



# JABBEM

JAMAICA BEACH BIRTHRIGHT ENVIRONMENTAL MOVEMENT

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## **The Bob Marley Beach Debacle: Important Facts the Jamaican Public need to know about Laws affecting Public and Free Access to Beaches and the Acquisition of Property Title through Adverse Possession.**

Simply put, should we not act presently and decisively, a day is coming where - as has already happened with many of Jamaica's best beaches - you will be denied the privilege of an easy drive out of Kingston to relax upon the warm, sun drenched healing waters of Bob Marley Beach, or to eat delicious fried fish and festival while communing with the Rastafarian Nyahbinghi community.

What you will discover is a destroyed natural environment, paved over and commercialized into a High Value Hotel paying 'slavery' wages with no spiritual value or respect for the cultural heritage that existed there for decades. And - if you want to enjoy the beach - you will have to be prepared to book a room or day pass, at a cost many simply cannot afford. As for the Rastafarian families with their young children? Cast into the street after over 60 years of peaceful and harmonious existence with no shelter and no way to earn a living. This is not the 'One Love' Jamaica has preached to the world. Bob Marley would surely be hurt and insulted were he alive to witness such an act take place at his favorite beach. This is no way to honor his legacy.

To quote Norman 'Rubba' Stephenson (son of the community founder):

*"This beach has a long-standing Rastafarian history and presence. It was occupied by Bongo Gabby (also known as Natty Dread), my father and the patriarch of the Ancient Nyahbinghi order who, along with Mortimer Planno, was responsible for teaching the ways of Rastafari to Bob Marley through mentorship. This is the original beach where Bob Marley and the Wailers stayed with Bongo Gabby, whilst producing music that has changed the lives of many all over the world and as such should be considered a world heritage site.*

*The land has been claimed illegally without respect to the Stephenson family, relatives of Bongo Gabby and the Thomas family, both of whom have been paying the land taxes up to date. Generations of families have lived here, and they are now being forced against their will to leave their homes with nowhere else to go. This is also a community where Rastafarians dwell and their rights to live here with their small children are now being threatened."*

### **THREAT TO BEACH ACCESS FOR THE PUBLIC**

How did this threat arise, and what - if any - is the government's role? JaBBEM has recognized that under Jamaican laws contained in the BCA-1956 Sec 3 (4), Jamaicans do not have guaranteed beach



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access rights except where acquired by custom or prescription that must be recognized in a court of law. The only guarantee is to traverse the foreshore for navigation. Furthermore, if the foreshore up to the high water mark (HWM) - which is normally a 5-6 foot space - and the floor of the sea is the public domain, then universally the public must have access rights to this space. There are no provisions in the BCA-1956 guaranteeing this right. This begs the question: 'Can a public space exist without public access'? This, in itself, may highlight the present government's ignorance or deliberate obfuscation of its responsibility to recognize when the public beach access right is threatened, and to safeguard the public access rights proactively.

No permission is required from the government by a private property owner who wishes to secure a property boundary by wire fencing, concrete wall, armed security or other. The government's claim regarding its not granting any "permission" or "plan" can be read as misleading, as the owner **does not** need the government's permission to prevent/restrict beach access over their land. They have the provisions in the BCA-1956 to protect their rights. The Woof Group Limited, listed purchasers of the Lands concerning Bob Marley Beach, will very likely exercise its rights as done by every hotel that has been built in Jamaica. Of this, the government must be aware. There is clear precedent. Is the government then complicit? Siding with the private interest over the often trampled upon rights of the Rastafarian whom the wider world loves and respects, and who has put Jamaica in good standing on the world stage.

## **FACTS CONCERNING ACQUISITION OF PROPERTY BY ADVERSE POSSESSION**

As regards the difficult issue of land ownership, the Rastafarian families had addressed this when they initiated the process and applied for Titles under the purview of Adverse Possession, for which they met the criteria having lived there over 60 years, through which enormous efforts down generations were made to clear the area of severe 'macka (thorny) bushes', and to clear and maintain a track for access where none existed.

It must be noted that both families are direct descendants of the original Nyahbinghi Rastafari settlers of that area. The Thomas Family received their title, which was later rescinded based on allegations that they were living on Government lands. The Stephenson family faced numerous institutional roadblocks that appeared to have the intention of slowing and/or blocking their application. The aforementioned law is explained in the Jamaica Observer article entitled "**Adverse possession law giving squatters bly, says lawyer**" of August 11, 2022 as the following:

"Adverse possession allows a person in possession of a plot of land for at least 12 years unchallenged to get a title for it if the paper owner fails to assert his own superior title within the limitation period set out in the Limitation of Actions Act. That Act bars the owner on paper from recovering possession of land after the expiration of 12 years in the case of a private citizen and 60 years in the case of lands owned by the Crown. The applicant must prove, among other things, that acts of ownership have been performed in relation to the property such as fencing or upkeep. There must also be proof that for the



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relevant period there were no demands made for the individual to leave the property and that the tenancy was undisputed.”

It is our opinion that reasonable efforts were made by the families, buttressed by the facts and in compliance with the law, to regularize their tenancy via Adverse Possession. Efforts that were thwarted and delayed by the state’s opposition.

## **CURRENT DEVELOPMENTS**

Indeed, the apparent harassment underscored by recent events is quite shocking and lends credibility to the proposition of the government’s adversarial role. After years of peaceful living, the electricity and water were both removed for all families. One family had infrastructural damage done to their home. Two visits by truckloads of fully armed Police officers in tactical gear, masked and with long guns occurred. In the first instance, they were filmed and photographed walking the beach whilst intimidating the locals and foreigners with their presence including down by the water’s edge. And in the second, they went up into the back lands to cut down and remove two truck loads of marijuana plants (the rest were burned), which were driven away along with the son of an elder who was arrested and taken to the Morant Bay Lockup on Heroes Day, a place where National Heroes Paul Bogle and George William Gordon were held after the Morant Bay Rebellion (October 11, 1865), far away from the local jurisdiction near the beach.

## **POLICY CONCERNS**

As stated in JaBBEM’s press release dated October 15, 2022, the BCA-1956 is a colonial era law that has no place in a modern Jamaican democracy and society of descendants of enslaved Africans who have been emancipated for 124 years. The BCA-1956 is discriminatory against ordinary Jamaicans while granting benefits to special interest groups.

JaBBEM is asking for the rapid repeal and replacement of the BCA-1956, with a post colonial progressive and just law that constitutionally protects and guarantees unfettered rights of all Jamaicans and their friends, to have full access to the beaches and use of the sea and rivers as ecological heritage spaces with rights of nature status.

Note that beach access is a form of land rights, therefore, we encourage the government to formalize the proactive inclusion of easements on properties that abut the sea.

Today it’s Bob Marley Beach. Tomorrow, where else? Support the movement and get updates, evidence and documentation by visiting us at JaBBEM.org, and by signing and sharing the online petition at <https://petitions.sumofus.org/p/savebobmarleybeach>

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