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# Linking Rule of Law and Trade Liberalization in Jamaica

Rachel J. Anderson\*

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# Linking Rule of Law and Trade Liberalization in Jamaica

Rachel J. Anderson

## INTRODUCTION

Jamaica is one of several smaller countries that hopes to improve its position in the global market, raise living standards, and strengthen democracy through trade liberalization. Rule of law<sup>1</sup> is essential for Jamaica to effectuate these goals through trade liberalization. Currently, several opposing factors are preventing Jamaica from taking advantage of the potential synergy between democracy, trade liberalization, and rule of law.

First, as in many developing countries, Jamaica's current situation reflects the entrenched inequity grounded in its colonial past.<sup>2</sup> Jamaica's seemingly contradictory predisposition toward both democracy and weak rule of law is a lasting effect of this colonial history. Democratization and support for existing democracies have long been touted as critical to successful economic development.<sup>3</sup> Among other things, economic development involves

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1. Thomas Carothers defines rule of law as "a system in which the laws are public knowledge, are clear in meaning, and apply equally to everyone . . . . In particular, anyone accused of a crime has the right to a fair, prompt hearing and is presumed innocent until proven guilty. The central institutions of the legal system, including the courts, prosecutors, and police, are reasonably fair, competent, and efficient. Judges are impartial and independent, not subject to political influence or manipulation. Perhaps most important, the government is embedded in a comprehensive legal framework, its officials accept that the law will be applied to their own conduct, and the government seeks to be law abiding." Thomas Carothers, *The Rule of Law Revival*, 77:2 FOREIGN AFFAIRS 96 (1998) [hereinafter Carothers, *Rule of Law*].

2. Jamaica was under Spanish colonial rule from 1506 to 1670 and British colonial rule from 1670 to 1962. Alonford J. Robenson Jr., *Jamaica, in AFRICANA: THE ENCYCLOPEDIA OF THE AFRICAN AND AFRICAN AMERICAN EXPERIENCE* 1025-27 (Kwame Anthony Appiah & Henry Louis Gates, Jr. eds., 1999).

3. See generally THOMAS CAROTHERS, *AIDING DEMOCRACY ABROAD: THE LEARNING CURVE* (1999) [hereinafter CAROTHERS, *AIDING DEMOCRACY*]. See also Foreign Assistance Act of 1966, Pub. L. No. 89-583, 80 Stat. 796 (codified as amended at 22 U.S.C. §§ 2151-2152(e) (2005)) (This 1966 legislation directed USAID to place an emphasis "on assuring maximum participation in the task of economic development on the part of the people of the developing countries, through the encouragement of democratic private local and government institutions."). Cf. Adrian Leftwich, *On the Primacy of Politics in Development, in DEMOCRACY AND DEVELOPMENT* 18 (Adrian Leftwich ed., 1996) ("[F]rom a development point of view, it is the primacy of politics and the character of the state that has to be the focus of our attention, not the

“structural transformation . . . to achieve economic diversification, including export diversification.”<sup>4</sup> Scholars and policy makers claim that democracy “support[s] market reforms by increasing government accountability and transparency, promoting the rule of law, and fostering respect for citizen’s rights and other limits on government power.”<sup>5</sup>

Second, Jamaica has a long history of democracy<sup>6</sup> but a much weaker rule of law track record.<sup>7</sup> As a result, it continues to encounter substantial difficulties in the process of trade liberalization.<sup>8</sup> Insufficient levels of rule of law and democracy can increase illegal economic activities and reduce domestic economic activity, thereby inhibiting investment.<sup>9</sup> Improving rule of law could enable the Jamaican economy to reap more benefits from regional and global markets, but the lack of explicit policy links between rule of law, democracy, and trade liberalization constrains the country’s ability to implement necessary rule of law reforms.

Finally, Jamaica’s size and structure inhibit its ability to derive major short-term economic benefits from trade liberalization. As a small, open, non-diversified economy, Jamaica is economically dependent on a few major trading partners. The constant deficiencies of rule of law and democracy in Jamaica, coupled with its small size, create a vicious cycle in which the lack of strong internal structures prevents Jamaica from making the changes needed for economic development.<sup>10</sup> Trade agreements, particularly regional ones, despite

form of government (democracy or not).”).

4. See RICHARD L. BERNAL, STRATEGIC GLOBAL REPOSITIONING AND FUTURE ECONOMIC DEVELOPMENT IN JAMAICA 1 (The North-South Agenda Papers, No. 18, 1996), available at <http://www.ciaonet.org/WPS/ber01/>.

5. CAROUTHERS, AIDING DEMOCRACY, *supra* note 3, at 46.

6. See TREVOR MUNROE, VOICE, PARTICIPATION, AND GOVERNANCE IN A CHANGING ENVIRONMENT: THE CASE OF JAMAICA 4 (World Bank, Discussion Draft, 2000), available at [http://lnweb18.worldbank.org/External/lac/lac.nsf/c3473659f307761e852567ec0054ee1b/1ffdd81022fb1f66852568dd00761c03/\\$FILE/Voice%20Participation%20and%20Governance%20-%20Jamaica.pdf](http://lnweb18.worldbank.org/External/lac/lac.nsf/c3473659f307761e852567ec0054ee1b/1ffdd81022fb1f66852568dd00761c03/$FILE/Voice%20Participation%20and%20Governance%20-%20Jamaica.pdf).

7. See DAVID DOLLAR, GOVERNANCE AND SOCIAL JUSTICE IN CARIBBEAN STATES 1-2, 15, 19 (World Bank Development Research Group, Report No. 20449, 2000), available at [http://lnweb18.worldbank.org/External/lac/lac.nsf/0/e13721b3914a6b12852568ef00506a48/\\$FILE/\\_08tnncpbidpgmsor540j20krfcdkm2r1099qn6t39cdig\\_.pdf](http://lnweb18.worldbank.org/External/lac/lac.nsf/0/e13721b3914a6b12852568ef00506a48/$FILE/_08tnncpbidpgmsor540j20krfcdkm2r1099qn6t39cdig_.pdf); MUNROE, *supra* note 6, at 14.

8. See DAVID E. BLOOM ET AL., GLOBALIZATION, LIBERALIZATION AND SUSTAINABLE HUMAN DEVELOPMENT: PROGRESS AND CHALLENGES IN JAMAICA 23 (United Nations Conference on Trade and Development, UNCTAD/EDM/Misc. 176, 2001), available at <http://www.unctad.org/en/docs/poedmm176.en.pdf> (“Jamaica faces the problem of how to maximize its opportunities in places where it has better access to certain markets than its competitors, while still managing to trade in markets where it is at a disadvantage. In addition, it must achieve this even as systems of barriers, market preferences and the size and shape of trade blocs change over time.”).

9. See Robert J. Barro, *Rule of Law, Democracy, and Economic Performance* 41, in 2000 INDEX OF ECONOMIC FREEDOM 31-32, 34-35 (Gerald P. O’Driscoll, Jr. et al. eds., 2000), available at [http://www.heritage.org/research/features/index/ChapterPDFs/2000\\_Chapter\\_2.pdf](http://www.heritage.org/research/features/index/ChapterPDFs/2000_Chapter_2.pdf).

10. See, e.g., MUNROE, *supra* note 6, at 29-35 (discussing the Jamaican government’s goals of increasing participatory democracy at a grass roots level and the failure to involve citizens at

constraints due to Jamaica's size, will offer opportunities for gains in social capital,<sup>11</sup> such as enhanced rule of law.

This Comment is an initial excursion into: (1) how the rule of law can enable individual countries, such as Jamaica, to take full advantage of trade liberalization and maximize the benefits of participating in regional trade agreements and (2) how regional trade agreements can facilitate the operationalization of rule of law and utilize rule of law as a mechanism for maximizing trade agreement benefits. Further, this Comment suggests that Jamaica should pursue rule of law reforms, despite the inherent difficulty in doing so. These reforms will increase the stakes in successful trade liberalization both for individual Jamaican citizens and for Jamaican society as a whole.

Part I of this Comment addresses the global trend toward integrating economic and trade concerns with domestic policies targeting governance. It discusses the growing international consensus that good governance, particularly rule of law, is directly tied to trade liberalization. Part I also explains the rule of law and why rule of law is vital to trade liberalization. For context, Part II gives an overview of Jamaica's political economy in relation to Jamaica's colonial past. Part III discusses the vicious cycle of low levels of rule of law, democratization, and socio-economic structures that exists in Jamaica and identifies socio-political and economic factors from Jamaica's history that contribute to that cycle. Additionally, Part III identifies points of intervention that can be addressed to transform Jamaica's vicious cycle into a virtuous cycle. Part IV offers possibilities to improve rule of law in Jamaica through regional trade agreements. Part V examines the Free Trade Area of the Americas (FTAA), specifically, as an example of the new genre of regional trade agreements that recognize the importance of good governance to successful trade liberalization. Finally, Part V also makes recommendations, based on the FTAA as a model, that Jamaica could implement to promote rule of law, recognizes potential constraints involved in implementing the recommended changes, and identifies structures that may aid in overcoming these challenges.

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the local level).

11. See, e.g., ROBERT PUTNAM, MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY 167 (1993) (defining social capital as the "features of social organization, such as trust, norms, and networks, that can improve the efficiency of society by facilitating coordinated actions"); Jonathan Isham et al., *Social Capital and Well-Being In Developing Countries: An Introduction*, in SOCIAL CAPITAL AND WELL-BEING IN DEVELOPING COUNTRIES 3 (Jonathan Isham et al. eds., 2002) (quoting Michael Woolcock, *Social capital and economic development: toward a theoretical synthesis and policy framework*, 27 THEORY & SOC'Y 151 (1998)) (defining social capital as "the networks and norms that facilitate collective action"), available at [community.middlebury.edu/~jisham/papers/IK%20and%20R%202001%20book%20introduction.rtf](http://community.middlebury.edu/~jisham/papers/IK%20and%20R%202001%20book%20introduction.rtf).

## I.

## ECONOMIC DEVELOPMENT AND RULE OF LAW

Many scholars and decisionmakers believe that globalization, trade liberalization, and economic development policies provide opportunities for growth in developing countries such as Jamaica.<sup>12</sup> As the globalization of international markets progresses, individual countries and the international community as a whole are looking for ways to ensure the success of economic development and trade liberalization.<sup>13</sup>

Modern regional trade agreements offer the particular benefits of directly linking an expanded range of non-traditional, socio-political trade issues, such as strengthening rule of law and democracy, to trade liberalization in the context of free trade.<sup>14</sup> This broader agenda will help facilitate sustainable trade policy and could include measures to improve national governance. This position is emphasized by the recent research conducted by institutions such as the World Bank and the International Monetary Fund (IMF) on the link

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12. See Alassane D. Ouattara, *The Challenges of Globalization for Africa*, Address at the Southern Africa Economic Summit (May 21, 1997), available at <http://www.imf.org/external/np/speeches/1997/052197.htm> (“[G]lobalization of the world economy is the integration of economies throughout the world through trade, financial flows, the exchange of technology and information, and the movement of people. The extent of the trend toward integration is clearly reflected in the rising importance of world trade and capital flows in the world economy. An increasingly large share of world GDP is generated in activities linked directly or indirectly to international trade.”). See also Robert Z. Lawrence, *Regionalism, Multilateralism, and Deeper Integration: Changing Paradigms for Developing Countries*, in *TRADE RULES IN THE MAKING: CHALLENGES IN REGIONAL AND MULTILATERAL NEGOTIATIONS* 27 (Rodríguez Mendoza et al. eds., 1999) (“[T]he leaders of most nations can agree in principle that free trade is desirable, and many are prepared to commit their countries to achieving it in the foreseeable future. In late 1994, for example, thirty-four nations in the Western Hemisphere and eighteen members of the Asian Pacific Economic Cooperation (APEC) Forum committed themselves to eventual full regional free trade and investment.”). But see, Press Release, United Nations (UN), *Trade ‘Marginalization’, Culture’s Role in Development, Future Challenges Addressed*, As UN Small Island Conference Continues in Mauritius (Jan. 12, 2005), available at <http://www.unis.unvienna.org/unis/pressrels/2005/envdev810.html> [hereinafter UN] (discussing that attempts to take advantage of the opportunities generated by globalization have not always been successful).

13. See, e.g., UN, *supra* note 12. This can be seen in the number of countries participating in the WTO and regional trade agreements as well as the number of countries attempting to join multilateral and regional trade agreements. As of February 2005, 148 countries were members of the WTO. *Members and Observers*, World Trade Organization, at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) (last visited Mar. 13, 2005).

14. See, e.g., *Regional Trade Agreements: Scope of RTAs*, World Trade Organization, at [http://www.wto.org/english/tratop\\_e/region\\_e/scope\\_rta\\_e.htm](http://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm) (last visited Mar. 13, 2005) (“The coverage and depth of preferential treatment varies from one RTA to another. Modern RTAs, and not exclusively those linking the most developed economies, tend to go far beyond tariff-cutting exercises. They provide for increasingly complex regulations governing intra-trade (e.g. with respect to standards, safeguard provisions, customs administration, etc.) and they often also provide for a preferential regulatory framework for mutual services trade. The most sophisticated RTAs go beyond traditional trade policy mechanisms, to include regional rules on investment, competition, environment[,] and labour.”).

between governance and development.<sup>15</sup>

### *A. Recent Trends in International Development*

Given this expansion of traditional trade liberalization goals to include non-economic priorities, regional trade agreements provide opportunities for countries such as Jamaica to improve rule of law. Trade agreements have covered an expanding range of issues since the post World War II emphasis on lowering trade barriers.<sup>16</sup> For example, when the World Trade Organization (WTO)<sup>17</sup> succeeded the General Agreement on Trade and Tariffs (GATT) in 1995, the WTO incorporated new issues into the multilateral trading system.<sup>18</sup> The WTO agenda includes determination of service standards, intellectual property rights, investment, competition, and environmental practices.<sup>19</sup> More comprehensive regional trade agreements such as the FTAA go a step further and incorporate promotion of the rule of law, democratization, and more equitable distribution of economic, political, and social resources.<sup>20</sup> Inclusion of these new elements in regional trade agreements gives small developing countries the opportunity to re-adjust domestic policy more effectively through cooperation with other countries in the region.

Socio-political factors like rule of law are crucial to the success of efforts to achieve trade liberalization and improve institutions such as customs services

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15. See, e.g., *Governance & Anti-Corruption*, World Bank, at <http://www.worldbank.org/wbi/governance/> (last visited Mar. 13, 2005) ("The World Bank views good governance and anti-corruption as central to its poverty alleviation mission. Nowadays, hundreds of governance and anti-corruption activities are taking place throughout the World Bank Group. They focus on internal organizational integrity, minimizing corruption on World Bank-funded projects, and assisting countries in improving governance and controlling corruption."); *Good Governance: The IMF's Role*, International Monetary Fund (1997), at <http://www.imf.org/external/pubs/ft/exrp/govern/govern.pdf> [hereinafter IMF].

16. See Lawrence, *supra* note 12, at 25 ("These included such issues as services trade, intellectual property, rules for foreign investors, product standards, competition policies, and labor and environmental standards.")

17. The WTO is the institutional entity that encompasses the GATT and modifications made as a result of an extended period of diplomatic negotiations lasting from 1986-1994 known as the Uruguay Round. See *Legal [T]exts: Uruguay Round Final Act*, WTO Committee on Trade and Development (1994), available at [http://www.wto.org/search?NS-search-page=document&NS-rel-doc-name=/english/docs\\_e/legal\\_e/lde2\\_512.htm&NS-query=uruguay+round&NS-search-type=NS-boolean-query&NS-collection=wto\\_eng&NS-docs-found=1248&NS-doc-number=2](http://www.wto.org/search?NS-search-page=document&NS-rel-doc-name=/english/docs_e/legal_e/lde2_512.htm&NS-query=uruguay+round&NS-search-type=NS-boolean-query&NS-collection=wto_eng&NS-docs-found=1248&NS-doc-number=2). The WTO includes all agreements and legal instruments negotiated in the Uruguay Round. *Id.* These include the GATT 1994, agreements on trade in goods; the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Understanding on the Dispute Settlement (DSU), and the Trade Policy Review Mechanism (TPRM). *Id.*

18. See Lawrence, *supra* note 12, at 25.

19. See *id.*

20. See FTAA, First Summit of the Americas Plan of Action, Dec. 9-11, 1994, available at [http://www.ftaa-alca.org/Summits/Miami/plan\\_e.asp](http://www.ftaa-alca.org/Summits/Miami/plan_e.asp).

and antitrust agencies.<sup>21</sup> A substantial body of scholarly literature exists on the effect of governance on economic, social, and political development supporting the position that governance creates the environment in which economic, social, and political activities take place.<sup>22</sup> In a more conducive atmosphere, these activities could flourish.

Rule of law is one of five categories that measure governance.<sup>23</sup> The

21. See Carouthers, *Rule of Law*, *supra* note 1, at 98.

22. This literature is being produced by academics as well as at the World Bank and the IMF. See, e.g., BARTON R. BOWEN, THE GOOD GOVERNANCE IMPERATIVE: A NIGERIA ECONOMIC DEVELOPMENT CASE STUDY (2003), available at <http://ssrn.com/abstract=442540>; IMF, *supra* note 15; DANIEL KAUFMANN & AART KRAAY, GROWTH WITHOUT GOVERNANCE (World Bank, 2000), available at <http://www.worldbank.org/wbi/governance/pdf/growthgov.pdf>; PHILIP KEEFER, A REVIEW OF THE POLITICAL ECONOMY OF GOVERNANCE: FROM PROPERTY RIGHTS TO VOICE (World Bank Policy Research, Working Paper No. 3315, 2004); FRANCIS NG & ALEXANDER J. YEATS, GOOD GOVERNANCE AND TRADE POLICY: ARE THEY THE KEYS TO AFRICA'S GLOBAL INTEGRATION AND GROWTH? (World Bank Policy Research, Working Paper No. 2038, 1998); ESWAR S. PRASAD ET AL., FINANCIAL GLOBALIZATION, GROWTH AND VOLATILITY IN DEVELOPING COUNTRIES (Nat'l Bureau of Econ. Research, Working Paper No. W10942, 2004); DANI RODRIK, DEVELOPING COUNTRIES AFTER THE URUGUAY ROUND (CEPR, Discussion Paper No. 1084, 1994); ANDRES SOLIMANO, GLOBALIZATION AND NATIONAL DEVELOPMENT AT THE END OF THE 20TH CENTURY: TENSIONS AND CHALLENGES (World Bank Policy Research Working Paper No. 2137, 1999); SHANG-JIN WEI, NATURAL OPENNESS AND GOOD GOVERNMENT (Nat'l Bureau of Econ. Research, Working Paper No. W7765, 2000); Thomas F. McInerney, *Law and Development as Democratic Practice*, 1 IDLO VOICES DEV. JURISTS 1 (2004), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=531382](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=531382); Eric Neumayer, *Good Policy Can Lower Violent Crime: Evidence from Fixed Effects Estimation in a Cross-National Panel of Homicide Rates, 1980-97*, 6 J. PEACE RESEARCH 619 (2003).

23. DOLLAR, *supra* note 7, at 9 (citing DANIEL KAUFMANN ET AL., AGGREGATING GOVERNMENT INDICATORS (World Bank, 1999) (mimeo)). Facets of governance:

(1) *Voice and participation* includes a number of indicators measuring various aspects of the political process, civil liberties, and political rights. These indicators measure the extent to which citizens of a country are able to participate in the selection of governments. This category also includes three indicators measuring the independence of the media, which serves an important role in monitoring those in authority and holding them accountable for their actions. (2) *Rule of Law* measures the extent to which people have confidence in and abide by the rules of society. These include perceptions of the incidence of both violent and nonviolent crime, the effectiveness and predictability of the judiciary, and the enforceability of contracts. Together, these indicators measure the success of a society in developing an environment in which fair and predictable rules form the basis for economic and social interactions. (3) *Political Instability and Political Violence* combines several indicators, which measure perceptions of the likelihood that the government in power will be destabilized or overthrown by possibly unconstitutional and/or violent means. This index captures the idea that the quality of governance in a country is compromised by the likelihood of wrenching changes in government which not only has a direct effect on the continuity of policies, but also at a deeper level undermines the ability of all citizens to peacefully select and replace those in power. (4) *Government Effectiveness* combines perceptions of the quality of public service provision, the quality of the bureaucracy, the competence of civil servants, the independence of the civil service from political pressures, and the credibility of the government's commitment to policies into a single grouping. The main focus of the index is on "inputs" required for the government to be able to produce and implement good policies. (5) *Graft* measures perceptions of corruption: the exercise of public power for private gain.

other categories are voice and participation, political instability and political violence, government effectiveness, and graft.<sup>24</sup> While each of these measures of governance have value as indicators, “rule of law and political stability have the most robust relationship to economic development.”<sup>25</sup>

### *B. Rule of Law as a Key Factor for Effective Trade Liberalization*

Although the negative effects of a lack of rule of law are well known, the economic benefits of strengthening rule of law are worth examining in greater detail. Just as weak rule of law inhibits growth, a robust rule of law encourages growth.<sup>26</sup> Recent studies suggest a positive correlation between GDP per capita growth and rule of law.<sup>27</sup> Steps to promote sustainable trade liberalization in Jamaica should emphasize rule of law while continuing to promote democracy in order to increase GDP growth.

Rule of law has a robust effect on economic growth<sup>28</sup> and is a key factor for achieving sustainable economic development while liberalizing trade. The level of rule of law is a measure of the effectiveness of a state; it measures the state’s ability to provide and ensure a rule-governed environment. Rule of law is thus one of the government’s core contributions to facilitating a productive environment for private sector activities such as market exchange.<sup>29</sup> Where this environment is lacking, the less privileged are deprived of a valuable public resource. As a result, society suffers from high unemployment, poverty, crime, corruption, discrimination, and a “poor environment for savings and investment”<sup>30</sup> in combination with a lack of job creation, skills, training, and access to education.

Rule of law plays a central role in economic development through a program of trade liberalization. Judicial integrity, as opposed to corruption, encourages private business investment by providing certainty and predictability in contractual relationships.<sup>31</sup> Control of violent crime and property crime likewise encourages property acquisition and development, as

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*Id.*

24. *Id.*

25. *Id.* at 10.

26. See DOLLAR, *supra* note 7, at 11 (citing DAVID DOLLAR & AART KRAAY, GROWTH IS GOOD FOR THE POOR, (World Bank, 2002)), available at [http://econ.worldbank.org/files/22015\\_Growth\\_is\\_Good\\_for\\_Poor.pdf](http://econ.worldbank.org/files/22015_Growth_is_Good_for_Poor.pdf); see also Barro, *supra* note 9, at 35, 40, 44.

27. See DOLLAR, *supra* note 7, at 11 (citing DOLLAR & KRAAY, *supra* note 26); see also Barro, *supra* note 9, at 35, 40, 44.

28. See Barro, *supra* note 9, at 35, 40-41; DOLLAR, *supra* note 7, at 10 (citing DOLLAR & KRAAY, *supra* note 26).

29. See generally Peter Evans, *Government Action, Social Capital, and Development: Reviewing the Evidence on Synergy*, in STATE-SOCIETY SYNERGY, (Peter Evans ed., 1997) (exploring forms of state-society synergy), available at <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1032&context=uciaspubs/research>.

30. See DOLLAR, *supra* note 7, at 4.

31. See Barro, *supra* note 9, at 32, 35.

well as capital investment.<sup>32</sup> Further, rule of law is important to attracting foreign investment,<sup>33</sup> which is a key factor in expanding Jamaica's ability to diversify in any substantial manner. The conditions facilitated through increasing rule of law encourage an atmosphere in which economic activity, particularly investment, increases.<sup>34</sup>

Improving rule of law produces multiple socio-economic benefits essential to effective trade liberalization. Rule of law helps to promote prosperity and equity, increases the productivity of resources,<sup>35</sup> and tends to reduce poverty. In addition, rule of law facilitates the development of an underlying stock of social capital and helps define the character of the state and the society. In terms of social indicators, rule of law is correlated with a higher level of literacy.<sup>36</sup> A more educated population will be able to achieve higher levels of job mobility and enter into more skilled labor markets. Understanding the relationship between rule of law and socio-economic factors makes it possible to identify points of intervention—areas of Jamaican society where rule of law reform has a high potential for improving the progress of trade liberalization and sustainable development.

As countries improve their rule of law, they are better able to take advantage of the benefits of trade liberalization and freer markets. This relationship makes it possible for Jamaica and similar countries to leverage the current trend in the world trade community towards promotion of domestic political reform through trade liberalization agreements. If Jamaica could take advantage of these reforms, it would be able to choose more freely between its present economic development options. The more stable socio-political environment facilitated by rule of law reform would encourage increased foreign investment and stimulate economic growth.<sup>37</sup> These improvements in Jamaica's prosperity would reduce its external economic vulnerability and allow Jamaica to reposition itself in the global market.

## II.

### THE JAMAICAN POLITICAL ECONOMY—A HISTORICAL OVERVIEW

This section gives a snapshot of Jamaica's current challenges as a small former colonial nation seeking to capitalize on the current trends toward globalization and trade liberalization. In addition, this section identifies key

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32. *See id.* at 31.

33. *See* DOLLAR, *supra* note 7, at 12; *see also* Barro, *supra* note 9, at 34-35.

34. *See id.* at 31-32, 34-35

35. *See id.* at 41; DOLLAR, *supra* note 7, at 10, 13.

36. *See* DOLLAR, *supra* note 7, at 12 (citing DANIEL KAUFMANN ET AL., GOVERNANCE MATTERS (World Bank, 1999), available at <http://www.worldbank.org/wbi/governance/pdf/govmatrs.pdf>).

37. *See* Barro, *supra* note 9, at 31-32, 34-35, 40-41, 44.

developments from Jamaica's colonial history that contribute to the country's current position.

For more than 450 years as a colony, first under the Spanish (1506–1670) and then under the British (1670–1962), Jamaica was politically and economically dependent on European colonial powers.<sup>38</sup> Successive changes led to the abolition of slavery, the diversification of agricultural production, large-scale emigration, and the rise of labor unions and political parties.<sup>39</sup> Although “Constitutional Decolonization”<sup>40</sup> increased political voice and power,<sup>41</sup> Jamaica has remained economically dependent on former colonial rulers as aid providers and trade partners.<sup>42</sup>

Jamaica was also actively involved in trade liberalization on a global scale. Jamaica was a founding member of the WTO in 1995 and instituted numerous reforms in the wake of the Uruguay Round<sup>43</sup> and later WTO sector-specific negotiations.<sup>44</sup> As a result of the Uruguay Round, Jamaica bound tariffs<sup>45</sup> and duties and began amending domestic legislation to conform to the new WTO obligations.<sup>46</sup> This new legislation included the Anti-dumping

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38. See generally Robenson, *supra* note 2, at 1025-27.

39. *Id.* at 1028-31.

40. Alonford Robenson defines the period of Constitutional Decolonization as the period between 1944 and 1962 when Jamaica finally achieved independence. See *id.* at 1031. During this period the British government “gradually removed itself from the administration of Jamaica’s internal affairs and passed several constitutional reforms that granted more local political control to native Jamaicans.” *Id.* Jamaica remained part of the Commonwealth of Nations after it became an independent nation in 1962. *Id.* The reigning British monarch is still the Jamaican chief of state today. See U.S. DEP’T OF STATE, BUREAU OF WESTERN HEMISPHERE AFFAIRS, BACKGROUND NOTE: JAMAICA (2005), available at <http://www.state.gov/r/pa/ei/bgn/2032.htm#econ>.

41. Robenson, *supra* note 2, at 1031.

42. See U.S. DEP’T OF STATE, *supra* note 40 (data from 2000).

43. See Lawrence, *supra* note 12, at 25 (“[T]he Uruguay Round . . . resulted in the formation of the World Trade Organization (WTO), the adoption of rules on intellectual property rights, the liberalization of services and agriculture, [and] the adoption of trade-related investment measures . . .”).

44. Trade sectors include, for example, agriculture, environment, government procurement, intellectual property, investment, labor, manufacturing, and services.

45. Bound tariffs are “[t]ariff rates resulting from the General Agreement on Tariffs and Trade (GATT) negotiations or accessions that are incorporated as part of a country’s schedule of concessions. Bound rates are enforceable under Article II of GATT. If a GATT contracting party raises a tariff above the bound rate, the affected countries have the right to retaliate against an equivalent value of the offending country’s exports or receive compensation, usually in the form of reduced tariffs on other products they export to the offending country.” *Briefing Room: WTO Glossaries*, Economic Research Service (ERS), at <http://www.ers.usda.gov/Briefing/WTO/Glossaries.htm> (last updated Nov. 12, 2003) [hereinafter ERS].

46. *Trade Policy Review: First Press Release, Secretariat[,] and Government Summaries: Jamaica*, World Trade Organization (1998), available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp85\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp85_e.htm) [hereinafter WTO, *Trade Policy Review*]. As WTO members, countries enter into agreements that are designed to further the multilateral trading system. See World Trade Organization, *Understanding the WTO* 10 (2003), available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/understanding\\_e.pdf](http://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf). The underlying goals are: (1) non-discrimination between trading partners, (2) freer trade by lowering trade barriers, (3) increase

Act,<sup>47</sup> the Trade Marks Act,<sup>48</sup> and an amendment to the Copyright Act.<sup>49</sup>

Jamaica's external vulnerability results from its relatively small size, high degree of openness,<sup>50</sup> non-diversified economy, and economic dependency on a few major trading partners.<sup>51</sup> Jamaica's total land area is 10,831 square kilometers, which makes it 0.12% the size of the United States and 4.48% the size of the United Kingdom, which are two of its main trading partners.<sup>52</sup> Its population of 2,713,130, as estimated in July 2004, is 0.9% that of the United States and 4.5% that of the United Kingdom.<sup>53</sup> In 2003, Jamaica's export-to-Gross Domestic Product (GDP) ratio was 43%, and its import-to-GDP ratio was 62%.<sup>54</sup> This indicates that Jamaica has an open economy.<sup>55</sup> As a small, open economy, Jamaica is a price taker and is vulnerable to external shocks. Exports revenues are dominated by tourism and Jamaica's four principle export commodities: bauxite, clothing, sugar, and bananas.<sup>56</sup> The United States and the European Union continue to play leading roles as the primary and secondary export markets for Jamaica. Together, the United States and the European Union purchase approximately half of Jamaica's exports.<sup>57</sup> In addition, the United States now supplies 44.8% of Jamaican imports.<sup>58</sup>

During the decade immediately following independence, the United States' role as Jamaica's main trading partner was politically recognized and

predictability by binding tariff rates and market-opening commitments, (4) increase competition by discouraging unfair practices, and (5) increase benefits to developing countries by giving them special treatment. *Id.* at 10-13. The obligations that WTO countries enter into are enforceable through WTO dispute settlement procedures. *Id.* at 55-61.

47. The Customs Duties (Antidumping [a]nd Subsidies) Act, Mar. 26, 1999, available at <http://www.thebriefingroom.net/doc3/customs.html>.

48. The Trade Marks Act, July 26, 1999, available at <http://www.moj.gov.jm/?q=law/view/527>.

49. The Copyright Amendment Act, Sept. 3, 1999, available at <http://www.moj.gov.jm/?q=law/view/115>.

50. "Openness implies that economic performance is closely tied to export performance." ASSOCIATION OF CARIBBEAN STATES, EXPORT PROMOTION POLICIES IN CARICOM CARIBBEAN ECONOMIES 4 (Report No. LC/CAR/G.757, 2003), available at [www.acs-aec.org/Trade/ftaa/lcarg757.doc](http://www.acs-aec.org/Trade/ftaa/lcarg757.doc) [hereinafter ACS, EXPORT PROMOTION POLICIES].

51. Richard L. Bernal, *CARICOM: Externally Vulnerable Regional Economic Integration*, in *ECONOMIC INTEGRATION IN THE WESTERN HEMISPHERE* 173-74 (Roberto Bouzas & Jaime Ros eds., 1994).

52. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK: JAMAICA, available at <http://www.cia.gov/cia/publications/factbook/geos/jm.html> (last updated Feb. 10, 2005) [hereinafter CIA I]; see also CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK: UNITED STATES, available at <http://www.cia.gov/cia/publications/factbook/geos/us.html> (last updated Feb. 10, 2005) [hereinafter CIA II]; CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK: UNITED KINGDOM, available at <http://www.cia.gov/cia/publications/factbook/geos/uk.html> (last updated Feb. 10, 2005) [hereinafter CIA III].

53. CIA I, *supra* note 52; see also CIA II, *supra* note 52; CIA III, *supra* note 52.

54. World Bank, WDI Data Query, *infra* note 61.

55. See ACS, EXPORT PROMOTION POLICIES, *supra* note 50.

56. See WTO, *Trade Policy Review*, *supra* note 46.

57. See U.S. DEP'T OF STATE, *supra* note 40.

58. *Id.* (data from 2000).

economically solidified.<sup>59</sup> However, the reality of economic dependency on one—at best two—key markets remained unchanged. Tourism, minerals, and agricultural goods remained key exports and left Jamaica extremely vulnerable to negative external shocks. The extensive and rapid liberalization and opening of Jamaican markets<sup>60</sup> intensified this vulnerability. For example, as the United States fell into a recession in the early 1980s, Jamaican exports and imports declined as well.<sup>61</sup>

During the three decades from 1962 to 1991, exports and imports as a percentage of Jamaica's GDP moved together in response to the ebb and flow of domestic reform and external shocks.<sup>62</sup> The gap between exports and imports widened from 1992 to 1996, during the initial years of Jamaica's most intensive period of trade policy reform.<sup>63</sup> Import levels have been greater than export levels, and the gap continues to widen.<sup>64</sup> In spite of extensive trade-driven reforms, Jamaica has been unable to achieve many of the expected benefits of its reforms, such as decreasing imports and increasing exports.<sup>65</sup>

For example, membership in international trade associations was not sufficient to shift control of the bauxite industry from multinationals to the Jamaican government. When Jamaica became a charter member of the International Bauxite Association in 1974, the government substantially increased export taxes on bauxite and placed a levy on the multinationals in control of the bauxite industry.<sup>66</sup> In response, the multinationals relocated their production to countries with more tractable regimes.<sup>67</sup> The relocation was particularly significant because bauxite represented a large portion of Jamaica's limited export market.<sup>68</sup>

However, Jamaica continued to pursue the benefits of cooperation with a

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59. Although the United Kingdom, the United States, and Canada all provided economic assistance to Jamaica after World War II, by the 1950s the United States and Canada had edged out the United Kingdom as Jamaica's main trading partners. See U.S. LIBR. OF CONG. FED. RES. DIV., JAMAICA: RELATIONS WITH THE UNITED STATES, BRITAIN, AND CANADA (Country Studies/Area Handbook Series 2003), available at <http://countrystudies.us/caribbean-islands/36.htm> [hereinafter U.S. LIBR. OF CONG., JAMAICA: RELATIONS].

60. The reforms during this period were based on 1950s assumptions that industrialization leads to development. BERNAL, *supra* note 4, at 1.

61. See World Bank, World Bank Development Indicators Data Query Online Database, at <http://www.worldbank.org/data/dataquery.html> (last visited Mar. 26, 2005) [hereinafter World Bank, WDI Data Query].

62. See *id.*

63. See *id.*

64. See *id.*

65. RONALD SEGAL, THE BLACK DIASPORA 181 (1995).

66. MINISTRY OF FOREIGN AFFAIRS AND FOREIGN TRADE JAMAICA, MULTILATERAL TREATIES SIGNED BY JAMAICA, available at [http://www.mfapt.gov.jm/Diplomacy/Treaties/multilateral\\_treaties\\_energy.htm](http://www.mfapt.gov.jm/Diplomacy/Treaties/multilateral_treaties_energy.htm) (last visited Mar. 9, 2005).

67. *Id.*

68. See BERNAL, *supra* note 4, at 7 (“[B]auxite/alumina exports account for 29[%] of total foreign exchange earnings.”).

larger trading bloc. After only four years in the West Indies Federation,<sup>69</sup> in a series of attempts to form new regional alliances, Jamaica joined the Caribbean Free Trade Association (CARIFTA)<sup>70</sup> in 1968, promoting regional integration in the Caribbean Basin. Regional integration continued throughout Jamaica's era of reform, providing an aspect of continuity in a period that is otherwise defined by radical change. In 1973, Jamaica became a founding member of the Caribbean Community and Common Market (CARICOM),<sup>71</sup> which was established by the Treaty of Chaguaramas and replaced CARIFTA.<sup>72</sup>

Under the governance of the Jamaican Labor Party, Jamaica began deepening the regional ties it initially formed under colonialism. Regional integration continued, and Jamaica has been a party to the successive Lomé Conventions<sup>73</sup> and the current Cotonou Agreement since 1975.<sup>74</sup> The rise of the United States as Jamaica's key export market did not mark a transformation from economic dependence to economic independence, but rather a shift from colonial dependence to hemispheric dependence.

The third decade of Jamaica's post-independence reform, from 1982-

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69. The West Indies Federation was comprised of ten former British colonies: Antigua, Dominica, St. Lucia, St. Kitts-Nevis-Anguilla, Montserrat, St. Vincent, Barbados, Grenada, Jamaica, and Trinidad-Tobago. ANTHONY T. BRYAN & ROGET V. BRYAN, *THE NEW FACE OF REGIONALISM IN THE CARIBBEAN: THE WESTERN HEMISPHERIC DYNAMIC 1-2* (The North-South Agenda Papers, No. 35, 1999), available at <http://www.ciaonet.org/WPS/bra02/>. The West Indies Federation was intended to be a single, politically independent, sovereign, federal state after four years. *Id.* at 2.

70. CARIFTA was intended to be a true free trade area requiring the complete elimination of tariffs and quotas among members. *Id.* It focused on eliminating constraints on commerce in the region but did not emphasize substantial integration in other areas. *Id.* In addition, CARIFTA did not emphasize extra-regional negotiations with non-member countries. *Id.* CARIFTA became the Caribbean Community and Common Market (CARICOM) in 1973. See Press Release, CARICOM, A Home of Our Own: The New CARICOM Headquarters Building (Feb. 24, 2005), available at [http://www.caricom.org/pres55\\_05.htm](http://www.caricom.org/pres55_05.htm).

71. CARICOM focuses on cooperation, particularly in the areas of human and social development in relation to Member States' economies. See Treaty Establishing The Caribbean Community, July 4, 1973, available at <http://www.caricom.org/>. CARICOM's primary goals are "to promote functional cooperation in as many areas as possible, to facilitate regional economic integration through the Caribbean Common Market, and to provide a mechanism for the coordination of the foreign policies of member states." BRYAN & BRYAN, *supra* note 69, at 2 (citing The Treaty of Chaguaramas, art. IV, available at <http://www.caricom.org/archives/revisedtreaty.pdf> (last visited Mar. 19, 2005)).

72. Jose Manuel Salazar-Xirinachs et al., *Customs Unions, in TOWARD FREE TRADE IN THE AMERICAS* 45, 66-67 (Jose Manuel Salazar-Xirinachs & Maryse Roberts eds., 2001).

73. See The Lomé Conventions, European Union, at [http://europa.eu.int/comm/development/body/cotonou/lome\\_history\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/lome_history_en.htm) (last visited Mar. 28, 2005).

74. See The Cotonou Agreement, European Union, at [http://europa.eu.int/comm/development/body/cotonou/agreement\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/agreement_en.htm) (last visited Mar. 19, 2005). The Cotonou Agreement is the successor agreement to the Lomé Conventions. See *id.* Executed in June 2000, the agreement has a life span of ten years and provides for the gradual phasing out of non-reciprocal trade preferences. See *id.* The existing commodity stabilization arrangements are to be replaced by Economic Partnership Agreements that will accord trade and aid from the European Union to the African, Caribbean and Pacific (ACP) states on the basis of, among other things, institutional reform, poverty reduction, and sustainable development measures. See *id.*

1991, reflects the hemispheric influence of the United States and extensive efforts to reform Jamaican trade policy. Renewed ties with the United States after severing diplomatic ties with Cuba<sup>75</sup> affected the overall economic climate in Jamaica. The renewed diplomatic relations led to a fivefold increase in U.S. aid to Jamaica and a substantial increase in the number of American tourists traveling to Jamaica.<sup>76</sup> Jamaica nevertheless remained heavily dependent on foreign aid.<sup>77</sup> The 1982 recession in the United States dampened the beneficial effects of restored ties with the superpower.<sup>78</sup> Jamaica remained unable to recover from the capital flight and emigration of skilled labor that occurred during the international recession and domestic violence of the 1970s.<sup>79</sup>

Trade liberalization and the opening of the Jamaican market hit its stride in the mid-1980s. Tariffs and supplemental stamp duties replaced agricultural import quotas.<sup>80</sup> Coffee, coconut, sugar, and bananas were deregulated and privatized and opened to private trading.<sup>81</sup> The comprehensive program of structural reforms and trade liberalization that began in 1985 dismantled price controls and ended the highly restrictive import policy instituted just a decade before.<sup>82</sup> Annual GDP grew in the 1980s and early-1990s after a long period of decline.<sup>83</sup>

The period from 1986 to 1996 was a period of increased economic growth and regional integration.<sup>84</sup> Jamaica implemented substantial liberalization and

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75. See U.S. LIBR. OF CONG. JAMAICA: RELATIONS, *supra* note 59.

76. See U.S. LIBR. OF CONG. FED. RES. DIV., JAMAICA: TOURISM (Country Studies/Area Handbook Series, 2003), at <http://countrystudies.us/caribbean-islands/31.htm>.

77. In 1985 tourism became the most important source of foreign exchange, thus ending the mining sector's thirty-five years of dominance. The Caribbean Basin Initiative (CBI) was announced in 1982, implemented by the 1983 Caribbean Basin Economic Recovery Act (CBERA), and expanded through the 1990 Caribbean Basin Economic Recovery Expansion Act (CBERA Expansion Act) and the 2000 U.S.-Caribbean Basin Trade Partnership Act (CBTPA). The CBI comprises CBERA, and the U.S.-Caribbean Basin Trade Partnership Act of 2000 (CBTPA). See *Caribbean Trade Initiative*, Office of the U.S. Trade Representative (USTR) (2005), at [http://www.ustr.gov/Trade\\_Development/Preference\\_Programs/CBI/Section\\_Index.html](http://www.ustr.gov/Trade_Development/Preference_Programs/CBI/Section_Index.html). CBERA granted broad unilateral tariffs to qualifying beneficiary countries. *Chairman's Proposal: The U.S.-Caribbean Basin Trade Enhancement Act*, U.S. Senate Comm. on Fin. (June 14, 1999), available at <http://finance.senate.gov/6-16cbim.htm>. The CBTPA gives enhanced preferences to the twenty-four beneficiary countries of the CBI. See *Caribbean Trade Partnership Act: Fact Sheet*, U.S. Dep't of State, at <http://www.usemb.gov.do/IRC/ecocom/cbifacte.htm> (last visited Mar. 14, 2005).

78. See World Bank, WDI Data Query, *supra* note 61 (showing declining Jamaican imports and exports during the U.S. recession in the early 1980s).

79. See U.S. LIBR. OF CONG. FED. RES. DIV., JAMAICA: PATTERNS OF DEVELOPMENT (Country Studies/Area Handbook Series, 2003), available at <http://countrystudies.us/caribbean-islands/26.htm>.

80. WTO, *Trade Policy Review*, *supra* note 46.

81. Commodity Marketing Boards formerly controlled trading of these commodities.

82. WTO, *Trade Policy Review*, *supra* note 46.

83. IMF, *supra* note 15.

84. *Id.*

deregulation measures beginning in 1985 and lasting into the 1990s.<sup>85</sup> As a member of the Caribbean bloc, Jamaica became party to several “bilateral” agreements between CARICOM and other hemispheric powers.<sup>86</sup> CARICOM also continued internal commitment to the Caribbean Single Market and Economy (CSME), adopting a new CARICOM harmonized tariff scheme in 1992 and the amendment of the Treaty Establishing the Caribbean Community in 1997.<sup>87</sup>

Jamaica initiated an extensive economic liberalization program in 1993, which had wide-reaching effects on its trade policy.<sup>88</sup> General measures included removing most quantitative restrictions on trade and breaking trade monopolies, implementing the four-phase schedule of CARICOM common external tariff rate reductions, establishing Free Trade Zones, and subsidizing certain sectors, including textiles.<sup>89</sup> These trade policy reforms were accompanied by eliminating price controls, streamlining tax schedules, and lifting controls on foreign exchange.<sup>90</sup> In 1994, Jamaica signed the U.S.-Jamaica Bilateral Textile and Apparel Agreement (BTA)<sup>91</sup> with the United States, which guaranteed Jamaican textiles access, subject to quotas, in the U.S.

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85. WTO, *Trade Policy Review*, *supra* note 46.

86. *Id.* These included agreements between CARICOM and Venezuela (1992), Colombia (1994), and the Dominican Republic (1998). Agreement on Trade, Economic and Technical Cooperation Between the Caribbean Community (CARICOM) and the Government of the Republic of Venezuela, Oct. 13, 1992, *available at* <http://www.sice.oas.org/trade/CARIVEN1.asp>. Under the CARICOM—Venezuela Agreement “some CARICOM goods are granted preferential treatment. Products originating in CARICOM are either given immediate duty free status or benefit from a phased reduction in the Venezuelan tariff imposed. The products, which are eligible, include confectionery, jams and jellies, wooden furniture, processed food, horticultural goods, medicaments and toilet preparations, spices and some fresh produce.” PLANNING INSTITUTE OF JAMAICA, INVENTORY OF JAMAICA’S TRADE AGREEMENTS 1, *available at* [www.pioj.gov.jm/piojdocs/special/E4C64EAA61.doc](http://www.pioj.gov.jm/piojdocs/special/E4C64EAA61.doc) (last visited Mar. 25, 2005). Agreement on Trade, Economic and Technical Cooperation Between the Caribbean Community (CARICOM) and the Government of the Republic of Colombia, July 24, 1994, *available at* <http://www.sice.oas.org/trade/caricome.asp>. Under the CARICOM—Colombia Agreement “some CARICOM goods are granted preferential treatment. Products originating in CARICOM are either given immediate duty free status or benefit from a phased reduction in the Colombian tariff imposed. There is also a provision for the establishment of trade promotion measures and the exchange of market research data.” *Id.* Agreement Establishing the Free Trade Area Between the Caribbean Community and the Dominican Republic, Aug. 22, 1998, *available at* <http://www.sice.oas.org/Trade/Ccdr/ccdr.asp#agreement>.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. PLANNING INSTITUTE OF JAMAICA, *supra* note 86, at 1 (“This agreement governs trade in textile and apparel goods assembled in Jamaica and exported to the United States. Under this agreement, goods made of fabric, which was cut and formed in the United States, are given guaranteed access and quotas can be increased at any time. Additionally, products made of fabric, which was cut but not formed in the [United States], are also allowed quotas but these cannot be increased during the duration of the BTA.”).

market.<sup>92</sup>

Jamaica's external vulnerability has become more critical as a result of the increasing globalization of trade. Globalization stimulates increased competition; a rise in reciprocal trade agreements; the gradual abandonment of preferential trade agreements;<sup>93</sup> and increased pressure to scale down, roll back, or adjust trade barriers on a national level. WTO negotiations will continue to produce reciprocal tariff reductions based on the most-favored-nation (MFN) principle.<sup>94</sup> Trade liberalization within the context of the WTO will continue whether or not Jamaica is positioned to benefit from it. Despite the reforms of the 1980s and the deregulation and liberalization of the 1990s, Jamaica's GDP growth remained below 5% in the early 1990s and dipped below zero in 1996.<sup>95</sup> Jamaica remains economically dependent on the United States and European Union and extremely vulnerable to negative external shocks. While the Jamaican government continues to promote reform in a wide range of sectors, it lacks sufficient resources to access the benefits of trade liberalization in the short-term.

### III.

#### LINKING RULE OF LAW AND SUCCESSFUL TRADE LIBERALIZATION

While linking rule of law to trade liberalization will not immediately reverse Jamaica's economic dependency or vulnerability to negative externalities, such a bridge could put Jamaica in a position to better benefit from international trade agreements and market globalization. Further, such a connection can facilitate Jamaica's ability to reverse the current vicious cycle

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92. WTO, *Trade Policy Review*, *supra* note 46.

93. Preferential trade agreements take account of the special and differential treatment accorded to developing countries by the Enabling Clause in the 1979 Tokyo Round by giving less developed countries preferential treatment and access to markets. See FERNANDO MASI, PREFERENTIAL TREATMENT IN TRADE: IS THERE ANY ROOM LEFT IN THE AMERICAS? 2 (The North-South Agenda Papers, No. 49, 2001), available at <http://www.ciaonet.org/WPS/maf01/>. Preferential trade agreements allow less developed countries to enter into agreements that have different terms than those for more developed countries without violating GATT/WTO rules. *Id.* at 3 (citing Martin Wolf, *Two-Edged Sword: Demands of Developing Countries and the Trading System*, in POWER, PASSIONS, AND PURPOSE: PROSPECTS OF NORTH-SOUTH NEGOTIATIONS (Jagdish N. Bhagwati & John Gerard Ruggie eds., 1987)). Preferential trade agreements have an important impact on less developed countries in areas like microeconomics, infrastructure, industrialization, and investment. See *id.* at 3.

94. Most-favored-nation status is "[a]n agreement between countries to extend the same trading privileges to each other that they extend to any other country. Under an MFN agreement, for example, a country will extend to another country the lowest tariff rates it applies to most other countries. A country is under no obligation to extend MFN treatment to another country, unless they are both members of the WTO, or unless MFN is specified in an agreement between them. Lower tariffs, such as those granted under a customs union or free trade agreement are negotiated under a special exemption to the MFN principle." ERS, *supra* note 45.

95. IMF, *supra* note 15.

of low rule of law, declining confidence in democracy, and weak socio-economic development. This Part builds on the causal links between governance and social outcomes that have been the subject of a growing body of literature.<sup>96</sup> More specifically, this Part adapts the virtuous and vicious cycles, discussed by David Dollar<sup>97</sup> in his 2000 World Bank Report *Governance and Social Justice in Caribbean States*,<sup>98</sup> to the relationship between rule of law, democracy, and socio-economic indicators. This Part identifies several areas that could serve as points of intervention to transform Jamaica's vicious cycle into a virtuous cycle, including decreasing crime; increasing staffing, equipment, and training of police and judges; raising the security level of property rights and intellectual property rights; and increasing the procedural efficiency of the Jamaican justice system.

### A. Cycles of Governance<sup>99</sup>

Based on a growing body of scholarship establishing a causal relationship between governance and social outcomes, David Dollar identifies virtuous and vicious cycles of good governance.<sup>100</sup> Dollar argues that governance and socio-economic outcomes are positively correlated and interact in a cyclical manner.<sup>101</sup> This theory of virtuous and vicious cycles can be expanded to include rule of law, so that rule of law, socio-economic outcomes, and democracy are positively correlated, and each pair of two of the three factors

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96. See, e.g., Bowen, *supra* note 22; THE CARTER CENTER, FOSTERING TRANSPARENCY AND PREVENTING CORRUPTION IN JAMAICA (Laura Neuman ed., 2002), available at <http://www.cartercenter.org/documents/1038.pdf>; DOLLAR, *supra* note 7; DOLLAR & KRAAY, *supra* note 26; NEVILLE DUNCAN, VOICE PARTICIPATION, AND GOVERNANCE: THE CASE OF THE EASTERN CARIBBEAN (World Bank, Discussion Draft, 2000), available at [http://lnweb18.worldbank.org/External/lac/lac.nsf/c3473659f307761e852567ec0054ee1b/cc47e019784d3cf9852568dd0073546c/\\$FILE/Voice%20Participation%20and%20Governance-OECS.pdf](http://lnweb18.worldbank.org/External/lac/lac.nsf/c3473659f307761e852567ec0054ee1b/cc47e019784d3cf9852568dd0073546c/$FILE/Voice%20Participation%20and%20Governance-OECS.pdf); ANTHONY HARRIOTT, CONTROLLING THE JAMAICAN CRIME PROBLEM: PEACE BUILDING AND COMMUNITY ACTION (World Bank, Discussion Draft, 2000), available at [http://lnweb18.worldbank.org/External/lac/lac.nsf/c3473659f307761e852567ec0054ee1b/84c2fbd13b2de02852568da0054fe1c/\\$FILE/Crime%20Policy.pdf](http://lnweb18.worldbank.org/External/lac/lac.nsf/c3473659f307761e852567ec0054ee1b/84c2fbd13b2de02852568da0054fe1c/$FILE/Crime%20Policy.pdf); KAUFMANN ET AL., *supra* note 23; KAUFMANN & KRAAY, *supra* note 22; KEEFER, *supra* note 22; DANIEL LEDERMAN ET AL., VIOLENT CRIME: DOES SOCIAL CAPITAL MATTER? (2000), available at [http://wbln0018.worldbank.org/LAC/LACInfoClient.nsf/1daa46103229123885256831005ce0eb/3330305cf82403ec85256c3600533526/\\$FILE/Socialk10.pdf](http://wbln0018.worldbank.org/LAC/LACInfoClient.nsf/1daa46103229123885256831005ce0eb/3330305cf82403ec85256c3600533526/$FILE/Socialk10.pdf); Paulo Mauro, *Corruption and Growth*, 110 Q.J. ECON. 681 (1995); McInerney, *supra* note 22; MUNROE, *supra* note 6; Neumayer, *supra* note 22; VITO TANZI & HAMID DAVOODI, CORRUPTION, PUBLIC INVESTMENT, AND GROWTH (IMF, Working Paper, No. WP/97/139, 1997), available at <http://www.imf.org/external/pubs/ft/wp/wp97139.pdf>; WEI, *supra* note 22; Roberta Gatti, *Explaining Corruption: Are Open Countries Less Corrupt?*, 16 J. INT'L DEV. 851 (2004), at <http://www3.interscience.wiley.com/cgi-bin/jhome/5102>; Rafael La Porta et al., *The Quality of Government*, 15 J.L. ECON. & ORG. 222 (1999).

97. David Dollar is Research Manager in the Development Research Group at the World Bank.

98. DOLLAR, *supra* note 7.

99. This term is taken from David Dollar. See DOLLAR, *supra* note 7, at 20.

100. *Id.* at 20.

101. *Id.* at 4.

influences the third. Moreover, in both virtuous and vicious cycles, each of the three factors has an effect on the other.

In a vicious cycle, weak governance leads to inequality and a poor environment for investment.<sup>102</sup> In vicious cycles, low levels of rule of law and democracy dampen economic activity and growth.<sup>103</sup> For example, high crime and insufficient protection of property rights discourage investment.<sup>104</sup> Weak democracy and low levels of economic activity and growth lead to weak rule of law that is reflected, for example, in increasing levels of crime. Low levels of economic activity and growth together with weak rule of law undermine democracy and decrease participation and faith in democratic processes.<sup>105</sup> Socio-economic issues, which arise in part as a result of decreased political participation, in turn lead to slow GDP growth,<sup>106</sup> minimal levels of education, skills, and training, as well as insufficient infrastructure such as poor roads. In a cyclical fashion, weak socio-economic progress then contributes to unemployment and lawlessness,<sup>107</sup> which compound rule of law and democracy problems.

In a virtuous cycle, good governance facilitates to positive socio-economic outcomes such as increased income and decreased poverty.<sup>108</sup> Socio-economic progress contributes to improved governance and increased investment.<sup>109</sup> In virtuous cycles, high levels of rule of law and democracy facilitate increased economic growth.<sup>110</sup> Strong democracy and economic growth foster respect for rule of law and provide support for legal and judicial systems. Economic growth and the rule of law provide access to public goods and increase individual participation in the economy.<sup>111</sup> Rule of law also has beneficial effects on other aspects of governance such as ensuring the implementation of democracy; supporting political stability; reducing political violence by providing people with judicial recourse; reducing graft through a more efficient judiciary; and making the government more effective by increasing the citizenry's confidence in the government.

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102. *Id.*

103. See Carouthers, *Rule of Law*, *supra* note 1, at 97 ("Without the rule of law, major economic institutions such as corporations, banks, and labor unions would not function, and the government's many involvements in the economy—regulatory mechanisms, tax systems, customs structures, monetary policy, and the like—would be unfair, inefficient, and opaque."); Barro, *supra* note 9, at 31-32, 35, 40-41, 44; DOLLAR, *supra* note 7, at 31.

104. See Carouthers, *Rule of Law*, *supra* note 1, at 99 ("Crime erodes public support and hurts the economy by scaring off foreign investors and interfering with the flow of ideas, goods, and people."); Barro, *supra* note 9, at 31, 34-35.

105. See MUNROE, *supra* note 6, at 13-15.

106. See DOLLAR, *supra* note 7, at 21.

107. *Id.*

108. *Id.*

109. *Id.*

110. See Barro, *supra* note 9, at 35, 40-41, 44; DOLLAR, *supra* note 7, at 2-4, 6, 10, 12-13, 16.

111. See Barro, *supra* note 9, at 31.

Encouraging a virtuous cycle will help Jamaica achieve successful and sustainable trade liberalization in conjunction with furthering domestic policy goals. Identifying these vicious and virtuous cycles highlights the need for targeted reform policies. The next step is to establish points of intervention with the potential to counteract the vicious cycle and, ideally, reverse the cycle into a virtuous one.

### *B. Jamaica's Vicious Cycle and Points of Intervention*

In Jamaica's vicious cycle, weak rule of law decreases confidence in democratization, low confidence worsens negative socio-economic conditions, and negative socio-economic conditions lead to further deterioration of rule of law. At the turn of the century, Jamaica had a relatively high level of democracy, a relatively low level of rule of law, and weak economic activity and growth.<sup>112</sup> These areas provide several points of intervention—areas in which Jamaica could strengthen rule of law, thereby improving the progress of trade liberalization and sustainable development.

Jamaica's relatively high level of democracy is evidenced by the political and civil rights enjoyed by its citizens.<sup>113</sup> Democratic rights include the right to vote, compete for public office, elect representatives who have a decisive vote on public policies, and "the freedom to develop opinions, institutions, and personal autonomy without interference from the state."<sup>114</sup> In 2003, Jamaica had a Freedom House score of two for political rights and three for civil liberties, earning the designation of a free country.<sup>115</sup> The Freedom House political rights score measures people's ability to participate freely in the political process.<sup>116</sup> Scores range from one (most free) to seven (least free).<sup>117</sup> A score of two for political rights indicates that while the country is free, "factors [such] as political corruption, violence, political discrimination against

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112. In 2000, Jamaica's economic freedom score was 2.81 and its democratic freedom rating was 2.2. *2000 Economic Freedom Scores* (Gerald P. O'Driscoll, Jr. et al. eds., Heritage Foundation & Wall Street Journal 2000), available at <http://www.heritage.org/research/features/index/downloads/>; *Freedom in the World 2001: Country and Related Territory Reports: Jamaica*, Freedom House, at <http://www.freedomhouse.org/research/freeworld/2001/countryratings/jamaica.htm> (last updated May 17, 2001) [hereinafter Freedom House, *Jamaica 2001*].

113. These are the two broad categories used by Freedom House, a leading non-profit organization that collects, measures, and compares data on "real-world rights and freedoms enjoyed by individuals as the result of actions by both state and nongovernmental actors." *Freedom in the World 2003: Survey Methodology*, Freedom House, at <http://www.freedomhouse.org/research/freeworld/2003/methodology.htm> (last updated May 12, 2004) [hereinafter Freedom House, *Methodology*]. The 2003 survey includes data from 192 countries and eighteen territories. *Id.*

114. *See id.*

115. *See Freedom in the World 2003: Country and Related Territory Reports: Jamaica*, Freedom House, at <http://www.freedomhouse.org/research/freeworld/2003/countries.htm> (last updated June 15, 2004) [hereinafter Freedom House, *Jamaica*].

116. *See id.*

117. Freedom House, *Methodology*, *supra* note 113.

minorities, and foreign or military influence on politics may be present and weaken the quality of freedom.”<sup>118</sup> A score of three for civil liberties indicates that there is also some level of oppression. For example, oppression may exist in the areas of censorship, political terror, and the prevention of free association or “cases in which groups opposed to the state engage in political terror that undermines other freedoms.”<sup>119</sup>

While Jamaica’s democratic freedom ratings continue to place it in the range of countries considered free, rule of law remains weak.<sup>120</sup> For example, Jamaica continues to have one of the world’s highest murder rates.<sup>121</sup> In addition, Jamaica’s property rights rating—a subcategory of economic freedom—is in the range of mostly not free.<sup>122</sup> The property rights score assesses whether there is: (1) freedom from government influence over the judicial system, (2) a commercial code defining contracts, (3) opportunities for foreign arbitration of contract disputes, (4) government expropriation of property, (5) corruption within the judiciary, (6) delays in receiving judicial decisions, and (7) legally granted and protected private property.<sup>123</sup> In effect, the property rights score measures the rule of law in the context of the market economy.<sup>124</sup> Jamaica’s property rights score of three indicates that although there is a moderate level of protection, property rights are weakened by factors such as an inadequate police force, high levels of crime, and a judiciary that lacks sufficient resources.<sup>125</sup>

Jamaica’s judicial system suffers from insufficient communication and little coordination between the various institutions.<sup>126</sup> Each phase of the judicial process is hampered by its own weaknesses. Jamaica’s judiciary does not use alternative dispute resolution such as plea-bargaining, leaving the under-staffed and under-funded courts backlogged.<sup>127</sup> Most cases take years to be resolved and those accused often wait years in detention before their cases go to trial, at considerable expense to the government.<sup>128</sup> The Jamaican

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118. *Id.*

119. *Id.* Civil liberties scores may “reflect real restrictions on liberty caused by nongovernmental actors” rather than the intentions of the government. *Id.*

120. MARK A. MILES ET AL., 2005 INDEX OF ECONOMIC FREEDOM 234 (Mark A. Miles et al. eds., Heritage Foundation & Wall Street Journal, 2005), available at <http://www.heritage.org/research/features/index/countryFiles/Jamaica.pdf>.

121. *See id.* at 234.

122. *See id.* at 233.

123. *See* William W. Beach & Marc A. Miles, *Explaining the Factors of the INDEX OF ECONOMIC FREEDOM 72-73*, in MILES ET AL., *supra* note 120.

124. *See id.* at 72.

125. *See id.* at 234.

126. *See, e.g.*, POLICE EXECUTIVE RESEARCH FORUM (PERF), VIOLENT CRIME AND MURDER REDUCTION IN KINGSTON – EXECUTIVE SUMMARY AND STRATEGIES v, viii (2001), available at [http://www.jamaicansforjustice.org/Documents/jcf\\_perf\\_exec\\_summary\\_c.pdf](http://www.jamaicansforjustice.org/Documents/jcf_perf_exec_summary_c.pdf) [hereinafter PERF].

127. *Id.* at viii.

128. *See id.* at v; MUNROE, *supra* note 6, at 14.

Constabulary Force (JCF),<sup>129</sup> Jamaica's semi-military police force, is understaffed and operating at 84% of its authorized staffing capacity.<sup>130</sup> This is compounded by a lack of equipment and training.<sup>131</sup> As a result, "[l]ocal ad hoc justice is widely seen as a more effective deterrent to crime than involving the police."<sup>132</sup> Nine of the sixty parliamentary districts are controlled as political fiefdoms, commonly known as garrison communities.<sup>133</sup> This leads to greater faith in political connections than in rule of law.

In addition to weak rule of law, Jamaica faces socio-economic challenges due to factors such as insufficient road infrastructure, weak economic growth, high levels of unemployment, a high murder rate, criminal gangs involved in narcotic trafficking, and falling agricultural production.<sup>134</sup> The 2003 per capita GDP in Jamaica was U.S. \$3,900.<sup>135</sup> In September 2004, the GDP rate of growth was -1.8%.<sup>136</sup> In that same year, the minimum wage for a forty-hour workweek rose from 1,800 Jamaican Dollars (JMD) to 2,000 JMD, which is approximately U.S. \$34 per week.<sup>137</sup> In October 2003, Jamaica had a national unemployment rate of 12.8%.<sup>138</sup>

Furthermore, Jamaica's trade policy economic freedom score of four indicates that there is still a high level of protectionism.<sup>139</sup> The trade policy score reflects Jamaica's average tariff rate weighted by imports from its trading partners.<sup>140</sup> The ability of individuals to pursue their economic goals—in other words, their economic freedom—may be directly influenced by the level of access to, and free flow of, international trade.<sup>141</sup> Increasing individual Jamaican's access to the benefits of trade liberalization could encourage economic growth and activity at a grassroots level.

Reforming the rule of law in Jamaica will help to break the current vicious cycle in which low judicial efficiency and high levels of crime, coupled with

129. The JCF is managed by a Commissioner of Police who answers to the Minister of National Security. *History of the Jamaica Constabulary Force*, Police National Computer Centre, at [http://www.jamaicapolice.org.jm/about\\_us.html](http://www.jamaicapolice.org.jm/about_us.html) (2001).

130. PERF, *supra* note 126, at ii-iii.

131. *Id.* at iii.

132. DOLLAR, *supra* note 7, at 23.

133. Freedom House, *Jamaica 2001*, *supra* note 112.

134. See MILES ET AL., *supra* note 120, at 233.

135. Caribbean Net News, *Jamaica government increases minimum wage by 11 percent* (Sept. 6, 2003), at <http://www.caribbeanetnews.com/2003/09/06/minwage.htm>.

136. *Latest Information*, Statistical Institute of Jamaica, at <http://www.statinja.com/> (last updated Mar. 14, 2005).

137. Caribbean Net News, *supra* note 135.

138. Statistical Institute of Jamaica, *supra* note 136. The unemployment rate for women (20.5%) is almost double that of men (10.3%). Statistical Institute of Jamaica, *Main Labor Force Indicators, 2000–2001* (2002), at <http://www.statinja.com/table-labourforce.html> (data for Apr. 2001).

139. See MILES ET AL., *supra* note 120, at 233.

140. See Beach & Miles, *supra* note 123, at 60.

141. See *id.*

decreasing confidence in democracy, dampen economic activity and growth.<sup>142</sup> In general, rule of law facilitates a rule-governed environment conducive to market activity.<sup>143</sup> More specifically, rule of law has a strong positive effect on economic growth.<sup>144</sup> Improving the level of rule of law by only one standard deviation has been shown to correspond to an increase in per capita growth and income growth of the poor by 1.5%.<sup>145</sup> Rule of law also increases resource productivity,<sup>146</sup> which can contribute to Jamaica's ability to take advantage of trade liberalization and is a very important factor in attracting foreign direct investment.<sup>147</sup> Finally, increasing rule of law can be beneficial in restoring a higher level of confidence in democracy.<sup>148</sup>

While much has changed politically since Jamaica gained its independence in 1962, the economic dependency on other countries and disparity between levels of democracy and rule of law, both elements of Jamaica's colonial legacy, have persisted. In its forty-three years of independent nationhood, Jamaica has made many attempts to decrease its economic dependency and liberalize trade. However, Jamaica is still caught in a vicious cycle and, therefore, can benefit from linking trade liberalization with rule of law and democracy.

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142. Barro, *supra* note 9, at 35, 40-41, 44.

143. *See generally* Evans, *supra* note 29.

144. *See* DOLLAR, *supra* note 7, at 10; Barro, *supra* note 9, at 35, 40-41, 44.

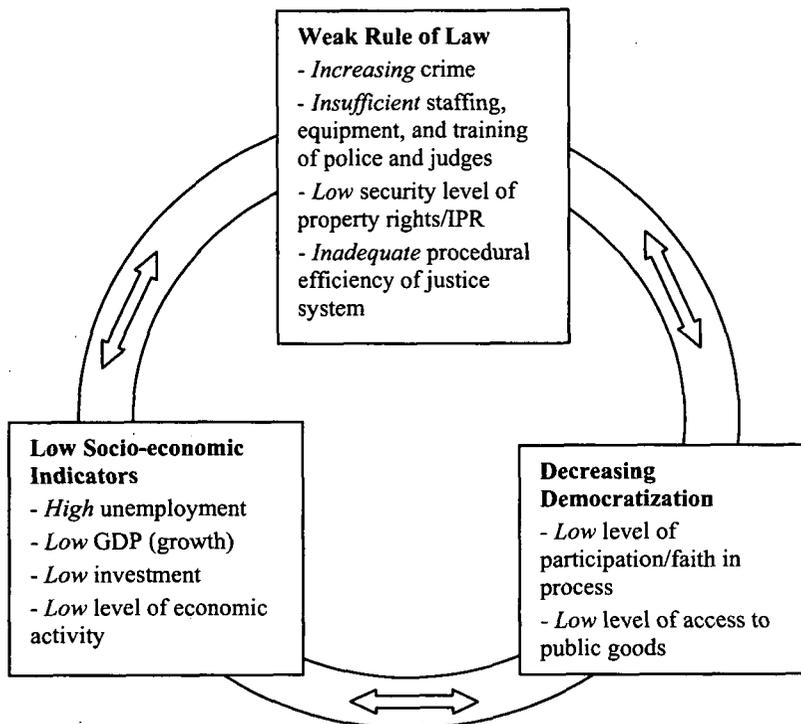
145. *See* Barro, *supra* note 9, at 21.

146. *See id.* at 41; DOLLAR, *supra* note 7, at 10, 13.

147. *See id.*

148. *See* Carothers, *Rule of Law*, *supra* note 1, at 96-97 ("The rule of law makes possible individual rights, which are at the core of democracy. A government's respect for the sovereign authority of the people and a constitution depends on its acceptance of the law."); *see also* MUNROE, *supra* note 6, at 15 ("More effective interventions in eradicating abuses in the rule of law are among the essential conditions for preserving and deepening Jamaican democracy.").

Figure 1: Vicious cycle of rule of law, democratization, and socio-economics<sup>149</sup>



Due in great part to its colonial history, Jamaica is caught in a vicious cycle of inadequate governance. In the current vicious cycle, rule of law, democratization, and socio-economic problems interact to create a downward spiral. Insufficient staffing, equipment, and training for police and judicial officials lead to a procedurally inefficient justice system. Understaffing and inefficiency allow crime to flourish, diminish public faith in the system, and encourage vigilantism.<sup>150</sup> Foreign direct investment is discouraged by weak rule of law reflected in high crime and insufficient protection of property rights and intellectual property rights (IPR).<sup>151</sup> Lack of investment reduces the level of economic activity, hinders efforts to reduce unemployment, and contributes

149. The vicious cycle of rule of law, democratization, and socio-economics was developed by the author by adapting David Dollar's cycles of good governance. DOLLAR, *supra* note 7, at 4.

150. See, e.g., MUNROE, *supra* note 6, at 14.

151. See Barro, *supra* note 9, at 31, 34-35.

to slowing GDP growth rates. In particular, rule of law has a marked impact on those members of a society encompassing the bottom 20% of the income distribution.<sup>152</sup> Inadequate access to public goods such as education, transportation, infrastructure, and the justice system also contribute to individuals' sense that democracy is too weak to provide them with a government that can meet their needs. High unemployment and low GDP, especially among the poorest 20%, leads individuals to feel that they have little or no stake in the society, making them more likely to engage in criminal activities.<sup>153</sup> Rampant crime in turn leads to even lower levels of faith in the democratic process. This reduces economic activity and investment by individuals and local communities. The potential jobs from investment are not created, and the benefits of another source of growth are thwarted.

Since Jamaica gained its independence, domestic politics have helped improve rule of law despite political power struggles that continue to undermine those gains. For example, the Jamaican government attempted to redress weaknesses in the judicial system and strengthen the implementation of the rule of law based on the British justice system.<sup>154</sup> However, political power struggles weakened rule of law when the two main political parties created armed militias in the 1960s during the fight for electoral control of the neighborhoods.<sup>155</sup> In the 1980s, those militias turned into organized gangs as they received less funding from the political parties and relied on marijuana and cocaine-smuggling as a source of income.<sup>156</sup> High crime levels remain one of the greatest challenges facing Jamaican society and contribute to the low level of rule of law.

Jamaica has attempted to break the vicious cycle through domestic efforts. In 1996, Jamaica adopted the National Industrial Policy (NIP),<sup>157</sup> which included a combination of short-, medium-, and long-term measures.<sup>158</sup> The short-term measures<sup>159</sup> led to sectoral negotiations and a Memoranda of Understanding in the bauxite/alumina and electricity sectors.<sup>160</sup> The medium-term strategy<sup>161</sup> produced the Incentives Regime and took the form of new

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152. *Id.* at 10 (citing DOLLAR & KRAAY, *supra* note 26).

153. *See id.* at 21.

154. *See* SEGAL, *supra* note 65, at 178 (citing ADOLPH EDWARDS, MARCUS GARVEY 27-29 (1967)).

155. Reese Erlich, *Jamaican Gangs Give Peace a Chance*, CHRISTIAN SCI. MONITOR, Apr. 9, 2001, available at <http://csmonitor.com/cgi-bin/durableRedirect.pl?durable/2001/04/09/p8s1.htm> (paraphrasing Brian Meeks, then chair of the University of the West Indies government department).

156. *Id.* at 2.

157. Government of Jamaica, *The National Industrial Policy—A Strategic Plan for Economic Growth and Development*, Mar. 27, 1996.

158. *See* WTO, *Trade Policy Review*, *supra* note 46.

159. Phase I (1996—1997).

160. *See* WTO, *Trade Policy Review*, *supra* note 46.

161. Phase II (1996—1998).

legislation, including elimination of tariffs on non-competing imported raw materials and capital goods, amendment of the Jamaican Export Free Zones Act, and extension of the Export Industry Encouragement Act.<sup>162</sup> The long-term strategy<sup>163</sup> intensifies the focus on domestic institutions and the Institutional Framework.<sup>164</sup> Jamaican trade policy reform and multilateral, regional, and bilateral integration continue into the new millennium.<sup>165</sup>

By taking advantage of the legitimizing function of Regional Trade Agreements (RTAs), as well as their financial and technical assistance provisions, Jamaica has an opportunity to express a greater voice in regional trade decision-making processes and break the current vicious cycle of low levels of rule of law, constrained democracy, and limited economic activity. Jamaica can then move toward a virtuous cycle of good governance and sustainable development.

#### IV.

##### BENEFITS OF MODERN REGIONAL TRADE AGREEMENTS

Modern RTAs combine the goals of economic growth and development with rule of law and democratization. This trend in RTAs affords Jamaica and similarly situated countries an improved environment for enacting domestic policy reforms.<sup>166</sup> RTAs, like the FTAA, reflect a growing international consensus that these factors are interconnected and mutually dependent. Modern RTAs that include a broader range of goals such as good governance and distributional equity can serve as vehicles to support domestic reform of rule of law, which in turn can serve as a point of intervention to transform a vicious cycle into a virtuous one.

In a virtuous cycle, high levels of rule of law and democracy encourage economic activity and growth.<sup>167</sup> For example, low crime rates and high protection of property rights encourage investment.<sup>168</sup> Strong democracy coupled with high levels of economic activity and growth lead to strong rule of law that is reflected, for example, in decreasing crime. High levels of

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162. See WTO, *Trade Policy Review*, *supra* note 46.

163. Phase III (1996—2010).

164. See WTO, *Trade Policy Review*, *supra* note 46. This includes the establishment of nine Industry Advisory Councils and the Office of Utilities Regulation, the review of the Fair Competition Act, the revision of the Companies Act, the strengthening of the Jamaican Bureau of Standards, and the realization of the supervisory role of government agencies in facilitating public-private negotiations. See *id.*

165. In 2000 the U.S. passed the Trade and Development Act, which includes the Caribbean Basin Trade Partnership Act, and Jamaica is party to the Cotonou Agreement between the European Union and ACP states. See USTR, *supra* note 77; U.S. Dep't of State, *supra* note 77.

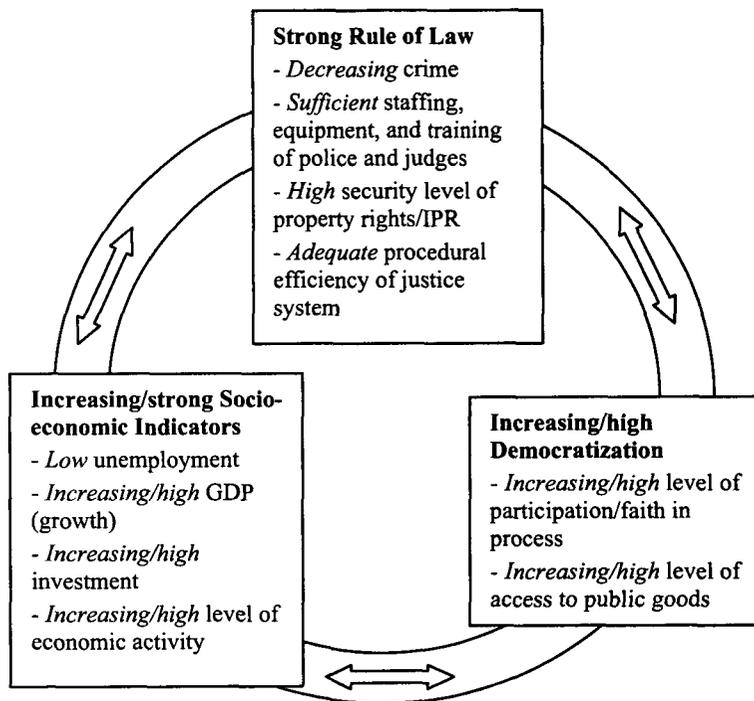
166. See MUNROE, *supra* note 6, at 36.

167. See Barro, *supra* note 9, at 32, 35, 40-41, 44.

168. See *id.* at 31.

economic activity and growth, together with strong rule of law, strengthen democracy and faith in the democratic process. Further, rule of law and democracy factors are bolstered by socio-economic progress leading to increased access to education, skills, and training, as well as infrastructure improvements.

Figure 2: Virtuous cycle of rule of law, democratization, and socio-economics<sup>169</sup>



169. The virtuous cycle of rule of law, democratization, and socio-economics was developed by the author by adapting David Dollar's cycles of good governance. DOLLAR, *supra* note 7, at 4.

Modern RTAs offer small economies such as Jamaica opportunities to diversify the domestic economy, secure wider market access for their exports, and develop mechanisms to improve rule of law.<sup>170</sup> Joining a larger trading bloc such as the FTAA therefore allows economically dependent countries to reposition themselves in the global market, support their own economic restructuring, and more easily reform their domestic institutions.<sup>171</sup> Given Jamaica's current state of development, the costs of self-exclusion from large trading blocs are extreme. RTAs allow countries like Jamaica to address domestic issues such as rule of law while simultaneously facilitating economic integration and trade liberalization.<sup>172</sup> For example, the FTAA First Summit of the Americas Plan of Action (FTAA Plan of Action) emphasizes rule of law in measures to combat problems such as corruption, illegal drugs, and related crimes,<sup>173</sup> all of which can inhibit foreign investment.<sup>174</sup> The following section addresses some of the challenges and opportunities associated with Jamaica's participation in the FTAA or other large-scale trade agreements.

Although the Jamaican government is taking steps to intervene in the vicious cycle described above by focusing on good governance, Jamaica's success will be greater if it undertakes a wider range of regional actions available through trade liberalization. The interconnection of traditional and non-traditional issues in the FTAA facilitates the development of reform measures that address challenges at the intersection of trade liberalization, rule of law, and democratization. This Part attempts to identify some domestic issues that could be targeted in the context of trade liberalization.

#### *A. Domestic Goals and Measures to Improve Governance*

The Jamaican government has identified goals and implemented a domestic strategy to achieve good governance.<sup>175</sup> The strategy has four elements: (1) economy, (2) democratic institutions, (3) rule of law, and (4) society.<sup>176</sup> The economic goals of Jamaican reform include appreciable and equitable economic growth, broadening of national participation and ownership, land and agrarian reform, poverty alleviation, and labor market reform.<sup>177</sup> The strategy for reforming domestic institutions focuses on efficient, effective, transparent, and accountable public administration, creation of a

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170. For example, the FTAA would give Jamaica and other Caribbean countries greater access to Latin American markets. See BRYAN & BRYAN, *supra* note 69, at 12.

171. See MUNROE, *supra* note 6, at 36.

172. See *id.*

173. FTAA, *supra* note 20.

174. Barro, *supra* note 9, at 31, 34-35.

175. JAMAICAN CABINET OFFICE, IMPROVING THE QUALITY OF GOVERNANCE THROUGH PUBLIC SECTOR REFORM (Government Paper 39/2000, 2000), available at <http://www.cabinet.gov.jm/docs/MP-392000.asp>.

176. See *id.*

177. See *id.*

citizens' charter, and improving accounting procedures and computerization of the public sector.<sup>178</sup> Jamaican reform of the rule of law aims to improve infrastructure and the level of security for all and to promote a fair and efficient system of justice.<sup>179</sup> The Jamaican good governance strategy also includes social goals such as improving the general social conditions of the Jamaican people, educational reform, orderly and reliable public transportation, and environmental protection.<sup>180</sup> This strategy has achieved several institutional improvements to date.<sup>181</sup> In the judicial sector, these improvements include institution of daily reports by the chief justice, resident magistrates on all court cases, introduction of a court reporting system in the high courts, training of court reporters, and introduction of an e-filing system.<sup>182</sup> Domestic reforms have begun to bear fruit in the economic sector, and Jamaica's economy achieved positive growth in 2003-04 due to gains in tourism and mining.<sup>183</sup>

Regional trade agreements such as the FTAA provide an opportunity to supplement and complement the Jamaican government's plan for reform and good governance with targeted intervention in the context of the FTAA.<sup>184</sup> In 2000, Prime Minister Patterson<sup>185</sup> addressed rule of law issues and "promised to stanch Jamaica's 'rampant criminality' by introducing new efforts to control guns, creating a new police anti-organized-crime strike force, and reintroducing the death penalty."<sup>186</sup> However, these measures have met with limited success. Jamaica continues to have one of the world's highest murder rates despite a decline in violent crime,<sup>187</sup> and narcotics-shipping by criminal gangs makes up

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178. *See id.*

179. *See id.*

180. *See id.*

181. The government also introduced two initiatives in the 1990s aimed at addressing underemployment, social tension, and the decreasing rate of growth. The National Poverty Eradication Policy and Program (NPEP) and the National Industrial Policy (NIP) "are intended to contribute to overall employment generation through self employment activities." BUREAU OF ECONOMIC AND BUSINESS AFFAIRS, U.S. STATE DEP'T, 2001 COUNTRY REPORTS ON ECONOMIC POLICY AND TRADE PRACTICES – JAMAICA (2002), available at <http://www.state.gov/documents/organization/8207.pdf>. In 2001 Congress abolished the Country Reports on Economic Policy and Trade Practices prepared by the Department of State. *Economic Policy and Trade Practices*, U.S. Dep't of State, at <http://www.state.gov/e/eb/rls/rpts/eptp/> (last visited Mar. 19, 2005).

182. *See* JAMAICAN CABINET OFFICE, *supra* note 175.

183. *Latin American and the Caribbean: Jamaica*, U.S. Agency for Int'l Dev., at [http://www.usaid.gov/locations/latin\\_america\\_caribbean/country/jamaica/](http://www.usaid.gov/locations/latin_america_caribbean/country/jamaica/) (last updated Feb. 2, 2005) [hereinafter USAID].

184. *See* BRYAN & BRYAN, *supra* note 69, at 12 ("[F]or a small country facing the risk of domestic policy reversals, establishing regional economic policy in the framework of a multilateral arrangement can have the benefit of increasing domestic policy consistency.").

185. Prime Minister Percival James Patterson became Prime Minister in 1992, led Jamaica throughout the 1990s, and is the Jamaican Prime Minister at the time of publishing this Comment. Patterson is the first dark-skinned Black to hold this office and is the only Prime Minister in Jamaica's history to be elected three consecutive terms.

186. Freedom House, *Jamaica 2001*, *supra* note 112.

187. *See* MILES ET AL., *supra* note 120, at 233.

7.4% of Jamaican GDP.<sup>188</sup> Achieving domestic goals like improving rule of law and decreasing crime could benefit from broader external support from other countries in the region. Further, the coupling of traditional economic reforms such as eliminating trade barriers at the border with non-traditional reforms such as expediting procedures for business visas or strengthening rule of law is a way to support domestic reforms through an international legitimating function.

### *B. Advantages of Initiatives Such as the FTAA*

Modern regional trade agreements offer small developing nations greater advantages than traditional, strictly economic agreements by incorporating socio-political goals. In the context of increasing globalization, RTAs also create favorable conditions in which smaller economies, including Jamaica, can achieve deeper and wider integration into the economic, political, and social dynamics of the international community. Lastly, modern agreements also tend to recognize the differences between participating countries while still affording each country an equal voice in regional decision-making processes. This allows countries to tailor agreements according to the needs and capacities of a specific partner. In these three respects, today's RTAs are more likely to "fit" small developing nations and are more likely to lead to more efficient, sustainable economic liberalization and domestic reform.

The FTAA serves as an example of the potential for regional or hemispheric trade agreements to promote sustainable development by including socio-political goals. Although the FTAA has not yet been implemented,<sup>189</sup> negotiations are continuing and it gives valuable insight into modern integrated regional trade agreements. The FTAA also remains relevant for Jamaica because of its potential impact on the entire Western Hemisphere. Each of the eight declarations of the Ministers of Trade of the Hemisphere<sup>190</sup> have reiterated and emphasized that the FTAA negotiations take seriously the broad

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188. *See id.*

189. Since the last Ministerial meeting in November 2003, FTAA negotiations continue to work towards an agreement based on the goals set out in the Miami Declaration. During recent consultations in Washington of the Trade Negotiations Committee (TNC) in February 2005, Co-Chairs worked towards developing a common and balanced set of rights and obligations for negotiators as is required by the Declaration. *See* FTAA Trade Negotiations Committee, *Joint Communiqué of Co-Chairs* (FTAA.TNC/com/06, Feb. 24, 2005), available at [http://www.ustr.gov/assets/Document\\_Library/Press\\_Releases/2005/February/asset\\_upload\\_file804\\_7282.pdf](http://www.ustr.gov/assets/Document_Library/Press_Releases/2005/February/asset_upload_file804_7282.pdf). For general information regarding the FTAA and the Miami Ministerial, see Press Release, Office of the United States Trade Representative, Zoellick to Lead U.S. Effort to Advance FTAA in Key Miami Meeting (Nov. 14, 2002), at [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2003/November/Zoellick\\_to\\_Lead\\_U.S.\\_Effort\\_to\\_Advance\\_FTAA\\_in\\_Key\\_Miami\\_Meeting.html](http://www.ustr.gov/Document_Library/Press_Releases/2003/November/Zoellick_to_Lead_U.S._Effort_to_Advance_FTAA_in_Key_Miami_Meeting.html).

190. Trade ministers of the thirty-four nations participating in the FTAA meet annually. A joint declaration is produced and made public from each meeting that summarizes the decisions and progress discussed and achieved at this meeting. The declarations are available on the FTAA website at [http://www.ftaa-alca.org/Minis\\_e.asp](http://www.ftaa-alca.org/Minis_e.asp).

social and economic objectives of the Miami Summit of the Americas Declaration of Principles<sup>191</sup> and Plan of Action.<sup>192</sup> These goals include strengthening democracy, promoting and protecting human rights, combating the problems of illegal drugs and related crimes, and achieving universal access to education.<sup>193</sup> Including social objectives is therefore a major stated priority of the FTAA member nations.

An RTA, such as the FTAA, would allow Jamaica to diversify, restructure, and reform its economy in order to better “hold its own” in the world economy by decreasing its economic vulnerability through hemispheric integration. Jamaica could take advantage of this opportunity to benefit from harmonization,<sup>194</sup> mutual recognition,<sup>195</sup> and economies of scale<sup>196</sup> through deeper and wider integration into the global economy. This greater integration could be fostered by Jamaica’s effective use of technical assistance in the context of the FTAA specifically and regional or hemispheric cooperation generally.

Larger regional or hemispheric trade agreements, such as the FTAA, with their trajectory towards hemispheric integration, bring much potential and substantial opportunity. At the same time, regional or hemispheric trade agreements like the FTAA also pose many, as yet, unanswered questions and uncertainties. Ideally, a large trading bloc would provide Jamaica the opportunity to enjoy the benefits of greater economic, political, and social union, much as Ireland has benefited from its membership in the European Union. However, smaller nations have legitimate fears of a loss of sovereignty due to their weaker bargaining power.<sup>197</sup> Jamaica could find itself bound in the unfortunate position of the “poor relation” that occasionally gets invited to dinner but never becomes a party to the inner family circle. As a result, Jamaica could find itself in a position where changes required to meet regional

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191. FTAA, Declaration of Principles (Dec. 9-11, 1994), available at <http://www.summit-americas.org/miamidec.htm> [hereinafter FTAA, Declaration].

192. FTAA, *supra* note 20.

193. *Id.*

194. Harmonization is a goal to unify trading countries’ tariff schedules: product descriptions, definitions and rules for transformation and is a focus of efforts to decrease the technical barriers to trade. See *The Harmonization Program*, World Trade Organization, at [http://www.wto.org/english/thewto\\_e/whatis\\_e/eol/e/wto03/wto3\\_48.htm#note1](http://www.wto.org/english/thewto_e/whatis_e/eol/e/wto03/wto3_48.htm#note1) (last visited Mar. 12, 2005).

195. Mutual recognition is “[t]he acceptance by one country of another country’s certification that a satisfactory standard has been met for ability, performance, safety, etc.” Alan V. Deardorff, *Deardorff’s Glossary of International Economics*, available at <http://www-personal.umich.edu/~alandear/glossary/> (last visited Mar. 17, 2005).

196. Economies of scale are “[a] property of a product function such that changing all inputs by the same proportion changes output more than in proportion. Common forms include homogeneous of degree greater than one and production with constant marginal cost but positive fixed cost.” *Id.* Economies of scale are called scale economies, increasing returns to scale, and increasing returns. *Id.*

197. See BRYAN & BRYAN, *supra* note 69, at 12.

trade liberalization goals could be in conflict with domestic interests or policies.

However, the FTAA “take[s] into account differences in the levels of development and size of the economies” in identifying appropriate measures.<sup>198</sup> This is reflected in the Consultative Group on Smaller Economies (CGSE),<sup>199</sup> which addresses the interests and concerns of the smaller economies involved in negotiations. The objectives of the CGSE are to (1) “follow the FTAA process, keeping under review the concerns and interests of the smaller economies” and (2) “bring to the attention of the Trade Negotiations Committee the issues of concern to the smaller economies and make recommendations to address these issues.”<sup>200</sup> By tailoring trade agreements according to country needs, smaller economies such as Jamaica have an opportunity to enjoy both the benefits of increasing returns to scale and the benefits of economic integration.

Given the risks and benefits associated with joining a regional trade agreement, Jamaica should consider planning for the short-, medium-, and long-term. In the short-term, Jamaica should continue to enjoy the benefits of preferential trade agreements with the European Union and the United States, which help secure Jamaica’s presence in these key markets. Jamaica should also continue to participate in Caribbean regional integration because it has the advantage of being one of the larger states in this union. Furthermore, Jamaica’s membership in CARICOM will encourage the development of a strong trading bloc. This trading bloc could prove beneficial not only in the short-term but also in the long-term, especially if Jamaica joins other extra-regional negotiations and agreements. Although entering into only bilateral or smaller regional agreements remains a theoretical option, Jamaica’s participation in a larger trading bloc such as the FTAA clearly affords greater benefits. Jamaica should look towards the opportunities heralded by hemispheric integration regardless of the eventual implementation of the FTAA.

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198. FTAA, Miami Ministerial Declaration, § 14 (Nov. 20, 2003), *available at* [http://www.ftaa-alca.org/Ministerials/Miami/Miami\\_e.asp](http://www.ftaa-alca.org/Ministerials/Miami/Miami_e.asp).

199. The CGSE was established at the FTAA’s Fourth Trade Ministerial. FTAA, San Jose Ministerial Declaration, § 13 (Mar. 19, 1998), *available at* [http://www.ftaa-alca.org/Ministerials/SanJose/SanJose\\_e.asp](http://www.ftaa-alca.org/Ministerials/SanJose/SanJose_e.asp). Information on the CGSE is available on the FTAA website at [http://www.ftaa-alca.org/SPCOMM/COMMSE\\_E.ASP](http://www.ftaa-alca.org/SPCOMM/COMMSE_E.ASP) (last visited Mar. 28, 2005).

200. *Id.*

## V.

## POLICY RECOMMENDATIONS

This Part develops recommendations using the FTAA as an example of a modern RTA. First, it identifies elements of the FTAA that are relevant for rule of law reform. Second, it suggests specific policies that Jamaica could implement in the context of the FTAA or a similar modern RTA.

*A. FTAA and Rule of Law*

The FTAA Plan of Action includes several measures with a multi-sectoral impact that will help Jamaica take full advantage of the goals of the FTAA.<sup>201</sup> FTAA measures have the potential to serve as mechanisms to effect change at the points of intervention. The FTAA Plan of Action has four core areas.<sup>202</sup> The first three of these provides opportunities for Jamaica to strengthen its rule of law: (1) preserving and strengthening the community of democracies of the Americas, (2) promoting prosperity through economic integration and free trade, and (3) eradicating poverty and discrimination in our hemisphere.<sup>203</sup>

Thomas Carouthers has suggested a categorization of rule of law reforms that focuses on the depth of the reforms.<sup>204</sup> His categorization identifies: (1) reform of laws, (2) reform of institutions, and (3) government compliance with the law.<sup>205</sup> This section focuses on the identification of law-related measures,

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201. FTAA, *supra* note 20.

202. *Id.*

203. *Id.* The emphasis on allocating resources to address rule of law issues in addition to economic and democracy issues in the context of the FTAA is based on the greater resources and measures already being allocated to economic and democracy issues.

204. Carouthers, *Rule of Law*, *supra* note 1, at 99-100.

205. *Id.* Carouthers explained that:

[t]ype one reform concentrates on the laws themselves: revising laws or whole codes to weed out antiquated provisions. Often the economic domain is the focus, with the drafting or redrafting of laws on bankruptcy, corporate governance, taxation, intellectual property, and financial markets. Another focus is criminal law, including expanding the protection of basic rights in criminal procedure codes, modifying criminal statutes to cover new problems such as money laundering and electronic-transfer fraud, and revising the regulation of police. Type two reform is the strengthening of law-related institutions, usually to make them more competent, efficient, and accountable. Training and salaries for judges and court staff are increased, and the dissemination of judicial decisions improved. Reform efforts target the police, prosecutors, public defenders, and prisons. Efforts to toughen ethics codes and professional standards for lawyers, revitalize legal education, broaden access to courts, and establish alternative dispute resolution mechanisms figure in many reform packages. Other common reforms include strengthening legislatures, tax administrations, and local governments. Type three reforms aim at the deeper goal of increasing government's compliance with law. A key step is achieving genuine judicial independence. Some of the above measures foster this goal, especially better salaries and revised selection procedures for judges. But the most crucial changes lie elsewhere. Above all, government officials must refrain from interfering with judicial

which Jamaica can target and reform by utilizing the resources available through the FTAA. These reforms include training for judges and court staff, improving the dissemination of judicial decisions, revitalizing legal education, and broadening access to courts.<sup>206</sup>

In light of Jamaica's economic challenges discussed in Part II and the FTAA's objectives as stated in the Declaration of Principles<sup>207</sup> and the Plan of Action,<sup>208</sup> Jamaican efforts to utilize FTAA reforms to improve rule of law should focus on strengthening law-related institutions. Table 1 gives an overview of the relevant elements of the FTAA Plan of Action. Under an implemented FTAA, each of the areas in Table 1 can provide opportunities for the Jamaican government to seek assistance<sup>209</sup> from other parties to the FTAA or a similar RTA. By exchanging expertise with the other countries in the region, each country can more quickly climb their learning curve.

Table 1: Overview of relevant elements of the FTAA Plan of Action<sup>210</sup>

<b>I. Preserving and Strengthening the Community of Democracies of the Americas</b>	
1. Strengthening Democracy	<ul style="list-style-type: none"> <li>• Strengthening the Unit for the Promotion of Democracy so that it can provide assistance at the request of the interested state on such matters as legislative and judicial processes, government reforms (including administration of justice, technical modernization of national legislative bodies, simplification of government regulations and promotion of participation by community organizations in local democracy), and other institutional changes.</li> <li>• Encouraging opportunities for exchange of experiences among member states democratic institutions, particularly legislature-to-legislature and judiciary-to-judiciary.</li> </ul>
2. Promoting and Protecting Human Rights	<ul style="list-style-type: none"> <li>• Review training curricula for law enforcement agents to ensure that they adequately cover proper treatment of suspects and detainees as well as relations with the community.</li> </ul>

decision-making and accept the judiciary as an independent authority. They must give up the habit of placing themselves above the law. Institutional reforms can help by clarifying regulations, making public service more of a meritocracy, and mandating transparency and other means of increasing accountability. The success of type three reforms, however, depends less on technical or institutional measures than on enlightened leadership and sweeping changes in the values and attitudes of those in power. Although much of the impetus must come from the top, non-state activities such as citizen-driven human rights and anti-corruption campaigns can do much to help.

*Id.*

206. *Id.* at 100.

207. See FTAA, Declaration, *supra* note 191.

208. See FTAA, *supra* note 20.

209. The United States, as the largest market and most economically influential member of the FTAA is the most likely potential provider of assistance. In addition to U.S. funded technical assistance, coordinated efforts among Caribbean countries or with Latin American countries may also prove to be fruitful avenues of achieving judicial reform.

210. See *id.*

3. Invigorating Society/ Community Participation	<ul style="list-style-type: none"> <li>Review the regulatory framework for non-governmental actors with a view to facilitating their operations and promoting their ability to receive funds. This review will emphasize the management and oversight of resources as well as transparency and the accountability to society of said actors.</li> </ul>
5. Combating Corruption	<ul style="list-style-type: none"> <li>Develop mechanisms of cooperation in the judicial and banking areas to make possible rapid and effective response in the international investigation of corruption cases.</li> <li>Give priority to strengthening government regulations and procurement, tax collection, the administration of justice and the electoral and legislative processes, utilizing the support of the IDB and other international financial institutions where appropriate.</li> </ul>
6. Combating the Problems of Illegal Drugs and Related Crimes	<ul style="list-style-type: none"> <li>Work individually and collectively to identify the region's narcotics trafficking and money laundering networks, prosecute their leaders, and seize assets derived from these criminal activities.</li> <li>Adopt programs to prevent and reduce the demand for and the consumption of illicit drugs.</li> </ul>
8. Building Mutual Confidence	<ul style="list-style-type: none"> <li>Support actions to encourage a regional dialogue to promote the strengthening of mutual confidence.</li> </ul>
<b>II. Promoting Prosperity through Economic Integration and Free Trade</b>	
11. Hemispheric Infrastructure	<ul style="list-style-type: none"> <li>Draw on other regional and sub-regional experiences within the Hemisphere to support infrastructure development.</li> <li>Governments that so wish will develop suitable mechanisms, including multilateral and bilateral commitments on regulatory and legal rules and practices, to encourage private investment, both domestic and foreign, in national and transboundary infrastructure projects.</li> </ul>
13. Telecommunications and Information Infrastructure	<ul style="list-style-type: none"> <li>Undertake efforts to make government information more publicly available via electronic means.</li> <li>Review the availability and interoperability of connections to international networks that facilitate trade, improve education and improve access to health care.</li> <li>Encourage major universities, libraries, hospitals and government agencies to have access to these networks, building on the work of the OAS Hemisphere-Wide Inter-University Scientific and Technological Information Network.</li> </ul>
15. Tourism	<ul style="list-style-type: none"> <li>Undertake initiatives to stimulate tourism in the Hemisphere.</li> </ul>
<b>III. Eradicating Poverty and Discrimination in Our Hemisphere</b>	
16. Universal Access to Education	<ul style="list-style-type: none"> <li>Promote, with the support of international financial institutions and the private sector worker professional training as well as adult education, incorporating efforts to make such education more relevant to the needs of the market and employers.</li> <li>Improve human resources training, and technical, professional and teacher training, which are vital for the enhancement of quality and equity of education within the Hemisphere.</li> <li>Review existing regional and hemispheric training programs and make them more responsive to current needs.</li> </ul>

Measures to improve the legal and judicial system in conjunction with the FTAA can decrease crime; increase staffing, equipment and training of police and judges; improve security of property rights and intellectual property rights; and enhance the procedural efficiency of the Jamaican justice system. Jamaica can reduce crime by implementing measures to combat corruption,<sup>211</sup> use and sale of illegal drugs, and other drug-related crimes.<sup>212</sup> The FTAA Plan of Action calls for countries to “[w]ork individually and collectively to identify the region’s narcotics trafficking and money laundering networks, prosecute their leaders, and seize assets derived from these criminal activities” and to “[a]dopt programs to prevent and reduce the demand for and the consumption of illicit drugs.”<sup>213</sup>

Jamaica can also reduce crime by less direct but equally significant measures to improve the overall efficiency and effectiveness of the judicial system. For example, the FTAA Plan of Action targets corruption by encouraging participating nations to “[d]evelop mechanisms of cooperation in the judicial and banking areas to make possible rapid and effective response in the international investigation of corruption cases.”<sup>214</sup>

Jamaica can improve staffing, equipment, and training of police and judges through measures to protect human rights<sup>215</sup> and provide universal access to education.<sup>216</sup> The FTAA calls for countries to “[r]eview training curricula for law enforcement agents to ensure that they adequately cover proper treatment of suspects and detainees as well as relations with the community.”<sup>217</sup> More generally, the FTAA Plan of Action requires countries to “[p]romote . . . worker professional training as well as adult education, incorporating efforts to make such education more relevant to the needs of the market and employers,” “[i]mprove human resources training, and technical, professional and teacher training,” and “[r]eview existing regional and hemispheric training programs and make them more responsive to current needs.”<sup>218</sup> These types of measures improve human capital, helping to ensure that changes are put into practice on a day-to-day basis at the ground level.

The protection and security of property and intellectual property rights are supported through measures addressing the reduction of crime, the promotion of human capital, and the improvement of the Jamaican legal system’s procedural efficiency. These improvements can also be supported through measures targeting increased society and community participation<sup>219</sup> and

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211. FTAA, *supra* note 20, § 5.

212. *Id.* § 6.

213. *Id.*

214. *Id.* § 5.

215. *Id.* § 2.

216. *Id.* § 16.

217. *Id.* § 2.

218. *Id.* § 16.

219. *See* FTAA, *supra* note 20, § 3.

through measures building mutual confidence, as outlined in the FTAA Plan of Action.<sup>220</sup> Steps toward further economic integration and free trade can serve as the mortar to cement these building blocks into place. Jamaica can promote economic integration through hemispheric infrastructure,<sup>221</sup> telecommunications and information infrastructure,<sup>222</sup> and tourism.<sup>223</sup> The Unit for the Promotion of Democracy can provide a centralized institution to support the coordination of these measures. For example, the Unit can “provide assistance at the request of the interested state on such matters as legislative and judicial processes, government reforms (including administration of justice, technical modernization of national legislative bodies, simplification of government regulations and promotion of participation by community organizations in local democracy), and other institutional changes” and “[e]ncourag[e] opportunities for exchange of experiences among member states democratic institutions, particularly legislature-to-legislature and judiciary-to-judiciary.”<sup>224</sup>

The following section identifies specific rule of law reforms that could facilitate a reverse in the trends identified in the vicious cycle discussion above.<sup>225</sup> The standard menu of measures used to strengthen rule of law includes reforming institutions, rewriting laws, upgrading the legal profession, and increasing legal access and advocacy.<sup>226</sup> The following discussion focuses on the categories of reforming institutions and upgrading the legal profession. The measures identified do not represent an exhaustive catalogue of all possible measures but rather serve as examples of the measures available.

### *B. Recommended Measures to Improve Rule of Law in Jamaica*

This section targets two key areas for reform in the context of a modern regional trade agreement such as the FTAA. Section 1 focuses on upgrading

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220. *Id.* § 8.

221. *See id.* § 11.

222. *See id.* § 13.

223. *See id.* § 15.

224. *Id.* § 1.

225. The measures suggested in this proposal are based on the menu of rule of law assistance measures as practiced by international development organizations, innovative judicial and legal reform measures developed in nation-wide or pilot-scale domestic reform projects, and the author’s experience as a public sector consultant in technical assistance projects in Eastern Europe and the Russian Federation.

226. CAROTHERS, AIDING DEMOCRACY, *supra* note 3. Reforming institutions includes judicial reform, legislative strengthening, retraining prosecutors police and prison reform, bolstering public defenders, and introducing alternative dispute resolution. *Id.* Rewriting laws includes modernizing criminal laws, updating civil laws, and introducing new commercial laws. *Id.* Upgrading the legal profession includes strengthening bar associations and improving legal education. *Id.* Increasing legal access and advocacy includes stimulating public interest law reforms, supporting advocacy NGOs that use law to pursue social and economic goals, aiding NGOs that promote judicial and legal reform, training journalists to cover legal matters, and underwriting legal aid clinics. *Id.*

the legal profession in Jamaica. Section 2 targets reforming the Jamaican judicial system. The measures suggested in these subsections aim to improve both the procedural efficiency of the judicial system and the staffing, equipment, and training of police and judges. Achieving appropriate and measurable improvements in these areas will likely have the indirect effect of decreasing crime and increasing the security of property rights, including intellectual property rights.

### *1. Upgrading the Legal Profession in Jamaica*

The recommended measures for increasing staffing, equipment, and training of police and judges include the creation of (1) a Regional Legal and Judicial Advisory Council, (2) a Regional Judiciary-to-Judiciary Visiting Scholars Program, and (3) a Regional Lawyer-to-Lawyer Exchange Program.

The creation of a Regional Legal and Judicial Advisory Council<sup>227</sup> could function as a clearinghouse for the review of legal educational and training programs for judges and lawyers. The Advisory Council could establish regional procedures to make these programs more responsive to current needs. It could establish review guidelines, compile and analyze data collected on a national level, create a database of relevant information, and make recommendations concerning reform, harmonization, and funding options. The work of the Regional Legal and Judicial Advisory Council should complement and be coordinated with relevant institutions in Jamaica such as the Jamaican Bar Association, the Jamaican Justice Training Institute, the Norman Manley Law School in Jamaica, and the Jamaican Lay Magistrates Association.

Universal Access to Education<sup>228</sup> is a key element of the measures tailored toward eradication of poverty and discrimination in the Western Hemisphere. However, simple access to education is insufficient to achieve the goals of the FTAA. Relevance and quality of education are vital components of the FTAA Action Plan.<sup>229</sup> These concerns also apply to legal education. Jamaica, like other countries involved in transition, requires access to relevant training for practicing members of the legal system. Access to up-to-date training and information increases the ability of participants in the judicial system to adapt and to change.

The establishment of a Regional Judiciary-to-Judiciary Visiting Scholars Program and a Regional Lawyer-to-Lawyer Exchange Program are measures that would encourage the exchange of experience among countries in the

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227. For a general discussion of the advisory council mechanism, see MALCOLM L. RUSSELL-EINHORN, STRENGTHENING ACCESS TO INFORMATION AND PUBLIC PARTICIPATION IN GOVERNMENT DECISIONMAKING IN TRANSITION COUNTRIES: PROCEDURAL UNDERPINNINGS OF ENHANCED REGULATORY REFORM AND ADMINISTRATIVE ACCOUNTABILITY (World Bank, 2001), available at <http://www1.worldbank.org/publicsector/legal/Controladministration.doc>.

228. FTAA, *supra* note 20, at § 16.

229. FTAA, *supra* note 20.

region. This exchange would allow members of the Jamaican legal system to gain first-hand experience with judicial procedures in other countries in the Americas. For example, lawyers could gain experience in alternative dispute resolution procedures. This experience could be brought back and translated into the Jamaican context to improve the procedural efficiency of the Jamaican judicial system. This measure could be facilitated under the FTAA goal of “encouraging opportunities for exchange of experiences among member states’ democratic institutions, particularly legislature-to-legislature and judiciary-to-judiciary.”<sup>230</sup>

## *2. Reforming the Jamaican Judicial System*

The recommended measures for reforming the Jamaican judicial system include: (1) Regional Interministerial Network for Legal and Judicial Administrative Modernization, (2) Regional Alternative Dispute Resolution Program, (3) Regional Commission of Enterprise/Administration Relationships, (4) Regulatory Quality Database, (5) Semiannual Public Reporting, (6) Evaluation Guidelines, (7) Bilateral and Multilateral Forums, (8) Impact Assessment Standards, (9) Central Regional Economic Analysis Unit for Legal and Judicial Policy, and (10) Establishment of Regional Public Information Offices.

The establishment of a Regional Interministerial Network for Legal and Judicial Administrative Modernization would link the centers of legal and judicial administrative modernization in each FTAA country. This would create a framework at a ministerial level for effective coordination of activity and exchange of information. Jamaica would be able to exchange high-level, politically sensitive information effectively with all relevant governmental actors in the region through one forum. In particular, this would support efforts to stem transnational narcotics trafficking and money laundering and “combat the problems of illegal drugs and related crimes” while “building mutual confidence” among FTAA member countries.<sup>231</sup>

Rule of law reforms in the context of the FTAA should include assistance to implement a Regional Alternative Dispute Resolution Program.<sup>232</sup> This program would include an evaluation of the potential costs and benefits of alternative dispute resolution in Jamaica. Analysis of this option would be carried out in cooperation with the Central Regional Economic Analysis Unit for Legal and Judicial Policy.

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230. See FTAA, *supra* note 20.

231. FTAA, *supra* note 20, at §§ 6, 8.

232. For a detailed discussion of the use of alternative dispute resolution programs in the United States, see EDWARD A. INFANTE, JUDICIAL CASE MANAGEMENT IN THE FEDERAL TRIAL COURTS OF THE UNITED STATES OF AMERICA (World Bank Group, 2001), available at [www1.worldbank.org/publicsector/LearningProgram/Judicial/CASEMGMT%20Infante%20paper.doc](http://www1.worldbank.org/publicsector/LearningProgram/Judicial/CASEMGMT%20Infante%20paper.doc).

The creation of a Regional Commission of Enterprise/Administration Relationships<sup>233</sup> would facilitate cooperation between the judicial and banking sectors under the FTAA goal of “developing mechanisms of cooperation in the judicial and banking areas to make possible rapid and effective response in the international investigation of corruption cases.”<sup>234</sup> This commission would bring together representatives from the ministries responsible for banking and corruption and representatives from the banking and international financial sectors. Regular communication and exchange of information would make the judicial system better able to investigate and combat corruption. A public-private commission would increase speed and efficiency through the simplification of bureaucratic procedures and elimination of unnecessary procedures.

Measures to strengthen the Unit for the Promotion of Democracy would include the development of institutional and human capacity in the area of regulatory quality.<sup>235</sup> The creation of a Regional Regulatory Quality Database<sup>236</sup> as a complement to this work would help to ensure that FTAA countries, including Jamaica, have access to best-practice solutions as well as obstacles and challenges faced in other countries in the region.<sup>237</sup> Appropriate solutions for the Jamaican context can be developed that take other countries’ experiences into account.<sup>238</sup>

Invigorating society and community participation can be facilitated through the adoption and adaptation of domestic measures successfully implemented in other countries in the region. One example of this type of measure is semiannual public reporting<sup>239</sup> of the efficiency of the judicial process. For example, reporting the number and names of cases that have not been terminated after a given period of time. This would create a direct

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233. A case study of the Portuguese public/private Commission of Enterprise/Administration Relationships can be found in ORG. FOR ECON. CO-OPERATION AND DEV. (OECD), *IMPROVING THE QUALITY OF LAWS AND REGULATIONS: ECONOMIC, LEGAL AND MANAGERIAL TECHNIQUES 29-32*, (Report No. OCDE/GD(94)59, 1994), available at <http://www1.worldbank.org/publicsector/legal/ImprovingLawQuality.pdf> [hereinafter OECD].

234. FTAA, *supra* note 20, § 6.

235. The OECD has defined regulatory quality and individual and system quality standards. OECD, *supra* note 233.

236. A discussion of the use of databases in various legal contexts can be found in OECD, *supra* note 233.

237. Similar efforts have been made in Jamaican Financial Sector Regulation. Lessons learned can be applied to the judicial sector. Jamaican application of an FTAA Regulatory Quality Database could focus on regulations relevant to Jamaica’s ability to take advantage of the FTAA.

238. One option would be to include regulatory quality in the Trade Education Database (TED) currently maintained by the OAS.

239. For a detailed discussion of the effectiveness of public reporting in reducing the number of cases pending more than three years in pilot and comparison districts in the United States, see JAMES S. KAKALIK ET AL., *JUST, SPEEDY, AND INEXPENSIVE? AN EVALUATION OF JUDICIAL CASE MANAGEMENT UNDER THE CIVIL JUSTICE REFORM ACT* (RAND, Document No. MR-800-ICJ, 1996), available at <http://www.rand.org/publications/MR/MR800/>.

incentive for judges to make the transition from a passive judicial role to a more active case management role. This type of measure was successfully tested in pilot districts in the United States.<sup>240</sup> The results show a decrease in the number of cases pending more than three years by about 25%.<sup>241</sup> The Unit for the Promotion of Democracy would provide information on implementing these types of studies.

Work in the area of economic integration and free trade would support the development of Jamaican institutions' law-making capacity through technical assistance in: (1) the creation of Evaluation Guidelines where needed for the assessment of the impact of proposed laws and regulations; (2) the institutionalization of knowledge transfer in the form of bilateral and multilateral forums to improve the quality of laws and regulations through economic, legal, and managerial techniques; and (3) the use of Impact Assessment Standards for the evaluation of the impact of implemented or reformed laws and regulations. These types of measures would help establish a foundation for the agreement and implementation of institutional infrastructure projects in a transboundary context. They would also contribute to information networks used by universities, libraries, hospitals, and government agencies.

Improving regulatory quality would include the establishment of an economic analysis unit, which would analyze legal and judicial policy for the parties to the regional trade agreement, such as the Central Regional Economic Analysis Unit for Legal and Judicial Policy.<sup>242</sup> This unit would support capacity development through analysis of the costs and benefits of proposed laws and regulations. Ensuring that trained economists participate in the reform of the Jamaican judicial system would promote more cost-effective solutions and encourage more efficient use of available funds. Public access to the results of this type of economic analysis of legal reforms decreases the level of uncertainty for investors and national Small and Medium Enterprises (SMEs),<sup>243</sup> thus providing an incentive for investment and increased economic activity.<sup>244</sup> This measure would be supported under the FTAA goal of "developing suitable mechanisms, including multilateral and bilateral commitments on regulatory and legal rules and practices, to encourage private investment, both domestic and foreign, in national and transboundary

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240. *Id.*

241. *Id.*

242. This builds on the OECD recommendation that the establishment of an economic analysis capacity has long term benefits for improving the efficiency of public administration. See OECD, *supra* note 233.

243. Small and Medium Enterprises are businesses that have no more than 300 employees, \$15 million in total assets, and \$15 million in total annual sales. *What is a SME?*, International Finance Corporation, at [http://www2.ifc.org/sme/html/sme\\_definitions.html](http://www2.ifc.org/sme/html/sme_definitions.html) (last updated June 7, 2004).

244. See Barro, *supra* note 9, at 32, 40-41.

infrastructure projects.”<sup>245</sup>

The establishment of regional public information offices to provide investors and SMEs with information regarding legal regulations in the context of the FTAA would increase small business and investor confidence and lower the costs of judicial administration. This measure would be supported under the FTAA goal of “encouraging private investment, both domestic and foreign.”<sup>246</sup>

### 3. Utilizing the Resources of Major Nations and Multinational Organizations

Constraints on implementing rule of law reform in a purely domestic context are linked to the source of the need for that reform. Lack of sufficient resources, whether in the form of financial and human capital or institutional capacity, limits the feasibility of implementing any large-scale reforms. However, tapping into a regional integration agreement has the potential to maximize the impact of scarce resources and, in some cases, to augment available resources through regional cooperation. From a financial perspective, Jamaica will be heavily dependent, at least in the short-term, on funding for technical assistance made available by the United States<sup>247</sup> and large multinational organizations such as the FTAA Tripartite Committee.<sup>248</sup> One key source of potential funding is through the U.S. Agency for International Development’s Hemispheric Free Trade Expansion (HFTE) program. The focus of this program includes strengthening the capability of Latin American and Caribbean countries to implement trade liberalization and reforms and to support economic growth and trade initiatives. Rule of law reforms could be funded by the HFTE or similar programs.

The three institutions in the Tripartite Committee are the Organization of American States (OAS), the Inter-American Development Bank (IDB), and the United Nations Commission on Latin America and the Caribbean (ECLAC). OAS technical assistance focuses on trade related capacity building. OAS Trade Unit efforts have concentrated on seminars, workshops, studies, databases, and an advanced training course. These activities provide a framework in which rule of law measures can be developed, supported, and implemented. The IDB has identified resources for technical assistance, in particular for smaller economies.<sup>249</sup> The IDB-Multilateral Investment Fund

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245. FTAA, *supra* note 20, § 11.

246. *Id.*

247. USAID funded \$16.8 million in programs in Jamaica in 2004. USAID, *supra* note 183.

248. The FTAA Tripartite Committee is composed of the Organization of American States (OAS-Trade Unit), the Inter-American Development Bank (IDB), and the United Nations Economic Commission for Latin American and the Caribbean (ECLAC). The committee provides analytical, technical and financial support. *About the FTAA*, FTAA, at [http://www.ftaa-alca.org/View\\_e.asp](http://www.ftaa-alca.org/View_e.asp) (last visited Mar. 12, 2005).

249. See FTAA, Toronto Ministerial Declaration, (Nov. 4, 1999), *available at*

(MIF) is a potential source of funding for rule of law reform in the context of the FTAA; its project areas include alternative dispute resolution, advisory centers, and technical training.

Institutional capacity would also be available through these multilateral institutions because they are responsible for coordinating and facilitating regional integration. These institutions currently provide analytical, technical, and financial support to the FTAA process. Implementing the measures proposed in this Comment would optimally supplement the OAS, IDB, and ECLAC work already in progress and would be coordinated and supported by these institutions.

#### CONCLUSION

This Comment suggests several measures that Jamaica could implement in the framework of regional or hemispheric integration. Further, this Comment presents several ways in which Jamaica could begin to resolve issues associated with deficiencies in rule of law and democracy in order to achieve successful long-term development and take advantage of the regionalization and globalization of trade.

Additional research is necessary to explore which measures are most effective and the order in which measures should be implemented. In the short-term, further research should concentrate on developing a detailed menu of trade issues in the area of democracy and rule of law that could be or already are included in international trade agreements. Research should also focus on identifying specific rule of law measures for Jamaica that have the potential to break or reverse vicious cycles of weak rule of law, constrained democratization, and low socio-economic status. In the medium-term, these measures should be tested in pilot projects. The results of these pilot projects should be synthesized into guidelines that allow the measures to be adapted to Jamaica's specific goals and conditions. Later, the lessons learned in Jamaica could be applied to other similarly situated countries.



# **BOOK REVIEW**

