grown overly apparent in recent years that many Latin- and Central American governments have used their powers to undermine oversight institutions and thereby erode the horizontal system of accountability (see e.g. Finkel, 2004, p. 63). Also, the effectiveness of the electoral process as a means of accountability can be questioned in a number of ways. In this light, the concept of societal accountability is one that appears to be gaining much deserved attention as an alternative and real source of political accountability.

Peruzzotti and Smulovitz describe societal accountability as a non coercive and non legal form of accountability that depends on the existence of an organized civil society that seeks to exert influence and pressure on the political system (2000, p. 150). One of the strengths of such accountability is that it can be activated upon demand. In other words, there are no temporal or periodic mechanisms (such as elections) that control the organizational capacities of civil society. Instead groups and individuals using this political platform may mobilize pressure and channel demand at any particular time and for just about any cause.

The political leverage of societal accountability is derived from its symbolic powers (Peruzzotti and Smulovitz, 2003, p. 312). Imagine the symbolism of thousand of people coming together to devote time and resources for the sole purpose of expressing discontent for state practices. Such a feat is not to be taken lightly, as widespread discontent and dissatisfaction may weigh heavily on the level of legitimacy that is enjoyed by the state (Diamond, 1994, p7). Imagine even a few hundred people, if they use recourses and available mechanisms in optimal ways they too may have the possibility of attaining increased accountability trough the symbolic powers of their collective action. The symbolic powers of societal accountability can be understood to have positive outcomes primarily in two ways.

Firstly, societal accountability may serve to exert political control "by exposing and denouncing wrongdoing" (Peruzzotti and Smulovitz, 2000, p. 152). In the globalized and televised world of today, civil society may possess a number of means for accomplishing

such feats. For example, the authors highlight the crucial role that media can play, and has come to play in many developing societies (Peruzzotti and Smulovitz, 2003, p. 313). By broadcasting and exposing illegal and arbitrary state practices, media and civil society may be able to attain undeniable levels of public pressure. When faced with such pressures, it may be in the best interest of state officials to contemplate changing condemned practices or attitudes. Among other things, organized pressure can lead to officials being dismissed from office when time for elections come around. However, it can also result with officials simply not choosing to respond to the demands of the populous, due in part to the non-coercive feature of societal accountability.

Secondly, societal accountability can achieve political control by activating horizontal institutions of accountability. This can be done by utilizing judicial problem solving mechanisms to challenge the state, or by activating oversight agencies (ibid). With regard to upholding the rule of law, this entails that civil society should be a force to be reckoned with. In other words, if government and state officials remain unresponsive to the public demands put forward by civil society they may face graver and legally binding sanctions, should mechanisms of horizontal accountability be activated.

On the above outlined premises, the analysis of this paper seeks to highlight and understand the ways in which Jamaican civil society utilizes mechanisms of social accountability that may serve to strengthen the rule of law in the country. This entails looking at legal mechanisms, as well as the array of non-binding and non-sanctioning ones, such as monitoring and exposure, that are available to civil society.



# 3. Background

## 3.1 The Socioeconomic context of Jamaica

In order to understand the arbitrary human rights practices that the Jamaican state and its agent have been accused of, by numerous members of civil society, we must first attempt to place them in their rightful societal context. The 168 alleged act of extra judicial killings that were reported by Amnesty International in 2005 (AI country report 2006) did not all simply occur without incident and cannot either be assumed to be practices that have been adopted by all members of the security forces. The Jamaican security forces face the daunting tasks of coming to grips with criminality in a society that has been absolutely plagued by violence and crime for decades. In the same year the annual murder rate was some 1650 murders, which brings Jamaica's per capita rate to one of the highest in the world (Jamaica Gleaner [hereafter *DG*], January 9, 2006). These escalating levels of crime and violence have led to many situations where the police force (JCF: Jamaican Constabulary Force) have found themselves outgunned and overpowered by the criminal elements of society that they were supposed to subdue, which undoubtedly places these officers in highly volatile and risky situations.

One of the phenomena that have contributed to the extreme levels of violence that persist within Jamaica is the astronomic increase in criminal activity on the island. The illegal drugs and arms industries have used Jamaica as a strategic transit point from which drugs and arms are dispersed to different corners of the globe. As a result, the country has experienced an ever increasing level of crime and dispersal of firearms throughout society (Johnson, 2005, p 586-588). Unfortunately, this scenario has led to a way of life in Jamaica that is very much structured around the level of insecurity. As I have personally experienced, the high rates of murder, gang violence, shoot outs etc, serve to deter and restrict ordinary Jamaicans from living and moving about as freely as they would like to in their day to day lives.

Apart from high levels of crime and violence, the socioeconomic situation throughout much of Jamaica is unfortunately one that is typical of a structurally dependent state. In 1980 the conservative JLP won the October elections during which the party's main promise had been to attain greater economic deliverance than the preceding PNP government. Once in office, the realization of this promise was perused through the adoption of neoliberal development strategies. However, these strategies have only proven to be effective for certain sectors of the economy, while others have suffered tremendously (Henke, 1999, p. 7). Their very limited success has resulted in widespread unemployment and economic stagnation that continue to color the lives of many Jamaican people to this day. Furthermore, the constraints of structural dependency have rendered the Jamaican state paralyzed and incapable of as much as stabilizing these worsening conditions on its own.

## 3.2 Human Rights Practices

The arbitrary human rights abuses that the Jamaican state and its agents have been accused of carrying out refer to an array of different practices, which according to the Jamaican constitution may potentially be in violation of these rights. They include everything from arbitrary detention and torture, to imprisonment without charge and extra judicial executions.

The empirical material of this study refers to incidents occurring between 1999 and 2006. During these years more than 800 incidents of fatal shootings by security forces (almost exclusively by the policing force) were reported, while only a handful of these were tried under law, two of which resulted in convictions. This paper does not wish to imply that all allegations of human rights abuse do in fact constitute human rights abuses. The point is that it is a matter for the courts to decide in accordance with the law. However, failure to address these allegations in a legally substantiated and timely manner leaves the window of suspicion open. What is implied is that failures to test the legality – or illegality – of e.g. fatal shootings suggest serious deficiencies in the institutions that uphold the rule of law.

Besides the constitutional extension of human rights, the Jamaican state has also ratified a number of international agreements on human rights, and codes of conduct for police and military officials. These constitutional and international legal standards represent the main point of departure for allegations of human rights abuses to be made by various sectors of Jamaican society and the international community. If such legal standards did not exist there would simply be no legal basis for these allegations to be made. However, in the case of Jamaica they do exist and under the rule of law the state and its agents are obliged to uphold and respect the constitutional rights of the citizenry. Any failure – or suspected failure – to do so is required to be processed and evaluated in accordance with existing laws and legal standards. Unfortunately this has not been realized in an overwhelming majority of suspected cases of human rights violations. The states inability or unwillingness to sufficiently adhere to the notions of legality and accountability has far too often led to victims of human rights abuses being victimized twice over. First by the state agent (or agents) that carry out the potentially illegal violation of these rights, and secondly by the judicial and political systems that fails to hold the state agent (or agents) accountable for these actions under the rule of law.

## 3.3 Three Cases of Allegedly Arbitrary Executions

As stated above, Jamaican state agents have accused of carrying out various forms of illegal human rights practices. Without the intention of trivializing any of these practices, it would appear that one of the most severe forms of human rights violation includes the deprivation of life. The arbitrary act of ending the life of a fellow citizen is irreversible and therefore deserves to be evaluated to the fullest in accordance with the law, not least when the suspected perpetrator is an agent of the state.

Failure of state institutions to uphold the rule the law (by adhering to the notions of legality and accountability) has prompted a number of responses from members of civil society.

These have been aimed at both challenging and bolstering various aspects of the rule of law. However, the public outcry would appear to be especially loud when agents of the state are suspected to have arbitrarily deprived a member of the populous of the right to life. Subsequently, groups such as human rights organizations, bar associations, and other individual members of civil society devote precious resources to cases dealing suspected arbitrary executions<sup>6</sup>.

In order to explore *how* civil society is working, it is imperative to first understand *why* it is working (the way it is). The three cases below aim at providing an empirical point of reference for the following analysis. By conveying the background and circumstances of these individual cases, the hope is to provide greater insight into the contexts that has prompted members of civil society to question the legality of state actions.

## Janice Allen

Janice Allen is a name that has been invoked and remembered in a many a discussion concerning the police force's use of firepower and excessive force. She was 13 when she was gunned down by police bullets in her home community of Trench Town, a crime ridden inner city community of Kingston<sup>7</sup>. Together with her 15 year old sister, she had taken cover behind a lamp post as police started shooting at a man across the street from where they were. According to eye witness testimonial the police had purposely shot 13 year old Janice, however the officers maintain that she was caught in the line of fire in the pursuit of an assailant. One officer was subsequently tried for the murder, but was freed in 2004 because of a total lack of evidence from the prosecution (DG, June 7, 2006).

This violent and unnecessary death of young Janice sparked widespread public outcry throughout Jamaica. Not only from human rights organizations but also from the government that publicly expressed utter condemnation of the police officers conduct (DG, April 18, 2004). This willingness to publicly admit wrongdoing is, at the very least, a positive indicator in the sense that it suggests a certain level of sensitivity and responsiveness at a higher political level. However, the government's condemnation of the case has not resulted in justice being served for the young girl or her family. No one has so far been charged or reprimanded for her death.

## Michael Gayle

Michael Gayle is another name that Jamaicans know far too well. On 21 august 1999 he was so severely beaten and stomped by police, that his life was beyond rescue and died in hospital under terrible circumstances two days later. The 26 year old man, who had also been diagnosed to suffer from mental illness, was apprehended by security forces as he attempted to cross a road block during a curfew in his home community of Olympic Gardens, Kingston (AI Full Report 2001, p. 45). Despite the fact that Gayle had been unarmed, members of the security forces proceeded to beat the man with batons and gun butts, which according to the postmortem resulted in a fatal and traumatic rupture of the stomach lining. The eyewitness

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<sup>6</sup> See e.g : <http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8325.htm>

<sup>7</sup> For anyone that recognizes the name Trench Town, it is the same community that Reggae Pioneer Bob Marley has often referred to in his songs.

testimonials of Gayle's mother (who bore witness to the violent death of her son as she pleaded for his life) and other witnesses have not been sufficient to ensure that justice is served in this case. In 2002 the DPP announced that he did not intend to file charges against any of the officers, a decision that was widely criticized by the opposition as well as civil society (AI Full Report, 2001).

## The Braeton Seven

The case that is known as the Braeton Seven involves the shooting of seven youths in a house on Braeton Street, St. Catherine parish. According to police, they had only returned fire after being shot upon by the young men inside the house, which happened to result in every one of them ending up dead. However, eye witnesses and residents claimed that the youths had been shot by police while begging for their lives. An independent pathologist later confirmed that all of the victims had been shot with bullets to the head at close range, a finding that does not fit nicely with the police's version of a shoot out (AI Country Report 2001).

The three cases referred above represent only a very small portion of all the incidents that occur. They all bear the same hallmark of interference with the proper course of justice. In all of those cases, witnesses that might have implicated a wrongdoing police corps have been harassed – even to the point of death threats – by other members of the same police force in order to prevent them from giving their statements. What these cases also have in common is the fact that we never would have heard about them if it were not for civil society having intervened in order to try for justice to be done. This has been through human rights organizations, lawyers working for free to help those that could not afford and by strong expression of dissatisfaction in the neighboring communities. Baring this in mind we now move to analysis of how such efforts may serve to affect the rule of law in Jamaica.

## 4. Analysis

Only in the most limited sense, can the rule of law solely be derived from the words that make up the written legislation - Constitution, Acts of Law and Regulations. In order to properly analyze what the current rule of law is, one must look to how these Acts of Law are transformed into a Current Law by the way they are practiced by the state and by the way the rights granted to individuals can be utilized by society. The responsibility of society to politically press for rights must be paralleled by a preparedness of the same society to utilize these rights. Since the sufferers of human rights abuse tend to be the weakest individuals in society, it becomes the responsibility of their surrounding neighborhoods to back those that are exposed to state violence. Such backing would involve legal aid to victims of state crime like cost of counsel, doctors, crime investigation, and preparedness to give witness, and much more. For this reason we will now take a look at functions of civil society which can bolster legal practice when the economy or other affairs of the state makes it too weak to properly fill all these functions on its own.

### 4.1 Countering Impunity through Independent Investigation and Public Exposure

It takes a multitude of coordinated agencies to ensure that the state and its agents adhere to the principals of legality and accountability as it is constitutionally obliged to. When suspected acts of arbitrary human rights practices are carried out each of these institutions play specific and equally important roles in holding perpetrators accountable under the law. Among others it is necessary for the police force, Director of Public Prosecutor (DPP), pathologist, and other units to conduct their work impartially in accordance with their individual mandates and in ways that provide for cooperation and intelligence sharing between these units. This portion of the analysis looks at how actors in civil society, primarily (in this case) human rights organizations, are using their position to conduct independent investigations as a means of monitoring police in the light of inadequate and faltering state procedures in many instances.

One of the first and most crucial steps in an investigation is to properly secure the crime scene and evidence. Only with such measures can a thorough and compelling investigation be carried out before being referred to other agencies such as the DPP. This is especially important in cases that involve homicide or that result in homicide, such as incidents of police

shootings. However, over the years it has become overly apparent that many police investigations blatantly fail to adhere to even the most basic investigative procedures in ways that are legally admissible and acceptable. Especially when it involves investigating homicide incidents that fellow officer may be accused of carrying out. In these cases there have been many accounts of investigations that appear to have been seriously flawed in ways that subsequently serve to hinder justice from being carried out (Police Executive Research Forum, 2001, p.4).

According to human rights groups such as Amnesty International, and Jamaicans for Justice, they have often received information about police showing total disregard for material and forensic evidence in incidents resulting in homicide. Examples of such practices include, loading dead bodies into the trunks of police cars, as opposed to calling on the proper units to assist in the removal of these bodies (Jamaicans for Justice, 2004, p.7). Also crime scenes have been alleged to go uninvestigated for periods of time that by far exceeds acceptable limits. These types of practices seriously undermine the notion of proper evidence gathering and subsequently make it next to impossible to hold agents of the state accountable as there is no evidence to corroborate or dispute allegations of suspected human rights abuses.

Failure by the police to conduct proper and professional investigations, have prompted several human rights organizations, such as Jamaicans for Justice and Amnesty International, to establish their own response units that are responsible for conducting research and evidence gathering at the scenes of suspected human rights abuses. When reports of shooting or other violent incidents are received, these response units are meant to be deployed as soon as it is possible to do so, as a means of insuring that the gathered information is as fresh and reliable as possible. Even though members of civil society have no authority to investigate crime scene material or forensic evidence, the importance of this work can none the less be stressed in a number of ways.

Firstly, reaching the scene of action as soon as possible is of key importance for attaining a clear and reliable understanding of what actually transpired between police and members of the citizenry. This allows for interviews to be conducted with eye witnesses that can provide vital information surrounding both the actions of the alleged perpetrators and of state agents. The importance of such information is that it can serve to seriously undermine the credibility of the police's version of events, as police often describe opposing versions of accounts than those of eye witnesses. In this light, police may be put under increased pressure to at least conduct investigations in less arbitrary ways that it would otherwise do. Especially considering that human rights organizations are particularly keen on publicizing and highlighting their own independent findings when they reflect inconsistencies on behalf of state agents.

Secondly, this type of prompt and on the scene type information gathering may give the members of human rights organizations the possibility of monitoring the investigative procedures of the police force as they are carried out. This places increased pressure on the police force to perform these duties in ways that are legally permissible, as the members of these organizations may have various means of recording inconsistencies and arbitrary handlings of crime scenes. Such information and eye witness accounts can later be used in court cases or media exposes that serve to give the greater public an insight to the potentially unconstitutional methods utilized by members of the security forces.

One such example can be made of the above mentioned case known as: The Bratton Seven. It involved the killing of seven young men under highly suspicious circumstances. Witness

testimonials that had been taken by the response units and media shortly after the crime stated that the seven young men had been killed in an execution style manner. These witness accounts along with other forensic evidence, or lack thereof, and the findings of independent autopsies all pointed towards the fact that police had indeed used an absolutely excessive use of force, as there was no evidence to corroborate a shoot out (Jamaicans for Justice, 2004, p. 5). Furthermore, media crews that arrived on the scene together with Amnesty International's response unit were able to film how police "cleaned up" the crime scene in a highly arbitrary fashion rather than investigate it. Among other things, the police shifted around material evidence without using gloves and without properly securing the bodies as to ensure the reliability and credibility of the subsequent forensic investigations.

The information and evidence that had been gathered by Amnesty International on the case was later used to mount international pressure on the Jamaican government. A UN Special Reporter from the High Commission on Human Rights visited the country in 2003 upon which she expressed her absolute conviction that the circumstances surrounding the killings of the seven youths appeared to (Report of Special Reporter on Jamaica, 2003, p. 16) have been arbitrarily carried out. Among other things, she based this conclusion on the evidence collected through Amnesty International's independent investigation and used it to criticize the government handling of the case and failure to hold any agents accountable (*ibid*).

Besides on the scene research, there are other instances in the investigative process that are of equal importance for ensuring that homicide cases are properly and independently processed in order for legal evaluation to be made. One of these instances is that of the autopsy. A professional, unbiased, timely and thorough autopsy is a vital part of any homicide investigation, as it may provide detailed and otherwise unobservable facts surrounding a particular case. However, the role of state forensic pathologists has come under serious scrutiny as reports of inconsistencies have been publicized and openly criticized. According to these reports the state pathology department has obstructed investigative procedures by failing to perform its functions in a number of ways.

International standards prescribe the highly specific circumstances and procedures that are meant to govern the work of the forensic pathologist when conducting autopsies<sup>8</sup>. Among other things, he or she must have access to the scene of the crime and all the information gathered by police as to allow for the autopsy report to be as detailed and valid as possible. These standards also allow for family members of the deceased to insist on medical- or other qualified – personnel to be present at the autopsy. In many instances, however, state pathologists have attempted to disregard these rights by preventing independent observers from adequately following the autopsy procedure as they are entitled to (AI Full Report, 2001, p. 57). This has served to tarnish the reputation of state pathologists and undermine its credibility in every sense of the word.

Independent evaluations that have been made concerning the work of state pathologist have been alarmingly bleak as they have described this work as absolutely inadequate in every sense of the word, especially in cases dealing with victims of police brutality. One such case regarded a young man who had been killed by police bullets. Despite being shot in the head, the state pathologist failed to conduct an autopsy that would meet even a minimal standard of professionalism as the skull had remained unopened and unexamined after the autopsy had been completed (AI Full Report 2001, p. 57). In other instances of police shootings the state

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<sup>8</sup> See UN Principles for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principles 12, 13, 14, and 16.

pathologist has even failed to list the cause of death in the autopsy reports (ibid). Under such circumstances it is not impossible to see how the inadequacies of an autopsy may serve to hinder justice from being served, as it is a crucial step in establishing whether a cause of death is due to foul play or otherwise.

Due to the substandard work that state pathologists have been accused of carrying out, human rights advocates such as Jamaicans for Justice, Independent Jamaica Council for Human Rights and Families Against State Terrorism have often taken it upon themselves to uphold the right of having an independent observer or pathologist present at the autopsy. This can be of utmost importance for individuals seeking legal vindication against the state, either for themselves or for a deceased loved one, as the findings of such a pathological investigation can be presented in the coroner's court upon an inquest. Without these findings the coroner may have little evidence of foul play, if he or she is to solely rely on the state's possibly unreliable autopsy report.

Following the killing of Michael Gayle in 1999 the public outcry from groups such as Jamaicans for Justice, prompted the Jamaican Government to reform administrative procedures regarding autopsies. This can be seen as a welcomed incentive on behalf of the state, but does not appear to have restored much trust into the work of its pathologists as many human rights groups are still highly critical of the unprofessional and arbitrary practices that are undertaken in this office (Jamaicans for Justice, 2004, p.17).

## 4.2 Legal aid and assistance

One of the most crucial instruments for attaining judicial access is the role of the legal representative. It is the task of this representative to use her or his expertise as a means of accessing and utilizing the problem solving mechanisms that are available within the judicial system. This is especially important when a vast majority of the people seeking to vindicate human rights (either for themselves or for a loved one) have little or no knowledge about the workings of the judicial system (Bolívar O. 1999, p.44). The problem is: that this type of representation costs. In fact, it costs a whole lot. And considering that most of these individuals rarely possess the means to acquire such representation on their own, the importance of voluntary provision of legal service cannot easily be overestimated.

The empirical study has identified a number of different organizations that devote a significant portion of their resources towards providing people with legal aid. Among others The Independent Jamaica Council on Human Rights, Jamaicans for Justice, The Jamaican Bar Associations and a number of other bar associations have expressed this as one of their primary activities<sup>9</sup>. This type of legal assistance is important throughout the entire legal process in order for a client to properly and efficiently access legal mechanisms along the way. It is vital from first steps of acquiring an independent autopsy and presenting material evidence at a coroner's inquest, to the final process of appeal in court.

Legal aid is also a vital tool for mounting international pressure in the form of appeals and petitions both to legally binding and non binding bodies. This includes appeals to international bodies such as the UN High Commission on Human Rights, and The Inter American Commission on Human Rights. Furthermore, as part of the British Commonwealth

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<sup>9</sup> See <http://www.ijchr.com/information.htm>, <http://www.jamaicansforjustice.org>, <http://www.jambar.org.jm>



the final court of appeal is the Privy Council that resides in the United Kingdom. An example can be made of the case of Michael Gayle, the young inner city resident that was brutally beaten to death by members of the police force and military. The inability and apparent reluctance of the DPP to hold state agents accountable led to widespread discontent over the state's handling of the case. Since all the domestic legal mechanisms had been exhausted (as the DPP has full discretion over who he chooses to prosecute), legal representatives for the deceased man's mother and Jamaicans for justice attempted to attain accountability by appealing to the Inter American Commission on Human Rights.

The result of the appeal was in the form of harsh critique from the commission, which seriously questioned the Jamaican state's handling of the case (DG, November 11, 2005). Even though this body has no mandate to legally sanction the Jamaican state, it would appear that this type of explicit critique could serve to mount considerable international pressure that would be hard to simply ignore. Without pro bono legal assistance it is conceivable that the family of Michael Gayle would have been able to mount such international pressure on its own. And despite the fact that no single officer has yet to be charged, the outspoken condemnation of the government's handling of this case may have provided Gayle's family with a vital sign of recognition and a slight feeling of justice against a state that has failed to do either.

Legal assistance has also been extremely important in pursuing legal vindication the case of young Janice Allen. After the 13 year old girl perished in a police shoot out, the DPP decided to charge an officer with her death. The subsequent trial in 2004 resulted in a verdict of not guilty, which the jury had been ordered to deliver by the presiding judge due to a total lack of presentable evidence on the prosecutions side (DG, June 7, 2006). This verdict sparked nationwide protest aimed at expressing discontent and was arranged by several members of society, including Jamaicans for Justice (DG, March 23, 2004). Following such a court ruling, the family members of victims had no choice but to pursue appellate levels of the judicial system if they were ever ensure that the guilty parties would be held accountable.

The failure of the state and DPP to hold any agent accountable for the horrifying and meaningless slaying of Janice Allen, prompted legal representatives and Jamaicans for Justice to challenge to court ruling by pursuing judicial review on the case. So far the case has been up for review in the Supreme Court on two occasions, on both of which the appeals were denied on the grounds that the initial verdict of not guilty could not be overturned (DG June 5, 2006). Despite the fact that no perpetrator has been held accountable for the death of Janice Allen, voluntary legal consultants continue to provide aid that is absolutely crucial for accessing problem solving mechanism of the judicial system such as the appellate process. Without this type legal assistance and representation it is highly unlikely that her family would have been able to mount such legal challenges against the state on its own.

### 4.3 Public Education

Information and access to information are some of the most vital tools for mounting public pressure in the pursuit of increased political accountability. Without being properly informed, it appears almost inconceivable that ordinary people would support a popular cause by lending their individual voices to a collective choir that chants anthems no one understands. Movements, such as the human rights movement derive much of their political leverage from

a widespread basis of participation. In order to challenge the state and hold it accountable there must be at the very least exist a backing that is interested and motivated to lend their energy, time and resources to furthering human rights practices. However, to build such a movement requires that citizens be properly informed and versed on the relevance of the actual cause (Sammonds, 2001, p. 224).

The notion of accessing information is especially important in societies where large segments of the population are marginalized on the basis of their socioeconomic stance. Even though human rights are rights that have been universally extended to the Jamaican citizenry, they are part of a legal doctrine that is highly abstract in the minds of many Jamaicans. Especially for those that actually suffer at the hands of state agents (Johnson, 2005, p 587). For members of the inner cities that have seen police abuse their powers – through violent behavior and possibly even murder – with total impunity, it would appear as though they have no such rights. Furthermore, if they are not aware of the extent of their human rights then it is most likely that they would have limited knowledge on how to vindicate abuse.

Without general knowledge of their constitutional rights it is virtually impossible for victims – or relatives of victims – to effectively hold state agents accountable for their actions. Many simply would have no idea of how to undertake such an enormous task of challenging a state that has shown little regard for them. In this light, actors of civil society can play a crucial role in overcoming the feeling of hopelessness that is often proclaimed to overwhelmed members of those communities that frequently suffer at the hands of the state and its agents. One of the most important strategies for accomplishing this is through educating the public and making information more accessible.

Local human rights groups in Jamaica devote a substantial amount of resources to conducting public education through e.g. workshops and open meetings that are aimed promoting greater insight on citizen right and also on the constitutional obligations of the state<sup>10</sup>. This kind of activity is extremely important for sensitizing various sectors of the population on the issue of human rights and human rights abuse. It is an essential way of getting people to support and understand the cause of human rights advocates and also of providing them with the knowledge to utilize the political and legal mechanisms that are available to them. Human rights groups such as Jamaicans for Justice, The Independent Jamaica Council on Human Rights, and Families against state terrorism have over the years hosted a number of independent, as well as coordinated, educational workshops in cooperation with international foundations such as The Carter Center (Jamaica Observer, June 11, 2006) .

The importance of educational workshops cannot easily be exaggerated with regards to the impoverished and marginalized groups of the urban inner cities. These are the groups that suffer the most at the hand of the police, and they are also the ones that have the least insight into government procedures and citizen rights. The existence of a national human rights movement cannot easily be maintained without including the voices and grievances of these citizens. Instead, it would appear that such a movement would gain increased political leverage by channeling the concerns, opinions and support of those that are the actual – and potential – victims of the arbitrary practices that are being opposed.

Above all, public human rights education is empowering. For residents of the inner cities, most of whom have no form of higher education or even formal employment, education,

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<sup>10</sup> See e.g. [http://www.jamaicansforjustice.org/jfj\\_website.php?section2=aboutus&section1=aboutlink](http://www.jamaicansforjustice.org/jfj_website.php?section2=aboutus&section1=aboutlink), <http://www.ijchr.com/information.htm>

including such on their rights as citizens provides them with a basis on which it may be possible for them to seek help to take more active and organized steps towards countering abusive state practices. The insight gained from this type of public education can serve to demarginalize groups that have traditionally been ignored and overlooked by the state and political parties, as it provides them with means to access the mechanisms for public grievance that is available to civil society (Diamond, 1994, p.8).

## 4.4 Reinforcing the system of law enforcement

A crucial institution for upholding the rule of law is that of law enforcement agencies. These agencies are responsible for securing that the law is adhered to in society, but also play a crucial role for the judiciary to carry out its functions properly and effectively. However, for the system of law enforcement to function in an optimal way in Jamaica a large number of efforts need to be made to improve the current situations under which these institutions operate.

Law enforcement in Jamaica has suffered from chronically deprived budgets due to serious under funding and under training. This has served to complicate the – already problematic – job of policing in Jamaica. Police lack proper equipment to carry out most of their tasks be it administrative duties or safe patrolling and their economic compensation is not nearly adequate considering the work load and dangers involved with policing in Jamaica (Police Executive Research Forum, 2001, p.3). Furthermore, the economic restraints that have been placed on the state have had implications for many aspects of the system, not excluding law enforcement (Sammonds, 2001, p. 224). Just about every unit within the JCF suffers from resource deficits in one form or another, which has grave consequences for investigative and policing capacities of the force.

All the members of civil society that have been discussed thus far have been human rights defenders in one way or another, in the sense that they are focused on upholding the rule of law against intrusive and arbitrary state actions. However, this is not the only sector of civil society that is undertaking work and projects that may serve to strengthen the institutions of the rule of law. The political platform of civil society provides an array of actors with a locus from which to pursue their own interests for upholding the rule of law. One of these actors is the Private Sector Organization of Jamaica (hereinafter PSOJ), which is an umbrella organization for a multitude of national businesses (see Henke, 1999, p. 16).

The inability of the Jamaican state to allocate sufficient funds to the countries law enforcement agencies have had consequences for all portions of society, not least the business sector. National insecurity has made businesses and business owners sought after targets of extortion, kidnappings, robberies etc, which has ultimately caused them to take collective action through efforts coordinated by the PSOJ. These efforts are aimed at bolstering the system of law enforcement as a means of creating increased stability and security, which may ultimately serve to strengthen the rule of law as this system is a crucial component. In other words, the efforts of the PSOJ have little to do with concern for arbitrary rights practices but may none the less have the potential to improve them by strengthening the system of law enforcement as whole.

The PSOJ has among other things coordinated wide spread incentives to allocating funds from private donors aimed at curbing the escalating drug and arms crimes. The result has been the establishment of two crime fighting initiatives called Crime Stop and King Fish, which are coordinated by police, army intelligence, the PSOJ and a number of other criminal agencies. According to promoters and defenders of these initiatives, they have been quite successful in apprehending dangerous weaponry, illicit drugs, and many sought after criminal offenders<sup>11</sup>. This serves to relieve some of the pressures involved with policing in Jamaica as one of the greatest dangers is the widespread existence of heavy duty fire arms. In this sense private funding may serve to bolster many of the deficits that would otherwise hinder police from achieving such successes on its own.

Even though funding of the law enforcement agencies may be considered to be the primary mean of reform (everything else is secondary as no kind of reform is possible without funding) it is not sufficient to attain improvement in isolation. In order for real changes to be made concerning human rights practices, a great deal of resources must also be devoted to training the police both in general, but especially on human rights (Mendez, 1999, p. 24). This has prompted members of civil society to attempt to provide such training through various strategies.

Human rights organizations have identified the need to provide law enforcement officials with adequate human rights training and have been assisting the government in developing a human rights curriculum (US Department of State, Country Report 2001). Such training is imperative for attaining a long term and profound dedication to upholding human rights (Mendez, 1999, . 24). Especially when potentially violent and arbitrary practices have become part of the organizational culture of the Jamaican Police force (UN Report of Special Reporter, 2003, p, 19). The PSOJ has also realized the importance of reforming police practices; however the focus of this organization has primarily been on various forms of community policing (primarily Crime Stop).

Both increased education on human rights, as well as attempts of community policing may serve to reform the system of law enforcement. Together, such strategies may serve to strengthen the relationship and trust between police and community members, which is a vital first step for improving the present conditions between the two (Ruteere and Pommerolle, 2003, p. 590). Efforts have also been made to provide increased general training of police officers. This, in turn may serve to improve the investigative procedures, and crime fighting capabilities of the police force, and ultimately also serve to strengthen the adherence to the rule of law. It would be in the interest of any police force to be trusted and respected by the community, which they serve. Only under such conditions will the police force have the public backing and support that is needed for them to properly carry out their mandate.

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<sup>11</sup> On Kingfish: see e.g. <http://www.caribbeannetnews.com/2005/04/25nets.shtml>  
On Crime Stop: <http://www.crimestop.org/index2.htm>

## 5. Conclusion

The rule of law is the most fundamental construction for maintaining and securing the social contract that underpins the liberal democratic state formation. Inherent in this contract is the notion of rights and freedoms that allow us, as individuals, to reach our full potential in modern existence. It is also the basis of restriction of state power, as one of the main concerns of liberalism is the protection of individual rights against an intrusive state. However, for these rights to be guaranteed the rule of law cannot simply exist by means of its constitutional inscription. Rather, it must exist in an omnipotent form transcending every aspect of society including the state.

The Jamaican state's failure to respect the rights of its citizens suggests that the rule of law has been truncated by the widespread existence of arbitrary practices among its agents. In this light, the institutions that serve to uphold the rule of law have been incapable of doing so, for whatever reason. The result has been a system of impunity showing little regard for human rights. The dangers associated with such practices have prompted many members of civil society to take action against the state in order to uphold the rule of law and protect the rights of the citizenry.

The preceding analysis has attempted to highlight some of the ways in which civil society may serve to uphold the rule of law, by means of its collective effort. By utilizing mechanisms that are at its disposal, it would appear that civil society has an enormous potential to deepen accountability, strengthening the judiciary, and secure increased judicial access that comprise the rule of law. These mechanisms include monitoring, exposing wrongdoing, providing legal aid and education and all amounts to civil society demanding societal accountability from state through the execution of these non coercive methods.

Even though it is beyond the aim of this thesis to assess exactly *how successful* the efforts of civil society have been, it is difficult to dismiss the role that its members may hold in the struggle for the unequivocal application of human rights. For the victims of human rights abuse in Jamaica there is nowhere else to turn to, no one else to hear their clamor or grievances. No one else that cares enough to attempt to vindicate their human rights against the illegalities of state practices. Members of civil society do not simply challenge and oppose state practices, they also serve to bolster institutional deficiencies through their efforts to uphold the rule of law within the polity. Even though rulers and lawmakers have at times been responsive to both domestic and international pressures, little appears to have been done to approve the actual situation. The question then remains if this has been due to a lack of will or ability to properly control the state. This leaves Jamaica at crossroad between developing into a full fledged liberal democracy and going down the slope into ever increasing lawlessness.

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