**“States of Exception as Paradigms of Government: Emergency and Criminal Justice in Jamaica”?**

**Introduction**

Emergency powers have a long and storied history within scholarship, much of which has revolved around the dichotomy of norm and exception[[1]](#footnote-1) (Schmitt 2005; Lazar 2006; Fatovic 2019). Ferejohn and Pasquino (2004, 221) define the norm as “an empirical regularity in the natural world or in the society” while for Fatovic (2019, 5) the exception represents “an extreme event that is highly disruptive or threatening to the established order.” This distinction inherently draws our attention to the fact that governments are supposed to follow established and customary rules for governance, especially if they are liberal and democratic.

However, the current study challenges and updates this distinction by analyzing Jamaica’s experience with emergency powers, focusing on the 2010s. It seeks to examine Jamaica’s experience using emergency powers, namely States of Emergencies (SOEs) and Zones of Special Operations (ZOSOs) for criminal justice purposes. The study primarily aims to analyze and examine the inherent tensions between emergency powers and criminal justice in a liberal democracy whereby the exception/emergency gets increasingly normalized, thus making it hard to distinguish between what is supposed to be normal or exceptional. Contrary to earlier theorizations, the norm and exception are gradually merging thus making them indistinguishable and this represents the key contribution of Jamaica as a case study. Finally, the analysis of both SOEs and ZOSOs Jamaica’s case represents a scholarly *terra nova,* one which has the potential to add to an expanding emergency powers literature and in general Caribbean politics.

It is the aim of this study to show how the lines between norm and exception are increasingly being blurred in Jamaica as part of what is arguably a larger global trend despite the continued hold of the Classical model in scholarship. The latter part of the 2010s, specifically 2017 to the present, will be used as an illustration of how emergency government practices in this decade are increasingly being normalized for combating ordinary criminal justice matters. From a theoretical standpoint, the study seeks to challenge the archetypal and arguably Classical Roman-inspired model of emergency powers made famous by the controversial German 20th century thinker Carl Schmitt and would-be “Crown Jurist”[[2]](#footnote-2) of the Third Reich. In Schmitt, we find an intellectual nemesis *par excellence* whose critiques of liberalism and parliamentary democracy still resonate across both the Left and Right.[[3]](#footnote-3) His Manichean view of the emergency (i.e. norm *contra* exception) continues to reverberate in this long debate, thus marking its necessity in contextualizing Jamaica’s current declaration of an exceptional framework for crime-fighting.

This challenge to Schmitt comes from the Italian thinker Giorgio Agamben’s work, which views the post-9/11 world as one increasingly being blurred and defined by the exception. Governance in this sense becomes a “technique” for solving everyday problems. Furthermore, it is this conceptual framework that holds potential for interrogating and explaining the juridico-political background of Jamaica’s use of SOEs to fight crime. Due to an ever-expanding list of “crises” affecting nation-states in the 20th and 21st centuries, the politics of emergency powers warrants continual empirical and normative investigations from different areas of the globe. The critical examination of Jamaica forces us to reconsider the Classical Model’s definition and understanding of what constitutes and justifies emergency action. Jamaica’s use of emergency powers to fight crime raises questions about our understandings of the temporality and spatiality of emergencies with a view of showing how increasingly blurry the lines between norm versus exception are. We need to keep in mind whether these lines are inherently indistinct or fabricated by governments interested in using crises for their benefits, specifically as a technique of governance. Finally, and most importantly, this paper hopes to contribute to the broad literature on emergency powers, rule of law, and our understanding of how Jamaica’s various post-independent emergency governments have anti-democratic features and practices which violate the civil liberties of some Jamaicans.

**States of Public Emergencies (SOEs) and Zones of Special Operations (ZOSOs) in Jamaica: A Brief Overview**

Jamaica’s experience with British colonialism has empirical and theoretical importance for exploring and understanding its current dilemma with emergency powers. Jamaica’s utilization of emergency powers during the early-middle 19th and early-middle 20th centuries was aimed at preserving the “rule of law” despite being an authoritarian society, thus exemplifying arbitrary governance. For example, Governor John Edward Eyre’s use of martial law to violently suppress the 1865 Morant Bay Rebellion (also known as the Jamaica Affair) epitomizes this struggle between legality and colonialism. The lack of crowd control and commitment to democratic norms resulted in a massacre of legal English subjects, a fact which led to the formation of the Jamaica Committee[[4]](#footnote-4) in the English Parliament that sought to prosecute Eyre for his alleged crimes. The aftermath served as a serious test for the English elite in questions related to the rule of law, morality, and the exercise of power (Kostal 2005). This episode shows how theory and practice are divorced in the bureaucratic colonial administration of distant lands despite lip-service to rule of law ideals. But such practices did not end with the withdrawal of colonial authorities and eventual self-governance, thus facilitating the enquiry into Jamaica’s current quagmire.

Since Jamaica’s independence in 1962, States of Emergencies (SOEs)[[5]](#footnote-5) have been used on several occasions,[[6]](#footnote-6) including the most recent ones which are at the heart of this study. The deployment of the Emergency Powers Act 1938 (EPA) as a legal measure is premised on negating threat(s) by a “person or a body of persons… likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life.”[[7]](#footnote-7) Essentially, this is an exhibition of executive power defining what the threats are and subsequent responses for securing the body politic. More recently, the incumbent Prime Minister, Andrew Holness, has argued that the impending approval of new legislation was necessary to protect Jamaican citizens’ “right to life and the enabling freedoms and security to enjoy it.”[[8]](#footnote-8) However, despite the Prime Minister’s overall goal of using SOEs and ZOSOs for liberty and security, there are still problematic elements in the execution of this plan in terms of how constitutional and democratic the current practices are in comparison to past violations under colonialism and in general the Post-Independence period.

Under colonial rule, martial law/emergency powers were normally used to quell Black slave insurrections,[[9]](#footnote-9) emancipated freemen protests, and labor unrest against the socio-economic inequalities as evidenced in the now infamous Morant Bay Rebellion. In recent decades there has been a propensity for the government of the day to rely on emergency measures to handle widely acknowledged crises such as political violence and hurricanes, but now ordinary criminal justice has entered the fray. During the latter years of the 2010s[[10]](#footnote-10) (specifically 2018 and onwards), they have been used across a large segment of the island, leading to a total of 7 out of 14 parishes being under a SOE as part of the government’s crime-fighting response. They have been localized at the community and parish levels whereby some parts of the country are governed by normal constitutional rules while other areas are subjected to declared exceptional ones. Furthermore, the Jamaican Parliament in 2017 approved an additional piece of legislation, titled the Law Reform (Zones of Special Operations-ZOSO) (Special Security and Community Development) Act as a tool in the fight against the country’s extraordinarily high homicide rate. Finally, the use of SOEs also range in their temporality with some being only a few months to more extensive ones that are up to a year or even two. In fact, some of the ongoing SOEs and ZOSOs have broken the previous year-long record which occurred in 1976-1977[[11]](#footnote-11) (primarily those in the Western parishes) and have entered their second to nearly third year of existence, thus exhibiting some permanence in those citizens’ lives. In other words, this decade sees the ordinary criminal justice function of government being performed via the use the extraordinary tools of SOEs and ZOSOs. It therefore represents a key decade of normalization of emergency powers in the history and politics of Jamaica.

In both empirical and normative works about emergency powers, the role of the executive is usually the primary institutional ingredient that is analyzed and emphasized (Rossiter 1948; Ferejohn and Pasquino 2004; Fatovic, 2009; Rooney 2019). For example, Jamaica as a constitutional monarchy retains a Governor-General (GG), who represents the British Crown on the island in a ceremonial manner. The Jamaican Prime Minister usually wields executive power in collaboration with the GG (who ceremonially is advised by the sitting Prime Minister on various state business) for their assent in declaring SOE’s. However, with the passage of the ZOSO legislation, the Prime Minister becomes the key member of the National Security Council (along with standing heads of the police and military, respectively) and is now entitled to declare, for a period not beyond sixty days, any geographical area of the country as a ZOSO, once the Council deems there are threats to the rule of law, predominantly (although these are debatable) in the form of gangs and rising murder rates and violence (Stubbs-Gibson 2017). While there are checks on executive power whereby the parliamentary Opposition can nullify such expansive powers being exercised, it seems that the Prime Minister is now the one “who decides on the exception,” in both *de jure* and *de facto* senses (Schmitt 1985, 5). The aforementioned situation in Jamaica seemingly lends some support to Agamben’s (2005, 1) anxiety as it relates to the state of exception increasingly being a “no man’s land between political law and political fact.” It also lends support to Rossiter’s claim (1948, 12) that: *“Crisis government is primarily and often exclusively the business of presidents and prime ministers.”[[12]](#footnote-12)* Finally, both SOEs and ZOSOs are the embodiment of a declaration of a state of exception whereby Jamaica’s democracy seems dependent on a “commissarial dictatorship” to solve an arguably normal crime problem thus leaving some citizens in a juridico-political purgatory.

**The Exception in Theory**

Emergency powers have been a source of contention at the practical and theoretical levels of law and politics. Thinkers from the ancient Greeks and Romans up to the contemporary period, whether categorized as civic republicans or liberals, have endorsed the use of emergency powers in appropriate circumstances. While older thinkers did not necessarily address the explicit bases for invoking emergency powers, more contemporary scholars have theorized on specific and broad instances for utilizing them. For example, Rossiter (1948, 6) notes three main types of crises that affect and “justify” democratic nations utilizing such measures: war, rebellion, and economic depression, while Fatovic (2019, 6) suggests that violent situations, natural disasters, and economic crises are usually classified as emergencies. However, Schmitt (2005) invokes decisionism[[13]](#footnote-13) and sovereignty as bases for declaring emergencies. Overall, we get a sense that the emergency has a fundamental role within statecraft and that several thinkers have seriously affirmed its importance, despite belonging to disparate schools of thought.

Colonial administrations the world over illustrated the propensity of how emergency powers were in conflict with rule of law ideals, even supposed liberal democracies that claim to support such principles. In this sense Arendt (1973, 185) identifies race and bureaucracy as “two new devices for political organization and rule over foreign peoples during the first decades of imperialism.” Bureaucracy, at its core, disavows law and replaces it with provisional and mutable decrees, thus establishing arbitrary rule while inhibiting the development of permanent societies in such places and thus represents the pernicious “rule of Nobody” (Arendt 1972, 137). In sum, colonialism and bureaucracy’s symbiotic relationship created a dangerous precedent as it relates to political governance and organization for countries where such relationships existed.

As previously mentioned in the introduction, Jamaica is no stranger in the contentious debates over the deployment of emergency powers and Hussain (2003) notes that colonial conceptions of the rule of law and emergency powers stemmed from racialist thought meant to impose and renew colonial authority over the British Empire’s growing non-white subjects, through the necessary tool of violence, as evidenced in India’s Amritsar massacre and the Jamaica Affair. Essentially, there was a dualism in both action and thought by the British regarding the rule of law thus leading to a very despotic, repressive, and violent rule *by* law for the colonies instead of rule *of* law as found in the motherland. Similarly, Kostal (2005, 19) argues that the aforementioned Affair served as a “jurisprudence of power” instead of the rule of law whereby the English ruling class failed to resolve the inherent contradictions “between the love of power and love of law.” Finally, Reynolds (2010, 16) argues that “radical nationalism” and the recalcitrance of Black and Brown colonials of Britain’s 2nd empire saw the imposition of emergency powers, especially for repressing opposition and dissent.

The historical development emergency powers in both the United Kingdom (U.K.) provide an interesting lens for comprehending constitutionalism within the metropole and beyond. It also provides an opportune location for the current research based on the historical colonial relationship between U.K. and her Caribbean possessions (most notably Jamaica as the country of interest here). Cotter (1953) argues that both the Defense of the Realm Act (DORA 1914), Emergency Powers Act (EPA 1920), and the Emergency Powers (Defence) Act (1939) are the main products of the U.K’s involvement in both World Wars, with the latter being explicitly imported into a number of British colonial and post-colonial constitutions after the wars. Rossiter (1948, 153) further notes that DORA is “perhaps the most radical parliamentary enactment in the history of England” because it created a *de jure* state of siege which impacted English life and freedom by inflating Cabinet’s powers while deflating Parliament’s own. Finally, he adds that it could be conceived of as a near legislative affirmation of martial law in England at the time.

Roberts (2019) notes that colonial governance practices of the 19th century British Empire gradually evolves and gets incorporated into the legal order of such fledgling societies which he terms “repressive legality.” Similarly, DeMerieux (1994) describes and discusses the aforementioned legacy being present in several West Indian constitutions whereby emergency powers have been codified and exported to British colonies at the time, primarily in the form of the UK’s 1920 EPA. She states that most West Indian constitutions: (1) empower derogation of rights & freedoms; (2) describe the circumstances which constitute an emergency; and (3) limit the state to taking reasonably justifiable measures to deal with emergencies

Since the 9/11 attacks there has been considerable focus and a revival of interest on what emergency powers mean for our current and future juridico-political arrangements in terms of both theory and practice. This revival is largely informed by the prevailing norm-exception binary going back to the Roman institution of dictatorship (Gross 2003), extending to John Locke’s theory of prerogative, and most importantly the 9/11 and War on Terror (WOT) paradigm (Head 2017). This binary has been at the forefront of both academic and popular debates regarding the emergency problem (Lazar 2006). Agamben (2005, 2-3) notes that the state of exception has become “the dominant paradigm of government in contemporary politics.”

However, more recent scholarship suggests that the aforementioned binary is too crude for analyzing liberal democracies. Lazar (2009) notes there are still continuities between periods of normalcy and emergency which a rigid binary tends to obscure, while Fatovic (2013) argues that such neat distinctions limit our understanding of how both prerogative and executive power operate historically and contemporarily in American politics. Thus it might be more accurate to examine contemporary democratic exercises of these powers on a continuum, from least rule-bound to most rule-bound.

Agamben (2005, 1-3) argues that the exeception is a “no man’s land between public law and political fact” and has become “a threshold of indeterminacy between demoracy and absolutism.” Gross (2006, 82) also suggests that the exception is increasingly hard to distinguish from normalcy due to the creation of new laws and institutions which grant “more expansive powers and authorities” for perpetuating the initial “emergencies”, thus making emergency government the norm. It is within the aforementioned literature that I hope to show how Jamaica’s experiences with emergency powers and criminal justice resonate and blur this binary as part of a much larger global and even Caribbean trend[[14]](#footnote-14) whereby Trinidad and Tobago declared a SOE in 2011 with similar intentions.[[15]](#footnote-15) In the end, the study hopes to show how quasi-permanence SOE/ZOSO governance practices become a defining feature in the normalization of the exception in Jamaica via seemingly constitutional mechanisms.

**ZOSOs: Emergency and Criminal Justice in Jamaica, 2017-until when?**

In this section, I will firstly sketch a brief overview of the development and implementation of the ZOSO legislation as well its legality. Secondly, I will examine the continued usage of declared SOEs as the primary criminal justice tool of the Jamaican government between 2017-2020 and the resulting anomalies which are seen in a number of violations primarily in the form of mass arbitrary and illegal detentions along with an instance of internal extraordinary rendition. With this in mind, I argue, using the evidence that has been accrued, that Jamaica has placed itself in a quasi-permanent “state of exception”, one which began in the colonial period but continues today through the questionable criminal justice practices of the past several years. Finally, this contemporary feature, I hope, aids to complicate and upset Classical accounts of norm-exception whereby Jamaica shows that the lines between both are not neatly delineated but more hazy than originally theorized.

During the 2016 parliamentary elections, the JLP promised the Jamaican electorate that under its administration they would be able to sleep with their doors and windows open. Since the 1970s onwards Jamaica has a consistently high murder rate based on global comparisons, with it being dubbed the “murder capital of the world” in 2006.[[16]](#footnote-16) The current Minister of National Security estimated that Jamaica has 1, 350 murders per annum over the last 15 years. [[17]](#footnote-17) The most recent figure was estimated to be at 44 per 100, 000 by the World Bank in 2018 with a population of around 2.8 million people. After assuming power, the Holness led-JLP developed and launched “Plan Secure Jamaica” in which several legislative commitments[[18]](#footnote-18) were to be undertaken to strengthen the criminal justice system. The ZOSO Act was described by the Prime Minister as a key pillar of this overarching plan to address violent crime on the island whereby a three-pronged phase described as “clear, hold, and build” would be crucial for managing each zone.[[19]](#footnote-19) This approach seems reminiscent of the Rio De Janeiro state government’s Pacification Programme in Brazil which was instituted to coincide with hosting of the World Cup and Summer Olympics (Campbell 2020).

Subsequently, the ZOSO bill was passed by both Houses of Parliament in July 2017.[[20]](#footnote-20) *Prima facie,* the ZOSO Act bears a striking resemblance to the 1974 Suppression of Crime and the current Constabulary Force Acts, with the latter retaining a number of the oppressive features of the former, a point which will be furthered elaborated on below.[[21]](#footnote-21) With the Act now in force, a National Security Council (NSC), with the Prime Minister at the helm, has the authority and power declare any geographical area of the island a zone(s) for an initial 60 days. In addition to this feature, the Prime Minister has the statutory latitude to further extend said zone(s) for another 120 days (the Act provides for three separate but continuous 60-day extensions, a total of 180 days) before seeking parliamentary approval for an extension.[[22]](#footnote-22) The “special” and arguably extraordinary powers of both the police and military include: (1) warrantless searches and seizures of “any place, vehicle, or person within a Zone;”[[23]](#footnote-23) (2) establish cordons and curfews;[[24]](#footnote-24) and (3) finally to arrest and detain persons on “reasonable grounds.”[[25]](#footnote-25) Overall, since the legislation’s passage there have been 4 declared ZOSO’s on the island. **Table 1.0** below provides the requisite details about such spatiality and temporality.

**Table 1.0 showing information about declared ZOSOs**

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| --- | --- | --- | --- |
| **Community** | **Parish** | **Date of Declaration** | **Duration** |
| Mount Salem | St. James | 09/1/2017 | 3 years & 6 months |
| Denham Town | Kingston & St. Andrew | 10/17/2017 | 3 years & 6 months |
| Greenwich Town | Kingston & St. Andrew | 07/1/2020 | 8 months & 17 days |
| August Town | Kingston & St. Andrew | 07/8/2020 | 8 months & 10 days |

In examining **Table 1.0**, the temporal nature of ZOSOs immediately carry us to the permanence vs. transience debate which is inherently apart of the Classical account of norm-exception as it pertains to declarations of emergencies. Gross (2006) suggests that the proverbial exception is increasingly hard to distinguish from normalcy, thus making emergency government the norm due to its prolongation which in turn strengthens governmental power. In this sense, claims of emergencies are able to extend themselves indefinitely with little to no monitoring and evaluation towards holding governments accountable to a strict deadline based on initial goals. Essentially, ZOSOs allow for an indefinite promulgation of emergency whereby the latter build phase of the three-pronged approach for ZOSOs are yet to be fully implemented and realized, with at some zones[[26]](#footnote-26) still transitioning into the holding stages, according to the current Public Defender, Arlene Harrison-Henry (2021). Furthermore, the Jamaica Social Investment Fund (JSIF) notes that the build phase could take up to 6 years to transform ZOSO communities.[[27]](#footnote-27) In analyzing the original remit of a ZOSO we see a pattern of indeterminate time limits both in the language of the law itself and the ground operation. This allows the government to use of claims of emergencies to subdue (clear) and govern (hold), by way of exceptional instead of normal provisions, all the aforementioned communities- rule by law instead of rule of law for criminal justice and social control. In summary, the door is open for potential abuses of citizens fundamental rights and freedoms as guaranteed by the Constitution, some of which have been documented by the Public Defender and will be discussed in the subsequent paragraphs further below.

While the objectives of the ZOSO Act are for primarily a sudden increased security presence in certain communities as a criminal justice tool, there are also adjacent socio-economic development and state-building elements whereby the Prime Minister “shall, within five working days of the declaration of a Zone, establish a committee to be styled the ‘Social Intervention Committee’.”[[28]](#footnote-28) In this sense, ZOSOs are not only about putting police and military boots on the ground but should also involve social intervention in vulnerable communities which are often susceptible to crime. Some of these initiatives include: employment and skills training programs, improving community infrastructure developments (roads, water, and electricity), healthcare, and general provision of government services (registration of individuals, passports, birth certificates *inter alia*)*.* Ostensibly the government wants to eliminate the proverbial “states within states”/political garrison communities that have developed over the years in Jamaica and are seen as threats to democracy/rule of law due to them being violent counter-societies. However, the social intervention component, according to (Campbell 2020, xiv) is largely “treated as an appendage to the dominant security approach.” Ultimately, the declaration and use of state of exception practices, with its accompanying militarization and curtailment of rights, seems problematic even if social intervention is tacked onto such straegies.

ZOSO’s are not without flaws whereby its legal intent and empirical practices have to be examined vis-à-vis rule of law norms and the Jamaican constitution. While the legislation had support from the influential Jamaican private sector,[[29]](#footnote-29) the Opposition Spokesman on Justice, Mark Golding, was one of the first to question the constitutionality of giving the security forces further “essential powers” during a Joint Select Committee in Parliament. Golding argued that ZOSOs would infringe on citizens constitutional rights in already downtrodden communities while questioning the powers being conferred onto the Prime Minister Holness as the NSC head.[[30]](#footnote-30) Golding made the following argument:

The National Security Council is a committee which operates in a very private and confidential setting. Its deliberations are not subjected to any form of scrutiny outside of its membership. This body, by making an order, can create an environment in these zones which are effectively a limited state of emergency with powers which do not normally exist.[[31]](#footnote-31)

The aforementioned observation by the opposition can be compared to Schmitt’s (1985, 49-50) critique of the parliamentary concepts of openness and discussion which he believes have been replaced by the secretive[[32]](#footnote-32) machinations of “small and exclusive committees of parties or of party coalitions” whihch are a key cog in the decisionmaking process affecting entire populaces.

The Prime Minister, as *primus inter pares,*  has now confered on himself extraordinary executive authority and powers for either declaring or terminating ZOSOs. Powers for declaring and continuing so-called “states of exception” in the form of ZOSOs are the domain of the Prime Minister and the NSC whereby they can extend said declared zones three times (180 days) without seeking parliamentary approval.[[33]](#footnote-33) This declaration of course comes with its own problems whereby erroneous data was used to implement the first ZOSO in the community of Mount Salem in Montego Bay, St. James parish.[[34]](#footnote-34) Updated police statistics eventually validated the residents initial concerns whereby the NSC admitted to using erroneous murder figures to declare the ZOSO.[[35]](#footnote-35) This strange error though is arguably some proof that the designation and declaration of states of exceptions are not like a machine free from human input and subjectivity. It points to the larger contentions about such declarations which critics usually deride as being tyrannical whereby a single individual or a group can take sovereign decisions thus proving Schmitt to be correct. However, à la Agamben, the obfuscation of data by the NSC (deliberate or not), aids to show that the state of exception represents a blurred space, one where the declaration of a ZOSO is within the legal order but the simultaneous actions of the NSC are outside of it as well thus creating a juridical No Man’s Land whereby citizens’ daily lives and constitutional freedoms can be suspended as will demonstrated below without little to no recourse.

Furthermore, the revocation of a ZOSO lies squarely within the remit of the aforementioned Executive bodies with very little parliamentary oversight whereby “within fourteen days of each extension” the Prime Minister merely has to make a statement to Parliament.[[36]](#footnote-36) The Prime Minister has even made remarks about the initial zones whereby he noted that “Mount Salem recommends itself,”[[37]](#footnote-37) as if to suggest there was no sovereign authority that instituted such a declaration by virtue of his office and the NSC. In sum, these practices mark a deliberate attempt by the executive to depart from norms of parliamentary consultation in deployment of emergency measures by using statutory means.

In examining the ZOSO Act vis-à-vis the Jamaican constitution, a conspicuous tension readily presents itself for discussion. From this perspective, the ZOSO Act seems unconstitutional, and this will be elaborated on using textual evidence to provide another angle for evaluating Golding’s aforementioned concern. Jamaica’s Chapter III of the Constitution, otherwise known as the Fundamental Charter of Rights, clearly expresses the following that: “Parliament shall pass no law and no organ of the State take any action which abrogates, abridges or infringes those rights.”[[38]](#footnote-38) However, under ZOSOs there are several provisions which clearly contravene several rights whereby the government has enabled the security forces to operate carte blanche, in practice not theory, in declared zones. In this sense, the authorities are able to conduct searches and seizures of persons, properties, vehicles, and places without warrants as provided for by the ZOSO Act based on “reasonable suspicion.” However, one can reasonably make the argument that such a provision is constitutionally vague and thus puts the citizen at the mercy of executive rule via the security forces own interpretation. The aforementioned state (ZOSO) practices are therefore in direct conflict with the Constitution, specifically the chapter on Fundamental Charter of Rights, which guarantees the “right of everyone to protection from search of the person and property”[[39]](#footnote-39) as well as “privacy of the home and family life”[[40]](#footnote-40) along with “ protection from torture, or inhuman or degrading punishment or other treatment.”[[41]](#footnote-41) These rights are non-derogable even in the context of either a SOE or a ZOSO and from this standpoint it seems as if warrantless searches and seizures are contrary to the supreme law of the land.[[42]](#footnote-42)

One of the main critiques leveled against ZOSOs are that they generally allow for the gradual erosion of civil liberties via arbitrary arrests, detentions, and searches. Therefore, it is imperative to identify violations which should not occur in theory but are the reality for some citizen. According to Harrison-Henry (2021), one of the most egregious examples of state actions not conforming to the legal provisions as detailed in the ZOSO Act was the arrest and detention of 582 individuals, based on the Jamaica Constabulary’s (JCF) own records, in the Mount Salem community between September 2017-August 2018. Out of this total figure, only *1* detainee was charged whilst the remainder were released on the same day of their arrest/detention over the said time period (Harrison-Henry 2021). In another example, Denham Town, a West Kingston community, saw 772 persons being detained with 615 of them being *“processed and released”* on the same day, despite the fact that neither the law nor the police defines what “process” means (Harrison-Henry 2021, 11).

The report additionally notes that the police did not supply the reasons for the wholesale detentions while failing to bring them to a Justice of the Peace (JP). For example, according to section 16 (2) (a-b) of the ZOSO Act alludes to the fact that citizens detained should be “immediately told the reason for his arrest or detention unless the circumstances are such that the person should know; and forthwith be taken before a Justice of the Peace who shall determine whether or not there are reasonable grounds for the arrest or detention.” However, per the Public Defender’s report, these statutory requirements of the legislation were unmet thus violating the detained citizens due process rights. The actions of the state forces in ZOSOs *prima facie* seem contrary to the text and spirit of the constitution as well as the Law Reform Act.

Using the police’s data on warrantless searches, the Public Defender again found notable violations which were not in keeping with provisions of the law, especially the requirement of reasonable suspicion. Across the respective ZOSOs, the security forces have engaged in searching several thousand homes. Based on JCF data provided to the Public Defender, Mount Salem had a total of 4,604 houses being searched with “significant numbers…yielding nothing” and “that searches were arbitrary and contrary to provisions of the Act” (Harrison-Henry 2021, 7). Only 48 and 20 houses were searched in the Greenwich and August Town ZOSOs respectively, with no arrests and illegal items emanating from such actions. Finally, Harrison-Henry (2021, 16) makes the following observation:

The unavailability of information on the searches of houses, or the failure to capture details in respect of such searches in the Denham Town Zone, is an indication that the security forces have not learned the lessons from the May 2010 joint police-military operation in west Kingston.

In summary, while the security forces have had some recoveries of weapons,[[43]](#footnote-43) they are nowhere the findings that would be accorded the status of an emergency and it could reasonably argued that such seizures could have been performed using ordinary criminal justice measures and laws.

While the aforementioned ZOSO violations are the main ones which have been documented by the Public Defender, a critical angle must also be used to critically examine the statute itself versus other available legal provisions such as the Constabulary Force and the Criminal Justice (Suppression of Criminal Organizations) Acts which provide the government with adequate criminal justice tools. Although SOCA was formally repealed in 1993, some of its more arbitrary, and some would say oppressive powers were subsumed under an amended Constabulary Force Act in 1994.[[44]](#footnote-44) Juxtaposing the Constabulary Force Act with ZOSO complicate things a bit further, whereby the police already had some of the aforementioned powers under the former statute. For example, the police commissioner under the Constabulary Force Act has “special powers” for crime prevention or detection whereby both cordons and curfews can be enforced on certain localities.[[45]](#footnote-45) However, this provision for the nation’s top law enforcement officer had similar temporal constraints to ZOSOs whereby cordons have been increased from 12 to 24 hours whilst curfews have moved from 48 to 72 hours under the latter legislation.[[46]](#footnote-46) Additionally, members of the police force are empowered to make certain arrests and searches of dwellings, houses, and vehicle with or without warrants.[[47]](#footnote-47) Overall, the key point here is that the government already had these legislative resources available for criminal justice. Furthermore, this begs the question as to why they there is an apparent intensification and multiplication of criminal justice laws with overlapping powers that give the government *rule by law* emergency powers as normal/ordinary statutes (at least in name only)? Essentially, the development of further extraordinary powers by successive Jamaican governments further complicates a strict distinction between norm and exception whereby ordinary criminal justice laws bestow extraordinary powers on some actors which again begs the question: Why is there an emphasis on developing new extraordinary legislation? Finally, per the Public Defender’s Report, the police are asking for increased powers under the said ZOSO Act, powers that are already available to them.

A potential answer to the question posed above can be found in what scholars like Honig (2009) and Sarat (2010) calls the jurisgenerative nature of declarations of emergencies. In this sense, the law is the supposed basis for thwarting “the ever-present threat of chaos” that lies in juxtaposition to an emergency or declarations of such (Sarat 2010, 4). Honig (2009) meanwhile sees this nature has possessing potentialities for both positive and negative outcomes when law and claims of emergency intersect. With this perspective in mind, we can see how assertions of emergencies maintain themselves via notions of: chaos, return to normalcy, necessity, and threat as the bases for new laws. Such rhetoric has been quite prominent in the case of the government’s decision for declaring successive SOEs and ZOSOs. Overall, claims of emergencies not only blur the existing legal order but lead to the creation of new laws and amendments of older ones in anticipation and response to said claims by virtue thus becoming self-fulfilling and self-perpetuating.

**SOEs Declared: Continued Merger of Emergency and Criminal Justice again, 2018-2020.**

Since the last declared SOE of 2010 in West Kingston, there have been a flurry of them since 2018 with at least half of the island’s 14 parishes and its 19 police divions being under suchdesignations.[[48]](#footnote-48) This represents a continuation of supposed exceptional governnance in Jamaica, albeit one whereby criminal justice and emeregency powers intersect to provide the state with more legal resources for potential abuses. **Table 2.0** below provides the relevant spatial and temporal details about the Jamaica’s most recent declaration of emergencies. ZOSOs on the other hand have been around since 2017 and are still ongoing compared to the Supreme Court’s ruling in July 2020 which effectively terminated, at least for now[[49]](#footnote-49), declared SOEs. The local parliamentary elections in September were also a contributing factor whereby the government affirmed it would not go to the polls with SOEs intact.

**Table 2.0 Declared SOEs across Jamaica**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Parish** | **Police Divisions**[[50]](#footnote-50) | **Initial Declaration** | **Temporay Suspensions** | **Resumption** | **General Election Suspension** | **Total Duration** |
| St. James | n/a | 01/18/2018 | 01/31/2019 | 04/30/2019 | 08/17/2020 | 2 years & 4 months |
| Hanover | n/a | 04/30/2019 | n/a | n/a | 08/17/2020 | 1 year & 4 months |
| Westmoreland | n/a | 04/30/2019 | n/a | n/a | 08/17/2020 | 1 year & 4 months |
| St.Catherine | North | 03/18/2018 | 01/2/2019 | 09/5/2019 | 08/17/2020 | 1 year & 8 months |
| Kingston[[51]](#footnote-51) | Central | 09/23/2018 | 01/7/2019 | 07/14/2020 | 08/17/2020 | 4 months |
| Kingston | West | 09/23/2018 | 01/7/2019 | 07/14/2020 | 08/17/2020 | 4 months |
| Kingston | East | 01/26/2020 | n/a | n/a | 08/17/2020 | 6 months |
| St. Andrew | South | 09/23/2018 | 01/7/2019 | 07/7/2019 | 08/17/2020 | 1 year and 5 months |
| Clarendon | n/a | 09/5/2019 | n/a | n/a | 08/17/2020 | 11 months |

**Key- n/a (not applicable)**

Based on information contained in **Table 2.0**, we can see that the Kingston Central and Western divisions had the least amount of months under a declared SOE whilst St. James experienced the longest imposition of said measure. The most common monthly value amongst all declared SOEs were 4 and 16 while the respective parishes and police divisions experienced an average of 13 months. Overall, the imposition of these exceptional measures seem to be governmental strategy for the long haul whereby it has admitted that it could use declared SOEs for up to 7 years until murders reach 500 per annum.[[52]](#footnote-52) Hitler’s proclamation of the Decree for the Protection of the People and the State effectively created a state of exception in Nazi Germany for 12 years (Agamben 2005). In this sense, Jamaica might be heading down a dangerous path as it relates to the designation of SOEs in the fight against crime.

While there was an initial air of optimism about the declared SOEs as part of tackling crime, there have been concerns which have been raised about the potential for and actual abuses of power by the state security forces. These fears are grounded in past abuses by the security forces, in particular the most recent declaration of a SOE in 2010 for the community of Tivoli Gardens which left nearly 70 civilians dead. Jamaicans are seemingly in support of nearly any measure that would dent the country’s high homicide rate. Therefore, both ZOSOs in Mount Salem and Denham Town saw 75% of Jamaicans supporting this move.[[53]](#footnote-53) A major local poll in early 2019 found that 90% of Jamaicans were supportive of SOEs.[[54]](#footnote-54) An upsurge in homicides in 2017 and fear of crime initially led to support (from the business community and ordinary denizens) of the Western tri-parish SOEs and this move was credited with a 70% reduction in murders within the parish of St. James in 2018.[[55]](#footnote-55) However, despite the early successes of the SOEs throughout 2018 and 2019, murders have continued largely on the same trajectory[[56]](#footnote-56) and as such the Jamaican public was split on its support for these measures with 49% believing that they are effective while 44 percent voicing that they are ineffective.[[57]](#footnote-57)

The declared SOEs have largely been operating in conjunction with ZOSOs in the parishes and police divisions where they overlap. Both have been euphemistically termed as “enhanced security measures.”[[58]](#footnote-58) However, we must ask what these aforementioned declared SOEs tell us about norm-exception in Jamaica? To answer this, I will discuss and provide how declared SOEs have reemerged as a criminal justice state policy, one which hopefully aids to challenge the strict binary distinctions between norm-exception which continue to get blurred in Post-Independence Jamaica. This is arguably due in part to the fact that claims of emergencies and the range of powers accorded to them, in the case of Jamaica, operate on a continuum whereby they can be deployed at anytime and anywhere, with or without appropriate reason.

Similar to ZOSOs, the governments utilization of SOEs as part of the criminal justice system have come under scrutiny within the political sphere, non-governmental organizations, the media, and international partners of Jamaica. In terms of key violations of civil liberties, arbitrary arrests and extended detentions have been the main ones which some citizens have endured as a result of state actions. For example, the Public Defender, Harrison-Henry noted that the security forces are still arbitrarily detaining citizens, a practice also seen with ZOSOs.[[59]](#footnote-59) Based on police statistics, Harrison-Henry noted that a little over 4, 000 persons had been detained under the declared SOE in St. James for an average of 4 days with only 153 persons being charged, primarily with minor offences.[[60]](#footnote-60) Similarly, the U.S. State Departments Annual Human Rights Report noted that during 2018 over 6, 000 persons were detained across the island with very few arrests leading to charges. Campbell (2020) notes that recent the security practices of the Jamaican state by way of declarations of emergencies underpin and develop concerns about the erosion of citizenship rights in marginalized spaces. In this sense, citizens from areas under declared SOEs, which are primarily working class areas, will have a different interaction with the state security forces compared to persons from middle to upper class strata thereby reaffirming the latter’s constitutional rights and disavowing the former’s own.

The extended detentions of five men, some of whom were held between a range of 204 to 458 days without charge respectively, would ultimately lead to downfall of the SOEs in July 2020. The police have argued that they use the SOEs as an investigative tool thus justifying extended detentions.[[61]](#footnote-61) However, defense attorney Bert Samuels, in an opinion piece for *The Gleaner* on April 17, 2019 questioned whether Guantanamo Bay-styled permanent detentions are the new criminal justice normal for Jamaica.[[62]](#footnote-62) The case of *Everton et al v The Minister of National Security et al* esssentially noted, according to Justice Bertram Morrison’s oral and written decisions, that the men’s constitutional rights and the Constitution itself were being infringed upon. For example, Morrison’s ruling noted that the circumstances under which the men were detained did not qualify or satisfy some sections of the Constitution as an emergency[[63]](#footnote-63) as well as being held under an executive detention system thus breaching their constitutional rights.[[64]](#footnote-64) Furthermore, the ruling also importantly noted that both EPA and Emergency Powers Regulations (EPR), in their contemporary forms, were not compliant with the updated constitutional amendment in 2011 that created the aforementioned Fundamental Charter of Rights and this reflected the tension between Crown Colony laws and the current constitutional realities of Jamaica.[[65]](#footnote-65) The judgement explicitly noted that the executive detention system equated a breach of the separation of powers doctrine. “The use of detention order for criminal offences breach the separation of power doctrine and cannot be countenanced…This, I find to be the egregious overstepping of the bounds of the power of the Executive.”[[66]](#footnote-66) Overall, the local judiciary acted as a constraint on executive power while also problematizing the government’s resort to a state of exception policy for combatting crime.

Finally, the extraordinary rendition[[67]](#footnote-67) of a local dancehall artiste who goes by the moniker “Tommy Lee Sparta”, whose given name is Leroy Russell, is of utmost importance in analyzing Jamaica’s resort to claims of exception solve its criminal justice issues. Russell’s arrest, described as a kidnapping by his lawyer,[[68]](#footnote-68) saw him being arrested by police in the capital of Kingston (which was not under a declared SOE) and subsequently transferred to the western city of Montego Bay and held there under emergency rules. Essentially, this action can be arguably conceived of as a form of rendition by the police. Following a *habea*s *corpus* application, a parish judge eventually ruled that Russell had been improperly detained, after initially giving the police a week to justify the artiste’s detention, under the declared SOE and that he was to be immediately released.[[69]](#footnote-69)

The aforementioned violations, while they don’t represent the entire gamut of these supposed “enhanced security measures,” at least provide us with some preliminary insights into the normalization of a declared exception within the Jamaican criminal justice sphere over the past 3 years. They further represent the gravamen of several complaints and suspicions by the main opposition party, local human rights bodies, and even the press that have resulted in an ongoing dialectic between constitutional rights/rule of law versus the security needs of the state. For example, Lloyd Barnett makes the following observation about the usage of both emergency measures:

It is, however, quite clear that the Charter mandates that these extraordinary measures should be of limited duration and be continued for no longer than it is necessary. Secondly, the elaborate emergency provisions established by the charter implicitly exclude any competing emergency measures such as ZOSOs, which do not conform with the constitutional standards and leave it to the Executive to impose stringent restrictions on the liberties of citizens.[[70]](#footnote-70)

The point here is that the government has embarked on a path of instituting dubious emergency provisions for the long haul which more or less translates to a declarative state of exception becoming a quasi-permanent way of life for Jamaicans in the years to come with justified fears of continued constitutional violations.

Both ZOSOs and SOEs have not successfully managed to make a meaningful dent in Jamaica’s crime figures. For example, **Table 3.0** below shows the national homicide figures and the percentage change since the implementation of declared ZOSO’s and SOEs, starting in late 2017 and early 2018. Despite Jamaica’s declared state of exception across several sections of the island, for 2020 the homicide rate was still at 46.5 per 100, 000.[[71]](#footnote-71)However, these figures have to be compared and analyzed against the specific areas where such measures have been deployed to determine their efficacy and this is outside the scope of the current paper due to data and time constraints. The focus here is on the violations that have been uncovered in this exploratory investigation of Jamaica’s ongoing declared state of exception.

**Table 3.0 showing Annual Homicides for Jamaica over a 5-year period**

|  |  |  |
| --- | --- | --- |
| **Year** | **Homicides** | **Annual % Change** |
| 2016 | 1354 | **\_** |
| 2017 | 1647 | 21.6 |
| 2018 | 1287 | -21.9 |
| 2019 | 1326 | 3.0 |
| 2020 | 1323 | -0.2 |

**Rule *of* Law vs Rule *by* Law: An Indefinite Conclusion**

Agamben’s problematization of the origins of the state of exception and by exception Schmitt’s classical account of it creates more questions than answers. Classical notions elide the blurry nature of the state of exception, one that is both within and external to the juridical order. Similarly, Jamaica’s own experience hopefully provides some empirical and theoretical problematization of declarative exceptions whereby they seemingly are a threshold for the island’s own legal order. The indeterminateness of Jamaica’s experiment with this criminal justice method challenges us to think beyond neat distinctions of norm and exception whereby we have to interrogate both areas in general public law to find how they interact and reinforce each other. The Jamaican government’s criminal justice approach seems reminiscent to a rule *by* law project instead of the rule *of*  law as seen by the number of constitutional violations in the form of arbitrary arrests, extended detentions, and extraordinary rendition.

Overall, the political future of Jamaica seems very interesting from emergency powers literature standpoint. The actions of the government in the short to medium term raises more questions than answers but there should still be an attempt to empirically and/or theoretically analyze Jamaica’s latest deployment of exceptional powers. In what ways does the Jamaican government’s current usage of emergency powers for crime-fighting challenge our understandings of the simple dichotomy between norm and exception? Are we seeing the emergence of a constitutional dictatorship, state of exception, or a blurry combination of both within post-independent Jamaica? Is it a paradigm of governance in Jamaica? These questions are pertinent for developing a richer and more nuanced account of ideas about norm, exception, and in general emergency power theories.

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1. *Political Theology: Four Chapters on the Concept of Sovereignty*, by Carl Schmitt, vii-xxxv. Translated and edited by George Schwaab. Chicago: University of Chicago Press, 2000. Schmitt (6) says: “The exception, which is not codified in the existing legal order, can at best be characterized as a case of extreme peril, a danger to the existence of the state, or the like. But it cannot be circumscribed factually and made to conform to a preformed law.” [↑](#footnote-ref-1)
2. # Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt,* (London: Verso, 2000), 182.

   [↑](#footnote-ref-2)
3. Tracy B. Strong, foreword to *Political Theology: Four Chapters on the Concept of Sovereignty*, by Carl Schmitt, vii-xxxv. Translated and edited by George Schwaab. Chicago: University of Chicago Press, 2005. [↑](#footnote-ref-3)
4. Renowned historical figures of this committee include: John Stuart Mill, Charles Buxton, John Bright, Charles Darwin and Thomas Huxley as noted by Nasser Hussain in *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: The University of Michigan Press, 2003), p.110. [↑](#footnote-ref-4)
5. SOEs are also called SOPEs (States of Public Emergencies). However, the former abbreviation will be preferred here and further on in the paper. [↑](#footnote-ref-5)
6. “What’s A State of Emergency? Things You Should Know,” *The Gleaner*, January 18, 2018. [↑](#footnote-ref-6)
7. Emergency Powers Act of 1938, §2 (b). [↑](#footnote-ref-7)
8. Andrew Holness’ Contribution to the Budget Debate for fiscal year 2017-2018. The new legislation here is the Law Reform (Zones of Special Operations-ZOSO) (Special Security and Community Development) Act*.* [↑](#footnote-ref-8)
9. See Hussain p. 108 in *The Jurisprudence of Emergency: Colonialism and the Rule of Law* for a brief overview of martial law declarations in a number of disparate geographical colonies. Jamaica’s experience was based on the experiences of the Baptist War (Sam Sharpe Rebellion/Christmas Uprising) of 1831-32 and the Morant Bay Rebellion of 1865. [↑](#footnote-ref-9)
10. 2010 saw a SOE being used to enforce and capture a local crime boss, Christopher (Dudus) Coke, for extradition to the U.S. See Mattathias Schwartz, “Massacre in Jamaica.” *The New Yorker,* December 12, 2011 Issue. Retrieved from https://www.newyorker.com/magazine/2011/12/12/a-massacre-in-jamaica [↑](#footnote-ref-10)
11. Keble Munn, Minister of National Security*. Ministry Paper 22*, “Review of the State of Emergency,” June 7, 1977, p.1. See also Ralph Blumenthal, “Jamaica’s Emergency Rule Reduces Political Violence,” *The New York Times*, July 16, 1976. Retrieved from: https://www.nytimes.com/1976/07/16/archives/jamaicas-emergency-rule-reduces-political-violence.html [↑](#footnote-ref-11)
12. Original emphasis retained. [↑](#footnote-ref-12)
13. Tracy B. Strong, foreword to *Political Theology: Four Chapters on the Concept of Sovereignty*, by Carl Schmitt, vii-xxxv. Translated and edited by George Schwaab. Chicago: University of Chicago Press, 2000. See pages xiv-xvi as a reason why Schmitt locates “genuine decisions” within his famous friend/enemy distinction of the political. [↑](#footnote-ref-13)
14. Lawmakers in St. Kitts and Nevis urged the then Prime Minister, Denzil Douglas, to declare a SOE similar to Trinidad and Tobago’s. St. Lucia’s then National Security Minister, Guy Mayers, admitted in 2011 that St. Lucia also came close to similarly imposing a SOE to fight rising crime as well but opted against this course of action due to potential economic fallouts. Retrieved from: <http://jamaica-gleaner.com/power/31364> [↑](#footnote-ref-14)
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16. “Jamaica ‘murder capital of the world’,” *BBC Caribbean.* Retrieved from: http://www.bbc.co.uk/caribbean/news/story/2006/01/060103\_murderlist.shtml [↑](#footnote-ref-16)
17. Horace Chang, “*Building Capacity for Security Resilience”,* presented as part of the Sectoral Debate by the Ministry of National Security, June 30, 2020. Retrieved from https://jis.gov.jm/media/2020/07/Min.-Chang-Sectoral-Presentation-2020-E.pdf

    [↑](#footnote-ref-17)
18. Andrew Holness (2017). *Prime Minister’s Contribution to the Budget Debate 2017-2018*. [↑](#footnote-ref-18)
19. *Ibid,* p.22. “Mr. Speaker, this legislation is designed to give effect to a well-established and practised security and community building strategy termed Clear, Hold, Build’.

    **Clear -** Law Enforcement goes into selected community and saturate community with their presence and displaces the criminal element and removes their space to operate while at the same time reassuring law-abiding citizens.

    **Hold -** Law Enforcement maintains a sustainable level of presence and control over the area, creating the space and support for a multi-sectoral intervention into the community to address outstanding and critical human needs and basic infrastructure.

    **Build** - Psycho-cultural, social capital, and leadership and organization building and support.” [↑](#footnote-ref-19)
20. Latonya Linton, “All Clear for Zones of Special Operations Legislation,” *Jamaica Information Service*, July 12, 2017. Retrieved from https://jis.gov.jm/clear-zones-special-operations-legislation/ [↑](#footnote-ref-20)
21. This is an argument that was advanced by Gordon Robinson, an attorney, in a weekly column (op-ed) titled “Where have I heard this before?”, column, *The Gleaner,* June 15, 2017.  [↑](#footnote-ref-21)
22. The Law Reform (Zone of Special Operations) (Special Security and Community Development Measures) Act 2017, §4 (1), §5 (1-2). [↑](#footnote-ref-22)
23. *Ibid*, §14 (1). The language specifies “reasonable suspicion” as the basis for such searches. [↑](#footnote-ref-23)
24. *Ibid,* §12 (1) (a-b). [↑](#footnote-ref-24)
25. *Ibid*, §16 (1). [↑](#footnote-ref-25)
26. According to the current Public Defender’s Report, the Mount Salem ZOSO was transitioning from the holding to building phase in April 2018. For Denham Town, the transition date is not available according to communication from the JCF. Greenwich Town is still in the holding phase while August Town started its transition from holding to building on July 30, 2020. [↑](#footnote-ref-26)
27. Nadine Wilson, “Minimum six years for ZOSO turnaround, says Sweeney-Crime dips in August Town but views mixed over social work ‘build phase’,” *The Gleaner,* February 1, 2021. Retrieved from http://jamaica-gleaner.com/article/lead-stories/20210201/minimum-six-years-zoso-turnaround-says-sweeney-crime-dips-august-town. Omar Sweeney is the managing director of the Jamaica Social Investment Fund (JSIF) and the comments were recorded at a Joint-Select Committee for reviewing the ZOSO Act every 3 years-a statutory requirement. [↑](#footnote-ref-27)
28. *Ibid,* §23 (1) 24 (1) (a-e). [↑](#footnote-ref-28)
29. Douglas Mcintosh, “Private Sector Leaders Support Zones of Special Operations Bill,” *Jamaica Information Service,* July 10, 2017. Retrieved from https://jis.gov.jm/private-sector-leaders-support-zones-special-operations-bill. The role of Jamaica’s private sector has been critiqued by several works which denounce the cozy relationship between itself and the state in crafting policy-Carl Stone etc. [↑](#footnote-ref-29)
30. Alphea Saunders, “Opposition questions constitutionality of Bill to create zones,” *Jamaica Observer,* June 22, 2017. Retrieved from https://www.jamaicaobserver.com/news/opposition-questions-constitutionality-of-bill-to-create-crime-zones\_102678?profile=151 [↑](#footnote-ref-30)
31. *Ibid* [↑](#footnote-ref-31)
32. Schmitt (1985, 50) further argues that:

    The idea of modern parliamentarism, the demand for checks, and the belief in openness and publicity were born in the struggle against the secret politics of absolute princes. The popular sense of freedom and justice was outraged by arcane practices that decided the fate of nations in secret resolutions. But how harmless and idyllic are the objects of cabinet politics in the seventeenth and eighteenth centuries compared with the fate that is at stake today and which is the subject of all manner of secrets. (50) [↑](#footnote-ref-32)
33. The most notable examples here are Mount Salem and Denham Town that seen their ZOSOs extended from 2017 to the present as seen in Table 5.0. Both communities were also the first and second Zones, respectively, to be declared on the island in said year. [↑](#footnote-ref-33)
34. Adrian Frater, “Faulty data!-Residents challenge crime figures used to declare Mount Salem zone of special operations,” *The Gleaner,* September 2, 2017. Retrieved from http://jamaica-gleaner.com/article/lead-stories/20170903/faulty-data-residents-challenge-crime-figures-used-declare-mount-salem [↑](#footnote-ref-34)
35. “NSC stands by Mount Salem zone declaration,” *Jamaica Observer,* September 6, 2017. Retrieved from https://www.jamaicaobserver.com/news/nsc-stands-by-mount-salem-zone-declaration\_110113?profile=1031. See also, Tristan Clavel, “Jamaica’s New Security Plan Off to Inauspicious Beginning,” *Insight Crime,* September 8, 2017. Retrieved from: https://insightcrime.org/news/brief/jamaica-new-security-plan-inauspicious-beginning/ [↑](#footnote-ref-35)
36. The Law Reform (Zone of Special Operations) (Special Security and Community Development Measures) Act 2017, § 6. [↑](#footnote-ref-36)
37. Ryon Jones, “Mount Salem chose itself,” *The Gleaner*, September 1, 2017. Retrieved from https://jamaica-gleaner.com/article/lead-stories/20170902/mount-salem-chose-itself-holness [↑](#footnote-ref-37)
38. Jamaican Const. Ch. III. §13 (2) (b). [↑](#footnote-ref-38)
39. Jamaican Const. Ch. III. §13 (3) (j) (i). [↑](#footnote-ref-39)
40. Jamaican Const. Ch. III. §13 (3) (j) (ii). [↑](#footnote-ref-40)
41. Jamaican Const. Ch. III. §13 (3) (o). [↑](#footnote-ref-41)
42. This argument has been pursued by a noted Jamaican constitutional scholar, Lloyd Barnett, in a column (op-ed) entitled: Lloyd Barnett, “States of Emergency, ZOSOs and the fundamental rights of individuals,” *Jamaica Observer,* January 20, 2019. Retrieved from: https://www.jamaicaobserver.com/news/states-of-emergency-zozos-and-states-of-emergency-zozos-and-the-fundamental\_154611?profile=1444 [↑](#footnote-ref-42)
43. “Four more illegal guns seized in Mount Salem,” *Loop News,* September 10, 2017. [↑](#footnote-ref-43)
44. The Constabulary Force Act 1935, Act 14 1994, Schedule 2. [↑](#footnote-ref-44)
45. The Constabulary Force Act 1935, Part IIA, §50b (1) (3a) (3b). This part of the Act was amended and incorporated 1994. [↑](#footnote-ref-45)
46. *Ibid.* Compare with ZOSO Act [↑](#footnote-ref-46)
47. The Constabulary Force Act 1935, Part I, §15 states: “It shall be lawful for any Constable, without warrant, to apprehend any person found committing any offence punishable upon indictment or summary conviction and to take him forthwith before a Justice who shall enquire into the circumstance of the alleged offence, and either commit the offender to the nearest jail, prison or lock-up to be thereafter dealt with according to law, or grant that personal bail in accordance with the Bail Act.” Furthermore, §50b (4) (5) make reference to the situations under which a search can occur whereby the following is stated: “No powers of search shall be exercised under subsection (4) without a warrant in relation to a dwelling house [↑](#footnote-ref-47)
48. “States of emergency after the polls,” editorial, *The Gleaner,* March 8, 2020. [↑](#footnote-ref-48)
49. The Holness government launched on appeal on October 29, 2020. See Edmond Campbell, “Govt appeals SOE ruling,” *The Gleaner,* December 19, 2020. Retrieved from:

    http://jamaica-gleaner.com/article/lead-stories/20201219/govt-appeals-soe-ruling-buntings-remarks-senate-debut-brings-out. Also see news report which characterized this move as a “delay tactic” for the government to avoid paying legal costs to 5 men who had brought the initial suit which effectively ruled that SOEs were unconstitutional: Alicia Dunkley-Willis, “Delay tactic?” *Jamaica Observer,* December 28, 2020. Retrieved from: https://www.jamaicaobserver.com/news/delay-tactic-\_210863?profile=0 [↑](#footnote-ref-49)
50. There are 19 geographical divisions of the JCF with the parishes of Kingston, St. Andrew, and St. Catherine operating being further subdivided to form 8 out of total number of divisions. They include: Kingston Central, Kingston Eastern, Kingston Western, St. Andrew Central, St. Andrew North, St. Andrew South, St. Catherine North and St. Catherine South. The remaining 11 divisions are designated under their respective parishes. [↑](#footnote-ref-50)
51. Kingston and St. Andrew are administratively governed as an amalgamation known as the Kingston and St. Andrew Corporation (KSAC) since 1923. Source: https://www.commonwealthofnations.org/partner/kingston-st-andrews-corporation/# [↑](#footnote-ref-51)
52. “Gov’t recommends up to seven more years of states of emergency,” *Radio Jamaica News*, July 16, 2019. Retrieved from: http://radiojamaicanewsonline.com/local/govt-recommends-up-to-seven-more-years-of-states-of-emergency [↑](#footnote-ref-52)
53. “Most Jamaicans in agreement with ZOSOs - RJRGleaner/Don Anderson Poll”, *Radio Jamaica News, February 28, 2018****.*** http://radiojamaicanewsonline.com/local/most-jamaicans-in-agreement-with-zosos-rjrgleanerdon-anderson-pol [↑](#footnote-ref-53)
54. “Most Jamaicans support states of emergency - RJRGLEANER/Don Anderson poll**,”** *Radio Jamaica News,* March 11, 2019.http://radiojamaicanewsonline.com/local/most-jamaicans-support-states-of-emergency-rjrgleanerdon-anderson-poll\_1 [↑](#footnote-ref-54)
55. “State of emergency declared in western Jamaica.” *Loop Jamaica,* April 30, 2019. https://www.loopjamaica.com/content/breaking-state-emergency-declared-western-jamaica [↑](#footnote-ref-55)
56. Hall, Arthur. “Clarendon, St. Andrew South lead 2020 crime figures.” *Jamaica Observer,* January 25, 2020. http://www.jamaicaobserver.com/news/clarendon-at-andrew-south-lead-2020-crime-figures\_184534?profile=1470 [↑](#footnote-ref-56)
57. Wilson, Nickoy. “Jamaica Split on SOEs-Security Expert Says Crime Has Been Politicised.” *The Gleaner,* February 2020. http://jamaica-gleaner.com/article/lead-stories/20200228/jamaica-split-soes-security-expert-says-crime-has-been-politicised [↑](#footnote-ref-57)
58. Anthony Lewis, “Government now wants MoBay operations called ‘enhanced security measures’,” *Jamaica Observer,* February 07, 2018. Robert Montague, the National Security Minister then, argued that a SOE has a negative connotation for the country’s tourism capital. “We want to make it very clear that, after this afternoon, we will no longer refer to the state of public emergency. We are in the tourism capital and tourism is the lifeblood. We would like to refer from henceforth to the enhance security measures,” stated Montague. Retrieved from: https://www.jamaicaobserver.com/news/government-now-wants-mobay-operations-called-8216-enhanced-security-measures-8217-\_124526?profile=1607&template=MobileArticle [↑](#footnote-ref-58)
59. Livern Barrett, “Cops Breaching Emergency-Power Rules with Faulty Data, Says Public Defender.” *The Gleaner,* November 21, 2018. http://jamaica-gleaner.com/article/lead-stories/20181122/cops-breaching-emergency-power-rules-faulty-data-says-public-defender [↑](#footnote-ref-59)
60. *Ibid.*  [↑](#footnote-ref-60)
61. Danae Hyman, “SOE buys time to hunt for evidence- cop,” *The Gleaner,* July 28, 2020. Retrieved from http://jamaica-gleaner.com/article/lead-stories/20200728/soe-buys-time-hunt-evidence-cop [↑](#footnote-ref-61)
62. Bert Samuels, “Are permanent detentions the way forward?”, *The Gleaner,* April 17, 2019. Retrieved from: http://jamaica-gleaner.com/article/commentary/20190417/bert-samuels-are-permanent-detentions-way-forward [↑](#footnote-ref-62)
63. Jamaican Const. Ch. III. §20 (2) (5). These sections deal with the material conditions which effectively validate the Governor-General’s Proclamation of an emergency as well as the judiciary’s role in determining said validity. **§20 (2)** states: A Proclamation made by the Governor-General shall not be effective for the purposes of subsection (1) unless it is declared that the Governor-General is satisfied that- **a**. a public emergency has arisen as a result of the imminence of a state of war between Jamaica and a foreign State; **b.** that action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services

    essential to life; **c.** that a period of public disaster has arisen as a result of the occurrence

    of any earthquake, hurricane, flood, fire, outbreak of pestilence,

    outbreak of infectious disease or other calamity, whether similar to the foregoing or not.”

    **§20 (5)** states: “The court shall be competent to enquire into and determine whether a

    proclamation or resolution purporting to have been made or passed under

    this section was made or passed for any purpose specified in this section or

    whether any measures taken pursuant thereto are reasonably justified for

    that purpose.” [↑](#footnote-ref-63)
64. *Douglas et al v The Minister of National Security et al.* 2020. SU2020CV02455-7 (Supreme Court of Judicature of Jamaica, October 1). [↑](#footnote-ref-64)
65. See *supra* note 42. Barnett also makes a similar claim whereby he notes the following: “Using this wartime statute, the Government made the Emergency Powers Regulations in 2010. It provides that the Governor-General, the Minister of National Security, the Chief of Defence Staff of the JDF and the Commissioner of Police may, if they consider it necessary, block roads, set up cordons, enter private property to carry out work, requisition any ship or article, require the provision of information, prohibit assemblies, establish curfews requiring persons to remain indoors for such duration as they think fit, restrict access to particular areas, prohibit wearing of uniforms or emblems, search premises and confiscate literature, stop and search vehicles, confine a person to his place of residence, and order the closure of places of public resort and entertainment. These provisions are clearly in conflict with the fundamental rights guarantees and are not authorized by the emergency provisions of the Charter.” [↑](#footnote-ref-65)
66. *Ibid,* p. 58. [↑](#footnote-ref-66)
67. In a move fairly reminiscent in terms of the procedural arrest, transfer, trial, and execution of George William Gordon during the 1865 Morant Bay Rebellion by Governor Eyre [↑](#footnote-ref-67)
68. Sade Gardner, “Lawyer says Tommy Lee ‘kidnapped’,” *Jamaica Observer,* May 22, 2018. Retrieved from: https://www.jamaicaobserver.com/entertainment/lawyer-kidnapped-\_133790 [↑](#footnote-ref-68)
69. “ ‘Tommy Lee improperly detained’: Judge orders release of entertainer,” *Loop News* May 29, 2018. Retrieved from: https://www.loopjamaica.com/content/tommy-lee-improperly-detained-judge-orders-release-entertainer [↑](#footnote-ref-69)
70. See *supra* note 37. [↑](#footnote-ref-70)
71. Parker Asmann and Katie Jones, “InSight Crime’s 2020 Homicide Round-Up,” *InSight Crime,* January 29, 2021. [↑](#footnote-ref-71)