

# **History of the Electoral Commission of Jamaica**

**Prepared by the Electoral Commission of Jamaica**

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## **Introduction**

As Jamaica entered its second half century as an independent nation there was much introspection about the failures and successes of the Country. There was concern about the relative underperformance of the economy, recognition of the relative improvement in physical and technological infrastructure, deep concern about the level of violent crime, debate about the level of improvement in social conditions and a celebration of the Country's performance and global recognition in athletics, music and culture. One area of national success, too often taken for granted, has been the Country's uninterrupted process of transferring political power through an electoral system in which citizens have, in general, been able to participate freely.

This is not to suggest that the Jamaican electoral system has not been severely challenged. The process through which, and the effectiveness with which, the Jamaican society has responded to challenges to the free participation of citizens in the electoral process is linked to an understanding of the structures created to administer and oversee the Jamaican electoral process. An important initiative in this regard can be traced to the creation of an electoral oversight structure in 1979, which sought to remove the Jamaican election process from partisan political intervention. The oversight structure began with the establishment of an Electoral Advisory Committee (EAC) in 1979, which was transformed in 2006 into the Electoral Commission of Jamaica (ECJ). The electoral advisory oversight process has, over its thirty five years of existence, sought to guard and strengthen Jamaican democracy. This document provides an overview of the development of Jamaica's electoral oversight process, in particular the role played by the EAC/ECJ, prepared in the context of Jamaica's electoral history. It also explores, briefly, what the ECJ sees as the way forward in 2014.

## **Electoral Practice in Jamaica from 1663 to 1944**

The processes and structures used to administer and oversee elections in Jamaica need to be understood within the context of Jamaica's long history of elections and electoral practice. In 1660 the decision was taken for the Jamaica Colony, acquired by the British from the Spanish in 1655, to be established under the protocol that had been set for British colonies; that is, for governance to be by a Governor, an appointed Legislative Council and an elected Assembly.

The Assembly was presided over by a Speaker elected by the Members. Its main responsibilities were passing laws and originating money bills to generate revenue to cover the expenses of administration of the Colony. The Legislative Council consisted of twelve members appointed by the Governor. It was presided over by the President, who was third in line to act as Governor in instances of the absence of the Governor and the Lieutenant Governor. Invariably the Admiral of the Navy, the General of the Army, and the Attorney General were among the members of the Legislative Council. As the upper house, the Council was part of the process of passing laws.

The first General Election was held in December 1663, that is, eight years after Jamaica became a British colony. The voters' list comprised of about 300 white men in a population of about 6000 whites. This indicates that while the 1663 elections positioned Jamaica as one of the first locations in the "New World" to hold elections, the beginning of elections in Jamaica was certainly not synonymous with democracy. The franchise to vote to elect members of the Assembly was restricted to persons who were white, male, 21 years or older, and possessed of freehold property worth not less than 10 pounds or payers of a specified amount of taxes. Persons who could offer themselves to be elected to the Assembly had to own freehold property valuing not less than 300 pounds or a personal estate worth no less than 3000 pounds.

One of the earliest acts of the Assembly in 1664 was the division of Jamaica into seven parishes. Local Government in Jamaica dates back to the setting up of the Vestry System in 1677 with responsibilities for the governance of parishes. The Vestry System derived its basic structure, function and name from the system of local government in Britain at the time. It incorporated the practice of holding meetings in the Vestry of the Anglican Church in each Parish. The number of vestries grew with growth in the number of parishes into which Jamaica was divided, reaching a maximum of 22. Vestries were abolished in 1865 following the Morant Bay Rebellion.

The qualifications to vote in vestry elections and to be candidates were the same as for the Assembly. However, vestrymen tended to be owners of mid-size plantations or merchants or professionals who lived in Jamaica and were doing well financially. At least six electors had to vote to make a vestry election valid. Elections were annual and no two vestries had elections on the same day. The functions of the Vestry included the operation of workhouses, preparing jury lists, road repairs, providing for the education of the poor, providing poor relief, maintaining the Anglican Church, feeding and accommodating the militia during martial law and, up to 1797, paying the rector.

Although "general" elections began in Jamaica in 1663, the electoral process was subject to the control of the all-powerful Governor of the Colony. The Governor was the chief executive officer of the colony and commander in chief of the military. He had powers to appoint the Legislative Council, appoint the local Privy Council, convene a Council of War, appoint the Ecclesiastic Commission; appoint judges and call the Assembly into session or prorogue the session. Governor Modyford, who arrived in Jamaica just after the first elections in 1663, demonstrated the power of the Office of Governor.

The 1663 General Election was reported to have been joyous and very cordial. However, the number of planters arriving just before, and with, the arrival of the new Governor outnumbered those who had voted in the first Assembly. They demanded new elections. Further, in June 1664 Major Joy of the Legislative Council killed Captain Rutter of the Assembly over a matter concerning privileges of the two bodies. This quite possibly represented Jamaica's first

politically linked murder. Governor Modyford dissolved the Assembly in 1664 and ruled without elected representatives to the end of his tenure in 1671.

When the next General Election was held in 1672 the total population comprised just over 16,000 persons, with 7700 whites, about 4000 of whom were men, of whom only about 800 qualified to vote. In the elections of 1816, when the white population was over 16,000, and the total population was nearly 300,000 only 1572 voted. For almost two hundred years after the onset of elections, only white property owners had the right to vote.

Free Mulattoes and free Black men were granted the franchise to vote in 1830 and Jews in 1831, provided they met the stipulations with respect to ownership of freehold land and or payment of taxes. The Catholics in Britain were given the franchise in 1829 and this seemed to have followed in Jamaica in the 1830s. After full emancipation from slavery in 1838, former enslaved Africans and their descendants theoretically had the right to vote, but stringent property rules continued to restrict severely the number of Jamaicans who were eligible to vote.

In 1863, in the last election before the Assembly was abolished the total electorate was 1457 in the context of the 1861 census which recorded the population to be 441,264. This is after Jews, Mulattoes and Blacks were no longer excluded from voting by virtue of their race. In other words, in the 200 year period between 1663 and 1863, during which the population increased by more than 70 fold and the racial requirement was abolished, the increase in the electorate was only by about five fold, and the electorate was still restricted to a very small minority of the population of the Colony.

In 1865, rebellion against the tyranny of minority rule, led by Paul Bogle, and centred in Morant Bay, led to the dissolution of the Jamaican Assembly, and the imposition of direct Crown Colony rule from England, with full executive authority vested in the Governor. This rule, with modifications during the period, continued for some 78 years.

In 1866 a new Legislative Council was appointed with powers to be the chief legislative body of the Country. These powers included the right to originate and approve money bills. The Council was comprised of the Governor as Chairman and the appointed members. Although a legislative council was an element of the structure created in the 1866 Jamaican Constitution, this did not remove fully the executive authority of the Governor, because the Governor continued to be able to use a constitutional “paramount importance” clause to disregard, if so desired, any ruling from the Legislative Council.

Vestries were abolished in 1867 and replaced by Municipal Boards appointed by the Governor at the same time that the number of parishes was reduced from 22 to 14. Also in 1867 the militias were abolished and replaced by the Jamaica Constabulary Force.

The Governor and appointed Legislative Council and 14 Municipal Boards became the principal agents of Crown Colony Government. Governors John Peter Grant (1866-1874), Henry Norman (1874-1877) and Anthony Musgrave (1877-1883) became the chief architects of sweeping reforms in financial policy; the creation of the civil service; the re-structuring of the judiciary; expansion of elementary education; the creation of public high schools, and the reconfiguring of the public health system. These reforms met with widespread approval, engendered new hope among the oppressed majority and fueled new energies in development. However, the absence of elected representatives became a cause for concern among some elements of the press and citizenry which translated into political agitation in 1882 and 1883.

By Order in Council in 1884 the Legislative Council was restructured. The new Council would consist of the Governor as Chairman, four ex-officio members, two nominated members and nine elected members. Five of the elected members represented two parishes each, with the other four representing the remaining four parishes. Any six elected members could veto a money bill. However, the Governor could appoint three additional officials or exercise veto powers by declaring that it was a matter of paramount importance. If the 1866 represented the beginning of full Crown Colony Government, the adjustment of 1884 was Crown Colony Government with a veneer of representation. In 1895, the number of elected representatives was increased to fourteen, with each representing one of the fourteen parishes.

Of equal significance to the inclusion of elected members in the Council in 1884 were the electoral reforms implemented with respect to the franchise to vote and the conduct of elections. Crown Colony Government immediately addressed issues that were of great import to those who had been aggrieved by the governance of the oligarchy.

The most significant features of these electoral reforms were represented in the passing of Law 21 in 1884. This Law established the foundations of Jamaica's modern electoral system. It included:

- the creation of the position of a returning officer, who would serve for life, or until his term of service is cancelled by the Governor;
- the creation of electoral districts;
- the issue of writs of election by the Governor to fill vacancies in the Council;
- the specification that candidates for election should be nominated in writing by at least 6 registered electors from the applicable district;
- the appointment by the returning officer of officers to preside at each polling station in circumstances where more than one person has been nominated.

Law 21 also specified the electoral process, including the secrecy of the vote, the use of ballot boxes, and safeguards against, and penalties associated with, various electoral malpractices. The 1884 law also had a companion piece of legislation, the 1885 Elections Petitions Act, which allowed for individuals to petition to the Supreme Court to challenge an election.

Act 16 of 1885 abolished Municipal Boards and replaced them with 13 Parochial Boards and the Kingston Corporation. Membership of Parochial Boards was comprised of the Custos, a Member of the Legislative Council and a number of elected members who had to be taxpayers of the Parish. Members of Parochial Boards elected their chairmen. The Chairman of the Kingston Corporation held the title of Mayor. Elections for Parochial Boards and the Kingston Corporation were to be conducted on the same franchise and voters' list as that used in elections for membership on the Legislative Council.

Parochial Boards had responsibility for the repair of roads and bridges, poor relief, markets, fire brigade, public health and water supply in the Parish. They retained the power to impose taxes and to charge fees for various services. As such, Parochial Boards were reformed and updated Vestries. In other words, Crown Colony Government did not change local government fundamentally. The first elections to elect representatives to Parochial Boards and the Kingston Corporation were held in 1887.

Over the later years of Crown Colony rule, the Legislative Council increasingly became more representative of the Jamaican population. Further, during the first half of the Twentieth Century, the fourteen elected members of the Legislative Council became the most influential group in Jamaican politics. Also during the first half of the Twentieth Century, more Jamaicans continued to achieve the right to vote. One important milestone was the extension in 1919 of the franchise to women.

Subsequent amendments to the Electoral Law of 1884 which shaped the electoral system up to 1944 can be summarised as follows.

- The tax requirement to vote was reduced to 10 shillings in 1887.
- A literacy test for voting was mandated in 1893.
- The number of elected members to the Legislative Council was set at one per Parish, that is, 14 in 1895.
- Following a dispute between the Governor and elected members over financial matters, the “paramount importance” clause was invoked in 1896.
- Women were first granted the right to vote in 1919 and were able to vote in the General Elections of 1920. However, unlike men, women had to be 25 years or older and pay taxes of at least two pounds.

In 1923 the Parochial Board of St Andrew and the Kingston Corporation were merged to form the Kingston and St Andrew Corporation (KSAC).

Despite the electoral advances during this period, property qualifications continued to severely restrict the participation of the majority of Jamaicans in the electoral process. These property qualifications included income of at least 40 pounds per annum, or taxes on land in the amount of at least 10 shillings per annum. As noted above, even though women were granted the franchise in 1919, they continued to be discriminated against in the voting process. These restrictions were such that in 1935, only 66,000 Jamaicans, comprising 7% of the population, were eligible to vote.

In the first General Election in 1884 eight white men and one man of mixed race were elected to the Legislative Council. It was not until a 1899 bye-election that Alexander Dixon, a graduate of The Mico, became the first Black man elected to the re-constituted Legislative Council. Following Dixon the second Black man elected was Josiah Smicle, a farmer from the St. David Division of St Thomas who had served as chairman of the St Thomas Parochial Board.

In the 1906 General Election, Dr Robert Love, Bahamian medical doctor and Episcopalian priest, who had settled in Jamaica after stints in the United States and Haiti won the St Andrew seat on the Council. These trailblazers were followed by A. A Fleming from St Catherine, F. R Evans from Westmoreland, J.A. G Smith, barrister from Clarendon, H. A. L. Simpson, Barrister from Kingston and D. T Wint, teacher from Kingston. By the time of the General Elections of 1925 Black men constituted the majority of elected members on the Council.

By 1929, Jamaica's first modern political party, the People's Progressive Party (PPP) was established. The PPP was formed by the founder of the Universal Negro Improvement Association (UNIA), Marcus Garvey, who would go on to become Jamaica's first National Hero. The PPP espoused the doctrines of universal adult suffrage, political independence and a West Indian Federation.

The PPP had some success at the polls, including winning bye-elections in Hanover (Rev. Veitch) and for seats on the Kingston and St. Andrew Parish Council (John Beecher and Marcus Garvey). The PPP's growth was interrupted by Garvey's imprisonment in Jamaica on contempt of court charges, which led to his missing three consecutive meetings of the Council and his colleagues on the Council declaring his seat vacant. He lost his bid to gain a seat on the Legislative Council in the 1930 General Election.

Despite Garvey's failure to win a seat on the Legislative Council, the increasing democratisation of the Legislative Council fueled demands for a more equitable voting system. In particular, effective legislative advocacy, especially from legislators such as J.A.G. Smith and D.T. Wint, assisted in creating the legislative and national climate for the initiation of serious demands for the inclusion of all adult Jamaicans in the electoral process, through the granting of universal

adult suffrage. Two individuals who were to join Garvey as national heroes were also instrumental in the lobbying for, and the negotiations surrounding, the movement to universal adult suffrage. These were Norman Manley, founding leader of the People's National Party, and Alexander Bustamante, founder of the Jamaica Labour Party.

The actions of Jamaican legislators in lobbying for universal adult suffrage linked with the economic challenges of the time and the changing posture of the United Kingdom, combined to create an environment conducive for change. The widespread riots of 1938 signaled the failure of the Crown Colony Government. Government by an appointed Executive Council and a hybrid Legislative Council suffered the same fate of the Assembly. The members of these Councils proved unable to provide effective governance for the Colony.

The Great Depression of the 1930s, riots across the West Indian Colonies, and the commencement of World War II concatenated to change the posture of Britain to its colonies. The Crown voluntarily decided to concede responsible government to Jamaica, a status it had denied the colony and withheld for nearly 100 years after it was first contemplated. With responsible government the Crown also conceded universal adult suffrage to Jamaica whereby all adults 21 years or older had the right to vote without regard to race, religion, gender or property ownership.

Granting universal adult suffrage to Jamaica in 1944 catapulted the Colony to being the only entity in the British Empire, other than Britain, where all adult citizens had the right to vote. While Canada started to be granted responsible government in 1848, New Zealand 1856, Australia 1857, the Cape Colony in 1872 and Southern Rhodesia in 1923 the "darker races", of those provinces and colonies were excluded from the franchise to vote. The franchise to vote extended only to the white settler majority. Jamaica became the first country where all adult members of the "darker races" were eligible to cast their ballots in a General Election. India was granted independence in 1947 but held its first election under adult suffrage in 1952 eight years after the 1944 General Elections in Jamaica.

## **Electoral Malpractices in Colonial Jamaica**

From early in Jamaica's electoral history there was evidence of electoral malpractice. Three examples of Governors being participants in the malpractices illustrate.

1. Between 1675 and 1728 the Jamaican Assembly disputed voting annual revenue to the Crown as a bargaining tool in its quest to gain royal assent of laws passed by the Assembly. In 1687 the Crown appointed Prince Rupert, the Earl of Albemarle, as Governor with the hope that the appointment of such a high peer of England would change the mind of the obstinate Assembly. While paying the new Governor and his lady high praise couched in elegant language the Assembly was unmoved. The Governor

responded by dissolving the Assembly and calling an election. The events which attended the election for members of the Assembly included the imprisonment of legal voters; taking persons ineligible to vote such as discharged seamen, soldiers, and indebted bondservants to vote at polling stations and transporting some of these to vote in several parishes.

2. Admiral Knowles who had served in Port Royal was appointed as Governor in 1751. The Assembly was divided on the matter of location of the capital. Those from Kingston and the Eastern parishes argued cogently for the capital to be moved from Spanish Town to Kingston while those in Spanish Town and the Western Parishes were in favour of the capital remaining in Spanish Town. Emotions ran high on the matter. Most of the Parishes were in the West. In the election that was held disreputable tactics and intimidation were employed to ensure that the Assembly would vote for the capital to be shifted to Kingston. In the new Assembly the bill was passed and signed into law on May 7 1755 and the capital was moved from Spanish Town to Kingston. However, the Bill was subsequently disallowed by the Crown. Admiral Knowles was recalled and the Capital returned to Spanish Town in 1758.
3. Following emancipation, males over the age of 21 paying taxes of 6 pounds per annum on freehold property or annual rent of 30 pounds per annum were eligible to vote. Baptists and other non-conforming missionaries organised free villages which allowed several black males to qualify to vote. Many of the recently freed qualified themselves to vote and registered. However, one had to be registered one year prior to the date of the election to be eligible to vote. Knowing this, Governor Metcalfe, who was not kindly disposed to either the Baptists or the recently emancipated, called elections for the Assembly before the newly registered electors were eligible to vote.

There were many other examples of electoral malpractice in the colonial era. In the 1846 election there was an issue of missing ballot boxes. In the 1851 election for the seat in St. David (St. Thomas), it is reported that one of the candidates arrived supported by a crowd of 300 men, most of whom were non-electors, and all of whom were armed with a bludgeon. They were protesting the defeat of a coloured candidate, supported by black voters of the Vestry. A riot developed and in the ensuing tumult the vestry officer was killed.

The 1884 Law sought to provide safeguards against electoral malpractice, but electoral malpractice continued. In 1938, for example, it was reported that continuous violence, dirty language, throwing of bricks and damaging of cars were methods of intimidation and hindrances to the casting of votes.

The malpractices also manifested themselves in various unique and ingenious forms. Rum or intoxicating drinks were used to bribe or change voters' choice of a candidate. In order to mitigate against the risk of votes influenced by rum, rum shops were ordered to be closed not only on Election Day, but also on the day before the election. The police were given special instructions to arrest anyone found offering rum or any other form of intoxicating drinks to voters on Election Day. This was to prevent the prevailing problem of voters who came prepared to vote for a special candidate but were swindled and intoxicated to the extent that the person did not even know for whom he voted.

There was also a prohibition of the use of music bands. The Law stipulated that no person for the purpose of promoting or procuring the election of any candidate should hire any band of musicians. Neither should any person play in any band at any meeting or in any procession held for the purpose of promoting or procuring the election of any candidate. Despite attempts at erecting legal and security safeguards, intimidation and corruption occurred regularly as voters were seldom able to vote in complete privacy. Often, the nominated candidate and his supporters were present at the polling station. Persons not wanting to become victims were often convinced to vote contrary to their personal choice. In the second half of the nineteenth century voters not wanting to fall out of favour or denied good work or the boycott of their businesses were forced to vote for candidates they did not support.

Other problems which confronted the colonial electoral process in Jamaica consisted of the poor and unsecured procedure as to the counting of the votes at election, the transportation of ballot boxes and the disappearances of boxes. There were often reports of the 'stuffing' of ballot boxes with multiple votes by one or multiple persons.

## **Election Management in Pre-Independent Jamaica**

Jamaica's 1944 constitution, for the first time in Jamaica's history, extended the voting franchise to all adults (at least twenty one years old) with no restrictions based upon income, property, race, gender or literacy. The granting of the New Constitution to Jamaica by Order in the Council on October 27, 1944, divided the Island into single member constituencies for representation in the House of Representatives.

The decision on the number of constituencies derived from the work of an Electoral Division Committee established in 1943. The Committee had been appointed to examine and report on suitable electoral divisions in the parishes for the purpose of holding an election of members of the House of Representatives under Jamaica's new Constitution. In its report, submitted on December 15, 1943, the Committee recommended the formation of 32 constituencies formed within the boundaries of existing parishes. Three constituencies were allocated to each of the

parishes of Kingston, St. Andrew, St. Catherine and Clarendon, while the remaining ten Parishes were allotted two constituencies each.

The new Constitution re-instated the bi-cameral legislature of an appointed Legislative Council of fourteen appointed members and an elected assembly named the House of Representatives which would consist of members elected from the 32 single-member constituencies.

The constitutional change also resulted in changes in election procedures. For example, the Electoral Law of 1884 was repealed and replaced by the Representation of the People Act (ROPA) in 1944.

The position of the Chief Electoral Officer was created by the ROPA, and the duties of Registration and Revising Officers in connection with the compiling of a register of persons qualified to vote were defined. The ROPA provided for the election of Members to the House of Representatives, for the franchise for such elections, for the conduct of elections, and for the appointment of Returning Officers, Presiding Officers and the necessary personnel to conduct the elections.

It was clear that administering elections under universal adult suffrage would require a significant enhancement in the Island's institutional capacity for managing elections. This was particularly of concern given that the Country had experienced a history of electoral malpractice. The requirements for this new organisational structure were captured in the ROPA legislation.

Noticeable features of the ROPA compared to the repealed law were:

1. The establishment of the Electoral Office of Jamaica, headed by the Chief Electoral Officer, as the department of Government responsible for the conduct of elections.
2. Defining the responsibilities of the Chief Electoral Officer and Returning Officers and the relationship between them.
3. Conducting the General Election with the voters' list derived from the 1943 census. This is the first and only time in Jamaica that the voters' list was compiled from the census and not from a process of enumeration and registration.
4. The use of symbols linked to the parties of candidates, which were placed beside their names on the ballot paper.
5. Voting by the placing of an 'X' on the ballot paper beside the name and symbol of the candidate instead of the previous method of striking out the names of all other candidates except the one for whom the vote was in favour.
6. Public education of voters by means of articles in the press, and conspicuously displayed posters; and lectures not only by Returning Officers but also by ministers of religion and school teachers.

7. In-depth training of Presiding Officers with respect to their duties in the polling stations on Election Day.

The predominant mandate of the EOJ was to ensure that under the principles of universal adult suffrage, the following conditions were observed:

- no unfair advantage is given to any party or individual contesting the polls;
- the objective of one person one vote is met;
- the vote is universal;
- all citizens who meet the qualifications established by law have the right to vote;
- each elector is entitled to vote free, without interference or intimidation;
- the vote is secret;
- the vote is direct, with each citizen voting for the representative of his/her choice;
- the vote is personal, with each elector having the right to attend in person at the designated polling station;
- the vote is not transferable to any other person.

Immediately upon its formation, the new EOJ began preparations for the first election under universal adult suffrage, which was held on December 14, 1944. A 'new' conduct of election procedure education drive was disseminated by means of newspaper articles and radio and with the co-operation of the clergy and school masters. The details of the procedure for registration affecting the newly qualified electorate were carefully explained prior to the period allowed for the making of claims and the taking of objections.

Prior to the Election, a film, "*Adult Suffrage and the Secret Ballot*" illustrating the functions and duties of a Presiding Officer, Poll Clerk and the elector in the polling station had been prepared under the direction of the Chief Electoral Officer. The showing of the film was very effective in educating very large numbers of people who had never voted and were quite unaccustomed to the procedure in the polling and recording of votes. At intervals, over a period of two months this film was shown at all the cinemas throughout the Island. During the month before Election Day, open air showings of the electoral film were also held in Kingston and Spanish Town.

During Jamaica's electoral history, secrecy of voting had never been assured. The EOJ had a mandate to ensure voting secrecy and to accommodate the secrecy of the vote of illiterate voters. To ensure the secrecy of the ballot and to allow illiterate persons to cast their vote, a system of symbols was arranged.

As a result of the careful plans which had been made, Jamaica's first Election under universal adult suffrage was relatively smooth and largely incident free, with both Nomination and

Election Days proving to be very orderly and non-violent. The Jamaica Labour Party won the Election and its leader, Alexander Bustamante, became Majority Party Leader. The 1949 and 1955 Elections were also considered to have been run smoothly, which latter Election was won by the People's National Party under the leadership of Norman Manley.

The first Local Government Election under universal adult suffrage was held in 1947. Parochial Boards remained unchanged under the new constitution. A total of 199 divisions were contested in the 12 Parish Boards and KSAC. Out of a total electorate of 614,209, 38.2% voted. Independents obtained 37.6% of the votes cast, won 93 divisions, and had the majority in St Thomas, St Mary, Trelawny, St James, Westmoreland, Hanover, St Elizabeth and Clarendon. The PNP won 29.4% of the votes and 52 divisions, while winning the majority in St Ann, Manchester and the KSAC; while the JLP won 27.8% of the votes and 52 seats but only two Parishes: Portland and St Catherine.

Because Members of the House of Representatives were members of Parochial Boards the JLP took control of the KSAC from the PNP and St Thomas and Hanover from Independents. This allowed Alexander Bustamante, leader of the party with the majority in the House, to become the Mayor of Kingston in 1947-48. Unlike the General Election in 1944, personal politics prevailed in the 1947 Local Government Election. It must be noted that many candidates in this Election later rose to prominence in national politics as had been the case in the Crown Colony period and in vestry elections after Emancipation.

The process of conducting elections in the early post-universal adult suffrage period was quite orderly. The orderly nature of the electoral process may well have been linked to the fact that the EOJ continued to lobby for the improvement of the electoral regulatory environment to reduce the likelihood of corruption in the electoral process. During 1949, for example, several recommendations were passed to amend ROPA. For example:

- The Chief Electoral Officer was empowered to direct that a special investigation should be instituted where inaccuracies in the voters' list were evident.
- Electoral ink was used as a safeguard against impersonation and multiple voting. It also specified measures for regulating the transport of voters as well as imposing stringent penalties for illegal practices.
- Special provision was made for members of the Police and Military to vote before Election Day so as to set these officers free for duty on Election Day.

The changes to the Country's election laws continued during the second half of the Twentieth Century. For example, Law 40, in 1954, brought in amendments to enable the

Chief Electoral Officer to provide an electoral ink comprised of more than one solution, as well as to amend sections relating to the procedure for the special voting of the Military and Police.

The General Election of 1949 saw an increase in voter turn-out to 63.8%. The PNP obtained 43.7% of the vote and won 13 seats while the JLP polled 42.5% and won 17 seats. Independents won only two seats. The trend toward two-party politics was evident.

Consistent with the agreement that after a full five year political cycle there would be a review of the Constitution, following the 1949 General Election a constitutional review was done and Ministerial Government was brought into being in 1953, with the Majority Party Leader taking on the title of Chief Minister. The central secretary of colonial officials was separated into ministries and the British officials handed over day-to-day administrative responsibilities of running the Government to Jamaican Permanent Secretaries. Ministers were appointed by the Governor on the advice of the Chief Minister and their appointment did not require any vote by the House. They had responsibility for general policy within the ministries that had been created. The Chief Minister and seven other Ministers sat on the Executive Council.

This reform of the Constitution was somewhat confusing in that the Members of the House sitting on the Executive Council were referred to as Ministers from 1944. The transition to responsible government became clearer in 1957, when the Executive Council was replaced by the Council of 12 Ministers presided over by the Chief Minister and Jamaica took responsibility for national security and defence. Ten of the Ministers were appointed from the House and two from the Legislative Council.

The point of importance with respect to the introduction of Ministerial Government in 1953 was that the EOJ was transferred from the control of Colonial Officials, which had been the case since 1663, to a Ministry and therefore under the control of a Minister. The first Election contested with the EOJ being under a Ministry was the General Election of January 1955. The Election was won by the PNP, which won 18 seats, compared to the JLP, which won 14 seats.

The 1955 General Election was followed by the 1956 Local Government Election. Indeed, apart from the 22 year-period between 1865 and 1887, local government elections have been held consistently in Jamaica based on electoral laws. In the 1956 Local Government Election, independent candidates won less than 10 per cent of the 235 seats and controlled no Council. Two-party politics had become dominant also at the local level of government.

As the Electoral Office of Jamaica continued to try to improve on the conduct of elections in Jamaica a Committee was appointed by the House of Representatives in 1956 to examine the existing Electoral Laws that governed both local and parliamentary elections. The Committee was assigned the following Terms of Reference:

- To enquire and determine so far as possible, the extent to which false voting occurred throughout the island as a whole and in each constituency.
- To examine the methods used in false voting and to make recommendations as to how the law might be amended to eliminate this malpractice as far as possible.

In keeping with the Terms of Reference set out for the Committee, interested organisations, members of the public, the KSAC, and Parish Councils were invited to submit agendas for consideration. The mandate of the Committee at the time was stipulated on the basis that revisions would be conducted to existing laws, and recommendations would be submitted to the House as deemed necessary.

The General Election of 1959 was the first to be conducted under the Constitution of full internal self-government. The PNP won once again, this time with an increased majority. Under the Constitution of full internal self-government, the leader of the political party with the majority of seats in the House became the Premier, instead of Chief Minister, and Norman Manley became Jamaica's first Premier.

Whilst there was no evidence of physical violence or disorder during the election period, soon after the Election complaints about malpractice appeared in the press. These complaints alleged impersonation, double voting, false voting, bribery, threatening of voters, missing ballots and the use of chemicals to remove voting ink. These allegations were almost a reciting of malpractices that occurred in the period of the Assembly. There were also charges of gerrymandering made by the Jamaica Labour Party.

Increasingly since 1944 elections in Jamaica shifted from being "beauty contests" to the exercise of real political power as was the case with the Assembly. As this trend accelerated, the signs were that the malpractices of the past, which were muted during the Crown Colony period, were being re-created in the new circumstances of two-party politics in the period of self-rule.

The problems associated with the 1959 Election did not carry through to the voting associated with the September 1961 National Referendum and the April 1962 Election. The 1961 Referendum canvassed Jamaicans about their willingness to remain in the West Indian Federation, established in 1958. A majority of Jamaican voters (54%) decided that they did not wish to continue in the West Indian Federation, which was subsequently dissolved in 1962.

The 1962 General Election was tightly contested between the Jamaica Labour Party and the People's National Party, and was recorded as being relatively quiet. In fact there was only one magisterial recount, which occurred in the St. Andrew North constituency and which did not alter the previously announced election results. The Election was won by the JLP,

led by Alexander Bustamante. He became Jamaica's second Premier in April 1962, and Jamaica's first Prime Minister when Jamaica achieved Independence in August 1962.

## **Election Management in Post-Independence Jamaica**

The Constitution adopted by Jamaica at Independence continued the process of electoral management. In particular, it enshrined the principle that every citizen of Jamaica who is qualified as an elector has the right to vote in free and fair elections and, at the insistence of Alexander Bustamante, went further to specify that (from January 1964) as far as is practicable "no person shall vote at an election, for a member of the House of Representatives, who is not entitled to vote, when he is not entitled to vote and where he is not entitled to vote."

The Constitution also provided for a Standing Committee on the House with membership consisting of the Speaker, as Chairman and three members of the House appointed by the Prime Minister and three members appointed by the Leader of the Opposition. The function of this Standing Committee was to keep under continuous review the number of constituencies into which Jamaica is to be divided and the boundaries of such constituencies and to report to the House every four to six years on the appropriateness of Jamaica's constituency divisions.

Jamaica entered Independence, and democratic governance, in 1962 with an electoral system marked by a number of key attributes.

1. There was a tradition of holding elections both at the national and local levels that reached back 299 years. Apart from two small interruptions, totalling a period of twenty eight years, when the Governor acted without reference to any elected representatives, General Elections had been held continuously in the Colony. At the local level apart from the twenty two years between 1865 and 1887 local government elections had been held continuously as prescribed by law. Holding elections was part of the deep culture of governance in Jamaica.
2. Universal adult suffrage was firmly entrenched. All adults over the prescribed age of majority had the right to vote.
3. The electoral machinery, the EOJ, was under Ministerial control, but the three General Elections and one Referendum it had conducted saw the Governing Party lose three times. Indeed, the Government had changed twice in the three General Elections. In other words, the 'winner take all' electoral system which was widespread in the world and part of the entire history of the Colony appeared to have operated impartially, based upon electoral outcomes, over the first decade of Ministerial control.

4. Two party-politics had emerged at both the local and national levels.
5. Electoral malpractices which were common when the electoral system was managed by colonial officials during the period of the Assembly and the Vestries, but were muted in the “beauty contest” elections to the Legislative Council during the period of crown colony government, appeared to have been re-created in the transfer to representative and responsible government.

In the post-Independence period, there were five major electoral issues that represented significant areas of concern of the two major political parties which had implications for the development of a new form of electoral oversight structure. These issues were electoral malpractices; bogus voting as a result of padding of the voters’ lists; gerrymandering of constituency boundaries; the calling of a general election during a state of emergency and the purging of some areas of persons of opposite political allegiances, real or suspected.

In response to concerns about voter impersonation, in 1966, legislation was introduced to allow for the finger printing of voters. Although the intention was to use finger prints, particularly in inner city communities where it was alleged that the prevalence of impersonation was high, for many years there was minimal use of the finger prints that were taken.

During the 1967 General Election, which was won by the Jamaica Labour Party, there was no report of any unusual incidents on Election Day. Preliminary results were sent to the Electoral Office from the various returning officers by telegram and telephone. Detailed reports of the votes received by each candidate and his or her party affiliation were given. Following the election, twelve election petitions were filed by unsuccessful candidates in varying constituencies. In two constituencies there were magisterial recounts but these did not affect the returns made by the returning officers.

There were, however, charges of gerrymandering that were made by the People’s National Party. The PNP alleged that Dr. Archie Singham of the University of the West Indies, Mona had advised the JLP Government to draw constituency boundaries to the clear advantage of JLP candidates. The People’s National Party, to no avail, took its concerns to the Boundaries Committee of Parliament.

Again, during the 1972 General Election, which was won by the People’s National Party, there were allegations that poor electoral practices of the colonial past continued to affect the electoral process. It was reported that ballot boxes were stolen or tampered with in the constituencies of St. Catherine Eastern and Southern. After the Election, petitions were filed by unsuccessful candidates in the constituencies of St. Andrew Southern, St. Thomas Eastern and Manchester Southern. Magisterial recounts were undertaken in Westmoreland

North Eastern, Manchester Southern and St. Catherine Northern. The result of the Manchester Southern seat which initially saw the PNP's Dr. Douglas Manley win against the JLP's Arthur Williams (Senior), was reversed in 1974 based upon an Election Petition Court judgment handed down by the Chief Justice.

These problems were reported to have continued with greater intensity during the 1976 elections. This election was preceded by the Government's declaration of a State of Emergency, which led to increased tension between the political supporters of the People's National Party and the Jamaica Labour Party. The Government announced the state of emergency as a response to escalating crime. During the period, several members of the Jamaica Labour Party, including Pearnel Charles, Babsy Grange and Ferdi Yapp were detained, but never charged. This and other actions during the period led to allegations by the Jamaica Labour Party that the State of Emergency was driven by efforts at electoral advantage. The results of the 1978 Commission Enquiry led by Chief Justice Kenneth Smith indicated that key military and intelligence officers had not supported, or known of, the intention to declare a state of emergency. The People's National Party disputed this finding.

During the 1976 General Election, numerous cases were reported of the theft or the tampering of ballot boxes. Allegations of malpractice were particularly acute in the constituencies of St. Andrew Western and St. Andrew South Western. In addition to stolen and tampered-with ballot boxes, checks of the returns from polling stations revealed that there were a number of constituencies with a very high percentage of voting, namely South West St. Andrew (99.8%); West Kingston (93.8%); East Central Kingston (90.5%); and West St. Andrew (88.9%). It was reported that in each of these constituencies electors applied for ballots after other people had voted in their names.

There were also allegations of more votes in ballot boxes than names on the voters' list, which led to concerns about significant levels of ballot stuffing. Concerns also emerged about voter intimidation and under-age voting. In the face of these allegations, thirteen election petitions were filed and 21 constituencies requested magisterial recounts. Prior to the Election, there were charges of gerrymandering made by the Jamaica Labour Party, during the process in which seven additional seats were created to take the total to 60.

By the 1976 elections, it was clear that despite all the work that had been done in seeking to address the organisation of elections in Jamaica, the electoral system continued to need further administrative improvement, and, in particular, a process was required to insulate the electoral system from partisan politics and the abuse of state power in pursuit of political objectives.

## **The Creation and Early Operations of the EAC**

The Jamaica Labour Party, led by Mr. Edward Seaga, lost the 1976 General Election to the People's National Party, led by Hon. Michael Manley. In the aftermath of the Election, the Jamaica Labour Party felt strongly that Jamaica needed immediately to accelerate the process of electoral reform. Mr. Seaga led a process within the JLP to document specific instances of all the various types of malpractices that had occurred in recent General Elections and where they had occurred. In his capacity as Leader of the Opposition he tabled the Report in Parliament.

One area of structural concern was that the electoral system, administered by the Electoral Office of Jamaica, operated under the control of a ministry of government. Mr. Seaga, in his capacity as Leader of the Opposition, wrote to Prime Minister Manley indicating the Opposition's strong interest in reform of the electoral system. Indeed, he indicated in his letter to Prime Minister Manley that the Jamaica Labour Party was not inclined to contest another election without meaningful reform of the system mandated to provide oversight to elections.

Prime Minister Manley had already engaged in intense dialogue with the National Executive Council of the People's National Party about the wisdom of removing the electoral system from the direct control of the government, and so was able to quickly agree that reform was needed. He invited Mr. Seaga to a meeting to discuss the matter.

At the meeting it was decided to set up an informal committee to examine the possibilities of reform. Hon. P.J. Patterson would be the liaison with the Prime Minister and Mr. Hugh Shearer would be the liaison with the Leader of the Opposition. The Committee consisted, from the PNP, of the Hon. P J Patterson, the Hon Keble Munn, Minister of National Security and Electoral Matters and Dr Paul Robertson, Deputy General Secretary of the PNP; and from the JLP, Mr. Shearer, Senator Bruce Golding and Mr. Abe Dabdoub, attorney at law.

After many months of informal discussions the Committee recommended that the EOJ be transferred from a department under Ministerial control to an independent body under the oversight authority of an Independent Committee of the Parliament. The matter was next brought formally to Parliament where a Special Joint Select Committee was set up to consider the proposals and make recommendations for the drafting of appropriate legislation.

It was decided that, henceforth, an impartial Committee should oversee the Country's electoral affairs. The Committee, to be called the Electoral Advisory Committee, would be constructed in a manner to allow for impartiality; while at the same time ensuring that the Country's major political parties were fully represented. It would consist of eight members (seven voting members and one non-voting member). Three, to be known as the Selected Members, would be selected by the Governor General on the joint advice of the Prime Minister and the Leader of the Opposition. Four, to be known as the Nominated Members, would be selected in equal

proportion by Jamaica's two major political parties; the eighth member would be non-voting and would be the Director of Elections.

Further discussions between Senator Bruce Golding, representing the Jamaica Labour Party, and Hon. Keeble Munn, representing the People's National Party, elaborated on the proposed structure of the EAC. It would be a creature of Parliament, not answerable to any minister of government, although it would report to Parliament through the Minister responsible for Government Business in Parliament. It was further agreed that Parliament would, by convention, take the advice of the EAC on electoral matters.

The rationale for the inclusion of members nominated by the Prime Minister and the Leader of the Opposition was a strongly held view that the oversight Committee would only be in a position to function effectively if it included a specific role for the Country's political establishment. While Jamaica came to this position at the outset of its approach to the creation of an election oversight function, the inclusion of active politicians nominated by political parties was eventually to become a regular pattern in electoral commissions around the world.

In the final version of the Act creating the EAC, it was decided that the Selected Members would be appointed by agreement of the Nominated Members. If the Nominated Members were unable to agree on the appointment of Selected Members, these members would be appointed by the Governor General after consultation with the Prime Minister and the Leader of the Opposition. The Selected Members would appoint the Chair of the Committee, but if they failed to agree on a chair, the Governor General would appoint the Chair after consultation with the Prime Minister and the Leader of the Opposition. The Chair would hold a casting vote in voting matters coming before the Committee. All Selected and Nominated members would appoint the eighth member of the EAC, who would be a non-voting member of the Committee and serve as Director of Elections and carry out the duties of chief electoral officer as outlined in the 1944 Representation of the People Act.

The compensation of the Selected Members, as occurred elsewhere in the Commonwealth in electoral oversight bodies, was benchmarked to be no less than the remuneration of puisne judges. Selected Members were appointed for four year time-spans, while Nominated Members were appointed for terms of eighteen months. The appointment of Nominated Members could be revoked by the Prime Minister or Leader of the Opposition. The appointment of Selected Members could only be revoked by a majority vote of the Committee members with voting rights, or by a resolution passed by two-thirds of the Members of each House of Parliament.

The decision to create a Committee whose members would be selected and nominated by the Prime Minister and the Leader of the Opposition had a close precedent only in the Standing Committee on Constituency Boundaries established in the Independence Constitution. While the Jamaican Constitution created several commissions, including the Public Service Commission,

the Judicial Services Commission and the Police Commission, which involved the Prime Minister and the Leader of the Opposition advising the Governor General on personnel appointments, in each of these Commissions, the advice to the Governor General would come from the Prime Minister, after consultation with the Leader of the Opposition. In the case of appointments to the EAC, on the other hand, the Leader of the Opposition would advise the Governor General directly.

The Jamaican structure also did not have international precedence. Indeed, in 2014, in Malaysia, for example, all members of the Electoral Commission were government appointees. The bipartisan framers of the EAC acted from first principles to devise a system of electoral management appropriate to democratic governance in the particular circumstances of Jamaica in 1979. They did not imitate precedents and practices from elsewhere. They responded to the exigencies of the Jamaica reality and in the process created a body that broke new ground in thinking about the management and control of the electoral process.

In August 1979, after deliberation on the matter by a special joint select committee of Parliament on constitutional and electoral reform, the Electoral Advisory Committee (EAC) was established under Section 4 of the Representation of the People (Interim Electoral Reform) Act of 1979. The Act was designated “Interim” because the expectation was that the Electoral Advisory Committee would exist until provision is made in the Constitution of Jamaica for the establishment of a constitutionally-enshrined Electoral Commission.

Under the Act, the EAC was responsible for advising the Director of Elections on the performance of his functions under the ROPA. The Act provided that where the Director of Elections refused to follow any advice or recommendation of the EAC, this should be reported to Parliament within fourteen days of the refusal. A third role of the EAC was that it could recommend suitable personnel for selection as Special District Constables to be on duty on any election day.

The inaugural Electoral Advisory Committee appointed in 1979 comprised of Professor Gladstone Mills, who held the chair in public administration in the Department of Government, UWI, Mona, Mrs Shirley Miller, QC, and Mr. R.V. Irvine, a senior Civil Servant, as selected members; Dr. Paul Robertson and Mr. O.K. Melhado, as nominees of the Prime Minister; and Senator Bruce Golding and Mr. Abe Dabdoub, as nominees of the Leader of the Opposition. As such the Committee consisted of three of the original conceptualisers of the idea of the EAC: Dr Robertson of the PNP and Senator Bruce Golding and Mr. Abe Dabdoub of the JLP. Their presence on the Committee facilitated the smooth translation of the EAC from idea and legal framework to practical reality and functional operations.

The most immediate task of the EAC was to preside over the transition of the EOJ as a Department of the Civil Service to one in which it was overseen by a Committee of Parliament.

The principle immediately adopted was that all posts in the EAC including the Director of Elections would be benchmarked for compensation to a comparable post in the Public Service. This was to be consistent with the principle enshrined in the Interim Act for compensation of Selected Members. This was to ensure that at no time would EAC employees be involved in negotiations with the Government concerning salaries and conditions of service. Whatever compensation and conditions of service that applied to the posts to which employees were benchmarked would automatically apply to employees of the EAC.

The new Committee, in overseeing the work of the chief electoral officer, the Director of Elections, also assumed authority for appointment of all registration and election officials, and the Committee's first personnel appointments including the recruitment of a Director of Elections, Mr. Carl Dundas; while within a few months of its operations, Mr. Frank Weir and Mr. Noel Lee, were appointed as Assistant Directors of Field Operations and Administration respectively.

Almost immediately on commencing on the transition from Ministerial control, the EAC and EOJ had to embark on the task of preparation for elections. It had little time to prepare for an improvement in electoral operations in Jamaica before it received its first major challenge. On February 3, 1980, in the midst of significant economic and social turmoil in Jamaica, Prime Minister Manley announced that in light of the economic situation and the failure to agree to the International Monetary Fund's terms for a new agreement, Jamaica needed to settle the economic strategy to be pursued. Consequently, he indicated that he would call an election as soon as the EAC was able to advise him that an accurate voters' list was in place.

The EAC immediately went about seeking to prepare a new voters' list. Both the Prime Minister and the Leader of the Opposition agreed that preparation for elections was urgent, and that a modified system that would produce a fair voters' list should be put in place, even if it would be infeasible in the available time to introduce the proposed full photograph identification system that had been under consideration.

A careful enumeration of voters was undertaken, and new checks to prevent impersonation were built into the procedures at polling stations. For the first time, ballot papers would carry certain features which served to enhance their security and improve the secrecy of the ballot. Further, a substitute ballot paper was to be used in place of the regular ballot paper in the event that the latter was stolen, lost or destroyed.

The EOJ, with the active support and direction of the EAC, worked valiantly to complete the enumeration exercise and the new voters' list. Among other initiatives, this involved the hiring of scores of interns during the summer of 1980 to assist full-time EOJ employees in completing the data entry activities required for the production of a new list. The work of completing the voters' list continued at the EOJ's Duke Street Offices into late at night and on weekends during this

period. The activities of enumeration and list preparation were conducted in the volatile atmosphere of Jamaica's longest and most violent election campaign. During this election campaign, in certain communities of Kingston, nightly sounds of gun fire were the norm, rather than the exception. There were also infrastructural challenges, with power outages, for example, slowing the process of printing the voters list.

There was considerable violence during the 1980 election campaign. Jamaica experienced a record surge in homicides during 1980 to the level of 844 murders, and about 600 of these homicides were recorded as being politically motivated. The society was highly polarised, and there was a perception that even the security forces were politically aligned. Mr. Roy McGann, the PNP's candidate for East Rural St. Andrew and Parliamentary Secretary in the Ministry of National Security, and his police bodyguard, Acting Corporal Errol White, were killed in a confrontation in Gordon Town Square, St. Andrew, on the day before Nomination Day.

Despite the challenges, the voters' list was completed and elections were held on October 30, 1980. The election was won by the Jamaica Labour Party.

On the actual day of the Election, although operations proceeded reasonably smoothly in many constituencies, there were serious concerns about electoral malpractice. For example, violence marred polling in certain constituencies of the corporate area. Two ballot boxes were stolen in St. Andrew East Central, and there were allegations of widespread electoral malpractice, including the stuffing of ballot boxes in certain constituencies. The integrity lamps introduced for the first time did not perform to expectation as a number of them failed to function on Election Day, and, it is alleged, some were not even turned on. The electoral ink also proved disappointing because although the ultra violet feature was good the dye did not leave a bright stain on the finger.

Six polling stations, five in West Rural St. Andrew and one in Southern Manchester were not opened on Election Day. In addition there were several reports of stations opening late. There was apparent tampering of ballot boxes while the final counting was taking place in St. Andrew Western. On opening some ballot boxes, the returning officer discovered that many ballots were marked for more than one candidate, which position differed from the preliminary statement on the poll submitted by presiding officers. In Kingston Central a number of ballot boxes were burnt while stored at the counting centre before the completion of the final count in that constituency.

The problems of over-voting that characterised the 1976 General Election also continued during the 1980 General Election. The constituencies with the highest voting levels were South West St. Andrew (105.1%); South St. Andrew (101.5%), West Kingston (93.7%), West Central St. Andrew (89.4%) and East Central Kingston (88.2%).

Nevertheless, despite the reported malpractices, as a reflection of the relief the nation experienced on the completion of Jamaica's bloodiest election campaign and the relative calm on Election Day, in 1981, the EAC received a special Gleaner award for yeoman service in the establishment of a fair electoral system in Jamaica.

### **The EAC: 1980 - 1993**

Subsequent to the 1980 Election, the EAC, under the chairmanship of Professor Mills, continued its focus on lobbying for, and implementing, improvements in the electoral machinery. But by its fourth year in operation, it was to be engulfed in a process that threatened its existence.

On November 23, 1983, the Opposition People's National Party issued a statement indicating its vote of no confidence in the Minister of Finance and calling on the Minister of Finance to resign. At the time the finance portfolio was held by the Prime Minister. On November 25, 1983, Prime Minister and Minister of Finance, the Hon. Edward Seaga announced that General Elections would be held in December 1983.

The Prime Minister's decision created controversy within the EAC and across the Country. In the immediate aftermath of the establishment of the EAC a decision had been made to improve the identification safeguards associated with the voting process. When it became clear that a completely new photo identification system could not be introduced in the time required for holding the 1980 General Election, the Prime Minister and Leader of the Opposition agreed to the postponement of its introduction, but the EAC continued to maintain the position that such a system should be introduced prior to the next general election. The People's National Party held to the view that a commitment to electoral reform along these lines represented a solemn agreement between the parties which was abrogated by the Prime Minister's calling of a snap Election.

The other concern was that the voters' list had not been updated since 1980, which meant, among other things, that all individuals coming of age since then would be disenfranchised. A new enumeration exercise had begun which would improve the accuracy of the voters' list, but it could not be completed in the time-line announced. Further, there was concern that there was insufficient time for the EAC to prepare for a general election.

In this context, the People's National Party's representatives of the EAC were not in favour of the EAC agreeing to the administration of the General Election. After much debate the majority position of the EAC was that it was obliged to go ahead with the administration of the Election because a legally valid voters' list was in place and, as such, the Committee had the statutory responsibility to arrange for a general election once called for by the only individual with the constitutional authority to announce general elections. For a brief period, the Opposition

nominees on the EAC withdrew from meetings of the Committee, and the People's National Party decided that it would not contest the Election.

Subsequent to the General Election, the Government introduced several legislative changes to counter the divisive effects of a boycotted general election. In particular, legislative changes were made to the Representation of the People (Interim Electoral Reform) Act to preserve the spirit of cooperation between the governing party and the opposition party that was reflected in the composition of the EAC. The 1979 Act called for the Leader of the Opposition to nominate two members of the EAC and to advise the Governor General on the appointment of Selected Members. Following the 1983 General Election there was no Parliamentary Opposition. Accordingly, in 1984, the Act was amended to read:

Where the Governor General is directed to act on the advice of or after consultation with the Leader of the Opposition and there is no person holding the office of Leader of the Opposition, the Governor General shall act as if the reference in those paragraphs to the Leader of the Opposition were a reference to such persons as the Governor General, in his discretion, considers appropriate.

A related legislative change revolved around the clause in the ROPA that allowed parties with at least five members in the House of Representatives to provide scrutineers for the enumeration/registration process. This clause was amended to allow, in the event of a one-party Parliament, for the requirement to be met by reference to the composition of the preceding Parliament.

The EAC survived the disagreements surrounding the 1983 General Election and continued its work in reforming the electoral system. Five critical conventions were developed related to the EAC during the period 1979 to 1993.

These were:

1. Both the Prime Minister and the Leader of the Opposition in naming persons to be appointed nominated high ranking officers of their parties such as the General Secretary or Chairman, noted attorneys-at-law or persons who had personal authority and were highly respected in their organisations. One consequence of this convention was that Nominated Members not only represented the position of the leadership of their party but also represented the recommendations agreed in the EAC to the leadership of their party. This broker-role proved invaluable in reaching consensus on electoral matters and in resolving disagreements.
2. In agreeing on Selected Members, the Governor General, Prime Minister and Leader of the Opposition always chose persons of high reputation and tested character. One

consequence of this convention was that the reputations of the Selected Members added credibility to the EAC.

3. Within the EAC where there were disputes and disagreements that were not resolved by contending groups, these were referred to the Selected Members for resolution. The Selected Members then considered the matters, sometimes with a Hearing, and made final decisions giving written reasons for the decisions made. These decisions are accepted as the unanimous position of the EAC. One result of this convention was that many very difficult issues were resolved peacefully and amicably, although the decision making process at times was slow and painstaking.
4. All matters coming to Parliament on electoral matters, including boundaries, were referred to the EAC for consideration and recommendation. In other words, while members of the Senate and House retained the right to bring electoral matters before Parliament, the Governing Party chose not to use its majority to act on any electoral or boundary matter before the tripartite electoral management body considered these proposals or resolutions and made recommendations. This convention fully understood the sovereignty of Parliament, that members of Parliament have rights enshrined in the Constitution, and that the Constitution had stipulated certain responsibilities to Parliament concerning electoral boundaries that cannot be delegated. However, to ensure that electoral matters and boundary issues were fully reviewed by both governing and opposition parties and independent members of civil society and the decisions made were fair and reasonable it was considered necessary to refer these matters to the EAC.
5. Recommendations of the EAC, including those in Reports to Parliament, were unanimous, signed by all members, and accepted and acted upon without change. This convention also fully understood that Parliament is sovereign. It also did not deny debate in Parliament or exclude dissent by some members of Parliament. But it was another measure to ensure the voluntary agreement that the party that forms the Government would not use its majority to impose its will on matters of elections and boundaries.

The EAC continued operations and administered national elections, which were won by the People's National Party in 1989 and 1993. The 1993 General Election was marred by extremely high levels of crime and violence. The 1993 EOJ Election Report stated that fourteen constituencies were severely affected by the violence, both before and on the actual day of voting. While his death was never proven to be related to his position, Returning Officer, Dennis Brooks, for St. Catherine Central was one of the victims of crime during the period, as he was killed by gunmen, away from his Office, three days before Election Day. Five constituencies reported having ballot boxes stolen.

In addition, a report dated May 11, 1993 to the EAC from the Director of Elections stated that there were fourteen constituencies in which violence took place; six constituencies in which ballot boxes were stolen; two constituencies in which stolen ballot boxes were not returned; sixteen constituencies in which some polling stations opened late; and four constituencies in which the polls closed earlier than 5 p.m.

Further, seventeen constituencies reported that they received some electoral materials late from head office; ten constituencies reported that election officials did not show up on Election Day; four constituencies reported inadequate security at some polling stations; nine constituencies reported illegal voting; three constituencies reported inadequate training of election officials; one constituency stated that too many stations were in one cluster; two constituencies reported presiding officers' errors; two constituencies reported no voting in one polling division; one constituency reported no voting in two polling divisions; and one constituency reported the loss of ballots while in custody of the security forces.

The 1993 Election also saw a marked continuation in an accelerating trend since independence of communal or homogenous voting, particularly in a number of inner city urban areas of Kingston, St. Andrew and St. Catherine. In such communities, described in Jamaica as garrisons, which had developed primarily during the 1960s and 1970s, it was not unusual for the losing candidate to receive no, or fewer than 10, votes, per ballot box. In 1962, for example, there was literally one box in the whole country in which the losing party got no votes. By 1993, for the parish of Kingston nearly half its boxes returned zero votes for the party that lost. In that year 78% of the boxes returned ten or fewer votes for the losing party. The concern was that the tendency toward electoral malpractice and voter intimidation was particularly strong in these communities.

The People's National Party won the 1993 General Election under the leadership of P.J. Patterson, who was instrumental in the discussions held with Edward Seaga that first outlined the framework within which the EAC would operate.

Though the EAC had made significant efforts to adjust the electoral system in Jamaica there were still factors embedded in the system that would still require additional effort and hard work to be totally eliminated. As a result, the EAC had been exploring ways and means to develop reforms for implementation. In November 1991, for example, a sub-committee under the Chairmanship of Professor L. H. E. Reid reported that a Computerised Voting System appeared to offer a real possibility of providing a competent, efficient system, secure against the abuses experienced over the years. This report was accepted by the EAC and extensive investigations into such a system began.

In September 1993, the Committee formed the view that in addition to any change to the actual voting system, the administration of the electoral system needed to be restructured to ensure that it functioned effectively. A Management Audit was commissioned and after the Committee examined tenders, Price Waterhouse was selected to undertake the study with the following Terms of Reference:

- To examine and make recommendations in respect of: the system, procedures and resources required for the preparation of an accurate and reliable voters' list;
- to determine personnel requirements and compensation;
- to identify the company best suited to carry out the Electoral Office's fingerprinting requirements;
- to identify the computer hardware and software required to generate the necessary reports/lists on a timely basis to achieve the Electoral Office's objectives;
- to identify a suitable vendor to provide a national identification card.

By November of 1993, the Cabinet accepted several proposals of the EAC, including, in particular that the EAC and the EOJ should be combined as a single organisational entity with the overall responsibility for the management of the electoral system. Other proposals from the EAC are listed below.

- a. The Committee should immediately be transformed into a permanent Electoral Commission, and should be autonomous, vested with the sole responsibility for the administration of its budget, but accountable to Parliament for the use of such funds, as well as all other matters for which it has responsibility.
- b. Its role should be similar to a board of directors which formulates policies and assesses implementation, and that the Director of Elections should be the chief executive officer, accountable to the Commission.

The year 1993 marked the fourteenth year of the existence of the EAC. It also marked the end of Professor Mills' chairmanship of the EAC. Hon. Michael Manley in commenting on Mills' work with the EAC posited that history will say that this may have been Mills' greatest single contribution to his nation, serving in the role of arbiter rather than teacher or advisor on governance and its institutions. Mr. Manley was of the view that the emergence of the Jamaican democracy from the storm of the late 70s to the relative calm of politics in the early 1990s owed much to his cool guidance. He opined that the debate by the 1990s was about public indifference to politics, rather than what it could have been which was the Country's ability to survive politics, with Professor Mills making an invaluable contribution in steering Jamaica away from

the shoals of political contention and its attendant violence into the calmer waters of electoral reform and independent electoral administration.

The year 1993 also placed electoral reform firmly back on the political agenda due to the controversies associated with the March 1993 General Election. The leaders of both parties accepted the need for continued reform. Despite the accolades in which his work as Chairman had been greeted, but in the context of the challenges experienced during the 1993 Election, Professor Emeritus, the Hon. Gladstone Mills did not return as chairman of the EAC in 1993, nor was Noel Lee reappointed as Director of Elections.

### **The EAC: 1993 to 2000**

In 1993, Mr. Peter John Thwaites replaced Professor Mills as chairman of the EAC. The most urgent matter was the appointment of a new Director of Elections. The Chairman and the Nominated Members differed in opinion on several matters. Mr. Thwaites resigned in 1994 after only about 8 months in office. He stated very publicly that in his opinion the development of the electoral system and its effective management would continue to be hampered as long as Nominated Members were in the majority.

The Interim Act was amended so that the representation of the Nominated Members would be one nominated member per party, plus one alternate member per party. This changed the composition of the EAC to three Selected Members and two Nominated Members, thus giving the Selected Members the majority votes on the EAC.

Mr. William Chin-See was appointed as Chairman subsequent to Mr. Thwaites' resignation. He was already a member of the new EAC appointed in 1993. The Committee then focused on addressing matters directly related to eliminating malpractices and improving efficiency in the conduct of elections.

An initial area of focus was electoral reform, including the use of fingerprint technology to ensure one person one vote, same person same vote. This was a strategy arising from the work of the Reid Committee in 1991, and championed by the Nominated Members of the EAC, several of whom visited other countries to see their systems at work. This was to be accomplished in three phases. Phase one was to employ fingerprint technology in a full enumeration of voters in order to initially create the electronic data base of voters, which would be updated through continuous registration, and which would be the source for preparing and producing voters' lists. Phase two was the use of fingerprints stored in the electronic data base to identify voters on Election Day and to issue them with ballots. Phase three was electronic voting. The timetable was to complete phase one prior to the next general election: that is, conduct the enumeration and compile the voters' list from the database of electors that was created.

The recommended Computerised Voting System would include:

1. A special ID Card with fingerprints and other means of identification (which are to be decided) encrypted thereon is to be provided to the registered elector.
2. The requirement for electors to be identified by means of the ID Card -through an electronic reader, with confirmation by a live fingerprint reader.
3. The elector's vote to be administered through an electronic voting machine with fingerprint reading capability.
4. The electronic recording of the elector's vote and the periodic transmission of voting information to a secure location for secondary storage.
5. The printing of a receipt or ballot acknowledging registration of the elector's vote.

The benefits to be derived from this system were to be realised in the almost total elimination of impersonation, the reduced risk of ballot tampering, the elimination of over-voting, the reduction in the number of polling stations, and the ability for electors to have greater choice in polling stations, reducing the potential intimidation associated with communal voting.

The EAC further focused on its electoral reform agenda, which included addressing the inadequacies and inefficiencies in the administration of the electoral system, which were most evident during the enumeration of voters and on polling day.

The ROPA required a full enumeration exercise every four (4) years, with an updating exercise between each full enumeration. The clear purpose behind this provision was that persons attaining voters' age would be given a reasonable opportunity to be enumerated and registered, so that at the time of an election they would be qualified to vote. Unfortunately there were serious deficiencies in the enumeration process and in the preparation of a good, clean voters' list.

The most common problems encountered were, failure to contact the citizens, poor quality of photographs and fingerprints, poor handwriting of enumerators, failure of the full enumeration team to be present at the home of the citizen during the enumeration exercise, loss of or mislaying of the enumeration forms, false names on the list (padding of the list), improper cancelling of the enumeration forms, under-aged persons enumerated (padding of list), multiple registration of the same person (padding of the list) and the continued inclusion on the list of the names of dead or migrating electors.

The EAC sought to address these problems by creating the provision for continuous registration with the establishment of permanent registration centers island-wide, with centers located in appropriate buildings. The focus was on consistency and efficiency in the taking of photographs and fingerprints, better policing of the registration process including safety of enumeration

records, appropriate training of personnel with suitable educational standards, production and posting of preliminary lists of new applicants for viewing on an on-going basis by members of the public and the preparation of up-to-date lists. In order to address the problems with enumeration, the EAC decided that:

1. There would be a full enumeration exercise in order to create a clean data base;
2. thereafter full enumeration exercises alone should be undertaken and completed at intervals of no more than six (6) years;
3. centres would be established to facilitate the process of continuous registration;
4. no applicant is to be placed on the voters' list until visited by the official electoral team to verify her or his place of residence;
5. the elector should be obliged to report at registration centres, all permanent changes of residence; and new addresses to be verified before the list is adjusted;
6. staff be identified and trained to carry out registration and that training should also be given to representatives of political parties;
7. there be legislation to enable the EAC to access the records of births, deaths and migration.

Another area of on-going concern was that of the accuracy of the voters' list. The EAC over time had acknowledged the following problems:

- a. Electors listed more than once.
- b. An elector wrongly listed in a polling division or constituency in which he or she does not reside.
- c. Unqualified persons listed as electors.
- d. Failure to publicly exhibit the list in sufficient time to deal with objections.
- e. Elector is enumerated but is left off official list.
- f. The confusion created with the production of supplementary lists by a Statement of Changes to the official list.

It was agreed that the official list should be published at least once every six (6) months and that the list to be used for any election is the published list which is no more than six (6) months old and is current (prepared no fewer than five (5) days before nomination day). It was also agreed that the power given to the Director of Elections to amend the published list by a Statement of Changes should be removed. This latter was an important change since amendments to the voters' list just before elections created particular challenges to the integrity of the voting system.

The EAC recognised that in order to maintain an efficient electoral system, crucial steps had to be taken to properly prepare the voters' list. Consequently, over time it moved to:

1. have enumeration data properly completed and audited to be put into the computer database;
2. electronically cross-match all data including fingerprints to remove duplications;
3. produce and display the preliminary list for three (3) weeks at Electoral Offices and at other prescribed public buildings, with copies to be provided to political parties;
4. allow three (3) weeks to process omissions and objections from anyone;
5. ensure, after verification and approval of the data received, that an effective security mechanism is triggered to restrict access to the data;
6. print official voters' lists after approval by the Electoral Advisory Committee.

The law made no provision for any time lapse between the announcement of an election and Nomination Day. The EAC felt that, in order to ensure fairness and to prevent the possibility for abuse by the calling of elections without reasonable notice, which might adversely affect citizens or groups wishing to participate, there should be a specific period set out in law. A period of five days should be the minimum. This period of five clear days should also be sufficient to place the Electoral Office in a better state of preparedness for the elections. An extra two hours on Nomination Day for the handing in and processing of nomination papers should have the effect of preventing rival parties from coming into contact with each other.

As a result the EAC decided that there should be at least five (5) clear days between the announcement of Nomination Day and the actual Nomination Day and that the hours for the nomination of candidates should be between the hours of 10:00 a.m. and 2:00 p.m.

In order to reduce the enthusiasm which tends to be exhibited immediately preceding voting, and which gives rise to improper behavior, and to reduce the work load of the security forces so that they can be better prepared for Election Day activities, the EAC regulated that all campaigning by or on behalf of candidates by way of public meetings and/or public marches shall cease at least twenty four (24) hours before the time fixed for the opening of the polls on Election Day.

Leading up to Election Day tended to be a challenging time for the EOJ as it was required to produce ten copies of the voters' list for each candidate, issue grants of poll, print ballot papers, check Black Books (Registration Record Card with photograph, thumbprint and personal data for each voter) for completeness, and package election materials for each Returning Officer for safe delivery at least two days before polling day. The Electoral Office also had to satisfy itself that suitable persons had been identified who were willing to serve as presiding officers and poll clerks, and then ensure that these individuals received the appropriate training.

The EAC's decisions to remove from the law the discretion of the Director of Elections to make Statements of Changes which required the preparation of supplementary lists, and for the insertion of a mandatory five (5) day period between the announcement of elections and

Nomination Day, were designed to enable the Electoral Office to perform its administrative functions efficiently and to be ready for Election Day.

The full electronic system proposed in 1991 was not adopted, but in the enumeration process conducted in preparation for the 1997 General Election, the EOJ finally had the requisite resources to implement the comprehensive system of photographing and fingerprinting as a requirement for voter registration that had been planned for introduction at the outset of its operation in 1979. Although fingerprints of electors had been taken for many years, for the first time, these fingerprints were used to clean the voters' list by matching the fingerprints of each elector with all other finger prints in the system.

Another strategic shift during this period was the use of legal mechanisms to deter candidates from engaging in unlawful electoral practices. The strategy was proposed by the PNP and was the brain child of Prime Minister Patterson. This involved the creation of a mechanism named the Constituted Authority, and another named the Election Court.

The Constituted Authority would have the authority on Election Day to halt elections in a constituency, electoral division, or polling station if certain conditions obtained, and to set a new date for the poll to be conducted not more than 30 days later. The Constituted Authority would also have the power to receive complaints from candidates or upon its own motion to investigate malpractices in the conduct of the poll and, should such investigation establish that certain irregularities occurred, make a recommendation to the Election Court to void the election in a constituency, electoral division or polling station. Should the Election Court so order, the Constituted Authority would set the date for the poll to be retaken. The time table was also set for the establishment of these legal mechanisms before the next election.

In November 1997 the Representation of the People Act was amended to set up the Constituted Authority to comprise the three Selected Members and two other persons to be appointed by the Governor General on the advice of the Prime Minister and the Leader of the Opposition, one of whom should be a retired judge and the other a member of the privy council, with the retired judge serving as chair. The Election Petitions Act was amended in 1997 to create the Election Court comprising a panel of three Supreme Court judges appointed by the Chief Justice.

The Constituted Authority had the power to halt an election if polling stations representing at least 25% of the electors in a constituency had not opened within five hours of the scheduled opening time or if there was a natural disaster. The Constituted Authority could also petition the Election Court to have an election voided under a series of circumstances included in the 1885 Election Petitions Act, as amended in 1997. The Election Court had the power to hear applications from the Constituted Authority for the voiding of elections under circumstances that included situations where the:

- total number of votes cast in a constituency or electoral division exceeds the number of electors on the voting list;
- ballot boxes have been stolen, destroyed, or tampered;
- votes have been polled by individuals who are not bona fide electors;
- there has been an upsurge in violence or any irregularity during Election Day which would lead to a substantial distortion or subvention of the process of free and fair elections.

Another strategy was for local and international observation of the conduct of elections. This proposal came from civil society, especially from Citizens Action For Free and Fair Elections (CAFFE). The Prime Minister was in favour of local observers, the Leader of the Opposition was in favour of international observers. The EAC recommended both. The appropriate legal and administrative steps were taken to permit local and international observation of elections in the form of amendments, in 1997, to the Representation of the People Act.

The 1997 General Election was conducted with the new circumstances of the operation of the Constituted Authority and the Election Court and local and international observation. It was conducted on a voters' list compiled from the house-to-house enumeration, which was done in a manner that captured the fingerprints and photographs of electors. Continuous Voter Registration commenced in 1998. However, the cross-matching of fingerprints continued to pose considerable challenges. Indeed, because of these challenges, the cross-matching of electors could not be undertaken in the time allowed for the calling of the elections. This did not meet with the approval of the Opposition.

Despite the series of efforts to reform the system, malpractices continued. Indeed, the 1997 election campaign saw a return to political campaign violence. 1997 was only the second time in Jamaica's history (with the first being 1980) when murders increased during an election year and declined in the year immediately following the election.

Nevertheless, the conduct of the 1997 Election represented a significant improvement over 1993. A high powered election observation team from the Carter Centre, co-chaired by President Jimmy Carter, Past President of the United States and General Colin Powell, concluded that the elections were fair but noted areas for improvement. The Government was re-elected.

The malpractices that continued to exist in the electoral system which were evident both in the 1993 and 1997 Elections created continued urgency for the process of electoral reform.

The seven year term of the EAC appointed in 1993 expired in early 2000. The Prime Minister and the Leader of the Opposition did not agree to the reappointment of the Selected Members of the Committee. This led to the Country being without an EAC for eight months in 2000.

## **EAC: 2000 to 2006**

The new EAC, which was appointed in December 2000 under the chairmanship of Professor Errol Miller, immediately recognised and took action on critical issues that had to be resolved before a General Election that was constitutionally due by the end of 2002. These included resolution of the patent of the Electronic Voter Identification and Ballot Issuing System (EVIBIS) which was held by Mr. Ryan Peralto, Chairman of the JLP, who had for many years been an advocate of electronic voting; demonstration of the EVIBIS to test its readiness for use in elections; the production of two voters' lists annually based on the cross-matching of the finger prints of all registered applicants; and the financing of the EAC to the level that matched its responsibilities.

Mr. Peralto agreed to transfer all his patent rights related to voter registration and the conduct of elections to a foundation, the composition of which was acceptable to the Government. The demonstration was held in mid-February 2001 which showed that the EVIBIS was not ready and needed further substantial work. The Government agreed to provide the EAC with the needed funding. The first voters' list produced through the cross-matching of all electors was published on May 30<sup>th</sup> with the second annual voters' list set to be published on November 30<sup>th</sup>, 2001.

In the process of taking these actions and engaging in the negotiations necessary for their implementation the EAC decided on a policy of openness and transparency in all areas of its operations except those detrimental to the security of the electoral process. Accordingly, the EAC decided to have regular press conferences to inform the public of its action and in which media personnel could question EAC members on any electoral matter, and to use the print media, supported by radio and TV advertisements to inform the public about relevant operational matters. The EAC also decided that the Director of Elections and the Chairman would deliver national broadcasts by radio and television prior to Nomination Day and Election Day.

The EAC established standards for free and fair elections and assessed the 60 constituencies against these standards using data and incident reports from the 1993 and 1997 General Elections. These standards included that only duly registered electors should vote; that they should vote in person; that they should vote only once; that they should vote in secret; that they should vote on ballots that could not be traced back to them; that they should vote at polling stations readily accessible to them; that all ballots issued should be accounted for at the close of the poll; that every ballot should be counted; and that every candidate should be able to exercise the right to an agent in each polling station. Where a constituency complied with ninety-five percent of the standards they were deemed to have satisfied the standards. Forty five constituencies met the standards.

Based on the results of this analysis of the constituencies against the standards of free and fair elections the EAC agreed and implemented general policies designed to build trust and confidence through structured procedures. These were that:

- the monthly registration of voters and the preparation of each voters' list would be done through a highly interactive and participatory process involving EOJ officials and political party scrutineers in each constituency;
- vetting of the draft voters' lists by political representatives at both the constituency and national levels;
- posting of draft voters' lists in Post Offices of each constituency so that applicants could vet the list for any errors.
- signed two year Polling Station Agreements by electoral officials and political representatives would be reached through an interactive and participatory process in each constituency, with the EAC setting criteria that polling stations should satisfy, with the understanding that any elections called during this period would be conducted at these polling stations;
- Selected Members of the EAC and the leadership of the EOJ would engage in a nation-wide exercise for recruiting pools of election day workers for each Parish based on quotas and criteria given to organisations such as the Civil Service Association, the Jamaica Teachers Association, Student Councils of tertiary institutions, service clubs and other civil organizations;
- lists of potential presiding officers and poll clerks and election day workers, would be provided to political representatives in each parish for vetting prior to elections, while Returning Officers and the Director of Elections would deploy election day workers for each Parish;
- the EOJ would implement an updated and modernised training programme for election day workers to ensure their competence in conducting the poll according to law and treating electors with patience and respect.
- monthly meetings would be held in each constituency involving the Member of Parliament, and Councillors and Care-Takers of the political parties recognised by the EAC, with these meetings addressing matters related to voter registration, draft voters'

lists, polling stations locations, the recruitment of election day workers and any other matter critical to electoral processes and elections;

- for each General and Local Election in addition to presiding officers, each poll clerk and indoor agent of candidates would be provided with a picture version of the voters' list for that station to aid in the identification of electors, with this picture version of the voters' list confined to use inside polling stations only;
- Selected Members, the Director and Assistant Director, Field Operations would hold meetings with the Minister's Fraternal in each Parish informing them of the changes that were being made in the electoral system; requesting their support for free and fair elections especially through the pulpit and other church resources; and engaging their involvement in conflict resolution between candidates and supporters in the parishes and constituencies in which they served.

While the measures outlined above applied to all 60 constituencies the EAC adopted four measures specifically designed to be applied to some or all of the 15 constituencies that were to some degree in violation of the standards for free and fair elections. These were as follows:

1. They were declared specialist constituencies in that in most areas of these constituencies candidates of opposing political parties were not allowed to have indoor agents in polling stations, or the indoor agents assigned had reasonable fears that they could not get in and out of the areas of the polling locations safely.
2. The EOJ recruited election day workers willing to work in these areas, provided them with special training to conduct electoral processes in hostile circumstances, and provided them with secure passage into and out of the areas in which polling stations were located.
3. With the agreement and the full cooperation from political representatives of those constituencies, the EOJ conducted exercises in voting procedures, because many electors in most of these constituencies had little or no recent experience in voting themselves.
4. The Selected Members had meetings with the Members of Parliament and their campaign managers in eight of the 15 constituencies where the plurality of victory in the 1993 and 1997 General Elections was so great as to cast no doubt on the election results, but where there was unquestioned evidence that malpractices took place. The purpose of these meetings was to engage these MPs and the campaign managers in restraining their misguided supporters from engaging in

malpractices that embarrassed them, their political parties and the Country. All eight MPs fully complied with the counsel of the Selected Members.

5. After Nomination Day, the Director of Elections wrote to 20 candidates nominated in the other seven constituencies, of the 15 not meeting the standards, pointing out the malpractices that had occurred in previous elections in areas controlled by their political parties such that the results were the net of the fraud conducted by both parties. They were advised that based on this history these seven constituencies were prime candidates for action by the Constituted Authority based on its own motions to the Election Court to void elections not complying with electoral law.
6. The Selected Members then applied to the United Nations Development Programme and received assistance from experienced investigators of electoral malpractices to complement local investigators, particularly in the seven constituencies. This was to ensure that the Director's letter was not simply a threat but would be acted upon with credible measures on which appropriate and impartial action could be taken.

In preparation for the General Election the EAC also implemented a number of measures. An Election Management Information System was commissioned and implemented which would track all incidences occurring in constituencies between Nomination Day and Election Day; track all operational matters on Election Day; and account for the delivery of each ballot box to the designated Counting Centre in each constituency and transmission of the counting of the ballots from each Counting Centre directly to the EOJ and the media through dedicated phone lines. Returning Officers and supervisors of polling locations were each equipped with two cell-phones from different providers to provide information to the Centre.

After Nomination Day the Selected Members, the Director, and the Deputy Director, Field Operations held seminars with all candidates in each Parish providing them with appropriate literature related to electoral law and practice, and informing them of the changes that would be implemented for the 2002 General Election.

An Election Centre was established to be the official space at which the leadership of all stakeholder groups would meet between Nomination Day and Election Day. The Election Centre was to be the focal point for all election related matters. It was to assist with coordination of events in the constituencies, to engage in conflict resolution and to ensure that authentic and current information was given to the public through the media. The membership of the Election Centre was comprised of the Director of Elections, who chaired the Centre on all matters related to elections; the Political Ombudsman, who chaired the Centre on all matters related to politics;

one representative of each political party recognised by the EAC; one representative of the Security Forces; one representative from CAFFE; and one from the international observers.

On the night of the 2002 General Election, Mr. Edward Seaga, Leader of the JLP, said on national television that he was not conceding that his party had lost, because the results in some constituencies were close. However, he declared that the Election was free and fair. Reporting on the General Election, CAFFE stated that “The 2002 General Election marked an electoral watershed as Jamaicans enjoyed a largely peaceful day of voting free from major irregularities.” In January 2003, Director of Elections, Danville Walker received the prestigious *Gleaner Man of the Year* Award. In its citation, the *Gleaner* stated “Today you are being honoured for the incredible effort you exerted to ensure that the historic October 16, 2002 General Election, over which you presided as the elections boss, went down as the cleanest in the Country’s history. Today we are in your debt.” The EAC was also given an award by the *Gleaner* for its role in the conduct of the Election.

Following the Local Government Election of June 2003 the EAC convened a three-day consultation during which it solicited the views of the leadership of CAFFE and other civil society organisations, the Prime Minister and the leadership of the PNP; the Leader of the Opposition and the leadership of the JLP and the leadership of minor political parties concerning an agenda for continued improvement and enhancement of the electoral system. The agreed Agenda for continued improvement and development of the election system resulting from the consultation consisted of six items.

1. The amendment of the Constitution to increase the upper limit of the number of constituencies into which Jamaica was divided from 60 to an odd number, which would eliminate the possibility of a tied General Election result.
2. The establishment of the Electoral Commission and its inclusion in the Constitution.
3. The conduct of a residence re-verification exercise to ensure that the voters’ list more accurately represented where electors actually reside. Many electors had changed residence since the enumeration of 1997 and the law required that electors vote where they reside.
4. Political Party Registration and Financing and Campaign Financing
5. The revision of constituency boundaries during the next period of general review set for March 2004 to March 2006.
6. Continued legal reform of certain electoral practices that needed strengthening, as revealed even in the circumstances of the improvements made in the recent general and local government elections.

## **Creation and Early Operations of the Electoral Commission of Jamaica (ECJ)**

The Act creating the EAC in 1979 promised the eventual creation of an Electoral Commission. The Price Waterhouse review of 1993 recommending that the EAC become a Commission had been accepted, in principle by the Cabinet in 1993. Although Cabinet agreed to the transition to a Commission in 1993, it still took another thirteen years before the ECJ was actually established. The Commission was established by the Electoral Commission (Interim Act) of 2006, which took on board most of the recommendations of the EAC. The Commission came into being on December 1, 2006.

The Act provided that the Commission was a Commission of Parliament, and delineated the composition of the Commission, the terms of appointment and remuneration of Commissioners, and the circumstances under which the appointment of Commissioners could be revoked. The Act reiterated the Interim nature that applied in the EAC Act by specifying that this Act applied until the Commission was enshrined in the Constitution.

The Act specified that the Commission would comprise nine Commissioners (four to be selected by the Governor General on the advice of the Prime Minister and the Leader of the Opposition (Selected Commissioners); four to be nominated by the Prime Minister and the Leader of the Opposition (Nominated Commissioners) and the Director of Elections (who would be appointed by all other Commissioners and would be a voting member of the Commission). The compensation of Commissioners was set at a maximum of the remuneration of a puisne judge, net of any salaries Commissioners received from the public purse.

Whereas the EAC had the statutory role of providing advice to the Director of Elections, the ECJ was given the statutory authority to provide instructions to the Director of Elections. Indeed, the Act made it clear that the ECJ and EOJ operated under one hierarchy of authority, with the Commissioner who served as Director of Elections (a Managing Commissioner one might say) being responsible to the Commission for the day to day operations of the EOJ.

The Selected Commissioners had terms of seven years, and the Nominated Commissioners, terms of four years. The Selected Commissioners could be removed from office by the vote of a majority of Commissioners, or a two-thirds majority of both Houses of Parliament. The contract of the Director of Elections could be revoked by a vote of at least six Commissioners, including at least 3 Selected Commissioners.

At its inception, the ECJ was chaired by Professor Emeritus, the Honourable Errol Miller. The other Selected Commissioners were the Honourable Dorothy Pine-McLarty, the Honourable Justice Clarence Walker and Dr. Herbert Thompson. The Nominated Commissioners were Karl Samuda, MP and Senator Thomas Tavares-Finson, nominated by the Leader of the Opposition;

and the Honourable Donald Buchanan and Mr. Linton Walters, nominated by the Prime Minister. The Director of Elections was Mr. Danville Walker.

The Act indicated that the objects of the Commission “shall be to safeguard the democratic foundations of Jamaica by enabling eligible electors to elect, through free and fair elections, their representatives to govern Jamaica.” The Act specified that the Commission would have fifteen functions, represented in Section 6 (a – o). These were to:

- a. establish policies for governing the registration of electors in accordance with the provisions of Section 37 of the constitution of Jamaica;
- b. give directions to the Director on the performance of his functions under the Representation of the People Act (ROPA);
- c. conduct general elections or by-elections, as the case may require, of members to serve in the House of Representatives, the Council of the Kingston and St. Andrew Corporation or any Parish Council; or as a mayor of any municipality, and conduct referenda;
- d. compile and maintain the register of eligible electors;
- e. verify the identity of every eligible elector;
- f. prepare the official list of electors in accordance with the ROPA;
- g. approve political parties eligible to receive state funding with respect to any or all aspects of the electoral process;
- h. administer electoral funding and financial disclosure requirements;
- i. monitor election expenditure by candidates or their official agents;
- j. review the number of constituencies and boundaries thereof and make such recommendations to the Standing Committee of Parliament as are appropriate as provided for in Section 67 of the Constitution of Jamaica;
- k. determine polling divisions within constituencies;
- l. prepare and execute programmes of public education with a view to informing the public about the electoral process and carry out media briefings on such occasions as may be necessary;
- m. conduct research on electoral matters and publish materials to enhance the electoral process;
- n. provide leadership and develop expertise in electoral matters;
- o. establish entities or mechanisms to provide services and products necessary for the conduct of elections, the identification of persons, the verification of residence and such other matters as may be required in relation to the functions of the Commission.

The ECJ, once operational in 2006, continued the successful traditions of the EAC, including continuing to act on the agenda for reform that had been agreed with key stakeholders following the 2003 Local Government Election. Based on the ECJ’s recommendation for example,

Parliament moved to amend the Constitution to increase the upper limit of the number of constituencies from 60 to 65, and to increase the actual number to 63 in the first instance.

The ECJ also established new processes and procedures for advising the Standing Committee of Parliament on Electoral Boundaries. These processes and procedures were employed in increasing the number of constituencies from 60 to 63 and in addressing breaches in the upper and lower limits of the number of electors in constituencies. Breaches in these limits occurred in circumstances in which the number of electors in constituencies exceeded the upper limit, which was set at 1.5 times the average of the total voters' list divided by the number of constituencies, or were below the lower limit, which was set at .67 times the average.

Shortly after its establishment, the ECJ also saw important personnel changes. Danville Walker demitted office as Director of Elections in 2008, in the wake of a ruling by the Chief Justice in a case (Daryl Vaz versus Abe Dabdoub), which held that renewal of the passport of a country outside the Commonwealth constituted allegiance to a foreign power. This ruling would be the basis for Hon. Danville Walker being debarred from serving as Director of Elections, since he held a United States passport. Orrette Fisher, who came to the EAC in 1995, acted as Director of Elections between 1995 and 1996. He acted as Director once again, on the departure of Danville Walker, before being appointed to the post in 2008.

The focus of the ECJ continued to be on reforms in electoral practices, in particular the more widespread usage of the EVIBIS. Further, a Geographic Information Systems Department was created within the EOJ to facilitate the development of electronic mapping systems for use in the review and determination of constituency boundaries and other geographic electoral matters.

In 2012, an Information Systems report from the Office of the Auditor General lauded the ECJ on the development of its EVIBIS programme and indicated that ECJ's technology initiatives led to Jamaica becoming recognised as having an electoral system that is on par with most modern and democratic nations. At the same time, the Auditor General made several recommendations with respect to the need for improved information technology governance, and administrative governance, of the ECJ to ensure that the integrity of these systems was protected.

The continued success of the ECJ in improving the electoral climate was reflected in on-going progress in the public perception of the freedom and fairness associated with Jamaica's general elections. The first election conducted by the ECJ was the 2007 General Election, which was won by the Jamaica Labour Party, under the leadership of the Hon. Bruce Golding, who had been involved in the crafting of the EAC in 1979 and who served as a Nominated Member between 1979 and 1984. This was the first General Election in which the EVIBIS system was used, with 692 of the 6,232 polling stations across the country featuring the use of EVIBIS stations. The Election was run relatively smoothly.

To ensure a continuing process of learning from the Country's electoral experiences, the ECJ documented the reforms leading up to the 2002 and 2007 General Elections, and the operations of the 2007 to 2008 General and Local Government Elections in the most comprehensive report on elections in Jamaica's history – a 218 page comprehensive report: *Elections 2007: The Report of the Electoral Commission of Jamaica – December 2006 – March 2008*.

The continued focus on improving electoral management was evident in the 2011 General Election. In 2011, the People's National Party won the General Election, under the leadership of Mrs. Portia Simpson-Miller, who served as a Nominated Member of the EAC between 1982 and 1990, and who became Jamaica's first female Prime Minister. This Election was also considered fairly uneventful in terms of electoral malpractices.

Indeed, commenting on the 2011 General Election, a former chairman of CAFFE, Dr. Alfred Sangster, noted that the highlight of the Election was the level of friendliness shown by representatives of opposing parties, with individuals in orange and green shirts hugging each other on Nomination Day. He viewed this as a wonderful tribute to the collective work of a number of organisations over many years seeking to preserve democracy and ensure free and fair elections that were free from fear. He included among these organisations, CAFFE, but had tremendous respect for the work of the EAC, EOJ and ECJ under their respective leaders, although noting the concern about voter apathy that was apparent in Jamaica. Dr. Sangster paid particular tribute to the former Director of Elections, Danville Walker; and his successor, Orrette Fisher, whom he described as having performed very well.

The improved stature and international recognition of Jamaica's electoral oversight process became manifest both in a lack of interest within the international electoral observation machinery in monitoring elections in Jamaica, and an increase in the extent to which Jamaican electoral officials were invited to observe elections, or provide advice to electoral commissions elsewhere in the world. As an example, in preparation for the 2007 General Election, the Chairman of the ECJ wrote to several bodies that observe elections and invited their organisations to send representatives to observe the elections. The response from the Carter Centre, which was one of the first international groups to send observers to Jamaican elections after the 1997 amendment to the ROPA that allowed for international observance of Jamaican elections, was instructive. The Carter Centre wrote as follows:

“over the years we have been pleased to witness tremendous progress in the implementation of the processes to ensure the integrity of the electoral process and the safety of Jamaican citizens. We feel the Jamaican electoral process is trusted and mature, and that our participation would be duplicative of the efforts of other international and domestic observer groups.”

In terms of its international reach, the ECJ became a member of several international electoral groupings, including the Commonwealth Electoral Network, and various Latin American networks, such as the Inter-American Union of Electoral Organisations (UNIORE); ECJ officers participated in election observer missions in Latin America, Africa and elsewhere; and ECJ officers provided advice to electoral commissions, particularly within the Caribbean. Locally, the EOJ was used to conduct the elections of the major political parties, and organisations such as the UWI Guild of Students, the Jamaica Amateur Athletic Association, among many others, because of the high regard ascribed by these organisations, and the Country at large, to its electoral management capacity.

While the ECJ was well connected internationally and both benefitted from and provided advice on electoral matters, international assistance did not translate into the provision for funding for elections. As a matter of principle and policy the Jamaican Government paid for all elections held in the Country and did not accept funding for the conduct of elections from any external source. Between 2007 and 2008, and again during the 2011 elections, the combined budget for the holding of elections was approximately J\$2 billion.

Under the Chairmanship of Professor, the Hon. Errol Miller, and continuing with the Chairmanships of Dr. Herbert Thompson, and the Hon. Dorothy Pine McLarty, who in 2013 became the first female to chair Jamaica's electoral oversight structure, particular focus was placed on using the ECJ as an agency to deepen democracy in the Country through, among other initiatives, the development of a robust system of political party registration and campaign financing. The party registration system would require political parties interested in contesting elections to be registered with the ECJ, whereupon, these parties could also gain equal access to state financing, up to the level of 40% of their operational costs, and also based upon the total financing limits approved by Parliament.. The proposed campaign finance legislation would require transparency in campaign financing and set limits on the amount of donations per contributor.

Both initiatives were developed by the Legal Committee of the ECJ, under the chairmanships of Hon. Clarence Walker and Hon. Dorothy Pine McLarty with the full support of the entire Commission and with the assistance from international partners. In 2014 the proposed party registration legislation was under consideration by Parliament, having been approved by the Legislative Committee of Cabinet, while the proposed campaign financing legislation was at the stage of being drafted by the Office of the Chief Parliamentary Counsel.

As noted by the Report of the National Committee on Political Tribalism in 1997, Jamaican politics had long been quite tribal. While this was most evident in the phenomenon of homogenous voting in certain communities, it was also clearly demonstrated in many walks of

life in Jamaica. In the politically charged atmosphere in which the EAC was created, the initial system of having the Nominated Members agree to the appointment of Selected Members did not work because no agreement could be reached among the Nominated Members. Professor Mills pointed out that in this charged atmosphere, he had to manage his social interactions very carefully. But in the 35 years between 1979 and 2014, Jamaica advanced considerably in dialogue on political matters within its electoral management structure. Past Members of the EAC and Commissioners of the ECJ almost uniformly described interactions among Members and Commissioners as a model of independent, civil discourse.

### **The Way Forward**

The ECJ continued to promote the development of policies that would enhance the perception of the Commission as an independent entity dedicated to the enhancement of Jamaica's electoral system. In 2014, in addition to continuing to plan for the introduction of new systems for monitoring party registration and campaign financing, the ECJ was also set to continue its focus on strengthening democracy by examining ways in which voter apathy could be reduced, and voter intimidation could be mitigated. It also intended to lobby to ensure that funding for technology to facilitate Jamaica's technological leadership in planning for free and fair elections, and for the management of elections themselves, continued to be accorded priority focus. Further, it intended to press for the achievement of the original intent of the framers of Jamaica's electoral oversight function, which was that the function should be enshrined in the Constitution, as was occurring in many other countries by 2014.

Another planned policy initiative was an in depth analysis of the role the ECJ can play in reducing the political garrison phenomenon that continued to represent a blot on the Jamaican electoral system. Jamaica's garrison politics had consequences that extended beyond voter intimidation and malpractice. One such, as articulated to the Commission in a presentation by Opposition Senator Johnson-Smith in a discussion on gender imbalance in politics in Jamaica, and in response to an earlier presentation to the Commission on the need for gender quotas in politics from Government Senator Imani Duncan, was that garrison politics discouraged women from seeking electoral office.

In 2014, in the seventieth anniversary of universal adult suffrage, and the thirty-fifth anniversary of the independent management of Jamaica's electoral system, the ECJ planned to continue the focus on improving the fairness of the electoral system and deepening and safeguarding Jamaican democracy from apathy, intimidation, malpractice, funding lacunae and mis-directed state power.

## Representatives of the EAC/ECJ: 1979 – 2014

### Chairs of EAC/ECJ

Professor, the Hon, G.Mills, OJ, CD	1979 - 1993
Mr. Peter John Thwaites	1993 – 1994
Mr. William Chin-See, CD	1994 – 2000
Prof., the Hon, Errol Miller, OJ,CD	2000 – 2012
Dr. Herbert Thompson, CD	2013
Hon. Dorothy Pine Mclarty, OJ	2013 -

### Directors of Elections

Mr. Carl Dundas	1979 - 1980
Mr. Noel Lee	1980 - 1993
Mr. Newton Forbes	1993 - 1994
Major Winston Sutherland	1994 - 1996
Mr. Orrette Fisher	1996 - 1997
Hon. Danville Walker, OJ	1997 - 2008
Mr. Orrette Fisher	2008 -

### Members/Commissioners of the EAC/ECJ

Professor, the Hon, G.Mills, OJ. (s)	1979 – 1993
Mr. Abe Dabdoub (n – J)	1979 – 1984; 1997 – 2005
Dr. the Hon. Paul Robertson (n - P)	1979 – 1991
Hon. Shirley Miller, OJ., CD (s)	1979 – 1993
Mr. O.K. Mellhado, CD (n - P)	1979 – 1980
Hon. Bruce Golding (n – J)	1979 – 1984
Dr. Reginald Irvine, OBE, CD, (s)	1979 – 1980
Prof. R. Murray, CD (s)	1980 – 1985
Dr. D.K Duncan (n – P)	1981 – 1982; 2010 -
Ms. Portia Simpson (n- P)	1982 – 1990
Hon. Errol Anderson (n – J)	1984 -- 1987
Hon. Karl Samuda, OD (n – J)	1984 – 1990; 2005- 2010
Dr. Mavis Gilmour, CD (n – J)	1987
Hon. Edmund Bartlett (n – J)	1987 – 1990
Prof. L. H. Reid (s)	1987 – 1993
Hon. Donald Buchanan (n – P)	1990 – 2000; 2006 – 2010
Senator Anthony Johnson (n – J)	1990 – 1996
Dr., the Hon. Peter Phillips (n – P)	1991 --1995
Senator Ryan Peralto, C. (n – J)	1990 -- 2005
Mr. Peter John Thwaites (s)	1993 – 1994
Ms. P. Banka-Coker (s)	1993 --1996
Mr. William Chin-See, CD (s)	1993 -- 2000

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s: selected members/commissioners

n- P: nominated members/commissioners, PNP; n – J: nominated members/commissioners, JLP

## Representatives of the EAC/ECJ: 1979 – 2014 (Continued)

### Members/Commissioners of the EAC/ECJ (continued)

Hon. C. McLarty, OJ (s)	1994 --2000
Hon. Maxine Henry Wilson (n – P)	1995 -- 2003
Mr. Danville Davidson (n – J)	1996 – 1997
Prof. the Hon. G. Lalor, OJ, CD (s)	1996 – 2000
Prof. the Hon. Errol Miller, OJ, CD (s)	2000 -- 2013
Hon. Michael Peart (n – P)	2000 – 2002
Dr. Herbert Thompson, CD (s)	2000 – 2013
Hon. Dorothy Pine Mclarty, OJ (s)	2000 --
Mr. Linton Walters (n – P)	2002 -- 2008
Hon. Burchell Whiteman, OJ (n – P)	2003 – 2006
Senator T. Tavares-Finson (n – J)	2005 –
Hon. Justice Clarence Walker, CD (s)	2006 -- 2014
Hon. Peter Bunting (n- P)	2008 –
Mr. Aundre Franklin (n – J)	2010 –
Mr. Earl Jarrett, CD (s)	2013 –
Hon. Justice Karl Harrison, CD (s)	2014 –
Professor Alvin Wint (s)	2014 –

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s: selected members/commissioners

n- P: nominated members/commissioners, PNP; n – J: nominated members/commissioners, JLP

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