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## 1999 Country Reports on Human Rights Practices

Released by the Bureau of Democracy, Human Rights, and Labor  
U.S. Department of State, February 25, 2000

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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. In 1998 annual per capita income was \$2,440, but this figure is misleading as there is a large and widening gap between the wealthy and the impoverished.

The Government generally respects the human rights of its citizens; however, serious problems remained in several areas. Members of the security forces committed extrajudicial killings and beatings and carried out arbitrary arrests and detentions. Although the Government moved effectively to punish some of those involved, continued impunity for police who commit abuses remains a problem. Prison and jail conditions remained poor; overcrowding, brutality against detainees, poor sanitary conditions, and

inadequate diet are problems. The judicial system was overburdened, and lengthy delays in trials were common. Violence and economic discrimination against women remained problems. Child labor is a problem. Mob violence against those suspected of breaking the law also remained a problem.

## **RESPECT FOR HUMAN RIGHTS**

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

#### a. Political and Other Extrajudicial Killing

There were no reports of political killings.

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 151 persons 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, longstanding 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 U.N.-approved language on basic principles on the use of force and firearms by law enforcement officials.

From April 19 to 21, there were 3 days of island-wide protests following a substantial increase in the tax on various petroleum products. The protests were mainly peaceful; some involved blocking roads, and some persons took advantage of the situation to loot businesses and to stone passing vehicles. In general the security forces acted with restraint and professionalism in the course of arresting 152 persons, mainly for looting; however, during the disturbances the police killed 7 persons and wounded 5 others. Although the majority of those killed and wounded were alleged looters, one of those shot and killed was an off-duty JDF soldier, who reportedly was trying to protect a child from gunfire and was shot by police despite allegedly identifying himself as a soldier. At year's end, this case was awaiting action by the public prosecutor's office, which had not yet brought charges against anyone for killing the soldier.

At year's end, the police still had not yet made public the results of their investigation into the August death of a 26-year-old Kingston man, allegedly suffering from clinical depression, whom nine soldiers and four policemen beat severely when he tried to walk through a police barricade during a curfew. Police arrested the man, who they allege pushed a policeman and tried to take his rifle. He later died from peritonitis caused by the beating. The case led local human rights groups to demand that the law be changed to allow relatives and their representatives to observe the post mortems of persons killed by the security forces. Initially, the Government tried to bar an independent pathologist from observing the deceased man's autopsy. As a result of an independent autopsy paid for by a local human rights nongovernmental organization (NGO), a coroner's inquest was convened. On December 22, an 11-person coroner's jury returned a 10-to-1 verdict that the death was manslaughter. The record was forwarded to the Public Prosecutor's office for possible prosecution of the security force members who conducted the beating.

Another case that received national publicity involved the police firing on a taxi carrying

passengers in Kitson Town in June. The police killed the driver--a district constable--and injured one of the passengers. It is not clear why police fired on the car, but local human rights activists say that the police acted under the mistaken belief that the taxi contained someone they wanted. The incident triggered a violent protest by the Kitson Town community and resulted in the arrest of 26 persons and the burning of 2 police cars. The results of the police investigation were sent to the Public Prosecutor's office for action.

Vigilantism, involving spontaneous mob executions in response to crime, continued to be a problem. There were 9 vigilante killings during the year, compared with 16 in 1998, and 16 in 1997. 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.

In December 1998, 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 criticized the excessive use of force by police in Hopewell, Hanover, who shot six persons who were demonstrating against the substandard roads and water supply. Although the authorities initially charged three policemen with unlawful wounding, in December 1998, the court dismissed the case for lack of prosecution. The Director of Public Prosecutions could have appealed the dismissal, but in May he decided not to do so.

A Human Rights Watch (HRW) report published in July detailed frequent and credible allegations of police abuse in lock-ups, including severe beatings, mock executions, and rape. The Government did not deny the report's allegations (and one government Minister admitted that the situation did not differ much from that described in a 1994 HRW report). Human Rights Watch noted that the Government responded quickly to remove some children from lockups; however, HRW also noted that the Government must undertake a systematic effort to curb police abuse effectively and bring sanctions against officers who commit abuses. The Government has not demonstrated this type of institutional commitment to reform.

There were reports that police sexually harassed women (see Section 5).

Prison conditions remained poor; overcrowding, inadequate diet, poor sanitary conditions, and insufficient medical care are typical. The July HRW report also criticized the conditions in which juveniles are held. The report detailed many cases in which juveniles were detained improperly, not given access to legal representation, and held in adult lock-

ups where they were victimized by adult prisoners. The conditions in these lock-ups are harsh, with severe overcrowding, intermittent meals, poor lighting, ventilation, and sanitation.

In general the Government allowed private groups, voluntary organizations, international human rights organizations, and the media to visit prisons and monitor prison conditions.

#### d. Arbitrary Arrest, Detention, or Exile

The police continued to arrest and detain citizens arbitrarily. 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 Independent Jamaica Council for Human Rights state that the practice continues. This was confirmed in July, when police rounded up 52 men from the Grant's Pen area of Kingston. The men reportedly were fingerprinted, photographed, and then released without being charged.

A July case involving the detention and forced transport of 32 persons (many of whom were reportedly mentally ill), who were living on the streets in a Montego Bay business district, triggered a national debate about police action and the dignity of citizens. These persons were rounded up during the night; some allegedly were bound and sprayed with pepper spray. They then were transported in an open truck belonging to the St. James Parish Council (the local government in Montego Bay) and released in a rural area of a neighboring parish. In July the authorities suspended five policemen from duty pending an investigation, which failed to uncover sufficient evidence for the Public Prosecutor to charge anyone with a crime. Upon further investigation, in October the authorities charged three persons (including a police inspector and two public sector employees) with false imprisonment and assault. However, few believe that only three persons were involved; it is believed widely that the police were involved and acted at the behest of Montego Bay merchants and with the acquiescence of the local government, and that large sums of "hush money" were paid as part of a coverup; both groups denied any knowledge or involvement. The local media severely criticized the apparent coverup, with one talk show going so far as to offer a \$6,250 (J\$250,000) reward for information leading to the identification of the parties responsible.

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 once a week into the welfare of each person listed by the JCF as 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 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," and 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 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 freedom of assembly, and the Government respects this right in practice.

Widespread public protests over gasoline price increases in April led to the closure of businesses, as demonstrators resorted to violence. The police killed and wounded a number of persons (see Section 1.a.).

The Constitution provides for freedom of association, and the Government respects this right 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 provides asylum or refugee status in accordance with the provisions of the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol.

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 the 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; however, they are underrepresented. 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. The Independent Jamaica Council for Human Rights (IJCHR) remains the country's only formal organization concerned with all aspects of human rights. However, a new human rights group, Jamaicans for Justice, was created in August in response to widespread concern about police impunity. The new NGO focuses on the issues of extrajudicial killing and excessive use of force by the police. 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

Social and cultural traditions perpetuate violence against women, including spousal abuse. 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 Domestic Violence Act of 1995 came into effect in 1996. It provides remedies for domestic violence, including restraining orders and other noncustodial sentencing.

There were anecdotal reports that the police sexually harassed women. One case of this type involved a young woman who was protesting peacefully the April gas tax increase and allegedly was arrested for no apparent reason. The incident, which was videotaped and widely broadcast, angered women throughout the country and contributed to the large turnout for the Women's March for Justice, an event that received international media coverage.

Women suffer from economic discrimination and sexual harassment in the workplace. 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 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.

There is no societal pattern of abuse of 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. However, resource constraints have resulted in juveniles "in need of care or protection" being incarcerated in police lock-ups with adults. The Government has not made resources available to construct additional facilities for juveniles (see Section 1.c.).

### People with Disabilities

No laws mandate accessibility for people with disabilities. Several government agencies and NGO's provide services and employment to various groups of disabled citizens. In January 1998, the Prime Minister appointed the first blind member of the Senate, an action that is expected to raise the parliamentary profile of problems affecting disabled persons. In July an incident in which police rounded up 32 persons (many of whom reportedly were mentally ill) triggered a national debate over police action (see Section 1.c.).

### 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) 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 committed firmly 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 fired 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 10,039 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 for either adults or children, 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. However, enforcement is erratic. 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. However, due to difficult economic circumstances, thousands of children are kept home to help with housework and avoid school fees. A 1994 report by the U.N. Children's Fund (UNICEF) stated that 4.6 percent of children below the age of 16 worked to help support their households. In December the Minister of Labor, Welfare, and Sport made a widely reported speech in which she stated that 23,000 children were engaged in child labor. While the Constitution does not prohibit forced or bonded labor by children, such practices were not known to

occur (see Section 6.c.).

e. Acceptable Conditions of Work

The minimum wage, raised from \$20 (J\$800) to \$30 (J\$1,200) per week in August, 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 observed widely.

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.

f. Trafficking in Persons

The law does not prohibit specifically trafficking in persons; however, there are laws against assault and fraud, and other laws establish various immigration and customs regulations. There were no reports that persons were trafficked in, to, or from the country.

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