



# The Criminal Justice System in Jamaica: The Need for an Open Evaluation

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## Abstract

The term criminal justice is dynamic and multi-faceted. It has several definitions as put forward by experts in the field of study that help in the understanding of the concept. Criminal justice can be defined as principles and procedures for developing, administering, and managing correctional law enforcement and forensic services. It becomes clear that criminal justice would demand the apprehension and punishment of law violators. The aim of criminal justice in any society is to provide a safe environment in which citizens can lead their lives without fear that they or their property will be threatened. Crime is a central concern in most civil societies. In the Jamaican, Constitution, the Fundamental Rights section can be suspended by a special act of Parliament for a specified period such as the state of emergency imposed on the country following the passage of Hurricane Ivan in 2004. There has been much dissatisfaction with the fact that the Constitution seems to give rights to the people but limit them or, in some cases, even take them away under certain circumstances. Using Jamaica as a pervasive example, one of the main features of the Jamaican crime scene is violence and as such the Jamaican criminal justice system, especially the arm that consists of police officers, responds with equal amounts or even more aggressive violence. As a means of dealing with the constantly rising crime problem, the Jamaican criminal justice system often employs the concept of “*fight fire with fire*”. As a result, criminal justice in Jamaica is immensely flawed. If justice means the fair, moral, and impartial treatment of all under the law, then it is safe to say that the Jamaican criminal justice system lacks justice; it is the most important component. More often than not, the civil rights and liberties of many individuals are disregarded in an attempt to rid the Jamaican streets of crime and violence. Persons believed to be participants in criminal activities are poorly treated and at times dehumanized. The average inner-city citizen complains of police brutality in Jamaica almost daily.

**Keywords:** Crime, Criminal Justice, Constitutional Rights, Freedom of Speech, Jamaica.

## Introduction

*Knowing what is right is comparatively easy.  
It is doing what is right that is hard.*

Susan Titus Reid (1996)

The term criminal justice is dynamic and multi-faceted. It has several definitions as put forward by experts in the field of study that help in the understanding of the concept. To begin, Schmallegger (2003) defines criminal justice as the system used by the government to maintain social control, enforce laws, and administer justice. Criminal justice can be defined as principles and procedures for developing, administering, and managing correctional law enforcement and forensic services (National Center for Victims of Crime, 2012; OregonLaw.org, 2007). This is captured in a flow chart for the United States (see Appendix I). Criminal justice involves the study of crime from a systems perspective (Walker, 1992). Far from being a narrowly defined law enforcement or correctional program, criminal justice is an interdisciplinary and professionally-oriented academic discipline concentrating on many aspects of crime and the concepts that impact our system of justice. It is distinct from the field of criminology, which involves the study of crime as a social phenomenon, causes of criminal behaviour, and other aspects of crime.

To use the variety of definitions as put forward above, criminal justice can then be interpreted to simply mean that subject area which concerns itself with crime and criminality, justice rule of law, and the impact it has on persons in a society. From a personal viewpoint, criminal justice seems to be that societal factor that should assure a stable society free from great instances of crime as the persons who commit crimes are dealt with rightly and justly. To use the contemporary example of Jamaican society that is heavily riddled with crime, criminal justice in its 'ideal' would indicate the prosecution of known criminals as fairly as possible to protect the rest of the society.

## Criminal Justice System

It becomes clear that criminal justice would demand the apprehension and punishment of law violators. The aim of criminal justice in any society is to provide a safe environment in which citizens can lead their lives without fear that they or their property will be threatened. At the same time however, criminal justice ideals must extend to the protection of the innocent, the fair treatment of offenders, and fair play by the agencies of law enforcement, inclusive of courts and correctional institutions. Criminal Justice is concerned with providing a fair and expeditious way of dealing with those accused or suspected of disrupting the safety and security of society. According to Schmallegger (2003), criminal justice, ideally speaking, is "truth in action" within the process of administration of justice. It is therefore vital to remember that justice, in the truest and most satisfying sense of the word, is the ultimate goal of all criminal justice systems.

Justice is a product whose quality depends just as much upon practical considerations predicated upon justice system exigencies, as it does upon idealistic notions of right and wrong. All persons shall be equal before the courts and tribunals and therefore wealth, social status, race, and other

social differences should not influence the process of justice. The reality however typically falls short of this ideal and is severely complicated by the fact that justice seems to wear different guises when viewed from different vantage points. Schmallegger, as well as several other criminologists, note that to some people, criminal justice seems biased towards the powerful. The laws that justice systems enforce seem to emanate more from the well-financed, organized, and vocal interest groups than they do from any idealized sense of justice. As a consequence, disenfranchised groups do not feel as though they share in the political and economic power of society. They are wary and untrusting of the agencies of justice, seeing them more as enemies than as benefactors. This is especially the case regarding Jamaican society.

The urban disadvantaged believe that a great deal of injustice is dealt to them especially as it relates to the state or state agencies. Examples of this sentiment can be seen in the general public opinion of the Kraal and the Breaton Seven murders involving Jamaican special police forces. Members of Jamaican society, especially those considered to be of the lower class, were of the view that the courts ruled in favour of the police because of their status as members of the police force rather than the evidence provided. It is the perception that crimes committed by members of a higher social echelon often go unseen and unpunished.

It is difficult to speak of criminal justice without any mention of criminal justice systems. Criminal justice systems, an integral part of criminal justice, are charged by the law to dispense fair, equal justice to all who come before them; maintaining the rule of law in society, deterring crime, and treating both offenders and victims in a just even-handed manner. This system is essentially an instrument of social control. Criminal justice systems throughout the world vary considerably. However, all systems face similar problems. They must decide on a punishment philosophy, definitions of the conduct to be included in the criminal law, the definitions of the elements of crime, and crime data collection.

According to Siegel (2002), societies consider some behaviours so dangerous and destructive that they either strictly control their occurrence or outlaw them altogether. It is the job of the agencies of justice to prevent these behaviours by apprehending and punishing transgressors and deterring future occurrences. Although society maintains other forms of social control such as the family, school, and church, they are designed to deal with moral rather than legal misbehaviour, which is quite definitely the remit of the state. Only the criminal justice system has the power to control crime and punish criminals. The major components of the criminal justice system are the police, the courts, and the correctional agencies. The police are responsible for maintaining public order, deter crime, and apprehend law violators. The courts determine the criminal liability of the accused brought to them and dispense sanctions to those found guilty of the crime. Correctional agencies provide post-judicial care to offenders who are sentenced by the courts to confinement or community supervision.

Crime is a central concern in most civil societies. This is so because of the levels of criminal activity now existing in every modern society regardless of political, economic, or social configuration. Although the possibility exists that many societies have some common ways of dealing with the scourge of crime, some however have rather unique ways of doing so. This factor is due to the various political arrangements, historical developments, and social and

economic conditions that exist in these areas. Using Jamaica as a pervasive example, one of the main features of the Jamaican crime scene is violence and as such the Jamaican criminal justice system, especially the arm that consists of police officers, responds with equal amounts or even more aggressive violence. As a means of dealing with the constantly rising crime problem, the Jamaican criminal justice system often employs the concept of “*fight fire with fire*”. As a result, criminal justice in Jamaica is immensely flawed. If justice means the fair, moral, and impartial treatment of all under the law, then it is safe to say that the Jamaican criminal justice system lacks justice, because it is the most important component. More often than not, the civil rights and liberties of many individuals are disregarded in an attempt to rid the Jamaican streets of crime and violence. Persons believed to be participants in criminal activities are poorly treated and at times dehumanized. The average inner-city citizen complains of police brutality in Jamaica almost daily. This is due to the tendency that many members of the Jamaica Constabulary Force (JCF) tend to treat most individuals living in the ‘ghetto’ and everything happening in the ‘ghetto’ (the sphere of most criminal activities in Jamaica) as criminal and non-law abiding.

Although many justice systems operations are controlled by the rule of law, they are also influenced by the various philosophies or viewpoints held by practitioners and policymakers. Knowledge about crime, its causes and controls, has significantly affected perceptions of how criminal justice should be managed. For example, scholars opine that a significant number of street crimes committed in Jamaica are a result of socio-economic factors. They argue that most criminals are desperate and poor rather than evil and calculating. As a result of this, committees are developed to stem the growing crime problem in Jamaica. In setting up these committees, many may argue that society is attempting to cure the disease when there is already an outbreak or treat it where there are symptoms. Though the connection to criminal justice is not in the forefront (i.e. obvious) in the example it can be foreseen. If you realize the source of contention in a society that causes crime and attempt to alleviate it, you are automatically attempting to fulfil one of the most crucial aims of criminal justice in any society and that is to provide a safe environment for your citizens.

## Crimes

Crime, mainly violent crime, is a serious problem in the island of Jamaica (Headley, 1994; Bourne, et al., 2015a, 2015b, 2015c, 2015d). While the vast majority of occurrences are located in impoverished areas, violence is not confined to any particular area but spreads its tentacles across the length and breadth of the island. It is very difficult to identify exactly when this crime problem began, but it is clear that one specific type now dominated the Jamaican landscape and is destroying the very fabric of the society. Jamaica’s most crucial crime problem is murder. Today, the murder rate is alarming and currently stands at 63 per 100,000, a per-capita rate that is viewed as being among the highest in the world (Bourne, et al., 2015d). To make matters worse, a vast number of these cases are unsolved. In addition to the attempt to solve cases going as far back as 1992, the Jamaican government, judicial system, and police force are faced with the daunting task of solving the many cases that continue to occur daily.

The Jamaican Constabulary Force (JCF) has the primary responsibility for the country's internal security. However, their efforts are not felt throughout the island and have little impact on the crime problem. The sentiment amongst many Jamaicans both locally and in the diaspora, is that the police force is ineffective, inadequately trained, and made up of many who are not well educated. To refute this claim, Headley (1994) writes that Jamaica has one of the best-trained, most well-equipped police-military apparatuses in the entire English-speaking Caribbean. He argues that tremendous inflows of U.S. dollars helped to reshape the country's security forces into a rough and ready fighting machine. Although certain things may have changed since Headley wrote in 1994, some aspects remain the same. As such the main problem with the JCF today is the poor police/citizen relationship and low levels of trust that exists between them. In addition to the JCF, the Jamaican Defense Force (army, air wing, and coast guard) is charged with national defence, marine narcotics interdiction, and supporting the JCF. The JDF however has no mandate to enforce law and order nor powers of arrest. As a result, it leaves most of the work of internal order upon the shoulders of the Jamaican police.

Several temporary and special committees were established to assist the JCF in alleviating the intense crime problem. These committees have developed many policies to treat the problem of crime in Jamaica. However, the fact that crime remains a critical, perhaps the most crucial, problem in Jamaica today is not a testament to the failure of these policies, but to the possible lack of participation on the side of Jamaican citizens. In saying this, it, therefore, begs the quintessential question, "Are we (Jamaican citizens) willing to give up some of our considered rights to help to solve the problem of crime and violence?"

The issue of relinquishing constitutional rights for national security is not new. The Jamaican constitution provides for freedoms and rights that are consistent with a democracy (Chaplin, 2011). Freedoms of speech and press, of conscience, peaceful assembly and association, religion, movement within the country, foreign travel, emigration and reparation, the right to petition the government for redress, freedom from unreasonable searches and seizures and privacy of communication are all written into the Jamaican constitution. These rights are highly valued by Jamaican citizens of every class, colour and creed. Attempts to interfere with these rights have been met with much resistance resulting in controversies and violence in some instances. Is it therefore fair that we, having the ability to help stem some crimes, just sit by and express our disgust at the problem and the in-capabilities of the men and women in uniform? Should we not be willing to meet the government and its agencies (specifically the police) somewhere in a collaborative attempt to solve the crime problem, even if it would mean relinquishing some of our constitutional rights?

It is important at this juncture to point out that under certain conditions, for example, "state of emergencies", some rights are simply taken away. These rights generally include the right to movement within or outside of the country. In the Jamaican, Constitution, the Fundamental Rights section can be suspended by a special act of Parliament for a specified period such as the state of emergency imposed on the country following the passage of Hurricane Ivan in 2004. There has been much dissatisfaction with the fact that the Constitution seems to give rights to the people but limit them or, in some cases, even take them away under certain circumstances. This



dissatisfaction is understandable on the premise that Jamaicans value their freedom above and beyond all other things.

Before constructing an argument for the voluntary relinquishment of rights, it is first necessary to understand whether the giving up of these rights would, in any way, help to appease the crime problem. One right that has been seen as obvious in helping the crime problem, by many criminologists and scientists, is the right to free movement. Accordingly, the JCF regularly conducts curfews in certain volatile communities in an attempt to stem the tide of crime. A curfew is a common occurrence in Jamaica and consists of the presence of policemen in communities for longer periods than that which is customary. Munroe (2002) asks:

Would you be prepared to sacrifice your freedom to go out in Kingston and St. Andrew because of curfews preventing us from going out after 6:00 pm Monday through Sunday, to ensure greater personal security? Many would answer this question with a solid yes! Giving up the right to freedom of movement for a given period for the betterment of the whole should be an honour for any right-thinking Jamaican. To the extent that crime and criminals are troublesome, if the freedom of movement is not voluntarily given up to the state, the criminals usually forcibly take it. The fear of being accidentally or purposefully shot in the crossfire among criminals or between criminals and the police forces many to remain in their homes. In a general way, to argue an unwillingness to surrender to government curfews because individuals need to go to work, school, or church is irrational and unreasonable when in the same vein they automatically surrender to the ‘curfew’ placed upon them by criminal elements in the society.

Another taken-for-granted right by many Jamaican citizens that can be given up in a bid to help solve the country’s crime is the right to free speech. The most critical impact of free speech on crime and violence is in the dancehall. Dancehall music tends to celebrate ‘dons’, guns, and sexual violence. This is not an attempt to imply that Dancehall music is the main reason behind the country’s crime problem. However, it cannot be denied that much of the lyrics of Dancehall songs incite violent tendencies within the general population and more specifically among the male youth. Whether it is admitted or denied, Jamaican Dancehall artists have had and continue to have a huge impact on their fan bases and as such their lyrics rarely go uncensored. These artists are to some extent protected by their constitutional right to free speech. To some extent, the government and other private sponsors have tried with some degree of success the banning some songs from airplay which has lyrics that glorify or incites crime and violence. These kinds of actions have been met with violent reactions from artists affected by such actions however, if artists and the general population should voluntarily give up their freedom of speech in this context, it may be able to assess whether there is any resultant impact on the reduction of crime.

To the extent that crime is so pervasive, and the existent relatively poor police/citizen relations it becomes necessary to implement some policies such as tapping telephone lines to solve crime. The problem here is that intercepting communication in the interest of national security and crime reduction interferes with personal privacy and freedom. For the onlooker, and understandably so, this may seem to be a case of seeking the easy way out. Some may argue why not work on good police/citizen relations instead of opting to invade one's privacy. If citizens are more comfortable with the police, then they will be more likely and willing to help in solving

crimes without their privacies being invaded. However, according to Harriot (2003), the authority of the police has been badly eroded in Jamaica. By living in an inner city community or 'ghetto', it becomes clear that the lack of comfort and confidence in the police are not minor issues. This is a mammoth task to take on which will require a considerable amount of time and resources. Perry Christie, the Prime Minister of the Bahamas, asserts “The illicit traffic in narcotic, drugs, firearms, and other organized crime, underpin much of the crime being experienced in the Caribbean.” (Caricom, 2011)

## Conclusion

It is fair to summarize that criminal justice is a very important and controversial term. Schmalleger (2003) claims that a more realistic approach to understanding criminal justice may be the non-system approach. As a non-system, criminal justice is depicted as a fragmented activity in which individuals and agencies in the process have interests and goals that at times coincide or may even conflict. In criminal justice systems, individuals are constitutionally guaranteed certain rights and obligations and it is the responsibility of criminal justice to see to it that these rights and obligations are upheld at whatever costs. This will however never be the case for obvious reasons. The obvious reasons that Schmalleger speaks of are the conflicting interests and goals. Nonetheless, it is imperative that criminal justice in a country, in any and every situation, upholds the principles of justice for all and fairness to its citizens.

Once the law sanctioned interferences with constitutional rights, it becomes a legal act. It is crucial to understand that people need to be willing to sacrifice in adverse situations and Jamaica is currently undergoing such a situation, and if allowed to continue unchecked, the result could be devastating. In understanding the essence of the analogy, “the good must suffer for the bad,” it becomes clear that all citizens are an integral part of the great Jamaican problem and therefore cannot be excused by not being criminals ourselves. Citizens of any country, and in the context of Jamaica, should strive to bear the national burden towards crime prevention in the interest of the national good. The crime problem is not young; it has matured and continues to reproduce leaving the nation in a situation that is detrimental to the economy, family life, and nation-building. Something must be done in the name of reason and common sense and it needs to be done now. Given the level of crime and violence in the country today, citizens should consider it quite welcoming and hence not a problem if the government deemed it necessary to intrude on some of their normal, taken-for-granted rights to successfully deal with crime and violence.

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Appendix I

