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FROM FORCE TO SERVICE

REFORMING THE JAMAICAN POLICE



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TABLE OF CONTENTS

Acronyms	1
Summary of recommendations	2
Introduction	7
Chapter 1 Core concepts and principles which should inform the new Police Service Act	9
Chapter 2: Purposes, Duties and Powers of the Police Service	17
Chapter 3: Police Governance and Accountability: Principles and Architecture	23
Chapter 4: Terms of Service and Welfare	34
Chapter 5: Terms and Conditions Continued The Special Case of the Commissioner of Police	42
Chapter 6: General Recommendations	52
References	54
Appendix 1 Northern Ireland Policing Board	51
Table 1 External Oversight Public Boards – Examples from the UK	30
Table 2 Functions of Police Commissioners	44

ACRONYMS

COP	Commissioner of Police
CS	Citizen Security
DPP	District Policing Partnerships
GOJ	Government of Jamaica
ECJ	Electoral Commission of Jamaica
GG	Governor General
ILP	Intelligence-Led Policing
JCF	Jamaica Constabulary Force
JCF Act	Constabulary Force Act (Jamaica)
MNS	Ministry of National Security
MOCA	Major Organised Crime and Anti-Corruption Agency
PCOA	Police Civilian Oversight Authority
PM	Prime Minister
PSC	Police Service Commission



SUMMARY OF RECOMMENDATIONS



CHAPTER 1: CORE CONCEPTS AND PRINCIPLES WHICH SHOULD INFORM THE NEW POLICE SERVICE ACT

1. We recommend that the concepts and principles of citizen security and intelligence led policing should inform the New Police Service Act.
 - Citizen Security prioritizes the security of the individual; recognizes the obligation of the state-police to protect the individual in rights-regarding ways; the equitable and unbiased distribution of security-related services within the society and fair treatment of all; and the co-responsibility of police and citizen in producing security by extending the principle of citizen participation.
 - Intelligence Led policing means using data and information on the patterns of crime and criminality to better target investigations and operations; effectively to disrupt networks and remove prolific offenders. In turn this will reduce false arrests and the targeting of whole communities and reduce the degree of injustice in policing while increasing its efficiency and effectiveness.



CHAPTER 2: PURPOSES, DUTIES AND POWERS

1. We recommend that the statement of purpose of the police service include:
 - > prevent crime and ensure public order;
 - > uphold and protect the rights and freedoms of citizens, residents and all visitors to the country; and
 - > do the above fairly, firmly and with integrity.
2. We further recommend that Part II of the JCF Act “calling out for military service” and all other references to military service not be included in the new Act.
3. Consistent with the idea of citizen security and policing by consent, and drawing on the Police (Northern Ireland) Act 2000, we recommend that it includes in its “core policing principles” the principle that, “Police officers shall carry out their functions with the aim of securing the support of the local community, and of acting in co-operation with the local community.”¹ These are agreeable core principles and we suggest that they be adopted by the Jamaican Police Service.
4. That the power to stop and search not be extended, but rather be limited to instances when there is “reasonable suspicion”.



CHAPTER 3: POLICE GOVERNANCE

The government is already at an advanced stage of preparing the legislation to bring a new police authority into effect. In this regard, the Police Services Commission (PSC) and the Police Civilian Oversight Authority (PCOA) are to be merged. The challenge is to ensure the effectiveness of the new entity. Nonetheless, we endorse this effort and we recommend the following:

1. The new Act should better define operational independence to ensure that the boundaries between the field of responsibility of the minister and that of the Commissioner of Police (COP) are more defined.
2. The police authority to be formed should be structured to promote consensus policies (that is, along the lines of the Electoral Commission of Jamaica (ECJ), given the degree of distrust of the police and of government.
3. The proposed consolidated police authority should possess powers of enforcement, given the record of police resistance to oversight.

¹ Police (Northern Ireland) Act (2000).

4. The Act should make the police service directly accountable to citizens. Direct accountability may be achieved via the following measures:

a. A provision that allows citizens to bring civil cases against the police service (not just individual officers), along the lines of the provision in the Violent Crime Control and Law Enforcement Act (USA) 1994.

b. Requiring the police service to make public its performance in relation to its plans and targets.

c. Requiring the police service to produce an annual report on its performance for submission to Parliament, and to be made public.

d. Requiring the police authority to produce an annual report and to make this report easily accessible to the public.



CHAPTER 4: TERMS OF SERVICE

1. The Act should recognize the right of police personnel to assemble/organize to promote their welfare and professional development.

2. It should prohibit any interference in the disciplinary process by the Police Federation or any other organization of constables including the Police Officers' Association.

3. Promotion panels composed of peers should be a part of the promotion process for all officers at the rank of superintendent and above.

4. The police service must chart clear career paths for specialists. It must reinforce the turn to greater acceptance of specialization by having salary scales that reward specialization, rather than purely rank-based salary scales.

5. The COP (and the PSC or new Police Authority) should be explicitly assigned the duty to protect and promote the integrity of the police service.

The success of these recommendations for improved internal discipline is largely dependent on the existence of a strong cadre of leaders and supervisors who are willing to hold subordinates to account, beginning with the COP.

¹ Police (Northern Ireland) Act (2000).



CHAPTER 5: THE COMMISSIONER OF POLICE

1. The system of producing and reproducing the officers of the police service should be reviewed. The requirements for entering the officer ranks should be different from the requirements for entry as an operative at the lowest level of the police service. In police services that provide for direct entry to their officer corps, a first degree and an additional year of officer training are required.

2. The Government of Jamaica (GOJ) should be prepared to fund the development of a high-quality officer corps. It is from this pool (and the best performers from the lower ranks) that the top leadership of the JCF would be drawn. Given the consistent application of the merit principle, the top leadership would then be the best of the best.

3. The requirements for the post of COP should be specified (based on a job analysis). These requirements should be used for the purposes of appointing future COPs and assessing incumbents.

4. The suggested procedure for appointing the COP is stated above. We recommend the open, rule-governed direct involvement of the Prime Minister (PM) and the leader of the opposition in this process.

5. To safeguard the integrity of the office of COP and to ensure the effectiveness of the police service, all short-listed candidates for the post should be rigorously screened via a process in which the PSC and the public are able to have full confidence. The integrity standards to be met and the methods for determining that they are met should be stated in the regulations (which accompany the Police Service Act).

6. Performance standards and targets should be set for the COP. The standards may be stated in his or her letter of appointment including the requirement to produce a national police plan, subject to review of the Police Authority at the end of every year, for the next year. This experience of preparing a national police plan subject to external review can be found in the Bahamas.



CHAPTER 6: GENERAL RECOMMENDATIONS

The following are general recommendations that do not fit with the chapter-appropriate recommendations.

1. Extend the time for debating and drafting the Act.
2. The process of producing the new Act should be open and participatory. If a citizen security orientation is to be taken then its values ought to be adopted in designing the process. One such value is participation, including citizen participation-as-voice. The people should be given a direct voice in the process. Concretely, this means at least a number of town hall-type meetings.
3. The Act will be accompanied by a set of regulations. There is the issue of what should be in the Act and what should be in the regulations. What is clear is that the drafting of the regulations will be treated as a purely technical-legal matter and is likely to be a closed process. The regulations are likely to be subjected to less scrutiny. We therefore strongly recommend a robust Act that includes all of the potentially transformative aspects – even if this means a measure of encroachment on the regulations.
4. The Act should be accompanied by the Police Authority Act for a framework of accountability and driver of change.

INTRODUCTION

Jamaicans must face some uncomfortable truths about our violent crime problem. One such truth is that if we are to significantly lower the rates of homicide and other violent crimes and weaken the power of criminal networks in the society, we cannot avoid a renewed attempt at a thorough transformation of the Jamaica Constabulary Force (JCF). This transformation should bring the force more in line with democratic policing principles and methods of work and make it more effective as an instrument of crime prevention and control.

The Government of Jamaica (GOJ) has initiated a process which is intended to produce a Police Service Act. This Act may either amend the existing JCF Act or supplant it. It may seek to be bold and transformative in its aims or it may seek cosmetic and incremental changes. In this regard, senior officials at the Ministry of National Security (MNS) were very clear in its initial intent, which is to “repeal” the JCF Act and to replace it; not to amend it.² The GOJ has provided some cues for the direction of the new Act, which are to transform the JCF from a “force” into a “service,” and to transform policing from a basis on the doctrine of national security to policing based on the idea of citizen security. The policy instructions for the new Act also include making the police service “intelligence-led.”

We suggest that the new Police Service Act should provide the legal armour for a process of transforming policing and institutionalizing the desired shifts as stated above.

This report, however, is not a prescription for the transformation of the JCF, rather, it restricts itself to a selected range of issues which ought to be included in the new Act and, via these selected issues, it seeks to give meaning to the suggested transformation to a citizen security-oriented police service. These issues are:

- defining the purposes and duties of the police service;
- encouraging citizen centredness and participation;
- structuring police governance and the system of external accountability; and
- the appointment and removal of constables regardless of rank.

The work on this report began after the GOJ initiated the process to “repeal and replace” the JCF Act and it ran parallel with the efforts of their working group. The reasons for pursuing a parallel effort included the desire to have a more participatory and open process. We were struck by the low levels of awareness of critical issues in police governance including who is to be held accountable for what – be it the Commissioner of Police (COP), the Minister of National Security, the Police Services Commission (PSC) or the Police (Civilian Oversight) Authority (PCOA). This low level of awareness is to be found even among the leadership of consistently active and fairly well-resourced groups such as the Jamaica Manufacturers’ Association (JMA) and other private sector groups which try to influence national security policy³. The type of police service is a

² Correspondence (not confidential) between senior MNS officials and the author (in his capacity as the Chairman of the PCOA) 2017. correspondence was not confidential.

³ See Daily Gleaner January 16, 2018 page 1 “Who Do We Hold Accountable for Ineffective Crime-Fighting?”

matter of great public interest. If there is to be a shift from national security to citizen security, then the involvement of non-state actors and widespread citizen participation are essential to achieving that outcome. In short, we wish to stimulate an open debate about the changes in police work that are required to bring about more effective crime reduction, improved public order and to put more justice into policing. We demonstrate how a new law may enable these outcomes.

This report is, thus, the first output of a process which is intended to become more participatory and deliberative with regard to the principles which should govern policing in Jamaica. It is hoped that this process will increase the demand for these principles to be given the force of law and that the new Police Service Act is crafted as an instrument for the transformation of the JCF.

The process of producing this report involved:

- a critical review of the JCF Act with reference to other police Acts which have been used as tools to make the respective police institutions service-oriented;
- a state-of-the-art review with regard to police reform, especially in selected countries which have achieved profound transformation of their police services such as Northern Ireland and South Africa;

- focus group studies which brought together a small multidisciplinary group to initially tease out some of the issues, which were then further explored with a larger consultative group composed of individuals with a track record of active engagement with policing issues including human rights groups (see Appendix 2); and
- two open public consultations held with community groups in selected parish capitals. It was hoped that the final draft of these notes would have benefited from more of these consultations. Perhaps these notes will help to create a greater demand for such a process.

The process was intended to be an open and meaningfully participatory one. This report, it is hoped, may be used to stimulate an even more open conversation about the Act and the type of police service that Jamaicans desire. As an aid for advocacy, it may be considered to be an early stage input rather than a late stage output of this process.

For the rest of the report, each of the issues highlighted above will be discussed in turn but, first, the conceptual issues are presented.

CHAPTER 1

CORE CONCEPTS AND PRINCIPLES WHICH SHOULD INFORM THE NEW POLICE SERVICE ACT

Introduction

The core issue in modern policing is the relationship between the police and citizens. Is it and ought it to be a power over citizens, a repressive protector of the state, a Force which regards the people as a threat to the security of the state? Alternatively, ought it to be a consent-seeking entity that protects the citizens by preventing and controlling crime and safeguarding their rights and freedoms?

Students of modern policing often turn to Robert Peel's (nine) principles for a clear articulation of the core issue stated above. Policing by consent has long been regarded as a sought-after ideal. It is the gold standard principle of democratic policing. The ideal of policing by consent is encapsulated in principles 2, 3 and 4 below.

- Principle 2 - To recognize the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect.
- Principle 3 - To recognize that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing the observance of laws.

- Principle 4 - To recognize the extent to which the co-operation of the public can be secured diminishes proportionately with the necessity of the use of physical force or compulsion for achieving police objectives.⁴

These principles were developed in 1825 to give direction to the yet to be established London Police Service. They were proffered at a time of rapid social change and challenging crime and public order problems in England. They have withstood the test of time and are as valid today as they were then.

The JCF Act is bereft of a similarly democratic orientation. The JCF was founded on somewhat different principles and has had a rather different orientation toward state and citizen. Thus, for example, the JCF Act gives the COP the legal authority to "establish a cordon around a locality" for the purpose of "preventing or detecting crime." A cordon is a crude and blunt instrument for preventing or detecting crime. It is often used without regard for individualized suspicion of criminality and against whole neighbourhoods (as in the case of general searches for illegal weapons.)

A shift in doctrine is a requirement for bringing policing and the new Police Service Act in line with democratic ideals and within the concept of a service-oriented police.

⁴ Peel (1829).

The present situation in Jamaica—characterized by very high rates of violent crimes, an overloaded criminal justice system and a fair measure of popular support for punitive policing responses that are not restrained by law—may not be favourable for such a shift. It is estimated that in 2017, some 28% of the Jamaican adult population were willing to allow the police to violate due process to suppress criminality.⁵ We take this data as coded representations of the degree of support for police vigilantism. The new police Act, however, ought not to be an Act for the moment. Neither should it be an Act that reinforces undemocratic values and practices in policing. Rather, it should be an Act which promotes a new era in policing based on embedded democratic values, structures and principles which promote effective and citizen-responsive policing.

A Service-Oriented Police

After more than ten years of systematic and sustained effort to reform the JCF, that is, to sanitise, “modernise and professionalise” it, the authors of the “Strategic Review of the JCF” (2007) made the observation that the JCF “was slow to adopt a culture of public service, community-based policing and respect for human rights.”⁶ Put another way, the JCF has resisted efforts to transform its relationship with the people and to become service-oriented.

It has been proposed that the word “force” in the name of the Jamaican police organization be changed to “service”. We endorse this change of name. Symbols are important. However, a change

of name without a corresponding change to more service-oriented behaviour would amount to cynical symbolic manipulation.

A similar change in name was proposed in the 1970s. There have also been proposals to change other symbols of the JCF such as its uniform, and to treat the change in symbols as signifiers of a break with the old tradition of policing and as signs of the new. Five decades later, it remains for the police, engaged Jamaicans and our legislators, to give meaning to a proposed change in name and other symbols, towards this idea of service.

To be service-oriented means:

- responsiveness to the security needs and demands of people;
- being protective of the citizen;
- consistent engagement in preventing and solving crime-related problems rather than simply reacting to incidents;
- commitment to solving public order problems and thereby contributing to improving the quality of life of citizens; and
- being amenable to direct accountability to citizens for the quality of service that is delivered.

⁵ Harriott and Lewis (2018), p. 65-66.

⁶ The Strategic Review is a very important document for anyone who is interested in the transformation of the JCF. I thank the staff of the PCOA for constantly reminding us (the PCOA) of its contents and value.

Such a process of change would require a deep shift in the values and doctrine of the police. It would involve a shift from the idea of the hostile adversarial public, in particular, and the perception of a hostile urban poor (from which a repressive orientation follows,) to serving these publics equally and fairly, relating to them as active partners in the co-production of their security. This is a huge leap. One does not serve a hostile public; one keeps them under control by force of arms. This huge shift entails an examination of these core ideas and presumptions which remain at the foundation of the occupational culture of the Jamaican police.

The major challenge with shifting to a service orientation is the difficulty that the police force has with integrating service and crime prevention and control. Service is taken to mean welfare, social work or, at best, “soft policing.” Those individuals and departments that are engaged in it are perceived as not doing real police work but community relations.

However, it is accepted that the success of police work is dependent on the cooperation of citizens. Thus, if their requests for service in the form of a response to incidents of burglary and domestic violence are respectively met with responses such as, “we have no vehicles,” and, “that is not our business,” and “work it out on your own,” then the police have little chance of gaining the public’s cooperation. Implied is the idea that crime-fighting and the investigation of major crimes are the primary or even sole concerns of the police. It is also taken as given that the role of the citizen is to

tell the police where to find criminals and guns, rather than to seek service and attention to their locally determined priorities. If, on the other hand, requests for service are regarded as opportunities to serve and to better integrate service with law enforcement, then productive problem-solving relationships may develop. A service orientation means placing the citizen at the centre of policing concerns.

Citizen Security - The Core Transformational Shift

The idea of citizen security is best understood by contrasting it with the traditional state or national security approach.

National security doctrine prioritizes the security of the state over the security of the citizen. Indeed, during our colonial past, the citizen and the anti-colonial movements that represented their interests and carried their aspirations were seen as the primary threats (to the state) not criminality.

However, even when the idea of state security is applied to ordinary criminality, there is a consistency in the centring of the state as the offended party. Thus, state security, in broad terms, is deeply rooted in the historically progressive idea that crimes are crimes against the state.⁷ They are regarded as violations of law and of “the Queen’s peace.” Criminality is defined in these terms as being primarily a failure to fulfil one’s obligation to the state, not one’s obligations to their fellow citizens. Accordingly, offenders are punished for

⁷ I use the word progressive to describe this shift as I believe that such a definitional shift was a condition for the emergence and institutionalization of justice as we now know it.

so doing. Thus, the state security dyad is presented at the trial as the crown against John Brown. The concept of citizen security is a shift from this core idea and its related practices. Crimes are primarily harms against one's fellow citizen-humans and a violation of one's obligations to others. The duty of the state is to protect the citizen and to promote public policy that prevents these harms and makes societies more just. The GOJ's instructions to its Police Services Act working group points to a shift away from this approach/doctrine to citizen security.

Citizen security prioritizes the security of citizens and is firmly anchored in notions of a democratic security in which a larger measure of freedom and rights are demanded and fundamental rights such as the right to life are not subject to negotiated encroachments during crime waves. It recognizes that the provision of security services is a core responsibility of the state to its citizens, and that these services should be distributed fairly and equitably within the society, and "is based on a fundamental understanding that governments retain the primary role for ensuring the survival, livelihood and dignity of their citizens."⁹

There are, thus, four critical elements to the notion of citizen security. These are:

- the paramountcy of the security of the individual;
- the obligation of the state-police to protect the individual in rights-regarding ways;

- the equitable and unbiased distribution of security-related services within the society and fair treatment of all; and
- the co-responsibility of police and citizen in producing security by extending the principle of citizen participation

The *Caribbean Human Development Report 2012* repeats the point that citizen security "is based on a fundamental understanding that governments retain the primary role for ensuring the survival, livelihood, and dignity of their citizens". Citizen security refers to:

*The social situation in which all persons are free to enjoy their fundamental rights, and public institutions have sufficient capacity, against a backdrop of the rule of law, to guarantee the exercise of those rights and respond efficiently when they are violated.*⁸

If the state has an obligation to protect the citizen, the citizen has a responsibility to actively participate in the co-production of his/her security in partnership with the responsible agencies of the state. Citizen security values and promotes citizen participation in police work, which includes the citizen as a participant in setting policing priorities and security-related problem-solving (especially in community settings.) If this degree of citizen involvement is to be accepted, then police structures and the distribution of authority must be more decentralized. A highly centralized police force is less likely to be responsive to local priorities and thus less service oriented than a more decentralized service which permits local populations to set the priorities for their annual policing plans.

⁸ Organization of American States (2009).

⁹ United Nations (2010).

Citizen participation and meaningful contribution in terms of priority setting also means a measure of direct police accountability to citizens. Citizen participation must be structured to provide citizens with the opportunity and power, in law, to keep their police service responsive, effective and honest.

There is considerable social support for the idea of co-responsibility and a strong support base for citizen participation in partnerships with the police. The Caribbean Human Development Report 2012 found that:

- there was considerable citizen involvement in neighbourhood organizations and a willingness to engage on security-specific matters; and
- despite the distrust of the police, there was a willingness to work with them in the neighbourhoods.¹⁰

These findings were reproduced in the subsequent LAPOP studies which reported declining but nevertheless significant community participation.¹¹

The idea of citizen participation in crime prevention and control and of the citizen-police partnership is not an idealistic dream. To consider citizen participation naïve is to squander the extant feelings of community self-efficacy and the potential for crime-specific problem-solving.

There are, of course, other perspectives on the direction of change in policing and the place of the

citizen in policing. These different perspectives coexist but are not conceptually integrated. Thus, the people may experience policing in different ways depending on the units that they interact with. One such perspective is Intelligence-led Policing (ILP).

Intelligence-Led Policing (ILP)

According to the GOJ's policy statement, under the new Police Service Act, policing is also to be "intelligence-led." Thus, it is to be service-oriented, citizen-responsive and intelligence-led.

There are no apparent or real tensions between being service-oriented and having citizen security at the core of police doctrine. Both are complementary, mutually-reinforcing organizing principles. The idea of ILP may, however, insert some tensions and, perhaps, even conflicting signals and undergirding values into this approach. The intelligence function is an important aspect of policing. Contexts and priorities may determine the priority targets of intelligence work. Contextual considerations may, for example, determine the relative importance of political movements (some of which may be integrated into the political system and some may challenge it from the outside), terrorist networks (a special subset), hate groups or criminal organizations as targets. Tactical-risk considerations may determine the means and methods used (signals intelligence/interception of communications, human intelligence etc.). ILP, however, cannot mean merely a continuity of intelligence work in policing or, a change in the methods used to collect and ana-

10 United Nations Development Programme (2012).

11 Harriott, Lewis and Zechmeister (2015), p.152-153; Harriott and Lewis (2017), p. 72-76.

lyse information, that is, the introduction of new methods or technological applications. For the idea to be taken as meaningful in new ways, then there must be more to it.

ILP must mean a further centring of intelligence work. If this centring simply means using intelligence to better target the work of the police and thereby reduce false arrests and the targeting of whole communities and reduce the degree of injustice in policing while increasing its efficiency and effectiveness – then it is compatible with CS. In other words, ILP would positively alter how policing is done. We prefer to accept this interpretation.

To better understand ILP as an organizing principle of police work, it may be illuminating to return to the context in which the idea was developed. Intelligence-led policing has its origins in counter-terrorism.

Terrorism is political in its orientation but it is also organizationally disconnected from any open participatory movement of people. Access to terrorist groups is, thus, heavily dependent on intelligence work. This kind of police work is dyadic. One element in the dyad is the heroic police intelligence officer who is ever more dependent on technological support and at the other end is the socially and politically isolated terrorist-as-target. Here, the citizen is, in the main, a bystander and victim or potential victim.

As the terrorist suspect is hidden among the general population and must preferably be detected

prior to any terrorist action, intelligence efforts tend to become initially less discriminating and more intrusive (relative to ordinary criminal intelligence).

There has been, for example, a widening surveillance of the movement and personal communications of people. Thus, ILP is associated with the demand for increasing police powers, and consequently, infringements on the rights of citizens especially their rights to privacy and freedom of movement. Intelligence work is about access to information. A guardrail against excesses in the pursuit of information is the right to privacy. It may be violated and the information gathered used to direct extra-legal police operations. However, if intelligence is convertible to evidence, then there is always the pressure to lower the guardrails of democracy such as the standards which are associated with the protection of the right to privacy, for example, extending the power of the police to search without warrants. Such extended powers would mean that when such searches yield finds that may be useful for solving crimes, these finds may be used in court. Anti-terrorism is an easily accepted justification for such encroachments on the rights of people. And, in Jamaica, during moments of sharp increases in violent crimes, crime-fighting may be sufficient justification for similar encroachments on the rights of citizens.

In the USA, where anti-terrorism was primarily directed outward, with its targets being in other countries, there was less of a danger of American ILP-oriented agencies violating the rights of

¹² In the USA, UK and elsewhere there are open and ongoing debates on this issue.

American citizens. Applied extra-territorially to the fight against terrorism, ILP has been basically 'hunt and kill' operations. There is, therefore, little concern with the problem of converting intelligence to evidence for presentation in the courts. Applied within national jurisdictions where there is respect for the rule of law, intelligence becomes more of a support system for investigations (unless a hunt and kill approach is to be taken controlling the crime problem).

ILP has since been seen as applicable to the "fight" against organized crime. The idea is, therefore, regarded as being transferable to jurisdictions such as Jamaica where organized crime is very problematic and is, indeed, at the heart of our crime problem. Adopting (without adapting) ILP would require transformation of the existing Force or new police service with a focus on threats such as organised crime and terrorism. It would carry with it the risk of leaping from intelligence to police operations and from intelligence-established guilt to punishment.

In making ILP portable, there is the risk that ILP will travel with its luggage of infringements on the rights of citizens (freedom of movement, right to privacy) and importantly, a dyadic perspective on policing. Applied to Jamaica, where it would be turned inward, it is likely that gangsters would be likened to terrorists and that the problems which are associated with ILP would be even more acutely expressed. It is for these reasons why, as a major thrust of police transformation, it may be regarded as being in tension with a citizen security orientation. We do not see the

justification for ILP – if it is to be taken as an organizing principle for policing in Jamaica. To authorize it via the new Police Service Act would be to make permanent the present priorities (to dismantle organised crime). As is noted above, we favour the more minimalist interpretation of "ILP" as greater reliance on intelligence work to better target investigations and operations.

This understanding of ILP has been operationalized in Northern Ireland by the PSNI. In their effort to break with the blunt methods of combating terrorism and the indiscriminate methods of policing the nationalist-catholic neighbourhoods, the PSNI crafted and ILP that converged with new and more cooperative methods of providing security for catholic neighbourhoods. Police-community partnerships that includes a measure of direct accountability to these communities were integrated with ILP in a manner that gives the police greater access to information of crime and terrorism and allows them to better conduct their investigations and to avoid misdirecting their power and abuse the people.

More specifically, small units of police officers are assigned to a specific neighbourhood which they work for an extended periods of time. For this reason as well as their new methods of work, service to and style of interaction with the members of the community, they develop close relations of trust with the people – while also having responsibilities to do intelligence estimates of these communities. Their detailed knowledge of the people and accountability to them - helps the police to avoid wrongful arrests and other rights

violations. This is a case of ILP operating in a manner that is compatible with Citizen Security.

Experiences from Elsewhere

The suggestions and recommendations that are made in this report are informed by experiences of other jurisdictions. We selectively cite and draw from jurisdictions that have crafted Acts which have aided the transformation of their respective police services. These are transformative Acts in that they:

- were intended to be used as transformative tools or aids to police transformation, thus our interest in the Police (Northern Ireland) Act 2000;
- have advanced the thinking on the application of citizen security to policing; and
- have enabled structures and capacities which have facilitated useful changes in policing services.

We also favour similarity, that is, the experiences of other common-law jurisdictions. The UK experience is privileged in our research, because of the policy influence the British engagement has had with police reform in Jamaica. It also serves as a model in the effort to find democratic resolutions to some of the problems that are associated with how the tensions between police powers-for-effectiveness and citizens' rights and freedoms are resolved. In the next chapter, we discuss the purposes and duties of the police service.



CHAPTER 2

PURPOSE, DUTIES AND POWERS OF THE POLICE

Introduction

The purpose and duties of the police service determine its relationship to government and people, and is informed by a prior understanding of this relationship. Here, we do not attempt to be exhaustive. Instead, we select those purposes and duties that are at the core of the relationship between police-state and citizens. These ought to be changed if this relationship is to be productive and if policing is to truly become a service to the people.

Purposes

The general purposes of the JCF are stated in the JCF Act. These purposes should be expressed in the Act in a manner that allows for a clear understanding of the JCF's roles and responsibilities. This is especially important because the JCF "is partially organized under military organization and discipline." This character of the JCF influences and reproduces its relations with citizens.

The JCF Act states the purposes and duties of the Force in minimalist terms as being:

- to keep the peace;
- to watch by day and night; and
- to detect crime.¹³

This statement of purposes is from another era. It is infused with the spirit of state security. In the period prior to independence, "keeping the peace" did not mean preventing criminal violence and averting members of the public from harming each other, but rather inhibiting and controlling mass manifestations of any resistance to colonial domination and material deprivations. This is why the duty to "keep the peace" is separate and distinct from the duty to "detect crime" or even to maintain public order. Keeping the Queen's peace in the Jamaican context is a term that was associated with the protection of the colonial regime, not with respect for the rule of law and the rights of citizens.

On the JCF website there is a statement of purpose accompanied by mission and vision statements. We take these policy statements, as being subsequent to the JCF Act, as being aspirational, and as being more indicative of the current thinking in the leadership of the JCF. According to the JCF Citizen's Charter (which was initiated by the Jamaica Chamber of Commerce): According to the website:

"The JCF is responsible for the maintenance of law and order, the prevention and detection of crime, the investigation of alleged crimes, the protection of life and property and the enforcement of all criminal laws as defined by the Jamaican penal code. The JCF also provides general assistance to the public, as needed. By adherence to our Citizens' Charter, the JCF endeavours to serve its citizens through the impartial, transparent enforcement of law and order."¹⁴

¹³ Constabulary Force Act (1935), pp. 9 & 13.

¹⁴ "About Us," Jamaica Constabulary Force, March 20, 2015. (<https://www.jcf.gov.jm/about-us>)

The above (aspirational) statement shows advances in thinking through the use of phrases as demonstrated in these examples:

- from “keeping the peace” to “maintenance of law and order,” and
- from “watch(ing) by day and night” to “prevention ... of crime,” that is, from being purely reactive to engaging in prevention.
- Also, phrases such as “service to citizens” and “adherence to our Citizens’ Charter” can be read as intent of respect and service.

We suggest that a clear statement of repurposing the police service be adopted and that it be included in the new Act. The cases presented below illustrate that there are variations in the purposes of police organizations across countries reflecting different perspectives on the role of the police, the core political values and the police’s relationship to citizens.

The report of an independent committee of inquiry into the roles and responsibilities of the police service in England and Wales endorsed an existing definition found in the Police Service’s Statement of Common Purpose as follows:

The purpose of the police service is to uphold the law fairly and firmly; to prevent crime; to pursue and bring to justice those who break the law; to keep the Queen’s peace; to protect, help and reassure the community; and to be seen to do this with integrity, common sense and sound judgement.¹⁵

The National Police Service Act 2011 (of Kenya) states that the functions of the Kenya Police Service shall be:

- the provision of assistance to the public when in need;
- the maintenance of law and order and the preservation of peace;
- the protection of life and property;
- investigation of crimes;
- collection of criminal intelligence;
- the prevention and detection of crime;
- the apprehension of offenders;
- the enforcement of all laws and regulations with which it is charged;
- performance of any duties that may be described by the Inspector General under [the] Act or any written law from time to time.

Despite the differences in contexts, both are focused on law enforcement and the “preservation of peace.” However, while protecting and helping the citizen is an explicitly stated purpose in the case of England and Wales, in the case of Kenya, the statement of purposes does not explicitly define the relationship of the police to the people. We strongly suggest that the new Act move more in the direction of defining the relationship between police and citizen in service-oriented and consent-seeking ways. That is, as protecting, helping and reassuring; in short, serving.

¹⁵ Police Foundation/Policy Studies Institute (1996).

Let us take the issue of helping the people. Some Jamaican police officers do help people but helping people is not considered to be one of their purposes. Indeed, as the experience which is described below illustrates, police and people tend to have different viewpoints and expectations in this regard.

In December of 2017, the Gleaner reported the following story:

When his girlfriend went into labour at home on Christmas Eve, one month before the date the doctors had said she would deliver her baby, 26-year-old Dujon Foxton thought the police officers stationed a few steps away from his house would be able to render assistance.

But Foxton said he was given the shock of his life when the cops on duty told him that there was nothing they could do to help. "In response, they were like, 'We are not prepared for these types of things and the vehicle here is not really for that,'" said Foxton, a resident of Mavis Bank in the hilly area of rural St Andrew.

Minutes later, the new-born baby was dead, crushing Christmas for Foxton and his family and leaving them struggling to look towards the New Year with any hope.

¹⁶

The constables on duty appeared to have been very clear that it was not their job to help persons in that type of distress. There was a reason for their reference to the use of the police vehicle. It was employed to make the distinction between being willing as humans to help someone in need and, the purposes, duties and responsibilities of the police as they saw them. The vehicle represents an object that was under strict rules of use and thus its use was beyond their discretion. Reference to the vehicle was their method of depersonalising the encounter. The reference, therefore, brings into sharp relief their view of their roles and obligations as police. The vehicle was, presumably, for crime-fighting, not getting someone to the hospital in an emergency. The prospective father and expectant mother shared a contrasting view and clearly expected help from the police. Such vastly different viewpoints on the purposes and duties of the police and their everyday manifestation in police-citizen encounters which are initiated by the latter have profound consequences for police-citizen relationships.

Interestingly, the official response of the JCF to the incident was that, "We offer service and we assist in whatever way we can... it is not unusual for the police to assist persons in medical emergencies."¹⁷ The leadership of the JCF simply suggested that the officers exhibited poor judgment. The new Police Service Act should be crafted to remove any ambiguity with regard to help being a matter of purpose and duty rather than a matter of officer discretion.

The paramilitary orientation of the JCF is also

¹⁶ Nadine Wilson-Harris, "Christmas Crushed," Sunday Gleaner, December 31, 2017 (<http://jamaica-gleaner.com/article/lead-stories/20171231/christmas-crushed-couple-criticise-cops-after-babys-death>).

¹⁷ *ibid.*

problematic in regard to its relationship with the people. The duties of the JCF include fighting in war. Its structure, training programmes, approaches to crime control and relations with the citizenry follow from this duty. The JCF is subject to military “organization and discipline.”¹⁸

Consistent with this duty, the JCF has a very tall, hierarchical structure which approximates that of a military organization and which does not promote individual responsibility and responsiveness to the localized security priorities of citizens. This paramilitary orientation also tends to promote an approach to crime control that de-emphasises prevention and (even) investigation and rather promotes “crime-fighting.” A military organization is not designed for service delivery to citizens. Rather, there is (a legacy of para-militarism that induces separation from (and confrontational contact with) the people. A military orientation or “organization” is not amenable to consent-seeking policing. The JCF has, nevertheless, adopted an attitude to the public that verbally recognizes value in their cooperation and participation but behaviourally excludes and alienates them. A Jamaican police service should not be required to give war service and should not be organized for that purpose. Below we summarize the main changes at the level of purposes.

Below we summarize the main changes at the level of purposes.

Proposed Purposes, Responsibilities and Duties

We suggest that a clear statement of (re)purposing the police service be adopted and that it be included in the new Act. This statement of purposes assumes that the new service would, like the JCF be a general purpose service but may be one part of a larger system of policing that could include, for example, a specialized investigative force.

The duties and responsibilities should include the following:

- The responsibility to prevent, detect and investigate crime and ensure public order and, the duty to serve and protect citizens’ rights and freedoms.
- The duty to treat people fairly and equally, with adherence to due process and without discretion.
- The duty to help people, including and especially in emergency situations.
- The duty to comply with the law and thereby preserve the moral authority to enforce the law.
- The duty to respect and protect the inalienable rights of citizens. This element is a necessary feature of any consent-seeking police service. Such a duty contrasts with the existing situation whereby citizens’ rights may be practically suspended at every turn. For example, the police consistently disregard the freedom of movement of people.¹⁹
- The duty to give war service should be removed. There is no threat of a war, civil or otherwise that would warrant the “military organization” of the police service. It should

¹⁸ JCF Act (2012), section 3 (1).

¹⁹ JCF Act (2012), section 20.

have specialist units which are paramilitary in their organization but “military organization” need not be a feature of the entire police service.

Duty and responsibility carry an obligation to act. To be able to act effectively the police personnel must have the appropriate powers within the framework and constraints of the rule of law and a system of accountability for their actions.

The Powers of the Police Service

It is worthwhile to recall that the Jamaican police service, like every other police service, has the power and legal authority to use force against citizens, residents and visitors to Jamaica in an effort to enforce the laws and to protect themselves and others from harm. This is an exceptional power that is not enjoyed by any other institutions or individuals. The Jamaica Defence Force (JDF), for example, has similar powers but within the limited scope of the zones of special operations.

The powers of the JCF include:

- to stop and search vehicles with respect to stolen goods, dangerous drugs or illegal gambling (Section 19);
- to search persons on board any ship or boat (Section 17);
- to arrest without warrant any person found committing any offence (Section 15);
- to arrest under warrant (Section 16).

Proposed New Powers

According to a Gleaner article based on a draft of the proposed legislation, the new legislation will extend these powers, in particular, the power to stop and search. Specifically, the police be given the power to:

- stop and search any person or vehicle during a roadblock or checkpoint to restore public order or to ensure public safety;
- erect or place barriers in or across any road or street or in any public place for the maintenance and preservation of law and order or for the prevention or detection of any offence;
- search for weapons of crime during an investigation.²⁰

The above are the powers to stop and search individuals at will – be they on foot, in vehicles or in their homes. It is the power to make arbitrary stops and searches. The condition “to ensure public safety” replaces the requirement of reasonable suspicion and is a fig-leaf cover for the arbitrary exercise of that power. The granting of this power would formalize the present illegal practices of the police and, in effect, deprive the people of the democratic right to freedom of movement. There are at least three objections to this proposal.

First, random stops are an ineffective and inefficient way of controlling crime. For example, a police service whose strategy for responding to reports of stolen motor vehicles, is to erect roadblocks and to conduct arbitrary stops and search

20 Arthur Hall, “Police Makeover Closer-Draft Legislation Proposes Significant Changes to JCF” Gleaner, December 24, 2017 (<http://jamaica-gleaner.com/article/lead-stories/20171224/police-makeover-closer-draft-legislation-proposes-significant-changes>).

at these roadblocks, is working in ways that do not require any investigative skills and competences and is simply searching for needles in haystacks. Second, this suggestion is a clear and a dangerous encroachment on the freedom of movement which is a basic right in a democracy. It should not pass unnoticed. Third, these powers are contrary to the proclaimed commitment to ILP and to citizen security, if citizen security is to be taken as entailing the use of methods of policing that respect the rights of citizens. The new Act would thus be internally inconsistent and incoherent.

Recommendations

1. We recommend that the statement of purposes of the police service include:

- To prevent crime and to ensure public order.
- To uphold and protect the rights and freedoms of citizens, residents and all visitors to the country.
- To do the above fairly, firmly and with integrity.

2. We further recommend that Part II of the JCF Act calling out for military service and all other references to military service not be included in the new Act.

3. Consistent with the idea of citizen security and policing by consent, and drawing on the Police (Northern Ireland) Act 2000, we recommend that the new Act include in its “core policing principles” that, “Police officers shall

carry out their functions with the aim of securing the support of the local community, and of acting in co-operation with the local community.”²¹ These are agreeable core principles and we suggest that they be adopted by the Jamaican police service.

4. That the power to stop and search not be extended but rather be limited to instances when there is reasonable suspicion.

²¹ Police (Northern Ireland) Act (2000).

CHAPTER 3

POLICE GOVERNANCE AND ACCOUNTABILITY: PRINCIPLES AND ARCHITECTURE

Introduction

Any attempt at transforming the JCF must include provisions for a governance framework that is built on the principles of police effectiveness, operational independence, transparency and robust internal accountability and external oversight. After some three decades of attempted police reform, what is needed is an efficient governance framework that drives transformation via appointments, ensuring quality plans, the implementation of these plans, the setting of policing standards and a change in organizational culture. The new Act is an opportunity for the redesign of police governance and accountability.

Any demand for accountability is negated by a focus on national security and a narrative that emphasizes “solving crime by any means necessary.” Accountability is suffocated by the limited institutional mechanisms through which citizens can demand direct accountability. Furthermore, police oversight, as a mechanism for improving performance and protecting the rights of citizens, is yet to be accepted by police and citizens alike as a necessary and legitimate tool for realizing police reform.

In this chapter, we first highlight a set of selected core principles which ought to inform the new governance framework for the police service, and then review the various mechanisms and organi-

zational arrangements that animate these principles and provide effective governance of the police.

SECTION 1

Police Governance: Core Principles

Transforming the Jamaican police force means confronting its core values and reorienting them toward a better alignment with citizen security and democratic values (or be confronted by them as a coherent police subculture that is resistant to democratic change). This values-orientation of the police is “expressed in governance processes and in the orientation of the police organisation that such processes of governing seek to engender.”

However, the related concepts of police governance and accountability are best understood in concrete terms. In this regard, the processes of governing the police include:

- internal managerial processes (priority-setting, resource allocation, information strategies, and processes of appointment, training, promotion and discipline, for example); as well as
- external monitoring, collaboration and standard setting, including monitoring, local and central priority-setting, complaints handling, law reform and collaborative partnership arrangements.²²

²² Henry (2017).

Police values are evident in the above-stated internal and external processes; for example, appointments and promotions based on merit rather than loyalty to leadership or long service. Below we make elements of the value orientation of a service and citizen security-oriented police explicit in the form of essential organizing principles of police governance. These principles include a commitment to accountability, operational independence and citizen primacy.

Accountability and Transparency

The degree of commitment to accountability may be taken as an expression of the values of a police service. Accountability involves “how decision making power shifts from one person or group to another and the mechanisms in place to hold them to account for how they utilize decision making power.”²³

Accountability entails:

- assignment of responsibilities;
- an obligation to answer for those responsibilities including providing explanations for decisions and actions taken;
- surveillance of performance to ensure compliance with direction; and
- enforcement/reinforcement or possible sanctions and rewards.²⁴

Good systems of accountability ensure that there is both individual and organizational accountability and legal and administrative accountability, based on standards of service. Good systems of formal accountability are usually supported by informal accountability which involves mass media and civil society serving as a check on the police and government by demanding information, demanding high standards of policing and the enforcement of these standards.

Accountability suggests that the police are answerable for their actions and their performance in implementing crime control and prevention measures. The new Act should be unambiguous in its treatment of issues such as:

- the kinds of action that should be strongly discouraged by the new legislation;
- the purposes or ends of the system of accountability (service provision, protection of citizens’ rights, preservation of the rule of law); and
- the authorities to which the police should be answerable and the mechanisms through which the new police service should be held accountable.

Police accountability may be structured to ensure that there is “answerability” to:

- self, that is, internal administrative accountability for performance and standards;
- the law;
- the political executive;

²³ Lindberg (2009).

²⁴ Henry, op. cit.

- external oversight; and
- the public.

An efficient and reliable system of accountability is designed to enable the achievement of the elements and purposes of accountability such as promoting similar policing values, objectives and methods.

A greater measure of formal accountability to citizens is based on the principle of transparency. Police services worldwide now recognize that public trust is vital for their effectiveness in preventing and controlling crime, and that transparency is integral to building public trust and confidence. For example, the 1996 Police Act (UK) requires police agencies to become more transparent by providing information on police plans, performance and budgets.

Operational Independence: Safeguarding the Integrity of the Service

If police services are to be effective, then they must be fair and unbiased in their treatment of citizens. Experience suggests that a major risk to which the police service is exposed is that of political intrusion and with it, the politicization of crime and crime control. The principle of operational independence ought to serve as a firewall against this kind of political intrusion.

To function fairly and effectively, the police service must have a considerable degree of autonomy. Its leadership must be able to determine,

“within the framework of government policy and law, how to respond to security related issues and events and, how to allocate the resources that are made available to them.”²⁵ This is the principle of operational independence or operational responsibility. It is the space between lawful government policy and police decisions and after-action accountability.

This principle is stated in the JCF Act, Section 3 (2a). With this limitation on the powers of the minister, the practice of unwarranted political interference in the operations of the JCF has since been checked but not erased. Stronger mechanisms for animating this principle are required. For example, there have been constant efforts to influence the promotion of senior officers. Greater insulation of the police service from political interference in its operations means that the police service’s leaders must accept greater responsibility for its performance and general conduct. Responsibility means accountability. Operational independence must, therefore, be accompanied by robust systems of police accountability. Insulation without firm accountability may lead to police unresponsiveness to both the proper policy directives of the political administration as well as the security needs of the people.

Operational independence is a condition for the professionalization of the police. The Jamaican and international experience suggests that undue political influence on the operational working of the police tends to subvert the application of the merit principle to promotions. This reduces the quality of police leadership, introduces

²⁵ Osse (2006).

unfairness and bias in the investigation of crime and corruption, and makes the police more responsive to the powerful and less so to the security needs of the ordinary citizen. The principle of operational independence is a corrective measure to these problems.

This corrective strategy may, however, create its own problems. The experiences of both the West Kingston Commission of Inquiry and the PCOA, suggest that there is a pattern of use or rather abuse of the principle of operational independence by the JCF as it tends to use this principle as a shield against accountability for its performance, and against the law.²⁶

The police must be made to understand that operational independence goes hand in glove with accountability and does not represent a blind trust on the part of government and the public. It requires that the police:

- operate on the basis of public consent (within the framework of the law), as evidenced by levels of public confidence; and
- take responsibility for their decisions and operations, accepting liability when required, and to exhibit full transparency in decisions and openness to external scrutiny.²⁷

If operational independence is coupled with a lack of accountability it may also lead to a separation from the people and unresponsiveness to their security-related needs and a loss of awareness that the main purpose of the police is to serve the people. Civilian primacy is a useful corrective

principle in addressing this problem.

Civilian Primacy

The second principle which should permeate the system of governance is the principle of civilian primacy.

The JCF, which is to become the Jamaica Police Service, is an arm of the state. As such, it is accountable to the elected government. Democratically elected governments are expected to serve the people who elect them. They are expected to serve the public interest and are accountable to the public. Similarly, the police service is expected to serve the needs of the citizen.

The police service is expected to be responsive, but as Osse notes, this does not mean that it simply does whatever particular individuals or groups want it to do.²⁸ It must serve the public interest. It is by so doing that it is able to win public trust and confidence and to “police by consent.” And, if it is to serve the public interest effectively, it must be accountable to the public.

Civilian primacy is an important theme in democratic policing, even if it is not labelled citizen security. It is the idea that the police are accountable to citizens and to democratic principles. The principle operates on three levels.

- The police service takes its policy directives from and is accountable to the elected political administration. It does not make policy.

²⁶ This observation is based on my participation in the work of these two entities.

²⁷ United Nations Office on Drugs and Crime (2011).

²⁸ Osse op. cit.

- protection of the people is primary.
- The police are accountable to the people for service to the people.

If this last point is to be meaningful, the citizen must have some legal recourse in cases where the withholding of service by the police, or their negligence, has dire consequences for the citizen. Take the hypothetical case of a burglar entering someone's home some time after midnight. The person calls the emergency number of the police and is told that a patrol car will be immediately dispatched. A member of the household is raped by the burglar one hour after the call was made to the police. The police arrive at the scene of the crime after daybreak. This is an instance of a failure to serve and protect. An investigation of the events reveals that the police failed to act because they were primarily concerned with their own safety. We believe that the new Police Service Act should provide the citizen with some legal avenue to sue the police for negligence.

Civilian primacy means that police personnel are expected to take risks to serve and protect the citizen. It also ensures constraints on the use of force, the protection of citizenship rights, and accountability to the law. In the absence of civilian primacy as service to the people and as serving the public interest, the police will tend to become ineffective and perhaps self-serving. In the absence of civilian primacy as accountability to the citizen, there is always the risk of unchecked abuses and a policing-led deterioration in democratic rights and freedom.

SECTION 2

The Architecture of Governance

Having highlighted the core principles of police governance we will now turn to the structures and mechanism of governance, that is, accountability-to. As noted above, there are five areas of accountability-to. These are accountability to the political executive, the Parliament, the law, independent civilian authorities, and the public – directly and via the media. Here, we privilege external independent oversight. The Jamaican experience suggests that accountability to external independent civilian authorities is important for the proper functioning of legal, ministerial, public and even internal accountability.

Police Authorities

Police boards and authorities are such mechanisms. Police boards or authorities extend participation in decision-making and enforcement and separate the two power centres for policy and operations.

These authorities are usually crafted to foster a national consensus on crime control and policing policies. Properly run, they facilitate public confidence in the police service and ensure its efficiency and effectiveness.

Police boards fit within a larger governance framework which satisfies a separation of powers and strengthens the legitimacy of the police.

A good system should also satisfy the requirement of ensuring police effectiveness.

Typically, these boards or authorities are required to:

- receive, review and approve the strategic plans of the police;
- ensure that these plans are funded or approve funding;
- monitor and assess police performance and ensure that agreed standards of service are met;
- advise Parliament;
- appoint and (if necessary) dismiss the COP;
- receive complaints against and discipline senior officers; and
- consult with the population on how they are policed (see Table 1).

Their effectiveness turns on their powers and authority. These powers may include:

- unimpeded access to information (PCOA);
- hiring and firing the COP;
- promoting and demoting senior police officers; and
- enforcing their decisions on pain of legal and administrative penalties.

Boards or authorities may be discussion-making and decision enforcement bodies (South Africa and Finland) or they may be advisory (England and Wales). Advisory authorities usually have difficulty coping with police resistance to accountability.

There are different approaches to constituting these authorities, each with unique contexts and challenges. In fact, even across the United States there are more than two hundred independent oversight institutions of different types. Any blueprint adopted should, ultimately, be guided by our experiences, peculiar needs, objectives and level of support (to include political and financial support). There are three basic approaches to constituting these boards or authorities.

The first type of board or authority is minister-centred in that it is structured to ensure ministerial leadership. Here, the minister of national security (or justice) chairs the authority. The other members, thus, act as a check on the power of the minister. The state police boards in India are constituted in this manner.

Some of the strengths of this type of board are that it:

- facilitates unfiltered reporting to the minister, but in the presence of other independent actors who may offer different assessments of the issues and different suggestions for courses of action;

- offers opportunities for quick decision-making that commits state resources and legal authority; and
- allows mediating influences on ministerial accountability to be formally structured and made visible.

Ministerial presence, however, presents difficulties when the police, as in the case of the Major Organised Crime and Anti-Corruption Agency (MOCA), investigates corruption and criminality in government and may even have to investigate a minister.

A variant of this type of board or authority is one on which the minister does not sit as a member but which is nevertheless purely advisory to the minister. The Police Advisory Board for England and Wales is an example of this variant (see Table 1 below).

The second type is independent-member-centred. It is chaired by an independent authority and, ideally, is structured for consensus decision-making. It stands as a thick intermediary between ministry and police and between state and citizen. One configuration of this type of authority is the Northern Ireland Police Board (see Appendix 2).

The strengths of the Northern Ireland Police Board include the following.

- It consolidates the powers of oversight and accountability (for robustness).
- It is independent (of the political administration).
- It is structured to bring crime prevention and control and other relevant expertise directly under the board. It comprises the dual elements of integrity and competence (senior civilian staff).
- It incorporates citizen participation.
- It has a strong element of local accountability in the form of district policing partnerships (DDPs).
- It gives policy direction and ensures accountability (both institutional and individual accountability).
- It has powers of enforcement.

Such an approach approximates the Electoral Commission of Jamaica (ECJ) model in that it is designed to facilitate consensus decisions on difficult matters in which the political parties are important stake-holders.

This type of board is more likely to work effectively if the following elements are in place:

- The method of appointing the independent members is appropriate and actually delivers the intended outcome. In the case of the Northern Ireland Police Board, the minister appoints the independent members. In the Jamaican context, such an approach would cast doubt on the independence of the members who are so designated. We believe that the method used for the ECJ works.
- There is a competent administrative support staff that provides it with independently-acquired information and evaluations of police work.
- Its powers are sufficiently robust that it may effect changes in police behaviour (plan and budget approval, hire and fire, promotions).
- It has the power to enforce its decisions

The third type of authority is a variant of the second. Here, the authority is composed exclusively of civilian experts. The number of ex-police members is limited to one retired senior police officer. There are several advantages to this type of authority. Being a panel of experts means that it contributes to reducing the tendency for policy-makers to over-rely on police experience in policy-making. Over-reliance on police advice is the case in many Caribbean countries where there is limited policing and crime prevention expertise in government ministries, universities and other sites which are outside of the police forces. Such a board, or authority, is better able

to integrate police experience and expert knowledge. There is greater reliance on evaluations and institutional learning as methods of improving police effectiveness. Moreover, it mediates between police and government and, state and citizen. It may thereby assist with building trust and confidence in policing policies. It is less likely to be a forum for fighting ideological-political battles over policing policies.

A board composed exclusively of experts may however result in undue technical influence on policy and insulate the police from pressures from citizens for improved service. This type of authority may work best as one component of a larger architecture of governance which includes the other critical policy actors and the public.

The Scottish Police Board is an example of this type. It is led by a chief executive officer and has considerable capacity to independently monitor and assess police performance. The features of this board are described in table 1.

The Conditions for Success

Selected conditions for the success of an independent police authority include the following features.

Independence

Thus far, we have categorized police authorities or boards by their degree of independence and expression of the set of principles of police gover-

nance that we have advanced. Independence of the political administration safeguards the integrity of the authority and is a condition for its effectiveness. The degree of independence of the authority may vary depending on how appointments to the authority are made.

Evaluation

An effective authority/board must have the powers and the capability to independently assess the performance of the police. It should not be totally dependent on the police for information and should not be solely reliant on the self-assessments of the police. It is by means of independent assessments of police performance that it ensures accountability, the consistent application of the merit principle and thus police effectiveness.

Enforcement

Another critical aspect of these boards which determines their effectiveness in discharging their functions and in effecting change in the style and methods of work of the police is if they have the legal authority to evaluate the work of the police and to enforce their decisions. Advisory authorities (to the political executive or to the Parliament) are likely to be ineffective.

Local accountability and participation

Local accountability is important to ensure police responsiveness to local priorities. Community or area or partnership boards are ways of ensuring local accountability and are useful channels for

citizen participation in ensuring their own security and how their neighbourhoods are policed. They are also sites for confrontation between the police and citizens – as is the experience of the District Policing Partnerships of Northern Ireland, now the Policing Community Safety Partnerships (PCSP).

Public access/reporting

The oversight institution must be easily accessible to the public to receive complaints about policing services. It must also facilitate regular reporting to the public about the service being provided by the police and the civilian oversight entity. This engenders transparency and accountability.

Secure funding

Financial support should be secure and sufficient to eliminate potential manipulation that may affect the integrity of the oversight organization and its operations.

The above-stated conditions are associated with effective authorities. We are not asserting they are all necessary conditions and that together they are sufficient. It may be possible to make considerable advances in police oversight and performance even with just a critical subset of these conditions being satisfied.

Recommendations

The government is already at an advanced stage of preparing the legislation to bring a police authority into effect. The PSC and the PCOA are to be merged in this regard. We endorse this effort. The challenge is to ensure the effectiveness of the new entity. We recommend the following.

1. The new Act should better define operational independence to ensure that the boundaries between the field of responsibility of the minister and that of the COP are more discretely drawn.

2. The police authority should be structured to promote consensus policies (that is, along the lines of the ECJ,) given the degree of distrust of the police and of government.

3. The creation of a consolidated police authority with powers of enforcement, given the record of police resistance to oversight.

4. The Act should make the police service directly accountable to citizens. Direct accountability may be achieved the following measures.

a) A provision that allows citizens to bring civil cases against the police service (not just individual officers), along the lines of the provision in the Violent Crime Control and Law Enforcement Act (USA) 1994.

b) Requiring the police service to make public its performance in relation to its plans and targets.

c) Requiring the police service to produce an annual report on its performance for submission to Parliament and to be made public.

d) Requiring the police authority to produce an annual report and to make this report easily accessible to the public.

TABLE 1
External Oversight Public Boards – Examples from the UK

Type of Police Board	Source of Authority	Functions/ Responsibilities	Leadership	Departments	Civilian/ Membership
<p>Type 1(B)</p> <p>Police Advisory Board for England and Wales</p>		<p>A non-departmental public body under Section 46 of the Police Act 1964 which operates as a stakeholder group.</p> <p>Advises the Secretary of State on general questions affecting police in England and Wales.</p> <p>Considers draft regulations to be considered by the Secretary of State on police reform, pensions, conditions of service and matters referred to it by the Secretary of State.</p>	<p>Body of experts appointed by the Secretary of State.</p>	<p>Consists of expert working parties which also have members with specialist knowledge in management and related policing issues.</p>	<p>Included in expert working parties.</p>
<p>Type 2</p> <p>Scottish Police Authority (SPA)/ Board</p>		<p>To maintain and promote policing principles and continuous improvement of policing and to hold the Chief Constable to account.</p> <p>SPA is the legal employer of all police staff in Scotland.</p>	<p>Has a senior management team with various Director positions who are also specialists in disciplines such as forensics, governance and policy development.</p> <p>The Chief Constable has the overall responsibility for the administration and management of police operations.</p>		<p>Of eleven board members only one has serving experience as an officer and was also a Chief Constable.</p>
<p>Type 3</p> <p>Northern Ireland Policing Board is an independent public body established to ensure that Northern Ireland will have police that has the confidence of the entire community.</p>	<p>Established under the Justice Act 2011.</p>	<p>Secure an effective and efficient local police service.</p> <p>Appoint (and dismiss if necessary) the Chief Constable, Deputy Chief Constable, Assistant Chief Constables.</p> <p>Consult widely with local people on how their areas are policed.</p> <p>Set priorities and targets for police performance.</p> <p>Discipline senior officers.</p> <p>Oversee complaints against senior officers.</p>	<p>Led by a chief executive officer who supervises a performance directorate, partnership directorate and resources directorate.</p>	<p>Has district policing partnerships which consult with local councils. Made up of independent members and political members who represent their district on local councils. Criticized for not having enough reliable performance indicators. They also experience low levels of public attendance at events and confrontations between police and members. The expected outputs from the DPPs are were not standardized and could range from reviewing statistical data to developing policing plans.</p>	<p>The Board is made up of nineteen political and independent members. Ten belong to the National Assembly and are appointed based on d'Hondt principles while the other nine are independent members appointed by the Justice Minister.</p>
<p>Also for consideration: Police and Community Safety Partnership (Northern Ireland)</p>	<p>Established under the Justice Act 2011</p>	<p>Consults and engages with the local community on issues of concern in relation to policing and community safety</p> <p>Identifies and prioritizes issues of concern and prepares plans for these.</p> <p>A policing committee that is composed of local political and independent members monitors the performance of the police and works to gain the cooperation of the public</p> <p>Delivers a reduction in crime and enhances community safety in their district.</p> <p>May establish delivery groups to address particular community safety issues that arise in their areas.</p>	<p>Is a statutory body bringing together in one partnership, the functions and responsibilities of District Policing Partnerships (DPPs) and the Community Safety Partnership (CSP) building on the most useful and effective aspects of each, while operating in a more streamlined way.</p> <p>There are eleven partnerships across Northern Ireland.</p> <p>Funded by the Department of Justice and the Northern Ireland Policing Board.</p> <p>The Chair is a councillor and the Vice Chair is an independent member.</p> <p>A code of practice regulates how meetings proceed and the functions of the meetings.</p>		<p>Ten political members and nine independent members selected by the Northern Ireland Policing Board.</p>

CHAPTER 4

TERMS OF SERVICE AND WELFARE

If the police force is to be service-oriented, fair, respectful of the rights of citizens and effective, then it must be treated fairly, respectfully and with due regard for the rights of its members. The externally-projected principles must be enacted internally; the internal must be a model for the external. Fairness in the internal affairs is more likely to encourage fairness in their encounters with citizens. In this chapter we highlight issues of fairness in the terms of service and general welfare of police officers – much of which we think should be protected by the new Police Service Act.

Fairness in Recruitment and Promotions

The principle of fairness must be applied to the recruitment practices of the police service. For example, in most police services in the Caribbean and Latin America, women account for no more than 20% of the members. This outcome may be shaped by a gender differentiated pull of the occupation. It is largely (but falsely) seen as a “man’s job” and, therefore, it disproportionately attracts men. Fairness that leads to a significant and impactful increase in the proportion of women in the police service may or may not yield positive transformations in how policing is done. However, we may imagine its potential for changing police-citizen interactions (when for example, there is a large enough proportion of females in the service).²⁹

Indeed, with the creation of new structures, it has already changed how the investigation of the victims of sex crimes are treated. One aspect of moving towards greater fairness would be a significant and meaningful increase in the number and proportion of women in the police service. This would be important in its own right, as a general move towards gender equality and its concomitant uplift of the dignity of all humans. It may also yield positive transformations in how policing is done, for police-citizen interactions, and the investigation of certain crimes—for example, sex crimes where the majority of victims are women.

The police services may also be discriminatory in their recruitment, work assignment, promotions and other internal practices. These and other forms of discrimination that are experienced by police officers are likely to be reproduced in their relations with the general public.

A basic principle that promotes fairness is that the selection criteria for entry should conform to the requirements of entry-level jobs, the promotion criteria for supervisory positions (and ranks) should conform to the requirements of those positions and similarly for the managerial or officer level positions. This principle should be stated in the new Police Services Act so that aggrieved police officers at all levels may seek redress in the courts and thereby also make the system truly conform to the legally-proclaimed principles. In this way the Act may be a tool for fairness and change which is put in the hands of all members of the police service.

²⁹ I am not suggesting that women are a kind of universal class that will lead us to a utopia. The idea of a universal class is a rather doubtful one – be it Weber’s bureaucracy or Marx’s proletariat. Gender equality is, however, a good idea – simply for lifting the dignity of all humans.

Fairness in promotions is a vexed issue within the JCF. The JCF has a formal system of examinations and evaluations for promotions. However, there are perennial complaints from police personnel that the more objective and transparent aspects of the formal system are made to yield to an over-reliance on the recommendation of the officer in command and the discretion of the COP. The true criteria for promotions are unstated and vary with the recommending officer and the personal biases of the COP.

Fairness may be better achieved by anchoring promotions in the merit-performance principle. Examinations may test the knowledge requirements for the (destination) rank. However, the ability to pass these examinations is not an indicator of past achievements nor is it measure of the likelihood of future achievements. Formal job-rank performance assessments should be a requirement for promotions. We make this point because, in the JCF, these assessments are done but they are not consistently used. There is a staging of the formalities of good practices but a backstage reality of informalities that are contrary to the formal processes. These assessments should not be equated with the recommendations of the commanding officer or the COP. And, in the case of senior officers, these performance assessments may be made by both the relevant office of the police service and by a new and capable police authority.

Peer assessments are an added way of ensuring not just fairness in promotions but also an appearance of fairness. In the professions, peer

assessments matters most. In the case of senior police officers, the people who work alongside them in day-to-day problem solving are able to assess their leadership and managerial contributions, their work ethic and integrity. We recommend that promotion panels composed of peers be a part of the promotion process for all officers at the rank of superintendent and above. Thus, for example, a panel of superintendents and senior superintendents could assess all candidates for promotion to the rank of superintendent and make recommendations which may or may not be endorsed by the COP before being submitted to the Police Authority. Promotion panels are not uncommon. What is new here is the suggestion that there be panels of peers.

We have tried to show that fairness is not simply a good in itself. It promotes merit and thus has the potential to improve police morale and performance.

Terms of Tenure

At present, after the completion of a probationary period of two years, the constable is enlisted for three years. Thereafter he or she is offered a renewable term of five years. However, in practice, after the probation period the constable enjoys security of tenure.³⁰ There is an expectation of lifetime employment and a proprietary claim on “their job”. Short of a criminal conviction, the constable and his/her job are almost inseparable.

³⁰ These contractual arrangements are stated in the regulations which accompany the JCF Act.

The JCF does not explicitly state the conditions which would warrant the dismissal of a constable. Rather, it devotes much effort to restricting the ability of the constable to leave the force. Thus, the JCF Act states: “no Sub-Officer or Constable of the Force who has not been enlisted for a term (five years) shall be at liberty to withdraw himself.”³¹

The JCF Act did not seem to anticipate the degree to which it would become necessary to fire police personnel to protect the integrity of the force and to ensure effective service delivery. There is great difficulty in firing corrupt and non-performing constables. In instance after instance, separation from the force is resisted on grounds that the constable has a reasonable expectation that his or her contract will be renewed.

This ironclad tenure was intended to be a shield against political intrusion. Viewed historically, this protective device was warranted – especially in the case of the senior officers who tend to interact with the political executive and who make the important day-to-day operational decisions. Security of tenure, however, did not prevent the deep politicization of the police service. Indeed, in the not too distant past citizens would refer to many police officers as “JLP police” and “PNP police”. It did not enable the leaders of the JCF to check the political interference in the affairs of the Force, which then compromised its ability to be fair to all and its effectiveness in preventing and controlling crime (for example, turning a blind eye to the garrison problem or policing garrisons selectively).

Since the 1990s however, there have been great advances in promoting politically impartial policing and reducing political influence on the day-to-day operational workings of the JCF. The revision of the JCF Act in the 1990s recognized “policy” as the legally approved domain of the political administration, and “operations of the Force” as the domain of the COP. This was an attempt to fix the problem of ministerial interference in the operations of the JCF.

The problem of security of tenure has, however, remained. It is very difficult for the JCF to separate itself from corrupt and incompetent junior and senior police personnel within its ranks, and presents a huge obstacle to the effectiveness of the police service.

The new Police Service Act should:

- offer police officers of all ranks equal protection under the labour laws;
- permit easier separation from the police service to protect the integrity of the service and ensure performance;
- wed the COP to performance criteria and make loss of the confidence of the authority sufficient grounds for firing the COP; and
- explicitly state the conditions under which all police officers may be fired.

³¹ JCF Act (2012), section 5.



Specialist Positions

The JCF is a general policing organization that promotes the formation of generalists. A general police service, however, needs people with specialist skills: crime type specialist investigators, different types of forensic experts, logistics experts, and lawyers among other specializations. It must be able to recruit people as specialists, facilitate mastery of their fields of specialization and encourage their retention as specialists.

The JCF has the practice of training staff as specialists then deploying them in ways that their training and specialist knowledge is not used, in effect they continue to work as generalists. Highly-trained specialists should not do low-skilled generalist jobs. No sensible Chief Medical Officer at a hospital would assign a senior cardiologist to do the job of an admissions clerk on the grounds that such an assignment better prepares the cardiologist to become a Chief Medical Officer. And yet, these kinds of assignments are done in the JCF and are largely unnoticed. Moreover, the COP does not have to account for the waste of human resources and the demoralization of highly-skilled specialists that results from these practices.

To make the most effective use of its specialists, the police service must chart clear career paths for these people. And, it must reinforce the turn to greater acceptance of specialization by having salary scales that reward specialization, rather than purely rank-based salary scales.

We recommend that the new police service define the specialist posts and occupations that are needed by the organization. Applications for those posts should be based on the qualifications for the particular jobs. Once appointed, constables are entitled to work in their fields of specialization unless they choose to do otherwise or if they fail to meet the integrity or performance requirements.

We further recommend that promotions be based on job analyses. Candidates must be assessed for their competence in relation to the destination post. The new Police Service Act should be crafted to make it possible for a candidate for these posts to legally contest any outcomes that favour incompetent candidates. Such an approach would ensure that the new Act would be crafted so that it may be used as an instrument for the professionalization of the police service.

We now turn to the issue of discipline.

Discipline

Discipline is about correcting behaviour. In the case of the police, it is about correcting the behaviour of powerful people (relative to citizens) who abuse their power.

The disciplinary regime of the police service should:

- promote and ensure observance of the rule of law by police officers;
- protect the integrity of the service and the individuals within it;
- encourage service accountability; and
- uphold the protection of the public.

Toward these ends, the system of internal discipline and accountability should become more meaningful.

It is not just the behaviour of individuals that must be corrected but, at times, the behaviour of whole units. The establishment of the Inspectorate of Constabulary (IOC) ought to have been a crucial step towards improved internal accountability and discipline. However, the IOC has been ineffective. It should be strengthened in terms of its capacity to monitor the performance of the various units of the police service and be able to ensure that the internal systems of accountability actually work to make the organization more performance and service oriented.

Internal discipline and accountability are undermined by a police occupational culture that is marked by loyalty as a primary value. Loyalty is expressed as solidarity with colleagues regardless of their conduct. This then leads to police federations coming under great pressure to protect their members irrespective of the nature of the offences that they commit. Undue pressure on the part of the police federation may impede the ability of the COP and the PSC to protect the integrity of the police service.

It is for good reasons, therefore, which are grounded in the experience of the JCF and other national police services, that the JCF Act prohibits the involvement of the Police Federation in matters of discipline. The JCF Act states that “no representations shall be made by the Federation in relation to any question of discipline, promotion, transfer, leave... unless some question of principle is involved.”³² The difficulty is that so many issues may be made to become questions of principle.

We believe that questions of principle may be pursued based on supporting evidence which suggests a pattern of principle-violating behaviour rather than by the Federation’s direct involvement in litigating individual cases. We suggest that the qualifier “unless some question of principle is involved” be removed.

Solidarity undermines internal discipline but, moreover, it also undercuts accountability to law. And, it does so in different ways. It suppresses whistle-blowing and truth-telling during the investigative process, and it encourages challenges to the disciplinary process as law violators know that they will not be socially ostracized if they are returned to duty within the Force.

The case of Constable Derron Nish illustrates this point. It was reported in the Jamaica Gleaner and is reproduced in full as follows:

The Supreme Court has granted an order quashing the decision of the Commissioner of Police to discharge Constable Derron Nish from the police force in August 2013 and to refuse him permission to re-enlist in the Jamaica Constabulary Force.

Justice Kirk Anderson found that the then Commissioner of Police, Owen Ellington, did not give Nish an opportunity to respond to a polygraph test which he was told he had failed.

The judge said that was unfair to the policeman.

The Commissioner of Police, who was the respondent in the claim, was ordered to pay 50% of Nish’s legal costs.

Justice Anderson ruled that if Constable Nish wishes to re-enlist in the police force, he will have to re-apply and a fair hearing will have to be afforded to him. The judge said if a hearing is to take place Nish has to be informed of the reasons it was recommended that he be barred from re-enlisting. He must also be provided with a copy of the polygraph test results.

Constable Nish was arrested and charged in 2010 with illegal possession of firearm, kidnapping, obtaining money by means of false pretence and fraudulent use of a licence plate but he was freed of the charges.

³² JCF Act (2012), section 67(2).

Nish said after he was freed he received a letter from the police commissioner in November 2012 that he would not be recommended for re-enlistment (my emphasis) on the basis of the charges that were laid against him. It was also stated in the letter that his integrity was sullied and he was accused of discarding his service pistol on the compound of the Matilda's Corner police station. Nish denied the allegations stating that he had handed over his firearm to a policeman.

Constable Nish and his lawyer subsequently attended a meeting with the Commissioner of Police in January 2013 and agreed to do a polygraph test. He was informed at a further meeting in August 2013 that he had failed the polygraph test and was told that he was dismissed from the Force.

*Justice Anderson ruled that the then Commissioner of Police should have afforded Constable Nish the opportunity to respond to the test results.*³³

Several of these types of disciplinary cases involving criminal offences are contested on procedural grounds as instances of wrongful dismissal.³⁴ What stands out in this instance is the refusal to yield even when the substantive violations are criminal and when the issue is not dismissal but rather separation after the expiration of a contract. This case illustrates the point that continuous service is regarded as an entitlement and that only a criminal conviction is seen as acceptable grounds for dismissal. When similar cases are fought, usually on procedural grounds, it becomes difficult and costly to maintain the integrity of the JCF. A right-thinking COP may be worn down by these tactics.

This type of resistance to discipline and the concomitant litigated outcomes are even more likely in police services where there is a single police culture, that is, there are no distinguishable “street cop” and “management cop” cultures. This is the case in the JCF where most officers are promoted from the lower ranks well after they have become deeply acculturated in the street cop culture. A single police culture means that there is a single—and thus deep and near impenetrable—police solidarity across ranks, and this weakens internal accountability. This is a core problem that must be fixed by new methods of producing police leadership.

³³ “Dismissed Cop Wins Case Against Former Police Commissioner,” Gleaner, February 19, 2018. (<http://jamaica-gleaner.com/article/news/20180219/dismissed-cop-wins-case-against-former-police-commissioner>)

³⁴ See, for example, the case of O'Connor versus the PSC. Barbara Gayle, “Hux’ Exonerated,” Gleaner, March 9, 2013. (<http://jamaica-gleaner.com/gleaner/20130309/lead/lead82.html>)

Recommendations

1. The Act should recognize the right of police personnel to assembly/organization to promote their welfare and professional development.
2. It should prohibit any interference in the disciplinary process by the Police Federation or any other organization of constables including the Police Officers' Association.
3. Promotion panels composed of peers should be a part of the promotion process for all officers at the rank of superintendent and above.
4. The police service must chart clear career paths for specialists. It must reinforce the turn to greater acceptance of specialization by having salary scales that reward specialization, rather than purely rank-based salary scales.
5. The COP (and the PSC or new Police Authority) should be explicitly assigned the duty to protect and promote the integrity of the police service.

The success of these recommendations for improved internal discipline is largely dependent on the existence of a strong cadre of leaders and supervisors who are willing to hold subordinates to account, beginning with the COP.

CHAPTER 5

TERMS AND CONDITIONS CONTINUED: THE SPECIAL CASE OF THE COMMISSIONER OF POLICE

Introduction

If the JCF is to be transformed into a police service that is responsive to the security needs of the Jamaican people and protective of and helpful to them, then this process of transformation must be led by persons and entities that have the legal authority, powers, duties and responsibilities to bring about this transformation. Leadership matters, and the quality of leadership of the COP matters greatly.

The JCF is centralized, hierarchical and powerful. The COP sits at the apex of this hierarchy and the centre of power. His or her powers are such that his decisions are usually unchallenged inside and outside of the police service. The new Act must define the COP so that the holders of this office are competent, responsible and accountable leaders of the change process.

Powers of the COP

In the interest of the effectiveness and efficiency of the police service, its leadership should be given the power and control over the resources that are required to get the job done. Here, the operating principle is that one cannot be reasonably held accountable if they are not responsible and if they are not given the necessary tools for the job.

However, given these powers and resources, the COP must be held to account for the performance of the service.

The COP:

- directs the operations of the police or, in the language of the Act, “has sole superintendence of the Force;”
- appoints the entry level constables, meaning that the COP has the power and responsibility to set the entry standards and the standards of training that will ensure a quality entry level constable;
- has the power to make promotions up to the rank of sergeant, that is, promotions to all supervisory positions. The supervisory ranks are directly responsible for the quality of service to the public;
- may recommend senior appointments inclusive of his staff at the High Command; and
- has the authority to dismiss members of the service who hold a rank which is lower than that of deputy superintendent of police (DSP).

For effectiveness, the COP must be responsible, enjoy considerable autonomy and be accountable. A review of the police service Acts for several Caribbean countries and selected others from elsewhere suggests the following types of configurations for the position of the COP:

- High autonomy and responsibility, with ministerial accountability (the London Metropolitan Police Service);
- High autonomy, weak responsibility, with ministerial accountability (Jamaica);
- Low autonomy and strong ministerial control (Guyana); and
- High professional autonomy and high accountability (Northern Ireland).

These variations are described in Table 2 below. We regard the full responsibility-high autonomy-high accountability approach as the ideal.

In Jamaica, the law provides the COP with considerable autonomy. It also vaguely outlines the responsibilities of the commissioner as having “superintendence and control of the police force.” In these cases, with some exceptions, performance and service delivery tend to be problematic. For example, while the COP has responsibility for recruitment and promotions to the level of senior superintendent of police (SSP), and influences promotions at the commissioner ranks, he/she has little control over the budget and day-to-day expenditure of the JCF. Plans (as an instrument of accountability) without funding are pointless.

This ministerial control of expenditure may be used to escape performance accountability to the public. Budgetary control is an important means of control that may be exercised by the ministry. It is not a tool that the political directorate is likely to surrender lightly.

The JCF-Jamaica case may be contrasted with the high autonomy-responsibility and high accountability ideal (Northern Ireland). This is the ideal type where transformation is required as in the case of Jamaica – and both the COP and the Police Authority are expected to drive citizen security service-oriented change processes.

High accountability signals a seriousness with outputs as service and outcomes as low crime rates and citizen satisfaction with their police service. Plans and performance targets are required and taken seriously. This is how meaning is given to service orientation, transparency and accountability. Other police services have this element as a legal requirement (but do not have a sufficient bundle of features to be clarified high autonomy and high accountability service). Thus, for example, in the Bahamas and in South Africa, their police service Acts outline the production of policing plans and performance targets as legal requirements that the commissioner must meet and be held accountable for, but they do not have the elaborate system of external accountability that exists in Northern Ireland. Answerability is primarily or solely to the minister; not an independent police authority.

Restrictions on the Powers of the COP

The power to transfer all constables regardless of their rank is a means by which the COP may ensure the effectiveness of the police service. The COP should retain this power. However, given the Jamaican and Caribbean experience, there should be limits. A police authority should be legally empowered to probe the patterns of use of this power and to call the COP to account for any misuse or abuse of this power and any maladministration of the police service that may be associated with these practices.

There are at least two problems that the unrestrained power of the COP to transfer has created.

- The assignment of highly trained specialists into non-specialist posts. We believe that we understand the rationale for some of these postings. In preparation for higher leadership, officers may be given different types of postings to afford them a wide range of experiences. As noted in the previous chapter, this approach, on one hand, puts to waste the investments in the specialist development of these officers and, on the other, displaces them with non-specialists who are required to lead specialist units of the service. Waste and ineffectiveness are introduced when specialists are treated as generalists and generalists are treated as specialists.

If the JCF is to remain and the new police service is to be a general police service that treats its gazetted officers as generalists, then policing specializations must be allowed to develop elsewhere.

- The misuse of transfers as rewards or as substitutes for disciplinary measures. We need not elaborate on the use of transfers as rewards. As disciplinary measures which cannot be admitted to be disciplinary measures, transfers are used to disrupt and to punish corrupt behaviour among police officers. However, by transferring corrupt officers (rather than seriously investigating them and removing them from the Force) the COP may unwittingly spread corrupt practices across the Force and extend the corrupt networks that exist within the Force. This outcome, we believe, is similar to that which resulted from the Roman Catholic Church's transferring paedophile priests. Once transferred they simply continued their behaviour in their new location. Transfers are a method of problem avoidance by weak leadership. Competent and morally strong leadership solves problems.

Given these experiences, we recommend the following measures.

- **Divisional and sub-divisional commanders or managers be appointed (to that specific post) for a renewable term of two or three years. If they are transferred within this period without their consent, and without good reason, then they may appeal to the Police Authority.**

- Appointments to the leadership of specialist units should similarly be for a fixed period.
- Removal from a post (prior to the termination of the specified term of appointment) must satisfy at least one of the following conditions:
 - o promotion
 - o negligence or/poor performance
 - o conviction in a court of law
 - o engagement in corrupt practices,
 - o abuse of power.

Some of the Indian police services have several of the above-stated restrictions on the powers of the COP.

The system of external accountability is, perhaps, the most important check on the power of the COP. This aspect was discussed in chapter 2. For emphasis, we repeat the following. The Act must:

- require the COP to have a crime prevention and control plan and performance targets;
- submit annual reports to the Police Authority, the Parliament and to the public; and

be compliant with the access to information provisions in the Police Authority Act and any authoritative efforts to assess his or her leadership performance and the performance of the police service.

Appointment of the COP

Given the powers and responsibilities of the COP and the importance of his/her role, success for the

general wellbeing of the society and the hugely negative consequences of role failure, the procedures for filling this post should ensure that only candidates of the highest integrity, competence and leadership capability are selected to fill the post.

The post of COP should be open to all qualified Jamaicans (naturalized or otherwise) within as well as outside of the Jamaican police service. At this stage of national development, to restrict the pool of applicants to members of the JCF would be to deny the JCF and Jamaica of capable leadership that may be available elsewhere.

The COP is appointed by the Governor General on the advice of the Police Services Commission (PSC). There are and should be a number of steps in this process. We believe that the PSC or Police Authority should short-list the applicants based on merit criteria and by matching the competencies of the applicants with the situational-appropriate (leadership and management) requirements of the job. It should then consult with the prime minister on the selection of one of the short-listed candidates. The PM should then consult with the Leader of the Opposition in an effort to make the COP a consensus candidate. If the shortlist consists of no more than three applicants, then the process could possibly take two cycles. On the completion of these consultations, the PSC would then recommend that the selected candidate be appointed by the GG for a specific period.

We believe that a COP cannot be effective if she or he does not have the confidence of the Prime Minister. Neither is such a person likely to be effective if he or she is perceived to be an active carrier of party biases and given to introducing discriminatory practices within the police service and in its service to the people. We also believe that it has been the (wise) practice to consult the PM on such appointments and that it is best to formalise and make transparent his or her role in the process of appointing the COP. This recommendation does not permit the PM to freely select the COP. The Jamaican and wider Caribbean experience suggests that there is a danger (of politicization) in giving the PM such unrestrained power. We propose a process which gives the PM a limited choice and in so doing protects the merit principle and encourages the selection of a consensus candidate.

As noted above, the qualifications for this job should be based on a job assessment which should be documented and made public.

To safeguard the integrity of the office of COP and to ensure the effectiveness of the police service, all short-listed candidates for the post should be rigorously screened via a process in which the PSC and the public are able to have full confidence. The integrity standards to be met and the methods for determining that they are met should be stated in the regulations (which accompany the Police Service Act).

The period of appointment should be for three years and should be synchronised with the strategic planning cycle so that the performance of the COP may be measured by the progress and end of term evaluation of the plan. No COP should be permitted to serve for more than two or three terms.

The Dismissal of the COP

The serving COP may be separated from the post under the following conditions.

- Their contract has come to an end. The relevant authority should be permitted to separate the incumbent COP from that post at the end of the contract term. There should be no expectation of contract renewal unless the relevant authority indicates intent to offer a renewal of the contract.
- If found to have knowingly adopted or approved policies, strategies and tactics in crime control or public order policing which violate the laws, constitutional rights and freedoms of citizens or court rulings (as in the case of the Vehicle Check Point policy which persists despite a ruling of the court.)
- Unsatisfactory performance including the failure to meet planned performance targets.
- Abuse of the powers of office.
- Involvement in other corrupt practices.
- Obstruction of oversight and external accountability.
- If suspended or demoted in rank.

- Incapacitation by physical or mental illness.
- Loss of the confidence of the police authority (PSC).
- the post of COP and other senior leadership positions be closed to external applicants and explicitly require as a condition for consideration for these position that the applicant be a member of the JCF.

Producing Quality Leadership

The police service should have a system for producing and reproducing its officers so that a large pool of highly-qualified and tested leaders are available to fill the highest leadership post in the organization. Good systems may be expected to reliably produce good leaders and ensure that the best persons are elevated to the position of COP.

We believe that any impartial observer would admit that the present system for producing the leadership of the JCF is problematic. Bad systems may occasionally produce good leaders, but most of the time they will generate a leadership pool that is inadequate to the challenges. The leadership problem of the JCF is a system problem; most of all it is a problem with the leadership pool. The JCF almost exclusively pulls its highest leadership from persons who entered the Force in the lowest rank.

In the process of drafting the new Act, two measures are proposed by the government committee to maintain this system and to prevent (not simply frustrate) any effort to change it:

- direct entry to the officer ranks by non-members of the police service should be blocked (this would end the practice of periodically permitting a limited number of direct entry applicants) and;

In combination, both measures would reliably ensure the replication of a failed system.

In recent years, there has been a significant change in the educational qualifications of the leadership and general membership of the JCF. Several senior officers now have post-graduate degrees. Education, and especially schooling, tends to have powerful positive effects on people. However, when these changes in educational attainment occur at late stages of their lives and careers, it becomes rather doubtful that education is likely to yield the benefits of new ways of thinking about core leadership and management issues, new ways of making decisions, new ways of processing ethical problems and new ways of behaving.

The core leadership issue is the willingness and ability to transform the ways of doing police work and to ensure performance via internal accountability (or at least to achieve the latter), and to protect the integrity of the organization. (I distinguish the leadership from the managerial challenges). The leadership issue thus may be reduced to a matter of having the personal courage to challenge the occupational culture and the shared conduct norms, values and assumptions that may be found in the police force. A management culture will have to be created by a critical

mass of change agents at different levels of leadership but, most of all, by those at the top of the hierarchy, who must lead by example.

The present configuration of external oversight must assist this process but it has its limitations. The rules and operations of the PSC appear to be based on two key assumptions. The first of these is that the police organization is a healthy system. Hence the difficulty of firing police personnel and the dependence of the PSC on the COP to initiate investigations and disciplinary action. Moreover, in practice, the COP determines who gets to the rank of SSP. Thereafter, the pool from which the commissioner ranks are drawn (ACP, DSP and COP) is fixed by the COP and the senior officers on whose judgement and recommendations he or she relies. The choices of the PSC are fixed by this process.

The second assumption is that the serious threats and sources of the types of corruption which fundamentally harm the legitimacy of the JCF are external to it, that is, are to be located in the political administration (and not within the JCF itself). The system of oversight was designed to help a healthy system remain healthy.

In relation to the methods of producing leadership, the contrast between the JDF and JCF is inescapable. The JDF by contrast selects its officers and its privates from two different pools of candidates that must meet different entry standards of job qualifications. One begins his or her career as a receiver of instructions and the other begins with clearly defined leadership responsibilities

and competences.

Having quality leadership within the police service means having a leadership or officer recruitment pool that is different from the recruitment pool from which base level or rank and file constables are drawn. The entry requirements, training programmes, performance and ethical standards for leadership should be different from those that are required to enter the police service as a low level operative. We are not convinced of the advantages of starting at the bottom.

While building this internal leadership, the police service may also draw from an open external pool of qualified and accomplished Jamaicans who may have served or are actively serving in other police services elsewhere and who may wish to offer their services to the JCF. As qualified Jamaicans, they should not be denied the opportunity so to do.

We believe that while most officers should be recruited directly into leadership positions and ranks, a certain proportion of the officers should still be taken from the lower ranks. This proportion however should not exceed 33% of the officers.

Recommendations

1. The system of producing and reproducing the officers of the police service should be reviewed. The requirements for entering the officer ranks should be different from the requirements for entry as an operative at the lowest level of the police service. In police services that provide for direct entry to their officer corps, a first degree and an additional year of officer training is required.

2. The GOJ should be prepared to fund the development of a high-quality officer corps. It is from this pool (and the best performers from the lower ranks) that the top leadership of the JCF would be drawn. Given the consistent application of the merit principle, the top leadership would then be the best of the best.

3. The requirements for the post of COP should be specified (based on a job analysis). These requirements should be used for purposes of appointing future COPs and assessing incumbents.

4. The suggested procedure for appointing the COP is stated above. We recommend the open, rule-governed direct involvement of the PM and the leader of the opposition in this process.

5. To safeguard the integrity of the office of COP and to ensure the effectiveness of the police service, all short-listed candidates for the

post should be rigorously screened via a process in which the PSC and the public are able to have full confidence. The integrity standards to be met and the methods for determining that they are met should be stated in the regulations (which accompany the Police Service Act).

6. Performance standards and targets should be set for the COP. The standards may be stated in his or her letter of appointment, including the requirement to produce a national police plan, subject to review of the Police Authority, at the end of every year for the next year. This experience of preparing national police plans subject to external review report can be found in the Bahamas.

7. See the other recommendations in the text above.

TABLE 1
Functions of Police Commissioners

Country	Functions & Responsibilities of the Head of the Police i.e. Commissioner/Chief Constable
<p>High Autonomy</p> <p>Jamaica Source: Constabulary Force Act, Police Service Regulations</p>	<ol style="list-style-type: none"> 1. Sole and operational command and superintendence of the Force. 2. Takes advice/direction from the Minister regarding the police and to be followed by the Force. 3. Determines the command and duties of the members of the Force, in the ranks established. 4. Gives commands for the regulation of traffic. 5. Establishes a cordon around a locality, or with written approval from the Minister, imposes a curfew in that locality between such hours as may be specified, requiring persons within the locality to remain within their premises during the hours so specified unless otherwise authorized in writing by a member of the security forces who are in charge of enforcing the curfew. 6. Powers to approve retirement of a Constable from the Force when the Constable turns fifty years old.
<p>High Autonomy- weak authority</p> <p>Trinidad Source: Police Service Act 2006</p>	<ol style="list-style-type: none"> 1. Commissioner approves persons applying to be trainees who undergo a course of training. 2. Considers recommendations from the Assessment Centre or from the Promotion Advisory Board in the case of the promotion of persons promoted in First and Second Divisions. 3. Responsible for engaging someone, who is not a police officer, to be Secretary to the Promotion Advisory Board. 4. Can dismiss a Constable before the end of the probationary period if he believes that person will not serve the interest of the Service. 5. Can appoint a person on contract for any specified period, who is not a police officer. Can also appoint a person not in the Service to be an officer, based on that person's skills, qualifications and merit.
<p>Low Autonomy – Ministerial control</p> <p>Guyana Source: Guyana Police Act</p>	<ol style="list-style-type: none"> 1. Has the command and superintendence of the Force. 2. Is responsible to the Minister for peace and good throughout Guyana. 3. Is responsible for the efficient administration of the Force. 4. Is responsible for the proper expenditure of all public moneys appropriated to the Force. 5. Directs duties of Deputy and Assistant Commissioners. 6. Has power to divide Guyana into police divisions and sub divisions. 7. Has power to dismiss a constable in probationary period if the Constable is not deemed efficient or is given to improper conduct. 8. Power to dismiss/discharge any member of the Force if he or his family are engaged in business such as a shop or liquor store where the member resides or carries on a business or trade for hire or gain. 9. Makes rules with approval of the Minister for the constitution and governance of the Police Association. 10. With the approval of the Minister, requires any Inspector, subordinate officer, or Constable, upon reaching fifty years, to retire from the Force. 11. Has the command and superintendence of the Special Constabulary, a supplemental body of the police. 12. Assigns officers of the Special Constabulary to divisions.
<p>Low Autonomy – high Ministerial control</p> <p>Bahamas Source: Police Force Act 2009</p>	<ol style="list-style-type: none"> 1. Considers the necessary operational needs of the Force. 2. Has the command, superintendence, direction and control of the Force and is ex-officio Provost Marshall. 3. Provides to the Minister, on request, verbal and written reports as required. 4. Prepares a Commissioner's policing plan to be submitted to the Minister outlining the policing of the Bahamas for the year. The plan includes the Force's priorities for the year, financial and human resources expected to be available and gives the Force's objectives and performance targets. Six months into every year issues a Commissioner's report related to implementation of the policing plan. 5. Gives permission for police officers to engage in any private businesses, trade or commercial activity. 6. Initiates disciplinary proceedings, beginning with an inquiry, of or above the rank of Inspector. 7. Can summarily administer a reprimand or serve reprimand on any police officer for minor misconduct. 8. Has the powers to investigate a complaint of police indiscipline; has the same powers as a Magistrate under the Criminal Procedure Code to summon and enforce the attendance of witnesses and to examine them under oath. 9. With prior approval of the Minister, enlists "fit and proper persons" as members of the Bahamas Police Reserve 10. Appoints persons over the age of sixteen to be cadets and is also responsible for the direction and control of police cadets. 11. Continues and maintains Complaints and Corruption Branch in terms of staffing, resources to be received, and records and investigates complaints. 12. Decides on salary increments to be paid to officers.

High Autonomy –
Ministerial accountability

Barbados

Source: Police Act 1961,
Amended 2007-9

1. Has the command and superintendence of the Force and shall be responsible to the Governor General for the efficient administration and governance of the Force and the proper expenditure of all public moneys appropriated for the Service thereof.
2. With the approval of the Minister, may make regulations for the discipline of subordinate police officers and Constables.
3. Receives applications from persons applying to be apprentices in the Band.
4. Acting after consultation with the Police Association and with approval of the Governor General, make rules for the Constitution and management of the Police Association.
5. Receives permission requests by members of the Force addressed to the Governor General, to engage in business or trade.
6. Keeps an account of receipts and disbursements of the Police Reward Fund, which is also subject to audit by the Auditor General.
7. Responsible for the possible sale of property at auction that comes into the possession of the Force.
8. Commands the Special Constabulary and has the power to release a Constable from his engagement to determine such engagement at any time, if that Special Constable does not perform the duties which he/she undertakes, or is for any reason considered unsuitable.

High Accountability

Northern Ireland

Source: Police (Northern
Ireland) Act 2000

1. Determines the number of police districts in Belfast and designates a district commander a police officer of required rank.
2. Participates in consultations led by the Secretary of State, regarding long-term policy objectives of Northern Ireland.
3. Participates in consultations with the Board relating to the functions of the Chief Constable.
4. Directs the control of the police.
5. Discharges the policing plan and enforcement of code of practice.
6. Appoints police trainees and police reserve trainees.
7. Gives approval for the appointment (by the Board) of police cadets to undergo training with a view to becoming police officers.
8. Can, in keeping with regulations made by the Secretary of State, appoint a person to exercise prescribed functions of the Chief Constable with the recruitment of persons other than senior officers and members of the police support staff.
9. Prepares and submits to the Board, if requested, a draft plan for monitoring the number of women in the police, and if women are under-represented, for increasing that number.
10. Gives guidance to police officers in connection with notifiable memberships i.e. membership that may affect the carrying out of their duties. The Chief Constable is required to publish the guidance given.
11. Prepares a draft code of ethics to be considered by the Board.
12. Ensures that all police officers have read and understood the code of ethics to be applied in their duties.
13. Makes arrangements for each police officer to be assigned a serial number and that it is displayed on their uniform.
14. Implements, together with the Board, any arrangements between the UK and Irish governments dealing with cooperation on policy matters.

High Autonomy

**Chief Constables (with
notes from Commissioner
of Police for the
Metropolitan Police
Service.)**

Source: London Police Act
(1996)

1. Shows regard for the local policing plan issued by the police authority (same for Commissioner of Police for the Met.)
2. After consulting a police authority, designates a person holding the rank of deputy/assistant constable to exercise all the powers and duties of the chief constable during any absence, incapacity or suspension, from duty of the chief constable.
3. Every Chief Constable shall as soon as possible after the end of each financial year, submit to the police authority, a general report on the policing during that year for the area in which his Force is to be maintained.

CHAPTER 6

GENERAL RECOMMENDATIONS

The following are some general recommendations which do not fit with the chapter-specific recommendations.

1. Extend the time for debating and drafting the new Act.

2. The process of producing the new Act should be open and participatory. If the Act is to embrace a citizen security orientation then those values ought to be adopted in designing the process. The people should be given a direct voice in the process. Concretely, this means at least a number of town hall-type meetings.

3. The Act will be accompanied by a set of regulations. There is the issue of what should be in the Act and what should be in the regulations. What is clear is that the drafting of the regulations will be treated as a purely technical-legal matter and is likely to be a closed process. The regulations are likely to be subjected to less scrutiny. We therefore strongly recommend a robust Act that includes all of the potentially transformative aspects, even if this means a measure of encroachment on the regulations.

4. The Act should be accompanied by a Police Authority Act to provide a framework of accountability and driver of change.





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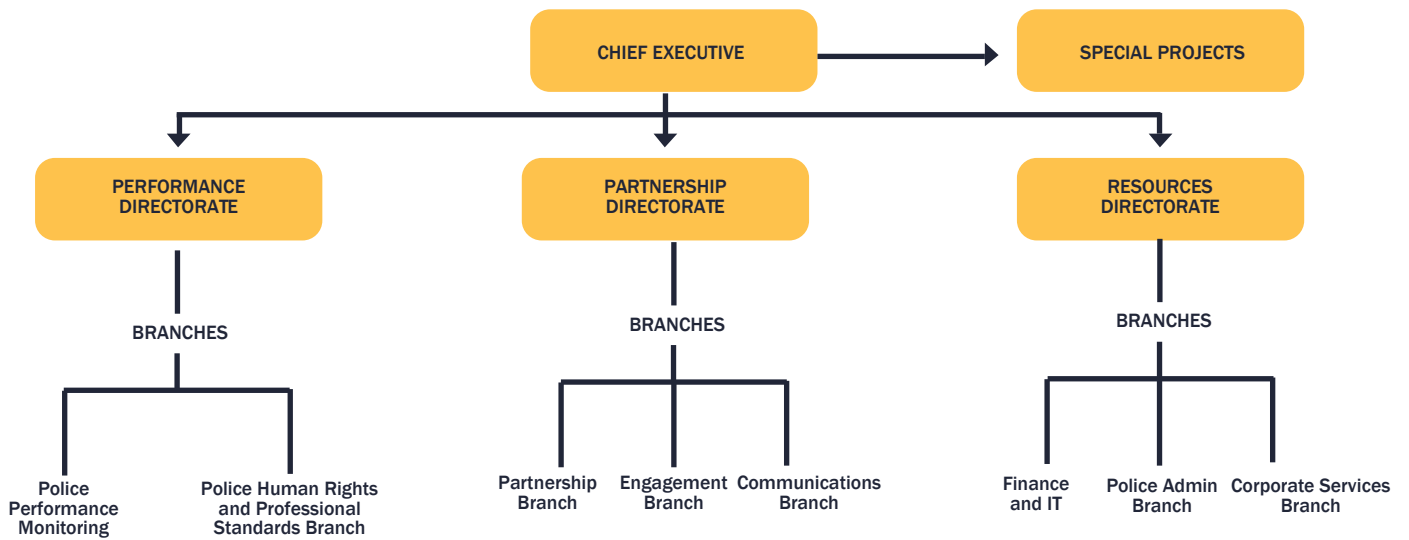
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APPENDIX

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