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U.S. Department of State

Jamaica Country Report on Human Rights Practices for 1998

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JAMAICA

Jamaica is a constitutional parliamentary democracy and a member of the Commonwealth of Nations. Two political parties have alternated in power since the first elections under universal adult suffrage in 1944; a third major party was established in late 1995. Prime Minister P.J. Patterson's People's National Party (PNP) won 50 of the 60 seats in Parliament in national elections in December 1997. The general election campaign was significantly less violent than previous electoral campaigns. However, there continued to be intimidation of voters and party agents and restrictions on the free movement of voters. The judiciary is independent but lacks adequate resources.

The Jamaica Constabulary Force (JCF) has primary responsibility for internal security, assisted by the Island Special Constabulary Force. The Jamaica Defense Force (JDF - army, air wing, and coast guard) is charged with supporting the JCF in maintaining law and order, although it has no powers of arrest. While civilian authorities generally maintain effective control of the security forces, some members of the security forces committed human rights abuses.

The economy is based on primary products (bauxite and alumina, sugar, bananas), services (tourism, finance), and light manufacturing (garment assembly). The Government promoted private investment to stimulate economic growth and modernization, pursuing in the process a sometimes painful program of structural adjustment. Annual per capita income is \$2,460, but this figure is misleading as there is a and widening gap between the wealthy and the impoverished.

The Government generally respects the human rights of its citizens; however, problems remained in

certain areas. Although members of the security forces committed extrajudicial killings and beatings and carried out arbitrary arrests and detentions, the Government moved effectively to punish some of those involved. Prison and jail conditions remained poor; overcrowding, brutality against detainees, dismal sanitary conditions, and inadequate diet are problems. The judicial system was overburdened and lengthy delays in trials were common. Economic discrimination and violence against women remained problems, as did mob violence against those suspected of breaking the law.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

The security forces frequently employed lethal force in apprehending criminal suspects, usually in the guise of shoot-outs. This resulted in the killing by police of 145 people during the year. While allegations of "police murder" were frequent, the validity of some of the allegations was suspect. This problem is the result of unresolved, long-standing antipathy between the security forces and certain communities, especially among the urban poor. The JCF conducted both administrative and criminal investigations into incidents involving fatal shootings by the police. The JCF policy statement on the use of force incorporates United Nations-approved language on basic principles on the use of force and firearms by law enforcement officials.

In September there were 2 days of riots in downtown Kingston that resulted in the deaths of two persons, including a JDF soldier. The JDF was called in to assist when the police were unable to quell violent clashes with rioters. The police force lacks training in effective crowd control techniques and often resorts to the use of excessive--and sometimes deadly--force.

Political violence continued to diminish. However, during the period prior to the 1997 national elections, the opposition Jamaica Labor Party (JLP) accused the security forces of targeting the opposition leader's West Kingston constituency for special attention, culminating in a May 6-7 confrontation with residents of Tivoli Gardens. In this confrontation, the police shot and killed four persons (three women and one child) and injured nine others by gunfire. All the victims were unarmed civilians. No member of the security forces was injured, and no arrests were made. In August the jury in a coroner's inquest found that members of the security forces had been fired upon, that they fired in self defense, and that none of them were criminally responsible. Many press commentators, local human rights activists, and the leader of the opposition condemned this verdict. However, the Defense Force refused to make public the results of its own inquiry, which possibly might have shed further light on the incident.

The police closed their files without taking disciplinary action in the cases of two deaths in which excessive force apparently was used. In January police allegedly shot a Spanish Town man who was sitting on his toilet seat. The incident sparked public protests and received wide media attention after the police hurled tear gas at the leader of the opposition National Democratic Movement (NDM) while he was trying to calm one of the protests. In March police or soldiers allegedly executed three men in the Grants Pen area of Kingston. The police alleged that they detained a car whose occupants (three men and a woman) engaged the police in a shootout. However, forensic evidence in the form of bullet holes and human blood and tissue found on a nearby wall apparently were more consistent with the allegations by area residents that members of the security forces placed the three men against the wall and shot them.

There were new developments in several cases from previous years.

An arrest warrant was issued for a police constable alleged to have been involved in the 1996 beating death of a 22-year-old man in a west Kingston police station; the constable remained a fugitive from justice at year's end. In the 1996 death of a man held in the Port Antonio jail, a court convicted the deceased's cellmate of murder and sentenced him to death. In the civil case of one of three men who suffocated to death in the Constant Spring jail in 1992 after being confined all night in an 8 by 7 foot cell with 16 other men (who survived the life-threatening confinement), the court of appeal heard arguments in February as to whether to increase the trial court damage award of \$22,815 (J\$829,560) in a wrongful death case brought by the mother of one of the victims. The court of appeal awarded her additional damages of \$27,000 (J\$1,000,000) for breach of her son's constitutional rights. This was the first time a court had allowed a damage claim on constitutional rather than statutory grounds. The plaintiff appealed to the Privy Council for a higher award; no ruling had been issued at year's end.

Vigilantism, involving spontaneous mob executions in response to crime, continued to be a problem. There were 16 vigilante killings in 1998, compared with 16 in 1997, and 21 in 1996. Official investigations into such killings generally do not uncover any information, since the persons and the community involved usually band together to intimidate potential witnesses.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture and other abuse of prisoners and detainees. However, reports of physical abuse of prisoners by guards continued, despite efforts by the Government to remove abusive guards and improve procedures.

On December 18, the court of appeal announced that flogging could not be imposed as a punishment because the legislative authority for it had expired. This sentence was rarely used; prior to 1994, no sentence of flogging had been imposed for 25 years.

In April 1997, the Police Commissioner condemned the excessive use of force by police in Hopewell, Hanover, who shot six persons who were demonstrating against substandard roads and water supply. The authorities charged three policemen with unlawful wounding; no trial date had been set by year's end. In April a court denied the appeal of a policeman who had been convicted in 1997 of unlawful wounding, and it ordered the convicted constable to begin serving his 18-month prison terms.

Prison conditions remained poor; overcrowding, inadequate diet, poor sanitary conditions, and insufficient medical care are typical. In August 1997, violence erupted at both men's maximum security prisons after prison warders engaged in a mass sickout. Inmates killed 16 of their fellow prisoners, many of them because they had been identified as homosexuals. The Government convened a commission of inquiry, which made its findings public in March. The commission concluded that lack of coordination among responsible government agencies contributed to the spread of the rioting. It recommended that prison security, prison conditions, and the quality of prison staff be improved. The Ministry of National Security accepted the recommendations and began to implement them, including construction of a new correctional facility.

In general, the Government allowed private groups, voluntary organizations, international human rights organizations, and the media to visit prisons and monitor prison conditions. However, foreign diplomats were denied access to the cell block areas of the police remand center when they visited the facility in

June, despite earlier assurances that full access would be given.

d. Arbitrary Arrest, Detention, or Exile

In 1994 Parliament repealed the Suppression of Crimes Act of 1974, which permitted warrantless searches and the arrest of persons "reasonably suspected" of having committed a crime. However, the Jamaica Constabulary Force Act now contains several of these provisions, and there were continued reports that the police abused these provisions. In March 1997, the Jamaican Bar Association (JBA) protested that the police were unlawfully detaining and fingerprinting groups of citizens in poor, inner city areas. At the time, the Police Commissioner disavowed the practice and ordered it discontinued; however, both the JBA and the Jamaica Council on Human Rights state that the practice continues.

The law requires police to present a detainee in court within 48 hours of detention, but the authorities continued to detain suspects, especially those from poor neighborhoods, without bringing them before a judge within the prescribed period. Magistrates inquire at least one time per week into the welfare of each person listed by the JCF as being detained. There is a functioning bail system.

Foreign prisoners must pay for their own deportation once they have completed their sentences. If they cannot afford to pay, they are jailed until relatives or consulates can arrange for transportation. In effect this constitutes an additional prison term for indigent foreigners.

The Constitution prohibits exile, and no instances of exile occurred.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, which exists in practice. However, the judicial system is overburdened and operates with inadequate resources.

Three courts handle criminal matters at the trial level. Resident magistrates try lesser offenses (misdemeanors). A Supreme Court judge tries felonies, except for felonies involving firearms, which are tried before a judge of the Gun Court. Defendants have the right to appeal a conviction in any of the three trial courts to the Court of Appeal, which is the highest court. The Constitution allows the Court of Appeal and the Parliament to refer cases to the Judicial Committee of the Privy Council in the United Kingdom as a final court of appeal.

The lack of sufficient staff and resources hinders due process. Trials in many cases are delayed for years, and other cases are dismissed because files cannot be located. The Government initiated a night court in September 1995, which has had some success in reducing the backlog of cases.

While the defendant's right to counsel is well-established, the courts appoint counsel for the indigent only for serious offenses (e.g., murder, rape, robbery, and gun offenses). However, the law does not consider many offenses, including wounding with intent to cause great bodily harm, as "serious." Thus the courts try many defendants without benefit of counsel.

There were no reports of political prisoners.

f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

The Constitution prohibits arbitrary intrusion by the State into the private life of an individual. The revised Jamaica Constabulary Force Act continues to give security personnel broad powers of search

and seizure similar to those granted by the former Suppression of Crimes Act (see Section 1.d.).

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, and the Government respects these rights in practice.

The Government privatized the Jamaica Broadcasting Company in June 1997, and the television station and two radio stations it operated became privately owned. The Government's broadcasting commission has the right to regulate programming during emergencies. Foreign television transmissions are unregulated and available through satellite antennas. The four largest newspapers, all privately owned, regularly report on human rights abuses, particularly those involving the JCF. Foreign publications are widely available.

The Government does not restrict academic freedom.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for these rights, and the Government respects them in practice.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government respects this right in practice.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the authorities respect them in practice.

The Government cooperates with the office of the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees. The Government provides first asylum, and provided it to approximately 40 persons in 1994. Similar but smaller numbers of first asylum cases, mainly Cubans and Haitians, were accepted in 1995 and 1996, but none have been accepted since. The Government established a committee and formal procedures to review claims to refugee status. This committee has denied all claims to refugee status by Cubans and Haitians who have arrived in Jamaica since 1994.

There were no reports of forced return of persons to a country where they feared persecution.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercise this right in periodic elections held on the basis of universal suffrage. All citizens age 18 and over have the right to vote by secret ballot. However, voters living in so-called garrison communities, which are located in inner-city areas dominated by one of the two major political parties, face substantial impediments to the free exercise of their right to vote. During the 1997 general election campaign, both international and local observer groups concluded that, although the process was significantly less violent than recent election campaigns, problems persisted in the garrison communities. These problems included intimidation of party agents and voters of nondominant parties and restrictions on the movement of voters and election workers. Some areas are so dominated by one party that the polls

simply closed early and vote counts were taken that resulted in 100 percent (or nearly 100 percent) of the votes being awarded to the dominant party. These problems persisted in the December 1997 election, despite the best efforts of the security forces, which were credited with controlling violence, such as the beating of voters, and reducing election malpractice, such as the theft of ballot boxes from polling places.

There are no legal restrictions on the participation of women in politics. Women hold about 13 percent of all political offices and 30 percent of the senior civil service positions. Two of the 16 cabinet members are women, as is the PNP General Secretary.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of human rights groups operate without government restriction, investigating and publishing their findings on human rights cases. In July the Jamaica Council for Human Rights reorganized under a new name, the Independent Jamaica Council for Human Rights (IJCHR), and remains the country's only formal organization concerned with all aspects of human rights. The IJCHR attracted substantial international donor funds, which alleviated some of the resource constraints that hampered it in the past. Government officials are generally cooperative and responsive to the views of human rights organizations.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Constitution prohibits discrimination on grounds of race, place of origin, political opinions, color, creed, or sex. The Government largely enforces these prohibitions in practice, except for widespread discrimination on the basis of political opinion in the distribution of scarce governmental benefits, including employment, especially in the garrison communities (see Section 3).

Women

In practice women suffer from economic discrimination, sexual harassment in the workplace, and social and cultural traditions that perpetuate violence against women, including spousal abuse. The Domestic Violence Act of 1995 came into effect in May 1996. It provides additional remedies for domestic violence, including restraining orders and other noncustodial sentencing. Violence against women is widespread, but many women are reluctant to acknowledge or report abusive behavior, leading to wide variations in estimates of its extent.

The Constitution and the 1975 Employment Act accord women full equality. The Bureau of Women's Affairs in the Ministry of Labor oversees programs to ensure the legal rights of women. These programs have had limited effect but have raised the awareness of problems affecting women. In June 1996, the Government established a steering committee, charged with creating a Commission on Gender and Social Equity. The committee forwarded its recommendations to Parliament, which accepted them; Parliament continued to discuss methods of implementation at year's end.

A number of active women's rights groups exist. They are concerned with a wide range of issues, including employment, violence against women, political representation, and the image of women presented in the media. Their effectiveness is mixed, but the groups were successful in advocating enactment of the Domestic Violence Act.

Children

The Government is committed to improving children's welfare. The Ministry of Education, Youth, and Culture is responsible for implementation of the Government's programs for children.

The Juvenile Act of 1951 deals with several areas related to the protection of children, including the prevention of cruelty, a prohibition on causing or allowing juvenile begging, the power to bring juveniles in need of care or protection before a juvenile court, the treatment of juvenile offenders, the regulation and supervision of children's homes, and restrictions on employment of juveniles. In 1996 the visiting Executive Director of the United Nations Children's Fund (UNICEF) said the Government had done very well in its efforts to improve the welfare and survival of children.

People With Disabilities

No laws mandate accessibility for people with disabilities. Several government agencies and nongovernmental organizations provide services and employment to various groups of disabled citizens. In January the Prime Minister appointed the first blind member of the Senate, an action that is expected to raise the parliamentary profile of issues affecting disabled persons.

Section 6 Worker Rights

a. The Right of Association

The law provides for the right to form or join a trade union, and unions function freely and independently of the Government. The Labor Relations and Industrial Disputes Act (LRIDA) defines worker rights. There is a spectrum of national unions, some of which are affiliated with political parties. Approximately 15 percent of the work force is organized.

The LRIDA neither authorizes nor prohibits the right to strike, but strikes do occur. Striking workers can interrupt work without criminal liability but cannot be assured of keeping their jobs. Workers in 10 broad categories of "essential services" are prohibited from striking, a provision the International Labor Organization (ILO) has repeatedly condemned as overly inclusive. The Government did not declare any strikes illegal during the year.

Unions maintain a wide variety of regional and international affiliations.

b. The Right to Organize and Bargain Collectively

The Government rarely interferes with union organizing efforts. Judicial and police authorities effectively enforce the LRIDA and other labor regulations. All parties are firmly committed to collective bargaining in contract negotiations, even in some nonunion settings. An independent Industrial Disputes Tribunal (IDT) hears cases where management and labor fail to reach agreement. Any cases not resolved by the IDT pass to the civil courts. The IDT generally handles 35 to 40 cases each year. Most are decided within 90 days, but some take longer to resolve due to the complexity of the dispute or delays requested by the parties. The LRIDA prohibits antiunion discrimination, and employees may not be solely for union membership. The authorities enforced this law effectively.

Domestic labor laws apply equally to the "free zones" (export processing zones). However, there are no unionized companies in any of the 3 zones--established in 1972, 1985, and 1988--that employ 10,797 workers. Organizers attribute this circumstance to resistance by foreign owners in the zones to organizing efforts, but attempts to organize plants within the zones continue. Company-controlled "workers' councils" handle grievance resolution at most free zone companies, but do not negotiate wages

and conditions with management. Management determines wages and benefits within the free zones; these are generally as good as or better than those in similar industries outside the zones. The Ministry of Labor is required to perform comprehensive factory inspections in the free zones once each year, and actually performs them at 6- to 9-month intervals. There were no reports of substandard or unsafe conditions in the free zone factories.

c. Prohibition of Forced or Compulsory Labor

The Constitution does not specifically address the matter of forced or compulsory labor, but there were no reports that this practice exists.

d. Status of Child Labor Practices and Minimum Age for Employment

The Juvenile Act provides that children under the age of 12 shall not be employed except by parents or guardians, and that such employment may only be in domestic, agricultural, or horticultural work. Enforcement, however, is erratic. While the Constitution does not prohibit forced or bonded labor by children (see Section 6.c.), such practices were not known to occur. Children under the age of 12 peddle goods and services on city streets, but there is no evidence of widespread illegal employment of children in other sectors of the economy. The Educational Act stipulates that all children between 6 and 11 years of age must attend elementary school. Industrial safety, police, and truant officers are charged with enforcement. Under current economic circumstances, however, thousands of children are kept home to help with housework and avoid school fees. A 1994 UNICEF report stated that 4.6 percent of children below the age of 16 worked to help support their households.

e. Acceptable Conditions of Work

The minimum wage, raised from \$15.00 (J\$500) to \$22.50 (J\$800) per week in 1996, is widely considered inadequate to provide a decent standard of living for a worker and family. Most salaried workers are paid more than the legal minimum. Work over 40 hours per week or 8 hours per day must be compensated at overtime rates, a provision that is widely observed.

The Labor Ministry's Industrial Safety Division sets and enforces industrial health and safety standards, which are considered adequate. Industrial accident rates, particularly in the bauxite and alumina industry, remained low. Public service staff reductions in the Ministries of Labor, Finance, National Security, and the Public Service have contributed to the difficulties in enforcing workplace regulations. The law provides workers with the right to remove themselves from dangerous work situations without jeopardy to their continued employment if they are trade union members or covered by the Factories Act. The law does not specifically protect other categories of workers in those circumstances.

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