

## Behind Jamaica's Garrisons

*The following are excerpts of the July 1997 Report of the National Committee of Political Tribalism. The Committee was chaired by Political Ombudsman the Hon. Justice Kerr*

### Police

THE COMMITTEE on the basis of submissions, oral and written, shares the following view of the National Task Force on Crime:

"The widespread perception among the general public is that there is improper political interference with the police in the performance of their duties."

One of the causes is the perception of members of the force that politicians can improve or impede their promotion. There is some support for this view in the rapid and successive promotions of members of the Force who have been assigned for significant periods as bodyguards to persons holding high political office. Assignments are from the specially trained Protective Services Division.

While it was agreed by all members of the Committee present that assignment was eminently a matter for the Commissioner of Police, there were unresolved differences of opinion as to whether or not the political official should be consulted by the Commissioner. We endorse the recommendation of the National Task Force on Crime of an assignment for two years.

### Performance

From the discussions at the Fora, we affirm the finding of the National Task Force on Crime to the effect that it is the expectation of political preference which provides the inducement for policemen to act contrary to the professional principles in the performance of their duties.

There have been complaints of the police not taking any action or turning a blind eye when political offences are being committed. There have also been allegations of police partisanship in the form of consistent harassment. In the Report of the members of the Public Education Committee on their recent visit to Tivoli - the citizens were vociferous in their complaints of police harassment.

The Committee is of the view that wilful neglect of duty should be reported to the Commissioner for appropriate action either as an offence under the Law or for disciplinary proceedings under the Constabulary Force Regulations.

### Duties

The duties of the police fall into two broad categories:

- (1) prevention of crime and the keeping of the peace; and
- (2) law enforcement.

For effective performance in both categories, the co-operation of the citizens of the community is essential:

"the power of the police to fulfil their functions and duties is dependent upon public approval of their existence, actions and behaviour, and their ability to secure and maintain public respect". - Lord Scarman

### Independence

As Lord Scarman in his Report on the Brixton Disorders puts it:

"The Independence of the Police is the other principle of policing a free society to which I wish to refer. Neither politicians nor pressure groups nor anyone else may tell the police what decisions to take or what methods to employ, whether to enforce the law or not in a particular case, or how to investigate a particular offence. The exercise of police judgement has to be as independent as the exercise of professional judgement by a doctor or

a lawyer. If it is not, the way is open to manipulation and abuse of the law, whether for political or for private ends."

On the matter of independence the Committee noted -

(1) the recommendation of the National Task Force on Crime that Section 3(2) of the Constabulary Force Act and the action taken by the provisions of the (Amendment) (No.2) Act, 1994, with manifest intent of placing the "operational command" of the Force in the Commissioner but expressly conferring on the Minister the power to "give to the Commissioner directions as to the policy to be followed by the Force": and

(2) the (Amendment) Act, 1997, creating the Government Police Inspectorate" with wide and unchallengeable access to documents in possession of the Force.

On these amendments the committee feels constrained to make the following comments: In establishing the Inspectorate by the Amending Act of 1997, the Government acted on the recommendations in the Hirst Report which were referred to with evident approval in the Report of the National Task Force on Crime.

The committee was of the view that such a monitoring body may be necessary to ensure uniformity in the implementing of policy in a country or state where there are different forces with each having a degree of autonomy as the County Police Forces in England. Here in Jamaica, there is a unitary system with a pyramidal administration with a Commissioner at the head. The monitoring of implementation of ministerial policy could be effectively done through a Junior Minister or Parliamentary Secretary with the Permanent Secretary in tandem.

Secondly, consideration was given to the effect this amendment would have on the division of functions in the 1994 Amendment which was intended to be a prompt acceptance of the recommendation of the National Task Force on Crime. The legislative intent as expressed in the recommendation was "to make it clear that the day-to-day operations of the Force are the sole province of the Commissioner of Police and that the relationship of the Minister vis-a-vis the Force is restricted to the making of policies".

The Committee is of the opinion that the terms and tenor of this later amending Act are in conflict with the legislative intent of the Act of 1994, in that it tends to erode the division of functions in the earlier act.

The Committee also considered the wide powers of access to documents conferred - Act 12 of 1997 - on the Inspectorate by Section 81(3):

(3) An officer of the Inspectorate may, in the discharge of his functions, at any reasonable time -

(a) enter premises occupied by any division of the Force or by any of the Auxiliaries;

(b) require a member of the Force or of any of the Auxiliaries to furnish such information or to produce such documents or records as he may specify; and

(c) inspect and examine such documents or records and make copies thereof.

In the exercise of these powers there would be access to documents relating to pending criminal investigations including directions from the Director of Public Prosecutions. The legislative intent of the Constitution to vest criminal proceedings wholly in the Director of Public Prosecutions to the exclusion of any other person or authority could be obliquely evaded if confidential communications to the Commissioner of Police would be available for ministerial scrutiny.

The committee expressed concurrence with the recommendations of the National Task Force on Crime in relation to the appointment of the Commissioner of Police and the criteria for promotion to all ranks up to Superintendent, the dismissal of any member of the Force found to be actively involved in partisan politics, and that Members of the Force should be encouraged to report any attempts by politicians or anyone to interfere with them in the execution of their duty with a view to having the allegation investigated by Public Complaints Authority.

With respect to the recommendation at para. 7.4p.40 of the National Task Force on Crime, on the power of the

Commissioner to dismiss members of the Force, the Committee is of the view that such wide powers could make the Commissioner a Judge in his own cause and accordingly, the following is suggested in lieu:

The Commissioner of Police should be empowered to dismiss members of the Force below the rank of gazetted officers on the finding and recommendation of a disciplinary tribunal appointed by him for the purpose with a right of appeal to the Police Services Commission. With respect to gazetted officers, the existing procedure should be retained.