

THE LAW REFORM (ZONES OF SPECIAL OPERATIONS) (SPECIAL
SECURITY AND COMMUNITY DEVELOPMENT
MEASURES) ACT

(ACT OF 2017)

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**A BILL
ENTITLED**

AN ACT to Provide for special measures for upholding and preserving the Rule of Law, public order, citizen security and public safety within certain geographically defined areas of Jamaica; and for connected matters.

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:-

Preliminary

- Short title.** 1. This Act may be cited as the Law Reform (Zones of Special Operations) (Special Security and Community Development Measures) Act, 2017.
- Interpretation.** 2. In this Act, unless the context otherwise requires –
- “Committee” means the Social Intervention Committee of the Zone established under section 24;
- “document” means in addition to a document in writing, any thing or manner in which information of any description is recorded or stored;
- “Jamaica” includes –
- (a) the Exclusive Economic Zone established under section 3 of the *Exclusive Economic Zone Act*;
 - (b) the archipelagic waters of Jamaica as defined in section 5 of the *Maritime Areas Act*; and
 - (c) the territorial sea of Jamaica as defined in section 12 of the *Maritime Areas Act*;
- “Joint Command” means the persons designated under section 8(1);

“Joint Force” means the members of the Jamaica Defence Force and the members of the Jamaica Constabulary Force who are assigned to operate within a Zone;

“Minister” means the Prime Minister;

“National Security Council” means the committee of Cabinet with responsibility for defence and national security;

“Prime Minister in Council” means the Prime Minister presiding as the chairman of the National Security Council;

“Zone” means the area declared as a zone of special operations under section 4.

Objects of Act.

3. The objects of this Act are to -

- (a) empower the Prime Minister in Council to declare an area a Zone of special operations;
- (b) uphold the rule of law while protecting the fundamental rights and freedoms of persons who reside or conduct lawful business in a Zone;
- (c) conduct law enforcement activities to rid a Zone of all illegal weapons, ammunition and other contraband;
- (d) empower members of the Joint Force to search a person, vehicle or place without a warrant, within a Zone, if they reasonably suspect that an offence has been, is being or is about to be committed;
- (e) provide that the Joint Command may establish a cordon and declare a curfew in a Zone;
- (f) promote social and economic development in a Zone through the efforts of various Government agencies and civil society;
- (g) provide for the establishment of the Committee to, among other

things, develop a sustainable development plan for the Zone.

Zone of Special Operations

Declaration of Zone.

4. – (1) The Prime Minister in Council, may, by order, declare any geographically defined area within a single continuous boundary in Jamaica, as a zone of special operations for a period not exceeding sixty days if the circumstances set out in subsection (2) exist.

(2) The circumstances referred to in subsection (1) are that there are reasonable grounds to believe that due to rampant criminality, gang warfare, escalating violence and murder and the threat to the rule of law and public order, it is necessary so to do.

(3) Subject to subsection (4), every order made under subsection (1) shall specify –

- (a) the geographical limits of the Zone; and
- (b) the period during which the Zone is to operate.

(4) The entire Island shall not be declared as a Zone.

(5) On the recommendation of the Joint Command, the Prime Minister in Council may, from time to time, by order, amend, vary or add to the geographical limits of a Zone.

Extension of period.

5. – (1) The National Security Council may extend the period referred to in section 4(3) after consultation with the Joint Command, for a period not exceeding sixty days.

(2) The extended period referred to in subsection (1) may be extended for a further period not exceeding sixty days.

(3) Any subsequent extension shall be subject to affirmative resolution of the House of Representatives.

Statement to Parliament

6. Within fourteen days of each extension the Minister shall make a statement to Parliament.

Revocation of the order.

7. The order declaring a Zone may be revoked, at any time, by the Prime Minister in Council on his own motion or on the recommendation of the Joint Command.

Administration of Special Operation Within Zone

Designation of Joint Command.

8. – (1) Where a Zone has been declared, the Prime Minister in Council shall designate a member of the Jamaica Defence Force, not below the rank of Major, nominated by the Chief of Defence Staff and a member of the Jamaica Constabulary Force, not below the rank of Superintendent, nominated by the Commissioner of Police, to be jointly in charge of operations within the Zone.

(2) The Joint Command shall be persons who, in addition to their general training as members of the Jamaica Defence Force and the Jamaica Constabulary Force, are additionally trained in human rights, the use of force and community development initiatives.

(3) Every Zone shall have a written accountability and reporting system as specified by the National Security Council.

(4) The Joint Command and every member of the Joint Force shall comply with the written accountability and reporting system referred to in subsection (3).

(5) Any person who fails to comply with subsection (4) is liable to disciplinary action.

Duty of Joint Command to submit report.

9. – (1) During the period that a Zone is declared, the Joint Command shall submit a written report to the National Security Council every ten days.

(2) A member of the Joint Command who fails to comply with subsection (1) is liable to disciplinary action.

Suspension of operation or change of Joint Command.

10. The Prime Minister in Council may suspend the operations in, or change the Joint Command of, a Zone where he considers necessary.

Identification of members of Joint Force.

11. Subject to the approval of the National Security Council, the Joint Command shall determine the method by which the identity of each member of the Joint Force who is conducting operations within a Zone may be ascertained.

Powers of Joint Force in Zone

Powers of Joint Command to establish cordons and impose curfews.

12. - (1) Subject to subsection (2), the Joint Command may, in any Zone –

- (a) establish a cordon around or within the Zone; or
- (b) impose a curfew in the Zone between such hours as may be specified requiring persons within that Zone to remain within their premises during the hours so specified unless otherwise authorized in writing by the member of the Joint Force who is in charge of enforcing the curfew.

(2) For the avoidance of doubt, whenever the Joint Command takes action under subsection (1), any member of the Joint Force may for the purpose of enforcing such action, exercise such powers as are vested in a Constable.

Duration of cordon and curfew.

13. Where a cordon or curfew is established or imposed under under section 12 (1) –

- (a) the cordon shall endure for a period not exceeding twenty-four hours;
- (b) the curfew shall endure for a period not exceeding seventy-two hours.

Search and seizure.

14. - (1) A member of the Joint Force may search any place, vehicle or person within a Zone, without a warrant, upon reasonable suspicion that

an offence is in the course of being committed or has been committed or is about to be committed.

(2) Where a search of any place, vehicle or person is being undertaken, it shall be the duty of the person in charge of the search to take such steps as are reasonably practicable in the circumstances to ensure –

- (a) the attendance, at all stages of the search, of the owner or occupier of the place or the owner or person in possession of the vehicle or, as the case may be, the agent of the owner, occupier or person in possession of the vehicle;
- (b) that the owner, occupier, or person in possession of the vehicle or agent is afforded every opportunity to observe everything done in relation to the search;
- (c) a female shall be searched by another female.

(3) A constable, may in connection with a search, seize any vehicle, article or document that will assist in preventing or controlling a public disorder or that is likely to be of substantial value whether or not by itself, to the investigation of any offence.

(4) A constable shall not seize –

- (a) any tool of a lawful trade or business; or
- (b) any article or document that is subject to legal professional privilege.

(5) The constable shall take such steps as are necessary to ensure that –

- (a) a list is compiled of all vehicles, articles or documents seized;
- and

- (b) a receipt for any vehicle, article or document, as the case may be, which is included in the list, is given to the owner or person in possession of that vehicle, article or document or the agent of the owner or person in possession of the vehicle.

Custody or disposal of things seized.

15. - (1) Any vehicle, article or document seized shall be secured in such place as an officer designated by the Joint Command may approve pending determination of any examination, investigation, trial or enquiry.

(2) If anything seized is perishable, it shall be disposed of in such manner as may be approved by the officer referred to in subsection (1).

(3) Where an officer referred to in subsection (1) has reasonable grounds to believe that any vehicle, article or document seized is no longer of evidential value in any criminal proceedings arising from or in connection with a search, that officer shall, forthwith, cause the vehicle, article or document to be returned to the owner or person in possession or the agent of the owner or person in possession, and shall cause the owner, person in possession or agent, as the case may be, to sign a receipt for that vehicle, article or document.

Arrest or detention.

16. - (1) Where the Joint Force is carrying out operations in a Zone in relation to which any action is taken under section 12(1), a person shall not be arrested or detained unless the person in charge of the operations is satisfied that there is reasonable ground for the arrest or detention of the person.

(2) Where any person is arrested or detained under this Act, that person shall –

(a) immediately be told the reason for his arrest or detention unless

the circumstances are such that the person should know; and

- (b) forthwith be taken before a Justice of the Peace who shall determine whether or not there are reasonable grounds for the arrest or detention.

(3) If a Justice of the Peace is satisfied that the arrest or detention of any person is reasonably required in the interest of justice he may, having regard to such further investigations as may be necessary, order that –

- (a) the person shall be remanded in custody for a period not exceeding twenty-four hours; and
- (b) at the expiration of the period of twenty-four hours, the person shall be taken before a Judge of a Parish Court:

Provided that where it is intended to hold an identification parade in respect of that person the provisions of section 63A of the *Judicature (Parish Courts) Act* shall apply.

(4) Where a Justice of the Peace makes an order under subsection (3) in respect of any person, such person shall be taken to a police station or lock-up without delay, and an entry shall be made in the appropriate Register in accordance with the *Prisons (Lock-ups) Regulations, 1980*.

(5) Where a Justice of the Peace is not satisfied that the arrest or detention of any person is reasonably required in the interest of justice, he shall order that the person be released forthwith.

Persons held in custody.

17. – (1) Where any person is in custody for twelve hours and no order has been made by a Justice of the Peace under section 16(3) the officer in charge of the police station or lock-up shall inform an officer not below the rank of Assistant Superintendent (hereinafter referred to as the

“prescribed officer”) of the circumstances of the case and shall record in the station Diary the fact that the officer has been so informed.

(2) The prescribed officer shall, upon receipt of the information referred to in subsection (1), cause such investigations as he thinks necessary to be made into the circumstances of each case and shall cause such person to be brought forthwith before a Justice of the Peace.

Treatment of persons arrested or detained.

18. - (1) Every complaint made by or concerning a person arrested or detained shall be recorded in the station Diary.

(2) A person who is arrested or detained under this Part shall, during such times as may be determined by the prescribed officer, be allowed such visits as may be permitted having regard to matters of security and safety of persons.

(3) Notwithstanding the provisions of subsection (2), the spouse, partner, family member, religious counsellor, registered medical practitioner of his choice, and attorney-at-law shall be permitted to visit, at any time, a person referred to in that subsection.

(4) Where a person requests the visit of a registered medical practitioner of his choice, other than one provided by the State, the person shall be responsible for any expenses incurred.

(5) Particulars of each visit shall be recorded in the appropriate Register.

(6) A person who is arrested or detained under this Part –

(a) shall be allowed to receive articles of food and clothing or such other article as is necessary in the interest of his health or welfare;

but

(b) shall not be allowed to receive any article which may endanger his health or the safety of his person or any officer or any other

person.

(7) Where it appears to any member of the Joint Force that a person who is arrested or detained at a police station or lock-up is ill or requires medical attention, whether or not that person complains of illness, the member of the Joint Force shall, without delay, take such steps as are necessary to cause that person to be given medical attention.

Use of body-worn cameras.

19. - (1) A member of the Joint Force, shall as far as is possible having regard to available resources, use a body-worn camera when conducting operations within a Zone.

(2) The Chief of Defence Staff and the Commissioner of Police shall establish and review the protocols and procedures for the use of body-worn cameras in Zones and, notwithstanding the generality of the foregoing, the protocols and procedures may provide for -

- (a) the circumstances in which body-worn cameras may be used within the Zone;
- (b) the categories of persons who may access the data collected and in what circumstances;
- (c) the use of the data collected;
- (d) when body-worn cameras may be activated or deactivated;
- (e) the circumstances in which a member of the Joint Force will be required to inform a member of the public that persons are being recorded;
- (f) how the members of the Joint Force document time and reason for deactivating body-worn cameras; and
- (g) training in the use of body-worn cameras.

Registration of weapons.

20. Weapons (including the ballistic signature) and ammunition that are assigned to members of the Joint Force shall be registered with the

Institute of Forensic Science and Legal Medicine prior to the conduct of operations within the Zone, unless the Chief of Defence Staff or the Commissioner of Police determine otherwise.

Duty to disclose identity on request.

21. - (1) A member of the Joint Force may require a person within a Zone whose identity is unknown to the member to disclose his full and correct name (including any alias) and his full and correct address where the member has reasonable cause to suspect that the person is in the course of committing, has committed or is about to commit an offence or can assist in the investigation of an offence.

(2) A person within a Zone who is requested by a member of the Joint Force to disclose his identity under subsection (1) shall not, without reasonable excuse, fail or refuse to comply with the request.

(3) A person shall not, without reasonable excuse, in response to a request made by a member of the Joint Force under subsection (1) -

- (a) give a name that is false in a material particular; or
- (b) give an address other than the person's full and correct address.

(4) A person who contravenes subsection (2) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding one hundred thousand dollars or in default of payment of the fine to imprisonment for a term not exceeding ten days.

Duty under law for the protection of children.

22. A member of the Joint Force is deemed to be -

- (a) an Attendance Officer for the purpose of section 23 of the *Education Act*; and
- (b) a prescribed person for the purpose of section 6 of the *Child Care and Protection Act*.

Social Intervention Committee

Establishment of

23. - (1) For the purposes of this Act, the Prime Minister in Council

Social Intervention Committee. shall, within five working days of the declaration of a Zone, establish a committee to be styled the “Social Intervention Committee”.

First Schedule. (2) The provisions of the First Schedule apply to the Committee.

Functions of Committee. 24. - (1) The Committee shall –

- (a) assess conditions within the Zone, including the state of the physical infrastructure, health, environment, land tenure, housing and settlements;
- (b) identify the threats to sustainable development of the communities within the Zone;
- (c) develop a sustainable development plan which will include addressing issues relating to health, the environment, social improvement, infrastructural development, education and economic development;
- (d) recommend social interventions within the Zone, including compulsory school attendance areas and local improvement and urban renewal initiatives; and
- (e) co-ordinate the implementation of social intervention programmes by the relevant public bodies.

(2) The Minister shall cause the terms of reference of each Committee to be prepared and transmitted to the Minister for approval.

(3) In making recommendations under this section, the Committee shall take into account the basic needs of the communities within the Zone.

(4) The Committee shall pay particular attention to vulnerable persons who live, work and attend school in the Zone, especially children, the elderly and persons with disabilities.

General

- Regulations.** 25. The Minister may make regulations for the better carrying out of the provisions and purposes of this Act.
- Review of Act by Parliamentary Committee.** 26. - (1) This Act shall be reviewed, from time to time, by a committee of both Houses of Parliament appointed for the purpose.
- (2) The first such review shall be conducted not later than three years after the date of declaration of the first Zone.
- Amendment of enactments and construction.** 27. - (1) The enactments specified in the first column of the Second Schedule are amended in the manner specified respectively in relation to them in the second column of the Second Schedule.
- (2) Each amendment shall be construed as one with the enactment specified in relation to the amendment.

FIRST SCHEDULE

(Section 23)

*Social Intervention Committee***Constitution of Committee.**

1. The Committee shall be comprised of at least ten persons selected from among the following -
- (a) the Minister or his nominee, who shall be the Chairman of the Committee;
 - (b) the Member of Parliament of the constituency within which the Zone is, or if the Zone is situate in two or more constituencies, the Members of Parliament of the constituencies or their nominees;
 - (c) the Custos appointed with jurisdiction over the Parish within which the Zone is located or the nominee of the Custos;

- (d) the Mayor of the principal town of the Parish within which the Zone is located or the Mayor's nominee;
- (e) the Chief of Defence Staff or the nominee of the Chief of Defence Staff;
- (f) the Commissioner of Police or the nominee of the Commissioner of Police;
- (g) an attorney-at-law;
- (h) the Permanent Secretary in the Ministry responsible for social security or the nominee of the Permanent Secretary in the Ministry responsible for social security;
- (i) the Permanent Secretary in the Ministry responsible for national security or the nominee of the Permanent Secretary in the Ministry responsible for national security;
- (j) the Permanent Secretary in the Ministry responsible for health or the nominee of the Permanent Secretary in the Ministry responsible for health;
- (k) the Permanent Secretary, in the Ministry responsible for economic growth or the nominee of the Permanent Secretary, in the Ministry responsible for economic growth;

- (l) a representative of the Planning Institute of Jamaica;
- (m) the Medical Officer (Health) appointed under the *Public Health Act* or the nominee of the Medical Officer (Health) who shall be a registered medical practitioner within the meaning of the *Medical Act*;
- (n) a representative of the Social Development Commission;
- (o) a representative of the National Works Agency;
- (p) a representative of the National Land Agency;
- (q) a representative from the National Water Commission;
- (r) the Senior Education Officer, Guidance and Counselling Unit, Regional Office of the Ministry responsible for education;
- (s) a person who the Minister is satisfied is a representative of a *bona fide* community group active in the Zone;
- (t) a person who the Minister is satisfied lives or works in the Zone; and
- (u) any other person who, or agency that, in the opinion of the Minister, can assist with the work of the Committee.

Appointment.

2. - (1) The members of the Committee shall be appointed by the Minister by instrument in writing.

(2) A member of the Committee shall, subject to the provisions of this Schedule, hold office for a period as the Minister may specify in the instrument of appointment and each member of the Committee shall be eligible for re-appointment.

Chairman and Deputy Chairman.

3. - (1) The Minister shall appoint one of the members of the Committee to be the Deputy Chairman of the Committee.

(2) The Chairman shall preside at all meetings of the Committee and if the Chairman is absent from a meeting, the Deputy Chairman shall preside.

(3) In the absence of the Chairman and Deputy Chairman, the members of the Committee present and constituting a quorum, shall elect one of their number to chair the meeting.

Publication of membership in Gazette.

4. The names of the members of the Committee as first constituted and every change in the membership of the Committee shall be published in the *Gazette*.

Procedure and meetings.

5. - (1) The Committee shall meet at such intervals as may be necessary or expedient for the transaction of business; and the meetings shall be held at the places and times and on the days as the Committee may determine.

(2) The Chairman –

- (a) may call a special meeting of the Committee at any time; and
- (b) shall call a special meeting within seven days of the receipt of a written request for

that purpose addressed to the Chairman by any three members of the Committee.

(3) The quorum for meetings of the Committee shall be five.

(4) Decisions of the Committee shall be by a majority of the members present and voting, however, in addition to an original vote, the chairman, deputy chairman or other member presiding at a meeting shall have an original and a casting vote in any case in which the voting is equal.

(5) The minutes of each meeting of the Committee shall be kept in proper form and shall be confirmed by the chairman as soon as practicable at a subsequent meeting.

(6) The validity of the proceedings of the Committee shall not be affected by a vacancy among the members of the Committee or a defect in the appointment of a member of the Committee.

(7) Subject to this Schedule, the Committee may regulate its own proceedings.

Invitees to meetings.

6. - (1) The Committee may, in its discretion, invite any person to attend any meeting of the Committee for the purpose of assisting the Committee in respect of any matter under its consideration.

(2) A person invited under sub-paragraph (1) may take part in the deliberations of the Committee on that matter, but shall not be entitled to vote at any meeting of the Committee.

Disclosure of interest.

7. - (1) A member who is, in any way, directly or indirectly interested in a contract made or proposed to be made by the Committee, in any other matter which falls to be considered by the Committee, shall -

(a) as soon as possible after the relevant facts

have come to his knowledge, disclose or cause to be disclosed the nature of his interest at a meeting of the Committee; and

- (b) not be present during the deliberation of the Committee on the matter or take part in the decision of the Committee in relation to the matter under discussion.

(2) The disclosure shall be recorded in the minutes of the meeting.

(3) The member shall not –

- (a) in the case of a contract, take part in any deliberation or decision of the Committee with respect to the contract; and
- (b) in the case of any other matter, take part in any deliberation or decision of the Committee with respect to the matter, if the Committee decides that the interest in question might affect prejudicially the member's consideration of the matter.

(4) A notice given by a member at a meeting of the Committee to the effect that he is a member of a specific company, firm or other body and that he is to be regarded as interested in any contract which is to be made with the company, firm or body after the date of the notice shall, for the purposes of sub-paragraph (1), be a sufficient disclosure of his interest in relation to any contract so made.

(5) A member need not attend in person a meeting of the Committee in order to make a disclosure which he is required to make under this paragraph, if he takes reasonable steps to ensure that the disclosure is made by notice in writing to the Committee.

Liability of Committee

8. – (1) A member of the Committee shall not be

personally liable for any act or default of the Committee done or omitted to be done in good faith in the course of the operations of the Committee.

(2) Where a member of the Committee is exempt from liability by reason only of this paragraph, the Committee shall be liable to the extent that it would be if the member were a servant or agent of the Committee.

Service of documents.

9. Any summons, notice or other document required or authorized to be served upon the Committee under this Act or any other enactment may, unless there is express provision to the contrary, be served by delivering the summons, notice or other document to the deputy chairman or secretary of the Committee.

Office of or member not a public office.

10. The office of a member of the Committee shall not be a public office for the purpose of Chapter V of the *Constitution of Jamaica*.

SECOND SCHEDULE

(Section 28)

Amendment of other Enactments

Acts	Amendments
Constabulary Force Act	
Section 5	Delete the words "he shall for such offence, forfeit and pay a penalty not exceeding twenty dollars, on summary conviction; and it shall be lawful for the Court, in case such penalty shall not be paid to commit such person to an adult correctional centre with or without hard labour, for any period not exceeding three calendar months" and substitute therefor the words "he commits an offence and is liable on summary conviction in a Parish Court, to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding three months".
Section 19	Delete the words "shall be guilty of an offence and shall be liable on summary conviction before a Judge of the Parish Court, to a fine not exceeding

two hundred dollars or to imprisonment, with or without hard labour, for a term not exceeding six months or to both such fine and imprisonment” and substitute therefor the words “commits an offence and is liable on summary conviction in a Parish Court, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months”.

Section 20 Delete the words “shall on summary conviction, be liable to a penalty not exceeding one thousand dollars and in default of payment thereof to imprisonment for any term not exceeding one month” and substitute therefor the words “commits an offence and is liable on summary conviction in a Parish Court, to a fine not exceeding one hundred thousand dollars and in default of payment of the fine to imprisonment for a term not exceeding one month.”.

Section 21 Delete the words “shall, upon summary conviction, be liable to a penalty not exceeding one thousand dollars and in default of payment thereof to imprisonment for any term not exceeding one month” and substitute therefor the words “commits an offence and is liable on summary conviction in a Parish Court, to a fine not exceeding one hundred thousand dollars and in default of payment of the fine to imprisonment for a term not exceeding one month”.

Section 22(3) Delete the words “he shall be guilty of an offence and shall be liable to a penalty not exceeding four dollars, to be recovered summarily before a Judge of the Parish Court, and in default of immediate payment, to be imprisoned, with or without hard labour, for any period not exceeding two months” and substitute therefor the words “commits an offence and is liable on summary conviction in a Parish Court, to a fine not exceeding two hundred thousand dollars and in default of payment of the fine to imprisonment for a term not exceeding two months”.

Section 29 Delete the words “as aforesaid shall, for every offence, forfeit and pay a sum not exceeding twenty dollars or in default of payment to imprisonment with or without hard labour or a period not exceeding three months” and substitute therefor the words “, commits an offence and is liable on summary conviction in a Parish Court, to a fine not exceeding two hundred and fifty dollars and in default of payment of the fine to imprisonment for a term not exceeding three months”.

- Section 50B(5) 1. In subsection (4), delete the words “subsection (5)” and substitute the words “subsections (5) and (6)”.
2. Delete subsection (5) and substitute therefor the following –

“ (5) The power of search granted under subsection (4) may be exercised without a warrant in relation to a dwelling house, vehicle or place for the purpose of apprehending any person upon reasonable suspicion that the person is in the course of committing or has committed or is about to commit, an offence.

(6) Any member of the Security Forces may seize any vehicle or article that is found when a search has been conducted, that is likely to be of substantial value whether or not of itself, to the investigation for the purpose of which the search was conducted.

(7) A member of the Security Forces shall not have the right to seize any article that a person would be able to refuse to produce on the grounds of legal professional privilege or any tool of a lawful trade or business.”.

- Section 70 Delete subsection (3) and substitute therefor the following –

“ (3) Every person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction in a Parish Court, to a fine not exceeding one million dollars and in default of payment of the fine to imprisonment, for a term not exceeding twelve months.”.

- New section 79 Insert next after section 78 the following section 79 –

“Minister may amend monetary penalties. 79. The Minister may by order, subject to affirmative resolution, amend the monetary penalties set out in this Act.”.

**Criminal
Justice
(Suppression of
Criminal
Organizations)
Act**

**New Parts
1A, 1B
and 1C** Insert next after Part I the following as Part IA, 1B
and 1C -

***Declaration of Criminal
Organization***

**Commissioner of
Police may apply
for declaration.**

2A. – (1) The Commissioner of Police may apply to the Court for a declaration that a particular organization (the "respondent") is a criminal organization for the purposes of this Act.

(2) The application shall

- (a) be in writing;
- (b) identify the organization;
- (c) describe the nature of the organization and any of its distinguishing characteristics;
- (d) set out the grounds on which the declaration is sought;
- (e) set out the information supporting the grounds on which the declaration is sought;
- (f) set out details of any previous application for a declaration of the organization and the outcome of that application; and
- (g) state that a response to the application may be filed under section 2B.

(3) The application shall be accompanied by any

affidavit the Commissioner of Police intends to rely on at the hearing of the application.

(4) For the purposes of subsection (2) (b), it is sufficient if the organization is identified by specifying its name or the name by which it is commonly known or by providing other particulars about the organization.

(5) The application, with any accompanying affidavit, shall –

- (a) be filed in the Court;
- (b) on filing, have as the return date for the hearing fixed by the Registrar of the Supreme Court a day within fourteen days after the filing; and
- (c) after being filed, be served by the Commissioner of Police on the respondent -
 - (i) by personal service within seven business days after the filing; or
 - (ii) if personal service is not practicable, or if the respondent is an unincorporated association or group, by public notice within ten days after the filing.

(6) The Court may extend the return date under this section on such conditions the Court considers appropriate.

Response by

2B. - (1) The respondent may

respondent.

file a response to the application under this Part.

(2) The response shall set out the facts relied on by the respondent in response to the application.

(3) The respondent shall file the response at least five business days before the return date fixed by the Registrar of the Court.

(4) The response shall be accompanied by any affidavit the respondent intends to rely on at the hearing of the application.

**Declaration
of criminal
organiza-
tion,**

2C. The Court may make a declaration that the respondent is a criminal organization for the purposes of this Act if the Court is satisfied that –

- (a) the respondent is an organization;
- (b) members of the organization in Jamaica associate for the purpose of organising, planning, facilitating, supporting or engaging in criminal activity; and
- (c) the continued existence of the organization is an unacceptable risk to the safety, welfare or order of the public.

(2) In considering whether or not to make a declaration, the Court shall have regard to –

- (a) the following information before the Court -
 - (i) information suggesting a

link exists between the organization and criminal activity in Jamaica;

- (ii) any conviction for current or former members of the organization in Jamaica;
- (iii) information suggesting current or former members of the organization in Jamaica have been, or are, involved in criminal activity, whether directly or indirectly and whether or not the involvement resulted in convictions;
- (iv) information suggesting members of an overseas chapter or branch of the organization associate for the purpose of organising, planning, facilitating, supporting or engaging in criminal activity; and

(b) anything else the Court considers relevant.

(3) A declaration may be made whether or not the respondent is present or makes submissions.

(4) The Court may, for the purpose of making the declaration, be satisfied that members of an organization associate for the purpose of organising, planning, facilitating, supporting or engaging in criminal activity –

- (a) whether all the members in Jamaica associate for that purpose or only some of the members;
- (b) whether members in Jamaica associate for that purpose for the same criminal activities or different ones; and
- (c) whether or not the members in Jamaica also associate for other purposes.

(5) For the purposes of subsection (4) (a), the Court may act on the basis of satisfaction that only some of the members in Jamaica associate for the purpose mentioned in the subsection only if the Court is satisfied that those members constitute a significant group within the organization in Jamaica, either –

- (a) in terms of their numbers; or
- (b) in terms of their capacity to influence the organization or its members in Jamaica.

(6) A declared organization is taken to include any organization into which

the members substantially restructure themselves with or without dissolving the organization named in the declaration.

Notice of declaration.

2D. – (1) As soon as reasonably practicable after a declaration is made under this Part, the Commissioner shall publish notice of the declaration in the *Gazette* and in at least one newspaper circulated in Jamaica.

(2) The declaration is of no effect until it is published under subsection (1).

Duration of declaration.

2E. - (1) A declaration under this Part remains in force for a period of five years after the day on which it is made, unless sooner revoked or unless renewed.

(2) A change in the name or membership of a criminal organization does not affect the declaration.

Revocation of declaration.

2F. - (1) The Court may revoke a declaration under this Part on an application under this section.

(2) An application may be made by –

- (a) the Commissioner, at any time; or
- (b) the declared organisation or a member of the declared organisation, subject to this section.

(3) An application shall –

- (a) be in writing;
- (b) set out the grounds on which the revocation is sought; and
- (c) set out the information

supporting the grounds on which the revocation is sought.

(4) The application shall be accompanied by any affidavit the applicant intends to rely on at the hearing of the application.

(5) The Commissioner is a party to any proceedings for an application by the declared organisation or a member of the declared organisation.

(6) The applicant shall serve a copy of the application, with any accompanying affidavit, on the other party to the proceedings as soon as reasonably practicable after the application is filed.

(7) If the Commissioner is the applicant, service on the other party shall be –

- (a) by personal service; or
- (b) if personal service is not practicable or the other party is an unincorporated association or group, by public notice.

(8) The Court may revoke a declaration on the application of the declared organisation or a member of the declared organisation only if satisfied that there has been a substantial change in the nature or membership of the declared organisation to the extent that –

- (a) members of the organisation in Jamaica no longer associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and

- (b) the continued existence of the organisation no longer represents an unacceptable risk to the safety, welfare or order of the public.

(9) A declared organisation or a member of a declared organisation may not apply for the revocation of a declaration until at least three years after the declaration is made.

(10) The total number of applications for revocation made by the declared organisation and all members of the declared organisation cannot be more than two during the first five years after the declaration is made.

(11) As soon as reasonably practicable after the revocation or expiration of a declaration, the Commissioner shall publish notice of the revocation or expiration in the *Gazette* and in at least one newspaper circulating in Jamaica.

Stated reasons for making or revoking declaration.

2G. - (1) The Court is to provide a written statement of reasons for any decision to make or revoke a declaration under this Part, or for refusing an application for a declaration or the revocation of a declaration.

(2) This section does not authorise or require the disclosure of information if an obligation to maintain confidentiality exists.

Renewal or extension of declarations.

2H. - (1) A declaration under this Part may be renewed at any time before or after the declaration expires.

(2) For that purpose, the provisions of this Act applying to an application for the making of a declaration apply as if reference to the making of the declaration were a reference to the renewal of the declaration.

(3) It does not matter how often declarations are renewed.

Right of appeal against declaration of criminal organization.

2I. - (1) Section 2V applies to a decision of the Court under this Part in the same way it applies to a decision of the Court in relation to the making of a control order.

(2) In that case, a reference to a controlled member is taken to be a reference to a criminal organization.

Part 1B. Control of Members of Criminal Organizations

Commissioner of Police may apply for control order.

2J. - (1) The Commissioner of Police may apply to the court for a control order for a person (the *respondent*).

(2) The application shall state the following –

- (a) details sufficient to identify the respondent;
- (b) the grounds on which the order is sought;
- (c) the information supporting the grounds;
- (d) details of any previous application for an order for the respondent and the outcome of the application;
- (e) that the respondent may file a response to the application under

section 2O;

- (f) that an interim control order may be made against the respondent under section 2S at any time on or after the return date.

(3) The application shall be accompanied by –

- (a) any affidavit the Commissioner of Police intends to rely on at the hearing of the application; and
- (b) a draft of the order the Commissioner of Police is seeking from the court.

(4) The application shall –

- (a) be filed;
- (b) on filing, state as the return date a day within thirty-five days after the filing; and
- (c) after being filed, be served on the respondent –
- (i) by personal service within seven business days after the filing; or
- (ii) if personal service is not practicable, by public notice within ten days after filing.

Interim Control Orders

Court may make interim control order.

2K. - (1) The Court may, on application by the Commissioner of Police, make an interim control order relating to one or more persons specified in the application pending the

hearing and final determination of an application for a control order confirming (or confirming with variations) the interim control order.

(2) The grounds of the application shall be supported by an affidavit from the Commissioner of Police, or affidavits from one or more other senior police officers, verifying the contents of the application.

(3) The Court is to make an interim control order in relation to a person if it is satisfied that the application and any further information supplied by the Commissioner of Police satisfy the requirements under section 2Q (1) for making a control order in relation to the person.

(4) The interim control order may be made in the absence of, and without notice to, the person in relation to whom the order is to be made (or the person's representatives).

(5) If the Court makes an interim control order, it shall fix the date on which, and the time at which, the hearing of the application for a control order in relation to the person is to be heard.

Date of effect of interim control order.

2L. An interim control order takes effect on the day on which notice of the order is served personally on the person to whom it relates under section 2M.

Notice of making of interim control order.

2M. - (1) The Commissioner of Police shall, within twenty-eight days after the making of an interim control order, serve notice of the order personally on the person to whom it

relates.

(2) The notice shall –

- (a) subject to subsection (3), include a statement of the grounds on which the order was made;
- (b) set out an explanation of the effect of sections 2X;
- (c) advise the person of the names of any other persons known by the Commissioner of Police to be members of the same criminal organization of which that person is a member and to whom an interim control order or control order relates;
- (c) set out an explanation of -
 - (i) the right to object to the making of the order at the hearing of the application for the control order; and
 - (ii) the procedure to be followed in notifying the Court before the hearing of the grounds of objection (the "notice of objection") and of the need to verify the grounds by affidavit; and
- (e) state the date on which, and the time at which, the hearing of the application for the control order is to be heard.

(3) A statement of the grounds on which an interim

control order has been made shall not contain information that shall not be disclosed in accordance with this Act.

(4) A copy of the affidavit verifying the grounds on which the application was made shall be attached to the interim control order unless disclosure of information included in the affidavit would be in breach of this Act.

(5) If disclosure of information included in the affidavit would be in breach of this Act, an edited copy of the affidavit, from which the information that cannot be disclosed has been removed or erased, may be attached to the notice of the interim control order.

(6) A police officer who has reasonable cause to suspect that a person is a person on whom notice of the making of an interim control order is required to be served under this section may –

- (a) request the person to disclose his identity; and
- (b) request the person to remain at a particular place for such period (not exceeding two hours) as is reasonably necessary to serve the notice.

(7) If the person refuses or fails to comply with a request under subsection (6) (b), the police officer may detain the person at that place for such period (not exceeding two hours) as is reasonably necessary to serve the notice.

**Service of
notice of**

2N. - (1) If notice of an interim control order cannot

interim control order.

practicably be served on the person to whom it relates in accordance with section 2M(1), the Court may, by order, direct that –

- (a) service of the notice of the order be postponed for a period (not exceeding twenty-eight days) after the period within which it is required to be served under that subsection as specified by the Court; or
- (b) instead of personal service, such steps be taken as are specified by the Court in the order for the purpose of bringing the interim control order to the attention of the person.

(2) The Court shall not make an order under subsection (1) unless it is satisfied that the Commissioner of Police has taken all reasonable steps possible to personally serve the person within the period and as required by section 2M.

(3) An order may be made under subsection (1) whether or not the twenty-eight day period referred to in section 2M (1) has expired.

(4) An order of the Court under subsection (1) (b) may direct that the notice of the interim control order be taken to have been served on the person to whom it relates on the happening of a specified event or on the expiry of a specified time.

(5) If the Court is satisfied that steps specified in an order under subsection (1) (b) have not (despite the best

endeavours of the Commissioner of Police) brought an interim control order to the attention of the person to whom it relates, the Court may specify that the notice of the interim control order be published in the *Gazette*, a daily newspaper circulating generally in Jamaica or by some other form of public notification.

(6) Service in accordance with an order of the Court under this section is taken to constitute personal service for the purposes of sections 2L and 2M (1).

Interim control order ceases when final control order made or served.

2O. - (1) An interim control order remains in force until, whichever first occurs –

- (a) it is revoked;
- (b) it ceases to have effect under subsection (2);
or
- (c) the application for a control order confirming the interim control order is withdrawn or dismissed.

(2) If a control order is made confirming an interim control order (whether with or without variation), the interim control order ceases to have effect –

- (a) if the person to whom it relates is present in court, when the control order is made;
or
- (b) in any other case, when the person is served personally with a copy of the control order.

Expedited hearing in cases of hardship.

2P. - (1) A person on whom notice of the making of an interim control order is served under this Part may request the Court to hear the application for the control order confirming the interim control order at an earlier date determined by the Court than that specified in the notice.

(2) The Court shall hear the application for the control order as expeditiously as possible if satisfied by the person concerned that, in the special circumstances of the case, he will suffer undue hardship if the hearing of the application for the control order is delayed.

Control Orders

Court may make control order.

2Q. - (1) The Court may make a control order in relation to a person on whom notice of an interim control order has been served under Part 1 if the Court is satisfied that –

- (a) the person -
 - (i) is a member of a particular criminal organization; or
 - (ii) is or purports to be a former member of a particular criminal organization but has an on-going involvement with the organization and its activities; and
- (b) sufficient grounds exist

for making the control order.

(2) The Court may-

- (a) make a control order confirming or confirming with variations the interim control order; or
- (b) revoke the interim control order.

(3) In considering whether or not there are sufficient grounds to make the control order in relation to the person, the Court is to take into account –

- (a) the affidavit from the Commissioner of Police, or affidavits from one or more other senior police officers, that verified the contents of the application for the interim control order concerned;
- (b) the affidavit provided by the person with the notice of objection referred to in section 2M; and
- (c) any other information provided by the Commissioner of Police or person to whom the order relates at the hearing.

(4) The control order may be made whether or not the person concerned is present at the hearing of the application.

(5) If the person concerned is not present at the hearing, the Commissioner of Police is to cause a copy of the

control order to be served personally on the person.

(6) The Court may, on making a control order in relation to a person, make any consequential or ancillary orders it thinks fit.

(7) Without limiting subsection (6), an order may be made, if in the opinion of the Court the circumstances of the case require if the person satisfies the Court that there is a good reason why he should be allowed to associate with a particular controlled member, exempting the person from the operation of section 2X to the extent, and subject to the conditions, specified by the Court.

(8) For the purposes of determining whether subsection (1) (a) (ii) applies to a person, the Court may take into account whether the person regularly associates with members of the criminal organization without reasonable cause and the extent to which the conduct of the person demonstrates that the person has genuinely dissociated himself from the organization.

Person to whom order relates may appear at the hearing.

2R. The person to whom the control order relates may appear at the hearing of the application and make submissions in relation to the application.

Form of control order.

2S. – (1) A control order shall—

- (a) specify the person to whom it relates; and
- (b) subject to subsection (2) include a statement of the grounds on

which the order has been made, and

- (c) set out an explanation of the right of appeal under 2I.

(2) A statement of the grounds on which a control order has been made shall not contain information that shall not be disclosed in accordance with this Act.

(3) A copy of the affidavit verifying the grounds on which the order was made shall be attached to the control order unless disclosure of information included in the affidavit would be in breach of this Act.

(4) If disclosure of information included in the affidavit would be in breach of this Act, an edited copy of the affidavit, from which the information that cannot be disclosed has been removed or erased, may be attached to the control order.

Date of effect of control order.

2T. A control order takes effect -

- (a) if the person to whom it relates is present in court, when the control order is made; or
- (b) in any other case, when the person is served personally with a copy of the control order.

Duration of control order.

2U. A control order remains in force until it is revoked.

Right of appeal against control order.

2V. - (1) The Commissioner of Police or the controlled member may appeal to the Court of Appeal against a decision of the Court in relation to the making of a control

order.

(2) An appeal lies as of right on a question of law and with leave on a question of fact.

(3) An appeal as of right shall be made within twenty-eight days after the date on which the decision was made unless the Court of Appeal gives leave for it to be made after that time.

(4) The making of an appeal under this section does not affect the operation of the control order to which the appeal relates.

(5) On an appeal, the Court of Appeal may –

- (a) confirm, vary or reverse the decision the subject of the appeal, and
- (b) make any consequential or ancillary order.

Variation or revocation of control order.

2W. - (1) The Court may at any time vary or revoke a control order on application –

- (a) by the Commissioner of Police; or
- (b) by the person to whom it relates.

(2) An application for variation or revocation of a control order may only be made by the person to whom the order relates with the leave of the Court and leave is only to be granted if the Court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.

(3) The Court shall, before varying or revoking a control order under this section -

- (a) allow all parties a reasonable opportunity to be heard on the matter; and
- (b) have regard to the same factors that the Court is required to have regard to in considering whether or not to make a control order and in considering the terms of a control order.

(4) If an application for the variation or revocation of a control order is made by the person to whom the order relates, the application shall be supported by oral evidence given on oath.

(5) The Court is to give notice of the variation or revocation of a control order to the Commissioner of Police (if the Commissioner of Police is not present when the order is varied or revoked) and to the Attorney-General.

Consequences of making of Interim Control Orders and Control Orders

Association between members of criminal organizations subject to interim control order or control order.

2X. – (1) A controlled member of a criminal organization who associates with another controlled member of the criminal organization commits an offence.

(2) A controlled member of a criminal organization who, at any time within a period of three months, associates with another controlled member of the criminal organization on three or more occasions

commits an offence.

(3) A controlled member of a criminal organization who associates with another controlled member of the criminal organization after being convicted of an offence under this section commits an offence.

(4) A person commits an offence under this section in respect of associations with the same person or with different people.

(5) It is a defence to a prosecution for an offence under this section if the defendant establishes that he did not know, and could not reasonably be expected to have known, that the other person with whom he associated was a controlled member of the criminal organization.

(6) It is a defence to a prosecution for an offence under this section if the association is in accordance with an exemption under section 2Q (7) (a).

(7) The following forms of associations are to be disregarded for the purposes of this section in its application to a defendant to whom an interim control order relates if the defendant proves that the association was reasonable in the circumstances –

- (a) associations between close family members;
- (b) associations occurring in the course of a lawful occupation, business or profession;
- (c) associations occurring at a course of training or

education of a kind prescribed by the regulations between persons enrolled in the course;

- (d) associations occurring at a rehabilitation, counselling or therapy session of a kind prescribed by the regulations;
- (e) associations occurring in lawful custody or in the course of complying with a court order;
- (f) other associations of a kind prescribed by the regulations.

(8) For the avoidance of doubt, in proceedings for an offence against this section, it is not necessary for the prosecution to prove that the defendant associated with another person for any particular purpose or that the association would have led to the commission of any offence.

(9) For the purposes of this section, a control order made in relation to a person is conclusive evidence that the person is a controlled member of the particular criminal organization to which the control order relates and of the terms of the order (including any exemptions from the operation of this section under section 2Q (7) (a)).

(10) A police officer who has reasonable cause to suspect that a person is a controlled member of a criminal organization who is associating with another controlled member of the criminal organization may request the person to disclose his identity.

(11) For the purposes of this section, a person is a "close family member" of another person if –

- (a) the person is a spouse or former spouse of the other or is, or has been, in a domestic relationship with the other;
- (b) the person is a parent or grandparent of the other (whether by blood or by marriage);
- (c) the person is a brother or sister of the other (whether by blood or by marriage); or
- (d) the person is, or has been, a guardian or carer of the other.

Part 1C. Registers of Criminal Organization and Controlled Members of Criminal Organizations

Register of criminal organizations and controlled members of criminal organizations.

2Y. - (1) For the better supervision of criminal organizations and controlled members of criminal organizations, a register or registers of all declarations made under Parts 1A and 1B shall be kept under the management of the Commissioner of Police, or of such other person, and in such place as the Minister may appoint, and in such form, with such evidence of identity, and containing such particulars, and subject to such regulations as may from time to time be presented by the Minister.

(2) All expenses incurred, with the sanction of the Minister, in keeping such register, shall be paid out of the Consolidated Fund.

Returns for

2Z. - (1) In order to make the

purposes of register.

register complete, and to make the supervision over criminals effectual, the Superintendents or other head officers of the several prisons, and the Superintendent of the General Penitentiary, and the Chief Officer of Police in every parish shall, from time to time, make returns to the Minister, or to such person or persons as he may appoint, in such manner, and at such time, and containing such evidence of identity, and other information with respect to persons convicted of crime, as the Minister may from time to time direct.

(2) All expenses incurred in carrying this section into effect, with the sanction of the Minister, in keeping the register, shall be paid out of the Consolidated Fund.”.

Firearms Act

New sections 42A, 42B and 42C

Insert next after section 42 the following -

“Vehicles, etc. may be seized.

42A. – (1) Where a constable has reasonable cause to suspect that –

- (a) any firearm or ammunition; or
- (b) any vehicle, aircraft, vessel, article, enclosure, container or other storage facility, device or apparatus (hereinafter referred to as “specified equipment”),

is being used or has been used or is likely to be used in the commission of an offence under this Act, the constable may, without a warrant, search the specified equipment, and if the search reveals evidence that the specified equipment is being used or has been used for

the commission of any offence, the constable may seize the specified equipment.

(2) Where a person is convicted of an offence under this Act in which any specified equipment seized under subsection (1) is used in committing the offence, the Court may, on an application by the Director of Public Prosecutions, order that the specified equipment be forfeited to the Crown.

Procedures regarding application for forfeiture.

42B. – (1) Where the Director of Public Prosecutions intends to apply to the Court for an order of forfeiture under subsection (2) of section 4 it shall, subject to subsection (4) of this section, notify in writing the owner of and any person (if known) having an interest in the specified equipment that he proposes to apply for the order.

(2) The owner or other person notified under subsection (1) may appear before the court at the hearing of the application, declare the nature of his interest and show cause why the specified equipment should not be forfeited.

(3) Where the Director of Public Prosecutions is unable to ascertain the owner of or any person having an interest in any specified equipment to which this section applies, he shall publish a notice in a daily newspaper circulated in Jamaica regarding the intention to apply to the Court for an order for forfeiture, not less than fourteen days prior to the application.

(4) Notice shall not be required under subsection (1) if the seizure of the specified

equipment was made in the presence of the owner or person having an interest in the specified equipment.

(5) If, upon the application of a person prejudiced by an order made under section 42A(2), the Court is satisfied that it is just in the circumstances of the case to revoke the order, the Court may revoke the order upon such terms and conditions, if any, as it deems appropriate, and without prejudice to the generality of the foregoing, may require the person to pay in respect of storage, maintenance, administrative expenses, security and insurance of the specified equipment, such amount as may be charged by the person in whose custody the specified equipment was kept.

(6) An application to the Court under subsection (5) for the revocation of a forfeiture order shall be made within thirty days of the date of the making of the order or such longer period not exceeding three months, as the Court may allow.

Authority may recover cost and expenses of storing specified equipment.

42C. The Authority may institute proceedings against any person to recover the cost and expenses incurred in the removal and storage of any specified equipment as a civil debt in a Parish Court if a forfeiture order is not granted under section 42A(2).”.

MEMORANDUM OF OBJECTS AND REASONS

Crime in Jamaica is a multidimensional problem that requires a multifaceted response. The homicide rate remains among the highest in the Caribbean Region. Over the period 2000 – 2015, Jamaica's murder rates averaged 40 per 100,000, with the year 2000 recording 34.1 which is the lowest while 2009 recording 61.7 which is the highest.

This high crime situation in Jamaica is as a result of a combination of factors including imports of illegal firearms and ammunition, financial fraud including Ponzi schemes and lottery scams, opportunities for corruption and extortion, supply and transshipment of illegal narcotics, all of which have been accompanied by the use of violence by criminals. These profoundly serious problems, have threatened the existence of the rule of law in certain geographical locales in Jamaica, have deterred investment, destroyed capital formation, discouraged business development and lowered the perception of Jamaica in the international arena. This Act should not have the negative impact on Jamaica, which could likely occur if a declaration of a state of public emergency was made.

Consequently, this Bill seeks to balance the need for security and the need for giving the members of the JCF and JDF certain essential powers that are required to address serious crimes on the one hand and upholding the rule of law and protecting the fundamental rights and freedoms of citizens on the other hand.

Andrew Holness
Prime Minister

