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Security, justice and corruption

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Martin Henry, Contributor

I parked on the rooftop, to which visitors are relegated, and beside a long-fallen lamp post with charred remains from a fire at its fibreglass base. The piece of road to the entry point of the car park is potholed. The elevators have, stuck to the doors, a note of apology that they don't work. The walls and paintwork descending are tatty. The upholstery on the furniture in places is dirty and worn.

And, worst of all, the plaque of pride at the front of the Jamaica Conference Centre bearing the names of the scores of artisans and builders who had contributed to this grand edifice is tattered, with some names at the lower reaches now rubbed away by the passage of time and by contact.

I hope Edward Seaga, the chief architect of this grand edifice of national pride when he was prime minister, no longer goes there to be embarrassed by its condition.

I remember well its conceptualisation and construction in the mid-1980s. The Jamaica Conference Centre is the headquarters of the International Seabed Authority and doubles as a conference centre for domestic use. Its decline, an international embarrassment, is a metaphor for the state of the nation. The operational challenges faced by the Jamaica Conference Centre, perched on the edge of Kingston Harbour with fabulous harbour-side viewing panes, are a window on the state of downtown as a destination for social and business activities.

That's where we gathered last Monday, led by National Integrity Action (NIA), of which I am a board member, to mark the UN Anti-Corruption Day. I shared the company of Chief Justice Zaila McCalla, who quietly lamented the state of the justice system and the slow pace of legal reform.

Minister of Justice, Senator Mark Golding, speaking for the prime minister, who was in South Africa for the Nelson Mandela memorial, would later regale the 'gathering' with the legislative agenda Government has for anti-corruption lawmaking, including the creation of a single anti-corruption agency with prosecutorial powers.

The minister made it quite clear, however, that IMF-demanded legislation was crowding out other legislative activity in the Parliament. But NIA director, Professor Emeritus Trevor Munroe, as he rose to crescendo in the closing address, called for lotto scam legislation speed, six months, not defamation legislation speed, six years, to be applied to anti-corruption legislation like the campaign finance bill.

The chief justice and I quietly concurred that security and justice are the core functions of a responsible government, and on these core functions our Government has fallen down very badly. And we both agreed that nothing else is going to flourish, never mind the furious pace of IMF-driven legislation for 'structural adjustment' of economy and government.

Director of Public Prosecutions Paula Llewellyn, whose office is a key player in the fight against corruption, was unusually absent from this year's Anti-Corruption Day Gathering. She was in Lucea, Hanover, making history with the Court of Appeal, which is holding its first sittings outside of Kingston since its establishment just after Independence in 1962.

The Great Debate about the Caribbean Court of Justice vs the UK-based Privy Council continues and has featured in the fall and rise of opposition senators. I didn't get to ask the chief justice what were her views on the matter. But I did ask the president of the Jamaica Bar Association, Ian Wilkinson, my colleague panellist on the Earl Moxam-hosted news review programme, 'That's a Rap', on an earlier occasion how many cases the Privy Council heard from Jamaica per year: 14.

Wilkinson and Clyde McKenzie, a defence attorney, regaled me at the time with instances of injustice in the justice system.

As far as I, a layman, am concerned, the real issue of justice for this country is not about a final court of appeal hearing 14 cases per year, or even 10 times 14; it is about the resident magistrate's courts and the justices of the peace badly named petty sessions courts being able to deliver swift and sure justice to tens of thousands of people

each year.

To take the two most prominent cases running now, Vybz Kartel has been in custody since September 2011, and Kern Spencer and Colleen Wright's case is running through its fifth year since arrest. That's not justice.

While we wrangle over final court of appeal, *habeas corpus* means nothing in Jamaica. INDECOM head Terrence Williams, addressing the St Andrew Justices of the Peace and Lay Magistrates Association two Saturdays ago, raised the matter of bail. The Constabulary Force Act commands that an arrested person must be taken "forthwith before a justice who shall enquire into the circumstances of the alleged offence, and either commit the offender to the nearest jail, or to take bail by recognisance".

Williams' grouse was that the Police Act says "forthwith", and the Bail Act, a later statute, says "within 24 hours". Either way, under the law, the matter of bail should be speedily resolved, as it isn't now, and arrested persons should be presented for trial in short order (*habeas corpus*, let the body appear). This is not an appeal court issue; it is a core justice issue at the base of the system.

The courts are clogged with criminal cases. The failure of justice from apprehension to trial fuels crime, and crime jams up the justice system. We have to break the cycle. I suggest again that Government top-slices the entire Budget to provide more for justice and security.

Nothing else will flourish without resolving the problems of justice and security. How to get the IMF to push the Government on to a legislative agenda and operational practices for improved justice and security?

Opposition Leader Andrew Holness, who, as short-lived prime minister, had delivered the keynote address at the launch of NIA two years ago, again threw his weight behind campaign-financing reform and some state regulation of political parties for the reduction of corruption. With the politicians lining up with their mouths, the passage of campaign-financing legislation through the Parliament could attain lotto-scam legislation speed.

I agree with Holness that the regulation of campaign financing with caps on donations and declarations required of donors must reasonably be accompanied by state financing of election campaigns. The majority of Jamaicans do not, at the moment, agree, and parliamentarians are running scared on the issue, which is part and parcel of the larger emotion-laden issue of demanding good governance with reduced corruption but unwilling to pay for it.

Holness made the point - a riding horse point of mine as well - that efficiency in the delivery of public services must be significantly improved to drive down corruption at the level of bribery. Inefficiency breeds corruption; and corruption breeds inefficiency in a vicious cycle that must be transformed into a virtuous cycle. It is all well and good to demand stronger legislation and greater enforcement, but if obtaining state services is an obstacle course, the man in the street is going to find a shortcut.

Where I have a problem with Mr Holness is in the view that the court challenge brought by the executive about the legitimacy of actions of the Office of Contractor General (OCG) against development projects is bad and dangerous. With the chief justice reminding me that the judiciary which she heads is a constitutional branch of government, I have to side with Minister Golding that asking the courts to decide an issue which has arisen between the executive and an administrative agency of Parliament and to interpret the law is the way to go.

The underutilised Supreme Court has precisely this function of interpreting constitutional and statute law and settling disputes about them. And case law has played a seminal role in the emergence of English common law and our entire inherited system of jurisprudence. Any public perception of Government favouring corruption by challenging the OCG should be carefully managed.

And speaking of public perception, the Transparency International-produced annual Corruption Perception Index has Jamaica scoring 38 out of 100, remaining pretty low on the scale and signalling a country with high levels of corruption. The Anti-Corruption Day Gathering on Monday last had TI's Americas director Alejandro Salas as guest, whose speech led the front page of **The Gleaner** the following day, although a little badly reported.

But the data, some of which was picked up and broadcast by the NIA director himself, not the perception, is heading in the opposite direction. The chapter on 'Corruption, Crime, Democracy' in the Vanderbilt University-led Latin American Public Opinion Project Report for 2012, which was released earlier this year, provided data on some positive trends in experiences of corruption.

Trevor himself triumphantly noted at the Gathering that in the last three years, 500 police officers have been "dismissed one way or another" for corruption, compared to only 1/100 that number, five, between 1999 and 2003.

CORRUPTION DECLINING

Contrary to public opinion, Jamaica has never been cleaner since Independence, as far as corruption is concerned, than it is now. Which is not to say very clean, only cleaner.

Prof Munroe, heading the NIA, is, of course, quite right: "There is much ground left to be covered" to be as clean as a Barbados with the highest score on the CPI in the region at 75.

As UN Secretary General Ban Ki-moon reminds in his 2013 Anti-Corruption Day message and NIA drives home in its first documentary, **The Cost of Corruption** (available on YouTube), "Corruption suppresses economic growth." Jamaica's growth strategy should not only have anti-corruption measures at its core, as NIA insists, but security and justice measures as well, with which the chief justice concurs.

And we'll have more money for maintaining public facilities like the Jamaica Conference Centre.

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