

RESEARCH ARTICLE

The Resort to Emergency Policing to Control Gang Violence in Jamaica: Making the Exception the Rule

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Abstract

This article critically examines reasons for the persistent use of states of emergency (SOEs) as a tool of crime control in Jamaica and risks associated with normalising these measures in small, low-capacity, competitive democracies in Latin America and the Caribbean (LAC). We attend to the question of permanent SOEs as an issue of law and certain policing methods becoming normalised. This differs from scholars who think about the use of permanent SOEs as suspension of law or executive rule and make a clear distinction between law and violence and normalcy and emergency. Our findings show that persistent usage of SOEs in Jamaica reflects the incapacity of the state to control violent crime as well as its effort to strengthen its coercive capabilities and compensate for the ineffectiveness of the police. It is also a response to public demand for SOE policing. State strengthening is a necessary condition for a more peaceful and law-abiding society but is also a carrier of risks of democratic degeneration via rights-disregarding policing. Nonetheless, we have seen authoritarian management of crime without descent into authoritarianism, in general, and strong boundary-marking and patrolling by some state-oversight institutions that enjoy the support of civil society.

Keywords: state of emergency; policing; crime control; criminal violence

Introduction

Post-independence Jamaica has struggled to manage its high, chronic and cascading violence problem. Failure to control sharp increases in criminal violence – especially gang ‘wars’ with their occasional, and highly publicised, insecurity-generating mass killings – has featured prominently in political and public discourses about the necessity of deploying states of emergency (SOEs) to manage violence in Jamaica. Further compounding the problem is the existence of garrisons, which

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are protected territories of some of the most powerful gangs. This article critically assesses the reasons for the persistent use of SOEs as a tool of crime control in Jamaica. It also examines the associated risks to the degeneration of low-capacity, competitive democracies in Latin America and the Caribbean (LAC). Within LAC, we have seen SOEs in places like Peru and Honduras but their persistent use in Jamaica, a more stable democracy, warrants further study.

The earliest post-independence SOEs were primarily aimed at suppressing political violence and politicised criminality, including the ones in 1966 and 1976. The 1966 SOE was limited to the political constituency of Western Kingston. This was then a site of intense electoral violence between the supporters of the two major political parties – the People’s National Party (PNP) and the Jamaica Labour Party (JLP).¹ The 1976 SOE was imposed in a context of even more intense and violent electoral competition between the two parties, but on a national scale.² While political violence may be resolved, ordinary criminal violence is yet to be solved or effectively controlled.

Since 2010, there has been an increase in the frequency of SOEs, now deployed as a major tool for the control of ordinary criminality in Jamaica. As the problem of violence has become more national rather than concentrated in the capital city of Kingston as it was prior to the early 2000s, SOEs have also become more expansive in their area of geographic coverage. But they are consistently deployed in mainly urban lower-income and violent ‘hotspot’ areas. Between May 2010 and March 2020, seven of the 14 parish capitals where violence has become a chronic problem have been subjected to SOEs. (The geographic units used for SOEs are either parishes or the police divisions within them.)³ SOEs have also become longer in their duration. While the 1966 SOE lasted for 30 days and the 1976 SOE for 377 days, since 2010, SOEs have been continuously used. In St. James, for example, since 2017, two SOEs have been declared and have exceeded 635 days. Between 2010 and 2020, there have been more than 2,500 days in total of SOE (some running concurrently) spread across seven parishes. In these areas, the SOE has become a ‘new normal’.⁴ We attend to the question of SOEs as an issue of law and certain policing methods becoming normalised. This differs from scholars who think about the use of permanent SOEs as suspension of law or executive rule and make a clear distinction between law and violence and normalcy and emergency.

The central argument is that persistent use of SOEs as exemplified by the Jamaican case is not primarily about responses to extraordinary events or developments. Extraordinarily high rates of criminal violence are a feature of life in Jamaica, thus making the extraordinary a chronic condition, lasting for most of the post-independence period. Persistent usage of SOEs reflects the incapacity of the state to control violent crime and gang violence as well as its effort to strengthen

¹Terry Lacey, *Violence and Politics in Jamaica, 1960–70: Internal Security in a Developing Country* (Manchester: Manchester University Press, 1977).

²See Amanda Sives, *Elections, Violence and the Democratic Process in Jamaica 1944–2007* (Kingston: Ian Randle, 2014).

³In the time period under review, SOEs were declared in the parishes of Kingston, St. Andrew, St. Catherine, Clarendon, Westmoreland, Hanover and St. James.

⁴Jermaine Young, ‘States of Exception as Paradigms of Government: Emergency and Criminal Justice in Jamaica?’, *Canadian Journal of Latin American and Caribbean Studies*, 47: 2 (2022), pp. 1–26.

its coercive capabilities and compensate for the ineffectiveness of the police. It is also a response to public demand for extraordinary measures. State strengthening is a necessary condition for a more peaceful and law-abiding society but also a carrier of risks of democratic degeneration via rights-disregarding policing. Routinised disregard for due process and popular demand for SOE present risks of its overuse and within-system degeneration of accountability and checks on power. There is a distinct possibility that the SOE could be a useful tool for reinforcing authoritarian patterns of behaviour by the police and security apparatus. A greater risk also attends this process. It is a more generalised lack of confidence in the ability of the democratic structures to deliver security. This could ultimately result in public support for a military government or unconstitutional regime unconstrained by the rule of law.⁵

So far, we have seen authoritarian management of crime through SOE policing without descent into authoritarianism, in general, and strong boundary-marking and patrolling by state-oversight institutions that enjoy the support of civil society. There is no overall threat of regime change and no counter-efforts to protect the political administration or political system via SOEs or other extraordinary measures. However, the current levels of violent group-amplified criminality, both organised and diffused, pose indirect risks to democracy via stresses on the rule of law, popular tolerance of vigilantism and popular demand for military government. Still, there are no imminent threats to the governmental system from this kind of criminality. Indeed, the political system has been very effective in co-opting criminal actors.⁶ Both the violence and the pockets of authoritarianism have been features of Jamaica's polity – which may be more or less pronounced at different political moments. If acute political conflicts tend to foreground these features so too does elevated, sustained crime-related insecurity. In 2016, for the first time, a majority of Jamaicans reported that they would support a military takeover of the government in order to better control violent criminality.⁷ We will return to this issue.

Although we are interested in understanding the particularities of the Jamaican context, it is important to see the use of SOEs for security-related purposes as part of a wider global, but also historical, practice, in the case of LAC. SOEs have been used in LAC for a wide range of purposes. In Honduras and Peru, they have been used to forestall resistance to coups d'état.⁸ These are contexts of political crises and struggles for regime survival or regime consolidation; their use is usually marked by a wide range of abuses of power. SOEs have also been used to control large-scale

⁵Since 2006, the Latin American Public Opinion Project (LAPOP) studies have tracked the prevalence of these attitudes among the Jamaican population. Later in this article, we will return to this issue.

⁶Obeka Gray, *Demeaned but Empowered: The Social Power of the Urban Poor in Jamaica* (Kingston: University of the West Indies Press, 2004).

⁷Anthony Harriott et al., *The Political Culture of Democracy in Jamaica and in the Americas, 2016/2017: A Comparative Study of Democracy and Governance*, available at www.vanderbilt.edu/lapop/jamaica/AB2016-17_Jamaica_Country_Report_English_V2_Revised_W_11.30.18.pdf, last access 14 Jan. 2024.

⁸Arce Moisés, 'The Repoliticization of Collective Action after Neoliberalism in Peru', *Latin American Politics and Society*, 50: 3 (2008), pp. 37–62; José Cruz, 'Criminal Violence and Democratization in Central America: The Survival of the Violent State', *Latin American Politics and Society*, 53: 4 (2011), pp. 1–33.

politically threatening protests (Nicaragua in 2018, for example),⁹ riots and minority claims-making (for example Chile in 2020)¹⁰ and unusual moments of disorder that are not directly and explicitly regime challenging but where the scale of the problem may be beyond the capacity of the regular police service (Ecuador in 2019, for example).¹¹ SOEs are largely intended for these types of situations. Their use in these circumstances attracts attention only if the response of the state is disproportionately violent and politically repressive.

Following the 9/11 terrorist attack in the United States and the subsequent war on international terrorism,¹² the use of emergency powers has also proliferated in Western liberal democracies. In the wake of these developments and the extraordinary legislative measures directed at international terrorism which encroached on many rights, other countries including stable democracies (such as the United Kingdom), which are better able to absorb the shocks and stresses that are instilled by terrorism, followed suit. Approval of externally directed extraordinary measures has made it easier for other democracies, including those in the Caribbean that are not direct targets or sources of international terrorism (with the exception of Trinidad and Tobago), to use SOEs for internal purposes. The old method of linkage is an established technique for transferring policy approval from one issue to another and from one environment to another. It is used to make the transfer from North to South, and from external to internal targets, acceptable to the Global South. There is a body of work that attempts to make the case for the transfer of counter-terrorist and counter-insurgency methods to organised crime.¹³ Such transfers require an accompanying set of legal instruments.

While SOEs have been used to fight terrorism in the West and for reasons described above in Latin America, in Jamaica and Trinidad and Tobago in particular, SOEs have been used for the sharply contrasting purpose of containing or suppressing ordinary violent criminality. There is a body of work on the use of SOEs

⁹Salvador Martí i Puig and Macià Serra, 'Nicaragua: De-Democratization and Regime Crisis', *Latin American Politics and Society*, 62: 2 (2020), pp. 117–36; Radek Buben and Karel Kouba, 'Nicaragua in 2019: The Surprising Resilience of Authoritarianism in the Aftermath of Regime Crisis', *Revista de Ciencia Política*, 40: 2 (2020), pp. 431–55.

¹⁰Cruz, 'Criminal Violence and Democratization in Central America'; Andrew Farrant, Edward McPhail and Sebastian Berger, 'Preventing the "Abuses" of Democracy: Hayek, the "Military Usurper" and Transitional Dictatorship in Chile', *American Journal of Economics and Sociology*, 71: 3 (2012), pp. 513–38; Kirsten Sehnbruch and Sofia Donoso, 'Social Protests in Chile: Inequalities and Other Inconvenient Truths about Latin America's Poster Child', *Global Labour Journal*, 11: 1 (2020), pp. 52–8.

¹¹Sehnbruch and Donoso, 'Social Protests in Chile'; Sebastián Etchemendy, 'The Politics of Popular Coalitions: Unions and Territorial Social Movements in Post-Neoliberal Latin America (2000–15)', *Journal of Latin American Studies*, 52: 1 (2020), pp. 157–88.

¹²Awol Allo, 'Protests, Terrorism, and Development: On Ethiopia's Perpetual State of Emergency', *Yale Human Rights and Development Law Journal*, 19 (2017), pp. 133–78; Michael Head, *Emergency Powers in Theory and Practice: The Long Shadow of Carl Schmitt* (London: Routledge, 2016); Pierre Auriel, Olivier Beaud and Carl Wellman (eds.), *The Rule of Crisis: Terrorism, Emergency Legislation and the Rule of Law* (Cham: Springer International, 2018); Victor Ramraj and Arun Thiruvengadam, *Emergency Powers in Asia: Exploring the Limits of Legality* (New York: Cambridge University Press, 2010).

¹³For a full discussion of this point, see Max G. Manwaring, *Insurgency, Terrorism: Shadows from the Past and Portents for the Future* (Norman, OK: University of Oklahoma Press, 2008); *Gangs, Pseudo-Militaries, and Other Modern Mercenaries: The Complexity of Modern Asymmetric Warfare* (Norman, OK: University of Oklahoma Press, 2012).

for politically repressive public order and regime-protective purposes.¹⁴ However, there is a paucity of studies which focus on its use in crime control by stable democracies in LAC, particularly Jamaica, which has implemented more than ten SOEs between 2010 and 2022. SOEs have also been declared for similar crime-fighting purposes in El Salvador (2022), Honduras (2022), Belize (2022), Haiti (2023), Guatemala (2019) and Trinidad (2011). It is important, therefore, to understand this trend towards the use of SOEs in LAC.

In our effort to systematically generate the evidential foundations of this article, we combine secondary and primary data, including interviews conducted among security policy elites in Jamaica. This method allows us to understand how important state actors, including members of the executive, explain, contest or justify the repeated use of emergency power and the state's public-support-seeking claims. It also ensures that we can make sense of discourse as a tool of power and as a support-seeking mechanism. In order for the state to effectively respond to violent crime and consolidate its power it must seek and constantly renew support for emergency powers. This feature of the Jamaican situation, or indeed that of any other democratic polity, is both guardrail and danger.

The structure of the article is as follows. In the first section, we outline the conceptual framework and examine emergency power provisions and laws in the Jamaican context. The second section explores the context in which the exception has become routinised policing practice. Drawing on interviews conducted with policy elites, the third section critically examines justifications for the normalisation of emergency powers.

States of Emergency and the Politico-Legal Dynamics

An SOE is a 'juridico-political' tool of last resort which gives a state extraordinary power, allowing it to suspend the regular legal order to deal with what is deemed an emergency or a national crisis.¹⁵ Typically characterised by the encroachment on some fundamental rights as well as the potential for power shifts to new coalitions, the SOE is normally framed as a necessary tool for the preservation of security and order. There is no question that an SOE increases the power of state actors, and the security forces in particular, vis-à-vis other actors. Giorgio Agamben sees an SOE as a new technique of government, calling it a 'threshold of indeterminacy between absolutism and democracy', noting that one of its defining characteristics is 'the provisional abolition of the distinction among legislative, executive, and judicial powers'.¹⁶ In some countries such as Jamaica, the executive is allowed to sign detention orders, encroaching on the role of the judiciary. Hence, the separation-of-powers principle is usually at risk with prolonged or permanent

¹⁴Allo, 'Protests, Terrorism, and Development', pp. 133–78; Harold Wolpe, *Race, Class and the Apartheid State* (London: James Currey, 1990); Gabriel L. Negretto and José Antonio Aguilar-Rivera, 'Rethinking the Legacy of the Liberal State in Latin America: The Cases of Argentina (1853–1916) and Mexico (1857–1910)', *Journal of Latin American Studies*, 32: 2 (2000), pp. 361–97.

¹⁵Claudio Grossman, 'A Framework for the Examination of States of Emergency under the American Convention on Human Rights', *American University International Law Review*, 1: 1 (1986), pp. 35–55; Guy Lurie, 'What Is Modern in the State of Exception?', *Journal on European History of Law*, 8: 1 (2017), pp. 50–7.

¹⁶Giorgio Agamben, *State of Exception* (Chicago, IL: University of Chicago Press, 2005), p. 3.

SOEs. This ‘threshold of indeterminacy between absolutism and democracy’ is one way of acknowledging ambiguity in terms of how the SOE functions in actuality. The possibility always exists for shifts along the continuum, depending on the strength of legal and political guardrails.

The decision to declare an SOE and provisions and regulations for its implementation are specified within a legal order.¹⁷ The juridical understanding focuses therefore on this legal order, changes in how the law and legal institutions operate while an SOE is in force and the rule of law. Under an SOE, rules and regulations are typically put in place to protect against a complete disregard for the rule of law. An SOE is also a political act. It derives in large measure from political crises and involves the exercise of executive power and political deliberations that seek to differentiate between emergency and normality. Carl Schmitt makes the argument that the state is prior to the law,¹⁸ and consequently an SOE and the need for it ‘is prior to or other than the law’.¹⁹

An SOE may be taken as an emblem of power relations between state and citizen. To invoke Foucault, the power-loaded nature of an SOE would be an expression of the disciplinary power of the state. Power is often extended in this way during an SOE and involves attempts at complete control over suspects,²⁰ through various techniques, including the extraction and application of state-generated statistics to bring about compliance.²¹ Mass surveillance and more targeted intelligence gathering, which are intensified during an SOE, allow for a greater measure of control over suspects’ activities. The Parliament’s inability to change the Constitution is an important safeguard against abuse of power and helps to differentiate between emergency powers inside the law and emergency powers outside the law.²² The exercise of emergency powers inside the law preserves the courts, allows for redress and attends to all important democratic principles. This ties the state organically to the rule of law. In this article, we are exclusively dealing with SOEs and the problem of crisis management within the law. We see it as a problem of pushing the boundaries and of expanding state power via security.

In the Jamaican case, the understanding of SOE as law which abolishes law is an extreme case exemplified by the 1865 Morant Bay Rebellion. Law as a constraint on political action was suspended. The colonial state was unimpeded, and the SOE was used for protection of the colonial state. This colonial brand of SOE was outside the law. It was named martial ‘law’. There were no fundamental rights or due process. Martial law was summary retribution for resisting colonial rule. During threatening

¹⁷John Ferejohn and Pasquale Pasquino, ‘The Law of the Exception: A Typology of Emergency Powers’, *International Journal of Constitutional Law*, 2: 2 (2004), pp. 210–39; Alan Greene, *Permanent States of Emergency and the Rule of Law: Constitutions in the Age of Crisis* (Oxford: Hart, 2018).

¹⁸Carl Schmitt, *The Concept of the Political* (Chicago, IL: University of Chicago Press, 2017).

¹⁹Stephen Humphreys, ‘Legalising Lawlessness: On Giorgio Agamben’s State of Exception’, *European Journal of International Law*, 17: 3 (2006), pp. 677–87.

²⁰Deborah Thomas, *Political Life in the Wake of the Plantation: Sovereignty, Witnessing, Repair* (Durham, NC: Duke University Press, 2019).

²¹Anthony Harriott and Rivke Jaffe, ‘Security Encounters: Negotiating Authority and Citizenship during the Tivoli “IncurSION”’, *Small Axe*, 22: 3 (2018), pp. 81–9.

²²See, for example, Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Chicago, IL: University of Chicago Press, 2006); David Dyzenhaus, *The Constitution of Law: Legality in a Time of Emergency* (Oxford: Hart, 2006).

popular protests, as was the case in Jamaica in 1865, once the Riot Act was read, the police could fire into protesting crowds – free of accountability to law. And they did. The application of martial law was savage. Some 500 persons were either hunted and killed or summarily ‘tried’ and executed, and homes were torched.²³ This was in the nineteenth century; in this period the colonial state was prior to law. Three subsequent legal changes were to progressively limit the powers of the state under SOE and bring about a shift from SOE outside of the law to its use inside the law.

SOE and the Rule of Law in Jamaica

There are three pivotal points in Jamaica’s attempt to ensure SOEs are constrained by the rule of law. In 1938 an Emergency Powers Act was passed; in 1962 an independent Jamaica developed a new Constitution mimicking the British Westminster Whitehall system and established the conditions under which an SOE may be constitutionally declared; and in 2011, a Charter of Rights was established with provisions for the protection of fundamental rights. The above may be viewed as three steps that progressively moved SOE from outside to within the law. This has led to attempts to nullify the process of disciplining SOE and to allow it to be used in everyday policing. Such are the complexities of the Jamaica situation.

Jamaica’s Constitution recognises that there will be circumstances or a ‘period of public emergency’ or ‘public disaster’ that put the lives of citizens or the Constitution at risk. The Charter of Fundamental Rights and Freedoms, which is Chapter 3 of the amended Constitution, defines a period of public emergency as:

Any period during which (a) Jamaica is engaged in any war; (b) there is in force a Proclamation by the Governor-General declaring that a state of public emergency exists; or (c) there is in force a resolution of each House of Parliament supported by the votes of a two-thirds majority of all the members of each House declaring that democratic institutions in Jamaica are threatened by subversion.

The Constitution clearly intended for a public emergency to be used conservatively. War is indeed an extreme occurrence and very few citizens, if any, would question the justifiability of suspending some constitutional rights in that context. The endangering of public safety and the occurrence of natural disasters are also justifiable reasons, although the former lends itself to varying interpretations. Section two, further, outlines the conditions that need to be satisfied in order for the governor-general’s declaration to be deemed effective:

(2) A Proclamation made by the Governor-General shall not be effective for the purposes of subsection (1) unless it is declared that the Governor-General is satisfied (a) that a public emergency has arisen as a result of the imminence of a state of war between Jamaica and a foreign State; (b) that action has been

²³Clinton Hutton, *Colour for Colour, Skin for Skin: Marching with the Ancestral Spirits* (Kingston: Ian Randle, 2015); Gad Heuman, *The Killing Time: The Morant Bay Rebellion in Jamaica* (Knoxville, TN: University of Tennessee Press, 1994).

taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life; (c) that a period of public disaster has arisen as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, outbreak of infectious disease or other calamity, whether similar to the foregoing or not.

Certain rights, not all, are also abrogated during an SOE. This is an important point because the actions and techniques of the security forces at times suggest a misconception that, during an SOE, all fundamental rights may be ignored. In these instances, there is a resort to *de facto* rights-denying practices. Lloyd Barnett, legal scholar and founding member of the Independent Jamaica Council for Human Rights, notes that ‘during the state of public emergency only three of the fundamental rights guaranteed by the Charter may be suspended or qualified. These are freedom of movement, freedom of the person and due process, that is the right on arrest to be charged and brought before a court.’²⁴ These freedoms are usually restricted through curfews, checkpoints, stop and search and detentions. The 2015 West Kingston Commission of Inquiry (WKC) into the deaths of 69 civilians, who were killed during the 2010 SOE involving an armed confrontation between a major gang, the Shower Posse, and the Jamaican army and police force, concluded that in several of these deaths the right to life had been violated. The right to liberty and the right to property were also violated.²⁵ The Commission recommended that the victims of these violations be compensated by the state. This recommendation was accepted and compensation made.

The Constitution also covers the temporal dimensions of emergency powers and democratic accountability; any extension of an SOE beyond 14 days requires that the executive must get the approval of Parliament. This need for approval from duly elected members of the opposition, who form part of the legislature, provides an important check on the executive as well as an opportunity to engage in democratic deliberations. The Constitution states that:

(3) A Proclamation made by the Governor-General for the purposes of and in accordance with this section (a) shall, unless previously revoked, remain in force for fourteen days or for such longer period, not exceeding three months, as both Houses of Parliament may determine by a resolution supported by a two-thirds majority of all the members of each House ... (4) A resolution passed by a House for the purpose of paragraph (c) of the definition of ‘period of public emergency’ in subsection (1) may be revoked at any time by a resolution of that House supported by the votes of a majority of all the members thereof.

While the prime minister must advise the governor-general to declare an SOE, the legislative branch, which consists of the Senate and the House of Representatives,

²⁴Lloyd Barnett, ‘States of Emergency, Zones of Special Operations and the Fundamental Rights of Individuals’ (Kingston: Independent Jamaica Council for Human Rights, 2019).

²⁵Government of Jamaica, Report of the West Kingston Commission of Inquiry, 2016.

has power over the decision to prolong or bring to an end an SOE. The main actors in the security forces – the chief of defence staff and the commissioner of police – core members of the National Security Council, are also involved in the decision to deploy the SOE and prolong its use. Their role has been explicitly acknowledged under the Andrew Holness administration.

The framers of the pre-amended 1962 Constitution were understandably less suspicious of executive power than the framers of the amended 2011 Charter of Fundamental Rights and Freedoms. The abuses of executive power were associated with an alien and passing colonial administration. The leaders of the independent movement who took over the nation-building project in 1962 installed, and expressed confidence in, the Privy Council as the final appellate court and ultimate protector of the Constitution. Prior to the 2011 amendments to the Bill of Rights, a proclamation of an SOE by the governor-general could remain in force for up to six months, but the new Charter of Rights requires approval of both houses after an initial period of 14 days. This decision was no doubt affected by the events that unfolded under the 2010 SOE, which we discuss in the next section. The Charter of Rights also provides for judicial review and a role for the courts. In addition to these constitutional provisions, Jamaica relies on ordinary statute, in the form of the pre-independence 1938 Emergency Powers Act, to exercise emergency powers.

While the Constitution sets out the broad limitations, the Emergency Powers Act of 1938 (amended 2021) delegates executive authority and sets out in detail the legal framework and powers to be exercised in an SOE. This Act provides the regulatory context, outlines avenues for redress and outlines powers to be exercised by the security forces. The right to life and other fundamental rights are to be preserved. Unsurprisingly, the original Emergency Powers Act was passed the same year of the historically significant 1938 labour riots in Jamaica. The labour riots were part of a larger anti-colonial movement within the Caribbean. This involved strikes across several sugar estates in the British Caribbean that were motivated by low wages, gross inequalities and high cost of living. The Emergency Powers Act was passed in the context of the excesses of 1938. Civil unrest resulted in police killings, persons suffering from wounds, charges for riotous assembly and sentences of up to one year's imprisonment.²⁶

Despite the limitations on the abrogation of rights discussed earlier, under the Emergency Powers Act (amended 2021), the security forces still have significant powers. They have the power to acquire any property as well as authorise the entering and searching of any premises. The Act makes provision for the detention of persons and gives the security forces powers to search persons, premises and vehicles without a warrant. They also have the power to seize property, stop and subject individuals to questioning and control public gatherings and movement. At the same time, the Act requires that an SOE be accompanied by the provision of regulations which are subject to review by the Senate and the Parliament. Emergency powers regulations typically make provision for a tribunal which allows for some measure of redress for abuses of constitutional rights. Section 10 of the Charter

²⁶Richard Hart, 'Labour Rebellions of the 1930s in the British Caribbean Region Colonies', *Caribbean Labour Society and Socialist History Society*, 15 (Sept. 2002), pp. 1–29.

of Fundamental Rights and Freedoms also makes provisions for review by a tribunal in cases where a person's freedom of movement is restricted. In a context of police impunity and complaints of police abuse, the tribunal acts as a check on arbitrariness.

Despite these mechanisms and legal limitations on power, and the large-scale abuses that were the subject of the 2015 WKC, several abuses of different types have persisted under SOE. In a case brought before the Supreme Court by Courtney Hall, Everton Douglas, Nicholas Heat, Courtney Thompson and Gavin Noble contesting the legality of the duration of their detention, Justice Bertram Morrison ruled that the prolonged detention of five men under an SOE amounted to a breach of their constitutional rights. He argued that in the light of amendments to Jamaica's Constitution in 2011, several of the regulations developed under the Emergency Powers Act contravened important constitutional provisions. Justice Morrison, in his ruling, stated that the powers granted to the minister of national security (a member of the executive) violate the separation-of-powers principles and the protection of fundamental rights.²⁷ There was a subsequent amendment to the Emergency Powers Act in 2021.

In the next section of the article, we first describe elements of normalisation of SOE and the mechanisms by and through which these are accomplished. We then discuss and analyse the reasons given for this process. It is the relationship between these reasons and people's lived experiences that ultimately determines the prevalence and intensity of support for these policies and thus the risks that they present.

SOE as a New Normal in Jamaica: Making the Exception the Rule

On 24 May 2010, an SOE was declared just prior to the launch of Operation Garden Parish, which was a joint military-police operation to capture and extradite Christopher Coke, the leader of the Shower Posse. The Shower Posse was then the most powerful transnational organised crime network and group in Jamaica. This SOE marked a turning point in the use of this tool by the government of Jamaica. It sets in train the shift from periodic to continuous use of SOE to control violent criminality; a shift from police-led to military-led operational policing and a shift in crime-control strategy from 'crime-fighting' to the application of a counter-insurgency strategy articulated as the familiar 'clear, hold and build'. Here we use the term crime-fighting to refer to a style of policing, namely the enforcer or don-style of policing.²⁸ In contrast, counter-insurgency is a strategy and set of tactics, some of which are also employed by the 'enforcer'. It has been used by the British for colonial pacification and has a long and troubled international record in LAC, including in Mexico, Columbia, El Salvador, Guatemala and Brazil.²⁹ In

²⁷'Why Detentions under SOEs Were Ruled Unlawful', *Jamaica Gleaner*, 18 Sept. 2020, available at <https://jamaica-gleaner.com/article/news/20200918/why-detentions-under-soes-were-ruled-unlawful>, last access 14 Jan. 2024.

²⁸Tracian Meikle and Rivke Jaffe, "'Police as the New Don'? An Assessment of Post-Dudus Policing Strategies in Jamaica', *Caribbean Journal of Criminology*, 1: 2 (2015), pp. 75–100.

²⁹Jorge Zaverucha, 'Fragile Democracy and the Militarization of Public Safety in Brazil', *Latin American Perspectives*, 27: 3 (2000), pp. 8–31; Consuelo Cruz and Rut Diamint, 'The New Military Autonomy in Latin America', *Journal of Democracy*, 9: 4 (1998), pp. 115–27; Saul Rodriguez, 'Building Civilian Militarism:

Jamaica, counter-insurgency is used in attempts to control ordinary criminality in ways that are more targeted, disciplined and time-bound than enforcer-style crime-fighting.

The pathway towards moving SOE from exception to rule in Jamaica began in 1976. While this SOE was primarily used to suppress political violence, it may nevertheless be taken as the first turning point in the regularisation-to-normalisation of the 'methods' of policing that are associated with SOE. For clarity regarding what is normalised, we may contrast the normalisation of the bundle of policing methods that are associated with policing under SOE powers with normalisation of SOE as a legal instrument. It is the former that has been normalised and the latter that is now being regularised. With regard to how normalisation occurs, we suggest that this process involves the persistent and generalised use of the methods without regard for their legal standing. Repetition, justification and acceptance within the police force, and support from a large enough section of the population, have served to establish these methods as conventions.

The methods which were used to suppress political violence and politicised criminality in the 1976 SOE were subsequently retained and applied to ordinary criminality. In this sense, the 1976 SOE marked the turn to normalising SOE policing in Jamaica (and the legislative expression of this through the Suppression of Crimes Act of 1974), while the frequency of SOE law occurred after 2010. Michael Manley, prime minister and leader of the PNP, who had declared the 1976 SOE, saw it as an important measure to prevent the destabilisation of Jamaican democracy. This period was one of sharp ideological and policy divergence along Cold War lines. An article in the UK *Guardian* noted that while Manley enjoyed the support of 56 per cent of Jamaican voters in the 1972 election, 'nobody believes that the Americans are prepared to see socialist regimes established in their sphere of influence ... and to Americans the Caribbean is their lake'.³⁰ The intense ideological conflict found expression in violent street politics. Some elements of a counter-insurgency approach may be found in the use of mass detentions, including the detention of selected opposition activists who were allegedly involved in an attempt to 'underthrow' the government.³¹ Underthrow stands in contrast to overthrow and is a contribution to the vocabulary of violent electoral politics by the then opposition party.³² By underthrow, we mean resorting to violence and other destabilisation tactics in order to make the country ungovernable and to effect a change of political administration via the electoral process. Manley's speech in Parliament cast accusations at the JLP and sought to provide justification for the need for an SOE and approximately 1,000 detentions. He argued that domestic and international actors were attempting to destabilise Jamaica and 'undermine confidence in the lawfully elected government'. Manley noted that the SOE was being used to control political violence, stating in his declaration on 19 June 1976 that:

Colombia, Internal War, and Militarization in a Mid-Term Perspective', *Security Dialogue*, 49: 1–2 (2018), pp. 109–22.

³⁰Whose Finger on the Kingston Trigger?', UK *Guardian*, 21 June 1976, available at <https://www.newspapers.com/newspage/260448744/>, last access 14 Jan. 2024.

³¹See Pearnel Charles, *Detained: 283 days in Jamaica's Detention Camp, Struggling for Freedom, Justice and Human Rights!* (Kingston: Kingston, 1977).

³²*Ibid.*

The main effect of the state of emergency will be to give the security forces the power to detain or to restrict those who they are satisfied are the planners and perpetrators of violence and terrorism. The security forces have a great deal of information about the plans of these people and will now have the power to frustrate their evil intentions.³³

The state has made concerted efforts to successfully normalise SOE policing methods via a series of legislation, including the Suppression of Crimes Act of 1974; the Gun Court Act of 1974 and, since 2010, the Criminal Justice (Suppression of Criminal Organisations) Act of 2014 and the Law Reform (Zones of Special Operation) (Special Security and Community Development Measures) Act of 2017. Further attempts were made to amend the Bail Act of 2000 to allow for longer detention of people without charge and successive ministers of government and commissioners of police have called for laws that give 'enhanced powers' to the security forces. In making our argument, we will further describe the line of continuity to 2010 as well as the qualitative significance of the 2010 SOE.

Although the path of continuity for SOEs becoming the new normal dates back to the 1970s, there was a gap in the use of SOE between 1980 and 2009. The JLP, which came to power in 1980 and saw itself as a target of the 1976 SOE under Manley, had taken a strong stand against SOE. Moreover, in the early 1990s there was an end to the Cold War conflict; this was followed by a period of ideological and policy convergence and thus less intense political conflicts in Jamaica. Although the conditions had changed and motivations for SOE had dissipated, the growing inability to control violent criminality and the success of the 2010 SOE provided the impetus for the aggressive use of SOE after 2010. The increased use of SOE has put a new wind in the sails of crime control.

Methods: Mass Detention and Use of Lethal Violence

Mass detention is a feature of SOEs when they are used to control violence. In the 1966 and 1976 SOEs, which were used to suppress political violence, there were approximately 400 and 1,000 detentions respectively.³⁴ During the first three days of the 2010 SOE, however, there were approximately 4,000 detentions in West Kingston. At least 3,600 of these were from the community of Tivoli Gardens (and the rest from the neighbouring Denham Town), which in 2010 had a population of approximately 10,000.³⁵ According to the 2016 WKC into the behaviour of the security forces during this SOE, this meant that approximately 90 per cent of all adult males in Tivoli Gardens were detained during Operation Garden Parish.³⁶ The total number of persons, nationally, who were detained during the period 24 May to 22 July 2010 ranged from over 4,372 to 6,000, according to the Jamaica Constabulary Force. Most of these detentions were made during the

³³State of Public Emergency: Security Forces to Detain Persons Likely to Endanger Public Safety', *Jamaica Gleaner*, 20 June 1976, available at <https://gleaner.newspaperarchive.com/kingston-gleaner/1976-06-20/page-22/>, last access 14 Jan. 2024.

³⁴Terry Lacey, *Violence and Politics in Jamaica*.

³⁵Government of Jamaica, Report of the West Kingston Commission of Inquiry, 2016.

³⁶*Ibid.*

first three days of the operation. Some 4,093 were released during the same period of time, which is suggestive of a measure of arbitrariness in making the detentions.³⁷ Between April and June of 2019, after only three months, 906 persons were detained under the Western Jamaica (comprising the parishes of St. James, Hanover and Westmoreland) SOE.³⁸ Again, the release of 811 persons, a total of over 89 per cent, suggests the indiscriminate manner in which mass detentions are carried out. The mass detention was a method of state discipline and a means of harvesting multiple bits of information on the detainees to improve the efficiency of future control.

The most important and perhaps illuminating feature of the SOE is the rate of killings by the security forces. The number of persons killed by the police and military in the 1966 and 2010 SOEs were 7 and 170, respectively.³⁹ Expressed as ratios of killings by the security forces to the number of homicides in the corresponding years, these ratios were 1:16 and 1:4 for the respective years.⁴⁰ Taking the long period from 1966, there has been a progressive escalation of lethal violence by the state during SOEs, which is tracked by similarly elevated use of lethal violence in regular policing during the entire period. Similar to the case with detentions, in later periods, after a measure of control is established, there is a decline in the use of lethal violence by the security forces. The expectation is that at the beginning of these SOEs, increased coercion would be necessary to bring about pacification. This is what 'clearance' in a counter-insurgency strategy of 'clear, hold and build' entails. It should also be expected that as control over the targeted territory is achieved, less coercion and certainly less overt violence (but increased surveillance) is used to sustain pacification within the particular target area. Here we make a distinction between the trajectory of violence for the duration of a particular SOE and the general post-independence record of SOE. If reversals could be prevented and the geographic distribution of violence contained, then the trajectory of state violence would be expected to conform to the localised pattern that is observed during SOE. Both trends would be expected to converge. Actualisation of this expectation is what would permit a transition to regular policing and the full enjoyment of freedoms and rights by the affected citizens.

The post-2010 outcome has been consistent with what was expected. Between 2011 and 2022, the rate of killings by the state security forces (police and military) declined from 8.5 incidents per 100,000 (in 2011 and 2013) to 5.1 per 100,000

³⁷*Ibid.*, p. 348.

³⁸Danae Hyman, '906 Detained under Western Jamaica SOE, Including Two Alleged Gang Members', *Jamaica Gleaner*, 9 July 2019, available at <http://jamaica-gleaner.com/article/news/20190709/906-detained-under-western-jamaica-soe-including-two-alleged-gang-leaders>, last access 14 Jan. 2024.

³⁹We use this estimate for consistency with official statistics. It is, however, a gross underestimate as the killings during the first two days of the SOE are excluded. These killings were never acknowledged by the Jamaica Defence Force (JDF) and Jamaica Constabulary Force (JCF) as confirmed killings by them. However, the reports of the Office of the Public Defender and the WKC (2016) suggest that 69 persons were killed during this period.

⁴⁰'INDECOM and Police Effectiveness: A Statistical Analysis', address by Terrence Williams, Commissioner, Independent Commission of Investigations (INDECOM), posted 15 Jan. 2018, available at www.indecom.gov.jm/indecom-and-police-effectiveness-a-statistical-analysis/984, last access 14 Jan. 2024.

residents.⁴¹ And, importantly, during this period the use of lethal violence by the security forces during SOE has tended to decline over time within the areas that are under SOE. At the onset of an SOE, elevated levels of lethal violence are used to establish control or in the counter-insurgency language it is used to 'clear the area'. Once control is established then lower levels or less intense coercion is needed to maintain it. This largely explains the pattern of reduced use of lethal violence by the police and army in these situations.

This process is, however, subject to reversals depending on the capacity of the state and its relationship with the people in these areas. A condition for reduced criminal and state violence is that the methods of control must become more indirect; and they must win approval and yield legitimacy gains as a condition for sustained violence reduction. Failure to make these legitimacy gains, however, leads to the continued use of SOE and the normalisation of its more overtly coercive methods of control.

Normalisation

The normalisation of SOE finds expression in the institutionalisation of the methods of emergency powers policing, such as the overuse of detentions, arrests prior to investigation, the unlawful use of roadblocks, searches without warrants and arbitrary checks of vehicles and individuals contrary to the ruling of the courts.⁴² In some instances, detentions are used preventively as a means of avoiding, or at least postponing, retaliatory violence between groups in conflict. In these instances, retaliatory killings are predicted by and acted upon by the police. Detentions may also be used simply to disrupt the regular criminal activities of a gang and to harvest information. Such is the pacifying, now everyday, normalised overuse of detentions.

On every measure, the 2010 SOE was a second turning point. SOEs are no longer a measure reserved for an extraordinary 'public order' crisis rooted in violent political competition, as was the case in 1966 and 1976, or for violent mass protests against specific injustices or for better living conditions. Rather, they are applied to the more everyday and enduring problem of chronic, armed violence. There is a clear line of continuity back to the earliest SOE, and in particular the extended SOE of 1976, the Suppression of Crime (Special Provisions) Act of 1974 and the Gun Court Act of 1974, which was inspired by counter-insurgency practices in Malaysia during British occupation. Military involvement in policing is a second line of continuity and military methods have become enduring aspects of crime control in Jamaica.⁴³ Although such methods were introduced as early as 1966, 2010 marked a clear shift in their acceptance as doctrine and strategy; that is, as a body of ideas and complete set of practices. This shift is the outcome of a long

⁴¹The data sources are JCF and INDECOM. See *ibid.*

⁴²Amnesty International, 'Waiting in Vain – Jamaica: Unlawful Police Killings and Relatives' Long Struggle for Justice' (London: Amnesty International, 2016).

⁴³Yonique Campbell, *Citizenship on the Margins: State Power, Security and Precariousness in 21st Century Jamaica* (New York: Palgrave Macmillan, 2020); Anthony Harriott, *Police and Crime Control in Jamaica: Problems of Reforming Ex-Colonial Constabularies* (Kingston: University of the West Indies Press, 2000).

process and with a line of continuity from the 1960s: continuities in the development of the violence problem (for example, between the territories and actors involved in political violence and those involved in ordinary gang violence) and the methods of responding to it (rights-disregarding policing). In the next section, we provide an account of some of the critical factors and forces that drive this normalisation of the SOE.

Legitimising and Justifying the Normalisation of SOE

Pressures for the normalisation of SOE and attempts at its legitimisation are in the main derived from the level and features of the violence problem itself; the ineffectiveness of the institutions responsible for responding to this problem and a desire to strengthen state capacity; and demand for emergency measures that are generated by public opinion. Each of these factors will be discussed in turn.

Controlling Gang Violence

Jamaica is where it is today because of a process of gradual accretion which has produced what is now perceived as one of the most significant situational shifts in the security landscape, a shift from political to gang-related violence. The first wave of violence in independent Jamaica was directly linked to politics and served the purposes of securing electoral victories and consolidating the power of a party in selected constituencies as 'safe seats'.⁴⁴ This process often involved the capture of territory by violently removing supporters of the opposing party and populating it with supporters of the aggressor party. In this process the party-affiliated gangs are also winners and losers. With the electoral defeat of the social-democratic PNP in 1980 and the period of policy convergence which followed, political violence sharply declined and yielded to ordinary gang-related violence.⁴⁵

The Christopher Coke extradition crisis of 2010 marked an important period in both the threat of gang violence and the use of SOE to respond to it. The 2010 SOE led to an instant success in bringing about a precipitous drop in violent crimes. Between 2010 and 2014, there was a 30 per cent reduction in the rate of murder and a similarly sharp drop in most of the other serious crimes. These results motivated SOE's more frequent use, making the year 2010 a turning point in the use of emergency powers. The explanation for the use of an SOE in that context is expressed below by a former minister of national security:

I think that there are very rare cases such as in the May 2010 situation where, literally, Christopher Coke and his cronies had launched an assault on the

⁴⁴Carl Stone, *Democracy and Clientelism in Jamaica* (New Brunswick, NJ: Transaction, 1980).

⁴⁵See Sives, *Elections, Violence and the Democratic Process*; Colin Clarke, 'Politics, Violence and Drugs in Kingston, Jamaica', *Bulletin of Latin American Research*, 25: 3 (2006), pp. 420–40; Anthony Harriott, 'The Changing Social Organization of Crime and Criminals in Jamaica', *Caribbean Quarterly*, 2: 3 (1996), pp. 54–71.

state. There were parts of Jamaica that the police couldn't control. They had launched attacks on Mountain View and on police patrols and had burnt down a police station. It was somewhere in the West Kingston police division. In that sort of environment where Coke had mobilised some 400 armed men, a different kind of response was required; and I think it was fully justified in that instance because you are literally, and I don't want to dramatise it, on the brink of a civil war.⁴⁶

This justification, however, went well beyond that crisis moment. The suggestion is that if a single gang and its allies were able to threaten 'a civil war', then the state would be obliged to treat the phenomena of street gangs and organised crime as major threats to the state. The justification then is not simply for a counter-insurgency response in the particular instance of 2010 but rather as a general response to violence that is beyond the control of the police.

Gang violence has also spread out across geographical borders. The number of gangs and the range of criminal activities they are involved in have also increased. Crime, therefore, is more threatening to the national economy and political administrations. State actors believe the best way to control this threat and pacify the increasing number of violent hotspots is through the deployment of SOE or elevated state violence, shading into counter-insurgency methods. Starting in 2010, the use of force in the specific context of SOE, as we have noted, came to be seen as a viable solution to the problem of violent criminality. According to a senior officer in the security forces:

The gangs have more capacity than the state, and they are using more modern technology than us in some instances. We have boots on the ground, and we are depending on this and traditional operations but the gangs are using sophisticated technology to stay ahead of the security forces. They are using WhatsApp to communicate with each other about their targets as well the presence of the security forces in real time. This means the state has to also be able to exercise more power and be able to exercise greater control over the physical spaces where gangs exercise power and authority or where they commit crimes. The SOEs provide them with a means to do this.⁴⁷

The normalisation of the SOE lies in part in a belief in its 'life-saving' potential. This is managed through mandatory stop and search, closer surveillance and detention to prevent or at least delay killings in areas that are affected by gang violence. According to a senior officer in the Jamaica Constabulary Force (JCF):

I have seen cases where the police have been able to prevent murders and save someone's life because of the SOE and their ability to detain someone under the Emergency Powers Act. To give you an example, the relative of a gang member was shot ... Now we knew that he would have retaliated immediately, and a murder would have been committed. Because of the SOE, the security forces were able to get him out of the community immediately, whilst

⁴⁶Interview with former minister of national security, Kingston, 23 Nov. 2021.

⁴⁷Interview with senior officer in Jamaica's security forces, Kingston, 21 Oct. 2021.

investigations were being carried out. Until we can get this gang problem under control, we need to use SOEs, which have obviously worked.⁴⁸

Ineffectiveness of Policing

The regularised use of military and counter-insurgency-type methods finds justification, partially, in the actual and perceived failure of police-led crime control in the 1990s and the related escalation of homicides and serious crimes which continued into the 2000s. The arrest rates for serious crimes including murder, shooting and robbery were low and already in decline.⁴⁹ Police effectiveness was hobbled by police criminality and was perceived as such. The 2016–17 Latin American Public Opinion Project (LAPOP) survey found that 42 per cent of the adult Jamaican population shared the view that the police were criminally involved.⁵⁰ Accompanying the objective measures of a decline in the effectiveness of law enforcement, and popular perceptions of its sources, were high prevalence rates of insecurity among the general population. The decline in the effectiveness of law enforcement must be seen as a long process involving progressive displacement of traditional methods of policing, in particular investigative techniques and due process, which served to increase demand for state violence and extraordinary powers. A member of one of the police oversight bodies believes that police failures and ineffectiveness, especially in relation to investigations, have led to a prioritisation of the militarisation of policing and SOE. According to him:

The police force does not work with proper management to get things done. You can't succeed in the courts without effective investigation, so you have to rely on extrajudicial killings. What SOEs give them is cover for that and to have super long hours where persons are held without charge. You think in this period they would build a case but it's as if you are putting the person on ice. These detainees are not frequently interviewed. The cases are weakly prepared, so they have to give bail. Any case which is indictable, you should be able to see where the case file is vetted at every level, and everyone looks at it before it comes to the prosecutor.⁵¹

The general failure of the police to control violent criminality through investigations and existing capacities was also offered as a reason for the persistent use of SOE by other policy actors. A very prominent legislator who has served in both the executive and legislative arm of government suggested that policing failure plays a critical role in the current reliance on emergency powers:

I think it is a failure of policing, a lack of imagination and a poor grasp of the situation. What they seem to want is the ability to arrest people without

⁴⁸Interview with senior officer in the JCF, Kingston, 11 June 2020.

⁴⁹Anthony Harriott, *Bending the Trend Line: The Challenge of Controlling Violence in Jamaica and the High Violence Societies of the Caribbean* (Kingston: Arawak, 2018).

⁵⁰Harriott *et al.*, *The Political Culture of Democracy in Jamaica*, p. 71.

⁵¹Interview with member of one of the main police oversight bodies in Jamaica, Kingston, 29 Oct. 2021.

building the necessary cases. And they don't seem to have a strategy to identify crime producers, that is the violence producers and criminal kingpins, and build cases against them to destabilise and disorder them. And I think that those capabilities exist under existing legislation.⁵²

At the neighbourhood level, especially in communities of the urban poor, policing failure is evidenced by the rise of gangs and the more powerful gang leaders or 'dons' who make rules and provide rule enforcement and policing services for their communities. Robberies, rapes and other crimes are reported to these dons who find and punish the offenders. Survey measurements taken by the National Crime Victimization Surveys indicate that the provision of don or gang-style policing was met with approval by a significant proportion of the populations of these communities.⁵³ Perhaps the greatest indicator of policing failure is the support for this alternative.

Given these failures, SOEs provide the state with a means of strengthening its coercive capacity in the absence of more wide-scale reforms. SOEs are human-resource intensive. They involve the extended and active presence of the military and police in areas that are designated to be under the SOE. The military and police thus use these opportunities to press their cases for increased personnel, the capacity to train, house arms and make mobile the new additions to their ranks. Between 2010 and 2020, the military has grown by approximately 100 per cent in strength.⁵⁴ Police failure has led to military and police expansion.

Side by side with this discourse of the failure of normal policing is a discourse of the success of SOEs. Success has become a feature of legitimisation discourses that seek to normalise SOEs. According to the commissioner of police:

As has been demonstrated through previous and current states of emergency, this methodology [SOEs] has been very effective in reducing violent crime. The limited state of public emergencies continues to be successful in the other divisions in which they are implemented. We have seen reductions in murders in Westmoreland and Hanover by 48 per cent and 42 per cent, respectively, when compared with the similar period prior to the declaration [...] Shootings are down by 27 per cent and 32 per cent respectively. In St. James, which has the longest-running SOE, shootings are down by 5 per cent. While murders were up by 7 per cent, they are trending down.⁵⁵

Performance is an important dimension of legitimacy. By claiming success, one promotes the legitimacy of the institutions that bring about this success. The difficulty in this case is that the military is effectively the lead institution during the

⁵²Interview with former minister of national security and senior parliamentarian who has served in both the executive and the legislature in Jamaica, Kingston, 11 June 2020.

⁵³Ministry of National Security, Jamaica National Crime Victimization Survey (Government of Jamaica, 2016; 2019).

⁵⁴World Bank, 'Armed Forces Personnel, Total: Jamaica', available at <https://data.worldbank.org/indicator/MS.MIL.TOTL.P1?locations=JM>, last access 14 Jan. 2024.

⁵⁵Alecia Smith, 'SOE Effective in Reducing Violent Crimes – Police Commissioner', *Jamaica Information Service*, 28 Jan. 2020, available at <https://jis.gov.jm/soes-effective-in-reducing-violent-crimes-police-commissioner/>, last access 14 January 2024.

SOE. Its successes are, therefore, most associated with that institution in its crime-fighting or policing role. Belief in the success of SOE and the experiences of reprieves from gang violence in localised hotspots have motivated a high and continuing demand for SOE among the general population of the country.

Satisfying Public Demand for SOE

Changes in the intensity and shifts in the main features of violent criminality as well as in the social structure of Jamaican society are conducive to the normalisation of extraordinary violence-control measures. The emergent elite and an upwardly mobile and self-confident Black middle strata have less faith in the state's ability to solve the problem of violence through ordinary policing. They are more willing to encourage police vigilantism and innovative solutions to the violence problem.⁵⁶ Arguably, this emergent elite and small-to-medium business strata are more confident about the use of force than the old elite who are afraid that excessive use of force might lead to revolt and a disruption of the social order. This attitude, and the associated practices, may be found elsewhere across LAC, where state vigilantism to manage violence has increased. A prominent public figure shared this view:

I think the police have a difficult task and the human-rights groups are not helping. They don't understand the problem. Most of these uptown 'brown' and white people in these human-rights groups who are talking about rights, the rights of criminals, and who are opposed to SOE, are safe in their communities uptown. They are not the ones hearing shots fired every night. They are not the ones who are afraid of losing their lives or the lives of their loved ones to criminals, so they can afford to talk all this nonsense. They don't understand the gravity of the gang and violence problem in Jamaica.⁵⁷

From this viewpoint, the 'brown' and white middle strata are too socially distant from the poor and too innocent about the motivations for violent criminality. Their tendency to emphasise the socio-economic roots of crime and the social-justice deficits in the society leads to a supposedly misplaced prioritisation of values such that, for example, freedom of movement and other rights ('of criminals') are ranked above the protection of the right to life (of ordinary citizens).

This demand for vigilantism to pacify criminals has been measured by public opinion surveys. The most reputable of these is arguably the LAPOP Americas Barometer. There have been five cycles of data, beginning in 2006, with the last one being in 2017. During this period, popular support for police vigilantism (measured by the question 'In order to catch criminals, do you believe that the authorities should always abide by the law or that occasionally they can cross the line?') increased and trust in the police declined. In 2017, some 28 per cent of Jamaicans supported 'crossing the line' and 43.9 per cent reported that they did not trust the police.⁵⁸ The decline in trust for

⁵⁶Yonique Campbell, *Citizenship on the Margins*.

⁵⁷Interview, Kingston, June 2021.

⁵⁸Anthony Harriott and Balford Lewis, 'Police Community Relations in Jamaica: Attitudes and Perception of the Police in a Context of Increasing Public Insecurity', in Harriott *et al.*, *The Political Culture of Democracy in Jamaica*, pp. 63–77.

policing is linked to the demand for a military coup, if it solves the problem of violent criminality. Support for a military coup in Jamaica has steadily increased; in 2016, for the first time, a majority of 56.4 per cent of a representative sample of the adult population reported that they supported a military coup ‘when there is a lot of crime’.⁵⁹ This is the highest figure recorded for 30 countries in LAC that were included in the survey.

The above figures reflect aggregated public opinion on three sets of issues: support for suppression of violent criminality without regard for law; declining trust and confidence in the police; and high levels of trust and confidence in the military and SOE-type approaches and their ability to control violent crime. The latter also include conditional support for a coup d’état. Interestingly, our fieldwork revealed support for military involvement in violence control and use of SOE – among older citizens, unattached youth and even among gang members who reside in violent hotspots – for its pacifying effects. While the reasons for support might be obvious among ordinary citizens (fear), among gangs these reasons might be less obvious. Gang members stated that they needed respite from violence, moments of break, when they did not need to be hyper-vigilant.⁶⁰ The popular demand for SOE thus takes a consensus form – with support across a wide range of social strata including those who suffer most from its excesses and abuses of power. They too make trade-offs against the benefits they associate with SOE.

Conclusion

Similar to a number of other countries in LAC, Jamaica is faced with the problem of high rates of violent crime, insecurity, limited capacity of the security forces, low trust in the police, punitive attitudes and demands for exceptional measures. Starting in 2010, but with a much longer ancestry dating back to 1966, post-independence Jamaica has experienced an increasing number of SOEs. Since 2010, SOEs have shifted in intensity and purpose with their main focus being the control of violent criminality instead of political violence. It is important to note that *de facto* SOEs have been evident in the practices and approaches of the security forces since 1976. The normalisation of SOE methods and the counter-insurgency and militarised approaches that they engender, which are distinct from ordinary crime-control strategies, have, expectedly, led to concerns about whether SOEs were intended for temporary or permanent use. By using SOEs as a tool of crime control instead of for regime protection and silencing opposition forces, as it was accused of doing in 1976, the Jamaican state has so far managed to win public support.

In explaining the reasons for the persistent use of SOE, state actors mainly focused on its role in controlling gang violence, public demand for SOE and the ineffectiveness of policing. Some of the main actors in the security sector who support SOE see it as a necessity and a tool that promises success. Performance or success legitimises – as does necessity – which is a way of making the case that there

⁵⁹Mollie Cohen, ‘Support for Electoral Democracy in the Americas’, in Harriott *et al.*, *The Political Culture of Democracy in Jamaica*, pp. 11–26.

⁶⁰Authors’ field notes from interview with gang members and community groups in SOE spaces, Montego Bay, 22 May 2021.

are no better alternatives in terms of a set of practices that are informed by morally superior political values, which are better in their rightness or better in terms of their effectiveness. To the extent that these arguments are accepted by large and influential enough sections of the population, perceived legitimacy will hold.

However, there are real-world risks that are associated with the abuse of power and the overreach of the executive. We have argued that the normalisation of SOE carries a risk of policing itself becoming unhinged from legal, rights-regarding restraints on policing power, which are common within liberal democracies. This could result in an intensification of the perversion of policing processes. For example, by arresting prior to investigating rather than investigating before arresting and greater resort to detention before establishing reasonable suspicion. These are rule-of-law risks. A second category of risks we outlined relates to the spillover of illiberal methods, which have been largely confined to policing, into more general practices across different fields of governance. One example of a potential spillover is reducing transparency on matters related to government finances. A minister of national security suggested that expenditure on national security should be kept from public scrutiny.⁶¹ In a similar vein, the government of Jamaica attempted to amend the Access to Information Act to increase the exemption period for public access to Cabinet documents from 20 to 70 years.⁶² Neither of these attempts were successful but the attempts reveal an impulse to push beyond the boundaries of policing. We have tried to show how these risks have been managed by the state system – albeit with unresolved tensions.

Like Jamaica, other countries in LAC have also turned to SOEs for crime-fighting purposes, making it even more important to understand this new tendency in the use of SOE for this purpose in the region. The Jamaican experience provides useful insights into how SOEs are being normalised in LAC and offer lessons that are of value in and beyond the region.

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El recurso a la policía de emergencia para controlar la violencia de las bandas en Jamaica: Haciendo de la excepción la regla

Este artículo examina críticamente las razones del uso persistente de los estados de emergencia como una herramienta de control del crimen en Jamaica y los riesgos asociados con la normalización de estas medidas en democracias pequeñas, de poca capacidad y competitivas en Latinoamérica y el Caribe (LAC). Analizamos la cuestión de los estados de emergencia permanentes como un asunto relacionado con la normalización de ciertos marcos legales y métodos policíacos. Esto difiere de los académicos que piensan en el uso de los

⁶¹Livern Barnett, 'National Security Budget Will Not Be Disclosed to Public – Montague', *Jamaica Gleaner*, 7 July 2016, available at <https://jamaica-gleaner.com/article/news/20160707/national-security-budget-will-not-be-disclosed-public-montague>, last access 14 Jan. 2024.

⁶²Nickoy Wilson, '“Withdraw it” - Gov't Told to Rethink 50-Year Increase in Period of Exemption from Public Access to Cabinet Documents', *Jamaica Gleaner*, 3 Oct. 2019, available at <https://jamaica-gleaner.com/article/lead-stories/20191003/withdraw-it-govt-told-rethink-50-year-increase-period-exemption-public>, last access 14 Jan. 2024.

estados de emergencia permanentes como la suspensión de la ley o del mandato ejecutivo, y hacen una distinción clara entre la ley y la violencia, y la normalidad y la emergencia. Nuestros hallazgos muestran que el uso persistente de los estados de emergencia en Jamaica refleja la incapacidad de parte del Estado de controlar el crimen violento, además de sus esfuerzos por fortalecer sus capacidades coercitivas y así compensar la ineficiencia de la policía. También es una respuesta a la exigencia pública para el ejercicio policiaco bajo un estado de emergencia. El fortalecimiento del Estado es una condición necesaria para una sociedad más pacífica y respetuosa de la ley, pero también se corre el riesgo de caer en una degradación democrática cuando los derechos civiles no son respetados por la policía. Sin embargo, hemos constatado la existencia de un manejo autoritario del crimen, sin caer en un autoritarismo, en general, y una fuerte señalización y patrullaje de parte de algunas instituciones estatales de supervisión que gozan del apoyo de la sociedad civil.

Palabras clave: estado de emergencia; policía; control del crimen; violencia criminal

O recurso ao policiamento de emergência para controlar a violência das gangues na Jamaica: Tornando a exceção em regra

Este artigo examina criticamente as razões para o uso persistente de estados de emergência como ferramenta de controle do crime na Jamaica e os riscos associados à normalização dessas medidas em democracias pequenas, de baixa capacidade e competitivas na América Latina e no Caribe (LAC). Abordamos a questão dos estados de emergência permanentes como um assunto de direito e da normalização de certos métodos de policiamento. Isto difere dos estudiosos que pensam sobre o uso de estados de emergência permanentes como suspensão da lei ou do governo executivo e fazem uma distinção clara entre lei e violência e normalidade e emergência. As nossas conclusões mostram que o uso persistente dos estados de emergência na Jamaica reflete a incapacidade do Estado para controlar o crime violento, bem como o seu esforço para reforçar as suas capacidades coercivas e compensar a ineficácia da polícia. É também uma resposta à demanda por policiamento do estado de emergência. O fortalecimento do Estado é uma condição necessária para uma sociedade mais pacífica e respeitadora da lei, mas é também portador de riscos de degeneração democrática através de um policiamento que desrespeita os direitos. No entanto, temos assistido a uma gestão autoritária do crime sem descida ao autoritarismo, em geral, e a uma forte marcação de fronteiras e patrulhamento por parte de algumas instituições de supervisão estatal que contam com o apoio da sociedade civil.

Palavras-chave: estado de emergência; policiamento; controle do crime; violência criminal

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