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2009 Human Rights Report: Jamaica

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2009 Country Reports on Human Rights Practices

March 11, 2010

Jamaica is a constitutional parliamentary democracy with a population of approximately 2.8 million. In generally free and fair elections in September 2007, the Jamaica Labour Party (JLP) won 32 of the 60 seats in the House of Representatives, and JLP leader Bruce Golding was sworn in as prime minister. Civilian authorities generally maintained effective control of the security forces.

While the government generally respected the human rights of its citizens, there were serious problems in some areas, including unlawful killings committed by members of the security forces, abuse of detainees and prisoners by police and prison guards, poor prison and jail conditions, impunity for police who committed crimes, an overburdened judicial system and frequent lengthy delays in trials, violence and discrimination against women, trafficking in persons, and violence against person based on their suspected or known sexual orientation.

RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

While the government or its agents did not commit any politically motivated killings, there were reliable accounts that security forces committed unlawful or unwarranted killings during the year.

According to official statistics, there were more than 200 shooting cases involving the police as of October 31, resulting in 241 fatalities for the entire year. Sources indicated that many police killings were unreported, with police meting out the justice they see as unavailable through the judicial system.

In most shooting incidents, police alleged that the victims were carrying firearms and opened fire on them. In many cases, however, eyewitness testimony contradicted the police accounts. In other cases, allegations of "police murder" were suspect, because well-armed gangs trafficking in weapons and narcotics and running lottery scams controlled many inner-city communities and were often better equipped than the police force.

The Jamaica Constabulary Force (JCF) employed lethal force in apprehending criminal suspects on many occasions. Violent crime was rampant, and there were a record 1,680 murders reported through December. The minister of national security referred to citizens killed by police as "collateral damage" and vowed to "use every effort" to defend police officers who were "hailed before the court like common criminals." However, it can take many years to bring police officers to trial for unlawful killings. Although there was progress during the year in bringing some cases to trial, there were no convictions, and no police officer accused of human rights violations has been convicted since 2006. As of May 15, 1,040 investigations into complaints against police officers for a variety of crimes remained incomplete.

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The JCF's Bureau of Special Investigations (BSI) investigated all police killings and when appropriate forwarded some to the Director of Public Prosecutions (DPP) for prosecution. For example:

On January 5, Paul Brown was driving a bus and allegedly hit a policeman's personal motor car. The policeman stopped him, an argument ensued, and Brown was shot in the face. The policeman was charged with murder, and his case remains before the court.

The BSI was investigating: the January 7 police killing of Anthony Nelson, a security guard, at Nelson's workplace; the April 5 killing of 16-year-old Hussein McCormack, found in a locked department store; the May 3 killing of Ramon Hopkins, whom eyewitnesses described as ordered off a motorcycle and then executed in a kneeling position with his hands behind his head; and the May 16 killing of Dane Daley, shot and killed by armed men in denim suits who were police officers.

On December 9, police shot and killed entertainer Robert Hill at his Kingston home in what police accounts called a "shootout." Prior to his death, Hill had reportedly told the *Sunday Herald* and other journalists that he feared for his life, and that police had been stalking and intimidating him after a crash with a police car in July. After the crash, he said police threatened him and beat him at Half Way Tree Police Station and at his home. The human rights group Jamaicans for Justice said "the young man did everything that a citizen could possibly do to highlight his case." At year's end the BSI was investigating the incident.

In February the DPP brought murder charges against Christopher Thompson, the police officer accused of murdering Randeem Hall in 2008. A December court date was changed to January 18, 2010, to allow time to locate witnesses. Authorities set a trial date of December 14 for the police officers charged in the 2008 murder of Carlton Grant, the 17-year-old son of dancehall artist Spragga Benz. The BSI completed the investigation into the killing of Jehvanie Robinson in 2008 and sent the case to the DPP, and the BSI was still investigating the 2008 deaths of Fabian Wray and Randall Richards.

The BSI completed its investigation into the 2007 police shooting deaths of Dexter Hyatt and Tian Wolfe and submitted the case to the DPP for a decision whether to bring charges.

In December 2007 the DPP charged four policemen, Noel Bryan, Phillip Dunstan, Omar Miller and Clayton Fearon, with murder in the 2007 death of Andre Thomas. Their trial was set to begin on April 26, 2010.

An inquest into the 2005 shooting death of Jeff Smellie started in November 2007 and was set to continue on January 11, 2010. Authorities had not yet brought to trial the police officers involved in the 2005 killings of Nicholas Weir and Donald Allen.

On June 3, authorities arrested Loui Lynch, Paul Edwards, and Victor Barrett, policemen involved in the 2004 abduction and killing of Kemar Walters and Oliver Duncan, and charged them with murder. Their trial began on December 11.

While it can take years for police officers charged with killings to reach trial, appeals can also take years to process, as exemplified by the Janice Allen case. In 2000 a group of policemen allegedly shot and killed 12-year-old Janice Allen on a

Kingston street. Authorities eventually charged one police officer, Rohan Allen, with her murder, but a court later acquitted the defendant, and the DPP chose not to prosecute him again. Janice's mother pursued a series of appeals, including an application for judicial review by the Privy Council of the DPP's decision. The Privy Council ruled in her favor and ordered the DPP to reconsider its decision not to prosecute Rohan Allen again. The hearing at which the DPP will consider prosecuting Rohan Allen a second time is scheduled to take place in February 2010.

b. Disappearance

There were no reports of politically motivated disappearances.

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

Although the law prohibits such practices, reports of physical abuse of prisoners by guards continued, despite efforts by the government to remove abusive guards and improve procedures.

When prisoners raised allegations of abuse by correctional officers, the charges were first reviewed by corrections officials, then by an inspector from the Ministry of National Security, and finally by the police. Authorities file charges against correctional officers for abuse if evidence is found to support the allegations. However, official complaints and investigations were infrequent.

Prison and Detention Center Conditions

Prison conditions remained poor, primarily due to overcrowding and poor sanitary conditions. Men and women were incarcerated in separate facilities under similar conditions. Cells in some facilities had little natural light and inadequate artificial light. Hunt's Bay Lockup held prisoners in a cage-like structure open to the rain and sun and the curious gazes of passers-by. The women's prison, Fort Augusta with about 200 inmates, had no indoor water supply. Inmates had to fetch water in containers they provided themselves from a central spigot or well. Inmates who did not own a container could not bathe.

Prison food was poor, and wardens were observed serving themselves generously with whatever meat was available, leaving only leftover gravy for the inmates. Mattresses were not provided; inmates slept on the concrete floors. Those with access to funds and outside contacts were permitted to purchase thin foam mattresses that often became infested with bedbugs. Ringworm was a common malady.

At the Armadale Juvenile Correctional Center where 50 girls, ages 13 to 16, were held in severely overcrowded conditions, lockdown was a common punishment for unruly behavior and other infractions. Although the use of lockdown was supposed to be limited to 24 hours, inmates reported lockdowns that lasted more than a month. During lockdown the girls were not permitted to use the bathrooms; instead, buckets or newspapers were used and removed each morning.

On May 22, fire broke out in the Armadale facility when police threw a tear gas canister into the locked dormitory. It ignited a foam mattress, and five girls died in the flames. Many more were injured, and two more girls died in the hospital from their injuries. The lack of sufficient or operable fire extinguishers led directly to the deaths of the inmates. Reports concluded that supervision and staffing was grossly inadequate, with staff often working double shifts. Inmates reported that they were forced to eat their meals with their hands as no eating utensils were provided. The facility was closed immediately after the fire.

Prison medical care was also poor, primarily a result of having only three full-time doctors, one full-time nurse, and one

psychiatrist to cover 12 facilities (eight adult, four juvenile) with almost 5,000 inmates across the island. One prisoner died after breaking a leg; prison staff claimed there was no vehicle available to transport him to the hospital, and by the time he was brought in, complications from diabetes had caused infection and the prisoner died. Other prisoners in need of dentures and unable to eat the prison food encountered difficulties in gaining access to a dentist. A doctor who treated the girls at Armadale made repeated requests to have two sexually active, HIV-infected inmates removed, to no avail. She also reported that many inmates at Armadale were suicidal, homicidal, or suffered from psychosis and received no treatment.

Although the law prohibits the incarceration of children in adult prisons in most cases, some juveniles as young as 13 years old were held in adult jails because there were no juvenile facilities with adequate security. Authorities jailed juveniles convicted of murder in an adult facility, but police were prohibited from holding children under 14 in adult police detention. Nonviolent youth offenders were under the jurisdiction of the social services agency and were generally sent to unsecured halfway houses (called "places of safety" or "juvenile remand centers") if they were removed from their homes.

Authorities moved girls to the women's prison from other facilities due to incorrigibly violent behavior. After the closure of Armadale, nine of those girls were moved to the notorious Horizon maximum-security remand center where the island's most violent male offenders are held. In October the Office of the Children's Advocate announced that it would investigate reports of children being held in police lock-ups.

Most pretrial detainees were held in police custody either in police stations or in remand centers, generally separate from convicted prisoners. Convicted prisoners were held in police custody only if they were in the process of being moved to a prison facility.

In general the government allowed private groups, voluntary and religious organizations, local and international human rights organizations, and the media to visit prisons and monitor prison conditions, and such visits took place during the year.

d. Arbitrary Arrest or Detention

The law permits the arrest of persons "reasonably suspected" of having committed a crime. While the law prohibits arbitrary arrest, security forces performed "cordon and search" operations, during which they detained persons and took them into custody. Although police can legally hold a person for 24 to 48 hours before charging or releasing them, the police reportedly held individuals until they determined whether they could charge them with anything, sometimes for as long as five weeks.

Role of the Police and Security Apparatus

The JCF has primary responsibility for internal security and is assisted by the Island Special Constabulary Force. The Jamaica Defence Force (JDF) is charged with national defense, maritime narcotics interdiction, and JCF support. The JDF has no mandate to maintain law and order and no powers of arrest (with the exception of the JDF coast guard in the maritime domain) unless so ordered by the prime minister. The Jamaica Regiment (JDF infantry forces) was detached as part of a joint internal security operation to assist the JCF in patrolling certain communities. The prime minister occasionally authorized the JDF to cordon and search with the JCF. The Ministry of National Security oversees the JCF and the JDF.

The JCF is headed by a commissioner who delegates authority through the ranks to its constables. The force maintains divisions focusing on community policing, special response, intelligence gathering, and internal affairs. The Anti-Corruption Branch, headed by a British police officer hired as assistant commissioner of police, has responsibility for addressing

corruption in the force, and some recent improvements have been noted. However, the corruption and impunity within the force remained despite a notable increase in the number of arrests of officers for corruption.

In January the JCF launched a toll-free hotline through which the public could anonymously report corrupt activities of both police and customs officials. In March the police commissioner uncovered a major corruption scheme involving officers at the Mount Salem Police Station. Beginning in October 2008, officers recruited a civilian to pose as a member of the force and participate in a lottery scam to defraud unsuspecting citizens. Undetected for six months, the fake officer bore firearms and participated in regular police activities.

As of December, authorities had arrested 60 JCF officers on corruption charges. Of the 56 police officers arrested in 2008 on corruption-related charges, the courts convicted three persons, dismissed 15 cases, and had 38 trials pending. Human rights groups identified systematically poor investigative procedures and weak oversight mechanisms as factors contributing to corruption. Another major factor in police corruption was the very low salaries paid to JCF members, in contrast to JDF soldiers, who have the reputation of being incorruptible and earn substantially higher salaries plus room and board for themselves and their families.

In December a court found former police superintendent Harry Daley guilty of corruption, and a judge sentenced him to 18 months of hard labor. The charges against Daley stemmed from allegations that he had collected protection money since 2007 from a businessman in St. Catherine's. He was to face trial on five other counts of corruption in January 2010.

The JCF conducted administrative and criminal investigations into all incidents involving fatal shootings by police. The JCF's BSI addressed police shootings, but no officer was found criminally liable during the year. The BSI, unable to keep up with its caseload, had a backlog of approximately 960 cases with only 21 investigating officers to cover more than 30 allegations of excessive force per month. BSI supplements the civilian Police Public Complaints Authority, which oversees investigations by the other two bodies and also initiates its own investigations.

The JCF continued a community policing initiative to address the long-standing antipathy between the security forces and many poor inner-city neighborhoods. Through a recently established Community Safety and Security Branch, the JCF conducted targeted training of 200 officers in 38 communities, trained community safety officers, and assigned JCF officers to targeted schools as resource officers to stem school violence. These officers also served as liaisons between the students, faculty, parents, and police. The government bolstered these efforts through public education and by nominating deputy divisional commanders with responsibility to introduce community policing to all the communities within their division.

Three civil society organizations—Jamaicans for Justice, the Independent Jamaican Council for Human Rights (IJCHR), and the local Amnesty International group—designed law enforcement and human rights training for JCF police cadets. The training sessions, approved by the police commissioner and the police academy commissioner, began in 2008 and continued during the year. Instructors from both within and outside the country conducted two 33-hour courses on the use of force, arrest and detention, and other best practices.

Arrest Procedures and Treatment While in Detention

Arrests normally require warrants signed by a police officer of the rank of station sergeant or higher; however, arrests may be made without warrants. Police often used the warrant as the first step in an investigation, in order to search for evidence. The law requires detained suspects to be charged or released within 24 to 48 hours of arrest, unless a justice of the peace or a resident magistrate grants a special waiver.

The law also requires police to contact duty counsel (a private attorney who volunteers to represent detainees at police stations and until cases go to trial) under the legal aid program, if requested by the detainee; however, authorities continued to wait until after detainees had been recognized in an identification lineup before contacting duty counsel for them. There was a functioning bail system, and detainees were provided with prompt access to family members.

Although the law requires police to present a detainee in court within a reasonable time period, in practice suspects were sometimes remanded for psychiatric evaluation, some for as long as three years when their cases were "lost in the system." Magistrates were required to inquire at least once a week into the welfare of each person listed by the JCF as detained, but few did so in practice, especially in the busy Kingston/St. Andrew corporate area.

e. Denial of Fair Public Trial

Although the law provides for an independent judiciary, the judicial system relied entirely on the Ministry of Justice for all resources.

Trials in many cases were delayed for years, and other cases were dismissed because files could not be located or had been destroyed. Some trials suffered as a result of antiquated rules of evidence as well as lack of equipment for collecting and storing evidence. For example, drug evidence collected in an arrest had to be stored in its entirety; samples or photographs were not acceptable. Storage facilities were inadequate and understaffed, so evidence went missing, rotted in the warehouse, or could not be located when needed.

The resident magistrate's courts, which handled more than 90 percent of the cases in the court system, continued operation of a night court in an effort to reduce the backlog of cases. The Supreme Court used mediation through the Dispute Resolution Foundation as an alternative to traditional trials, which alleviated some of the civil case backlog in that court. The resident magistrate's courts also used alternative dispute resolution in limited cases.

Some criminal trials were dismissed because witnesses failed to come forward as a result of threats, intimidation, or murder. Some of those who came forward qualified for the witness protection program, but many either refused protection or violated the conditions of the program. According to the JCF, no participant in the witness protection program who abided by the rules of the program was ever killed.

The court system includes justices of the peace, the resident magistrate's courts, the Supreme Court, which has unlimited jurisdiction in civil and criminal matters, and the Court of Appeal. Defendants have the right to appeal a conviction in any of the two trial courts (resident magistrate's courts and the Supreme Court) to the Court of Appeal, the highest court in the country, and ultimately to the Judicial Committee of the Privy Council in London, the final court of appeal.

Trial Procedures

Most trials are public and adjudicated by a judge alone. More serious criminal offenses are tried with juries in circuit court at the Supreme Court level. There was a persistent problem seating enough jurors for cases, which contributed to the extensive judicial backlog. Citizens were reluctant to serve as jurors for fear of retribution.

The constitution provides that defendants are presumed innocent and have the right to counsel and to confront witnesses against them. Legal Aid attorneys were available to defend the indigent, except those charged with certain offenses under the Money Laundering Act or Dangerous Drugs Act and in the case of offenses in which the defendant is not liable to incarceration. The Office of the Public Defender (OPD) may bring cases for persons who have had their constitutional rights violated but cannot prosecute or otherwise appear in court. Although the OPD contracted with private attorneys to

represent indigent clients, funds were insufficient to meet the demand, and such attorneys sometimes requested payment from clients.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

There is an independent and impartial civil judiciary process. Complainants may bring human rights abuse cases for civil remediation to the courts, but awards can be difficult to collect. The government is required to undertake pretrial negotiations or mediation in an attempt to settle out of court, but the government often did not do so. When there were settlements, whether in or out of court, the government often lacked the funds to pay, resulting in a backlog of awards.

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

Although the constitution prohibits such actions, the Constabulary Force Act gives security personnel broad powers of search and seizure. This act allows search without a warrant of a person on board or disembarking from a vehicle, ship, or boat if a police officer has good reason to be suspicious. In practice the police conducted searches without warrants.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and of the press, and the government generally respected these rights in practice.

The independent media were active and expressed a wide variety of views without restriction. However, some local media professionals expressed concern that the country's libel laws limited their freedom of expression. Specifically, news outlets reported the need to self-censor investigative reports because of the potential for courts to award high damages in cases of defamation. Some journalists also stated that they censored their political coverage based on fear of violent reprisals. The Press Association of Jamaica (PAJ) and the Media Association of Jamaica (MAJ) continued to advocate changes in the libel laws, which the PAJ president described as "oppressive."

Prime Minister Golding, when he was opposition leader, called for a review of the country's old libel and defamation laws to allow the media more freedom to report on public officials. Golding argued that since such public officials are to be held to a higher standard than the average citizen, they should therefore not be subject to the same protection under the law. The June parliamentary session considered several issues related to the libel and defamation laws, but did not complete its review. The MAJ and the PAJ were expected to reconvene with the Joint Selection Committee of Parliament to come to a compromise.

Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. According to the International Telecommunication Union, there were 57 Internet users per 100 inhabitants in 2008.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom. With respect to cultural events, the Jamaica Broadcasting Commission (JBC) sought to regulate and limit the dissemination of certain popular music deemed inconsistent with public morality. Despite public protest early in the year, the commission banned certain lyrics deemed inappropriate for broadcast, including dancehall songs referring to the **simulation** of aggressive or violent sex. The commission also banned editing methods used to expunge lyrics thought unfit for broadcast, which protesters interpreted as an outright attack on dancehall music. The commission stated that its directive was aimed at "all types of musical broadcast output, including soca **music** and carnival music."

b. Freedom of Peaceful Assembly and Association

The law provides for freedom of assembly and association, and the government generally respected these rights in practice.

c. Freedom of Religion

The constitution provides for freedom of religion, and the government generally respected this right in practice.

Societal Abuses and Discrimination

Members of the Rastafarian community complained that law enforcement officials unfairly targeted them. However, it was not clear whether such complaints reflected discrimination on the basis of religious belief or were due to the group's illegal use of marijuana as part of Rastafarian religious practice.

There was a small practicing Jewish congregation in the country. There were no reports of societal abuses or discrimination, including anti-Semitic acts.

For a more detailed discussion, see the *2009 International Religious Freedom Report* at www.state.gov/g/drl/rls/irf.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.

The law prohibits forced exile, and there were no reports that it occurred.

Protection of Refugees

Although the country is a party to the 1951 Convention relating to the Status of Refugees and its 1967 protocol, its laws do not provide for the granting of asylum or refugee status. However, the government has established a system for processing and providing protection to refugees. In practice the government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened, and it handled refugee or asylum cases administratively.

The government generally cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in assisting refugees and asylum seekers.

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

The law provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic elections held on the basis of universal suffrage.

Elections and Political Participation

All citizens age 18 and over have the right to vote by secret ballot. However, in recent elections voters living in "garrison communities," inner-city areas dominated by one of the two major political parties, often faced substantial influence and pressure from politically connected gangs and young men hired by political parties to intimidate supporters of the opposing political party. These factors impeded the free exercise of their right to vote. According to Amnesty International, at least nine persons died as a result of election-related violence in the 2007 campaign period.

In the 2007 elections, after a legal challenge in one district, authorities determined that the JLP won 32 out of 60 seats in the House of Representatives. People's National Party (PNP) challengers filed four cases against elected parliamentarians who held dual nationalities, citing a constitutional provision that bars from office those who have "sworn allegiance to a foreign power." Although three winning candidates subsequently renounced their foreign citizenship, the Supreme Court ruled that if the candidate had held dual citizenship at the time of nomination for office, he or she was ineligible to hold a seat in Parliament. In three of the four cases heard thus far, the Supreme Court ordered by-elections, each of which was won by the incumbent JLP parliamentarian after renouncing dual nationality. In response to the PNP challenges, the JLP threatened to reciprocate against PNP parliamentarians holding dual citizenship, with one such challenge filed in October. At year's end the case continued.

There were eight women elected to the 60-seat House of Representatives and three women appointed to the 21-seat Senate. Two of the 16 cabinet ministers were women.

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption, but the government did not implement the law effectively, and officials engaged in corrupt practices with impunity. The World Bank's worldwide governance indicators reflected that government corruption was a serious problem. A 2007 media poll and a survey by the Caribbean Policy Research Institute found that the public believed more than half of the JCF was corrupt and considered corrupt nearly 50 percent of all government employees, particularly parish council members and customs officers.

In February 2008 authorities arrested Kern Spencer, the former junior minister of energy, mining, and telecommunications, on charges of fraud, corruption, and money laundering in connection with a scandal involving payment of more than J\$114 million (\$1.7 million) to distribute and install light bulbs donated by Cuba. At year's end Spencer's trial continued and was set to resume in January 2010.

Another major scandal led to the resignation in July of Joseph Hibbert, a JLP Member of Parliament and the junior minister in the Ministry of Transport and Works, following allegations of bribery. The former official was one of a dozen politicians who allegedly accepted bribes from the British bridge-building firm Mabey and Johnson. In September the firm pled guilty to foreign bribery charges following an investigation by the United Kingdom's Serious Fraud Office, alleging that it had paid Hibbert more than \$160,000 since 1999. Hibbert denied the charges and, despite a recommendation from the contractor general for charges of corruption and perjury, the former junior minister continued to hold his seat in Parliament.

In the North-East St. Catherine parliamentary by-election in June, PNP allegations of corruption prompted an investigation by the Office of the Contractor General (OCG). The PNP charged that the JLP had awarded state contracts to gain political advantage prior to the by-election. The OCG report apparently found "irregularities" in the award of public works contracts in the period before the election, but procurement guidelines are so vague that it was not clear if any illegality was involved. By year's end Parliament had not acted on the report.

Also in June authorities arrested two longtime Supreme Court clerks for breaching the Corruption Prevention Act. The employees, suspected of charging unsanctioned fees to expedite divorce petitions, awaited trial at year's end. In October authorities arrested an employee of the Inland Revenue Department on several counts including fraud and falsifying documents. The employee was accused of stealing J\$21 million (\$237,000) from the Finance Ministry.

The Corruption Prevention Act requires many government officials to file financial declarations; however, reports indicated that more than 5,000 civil servants failed to file or filed late or incomplete financial declarations required under the act. The DPP's office has the authority to identify noncompliant officials and send their cases to the magistrate's office, but the government did not levy any fines on officials during the year. The Ministry of Justice and the Attorney General's Office have overall responsibility to combat official corruption, but the various ministries are responsible for their own investigations.

The Access to Information Act was designed to "reinforce and give further effect to the fundamental democratic principles vital to governmental accountability, transparency and public participation in national decision making." According to media accounts, however, these standards were not routinely met. The MAJ asserted that one request by the *Gleaner* newspaper to the National Land Agency for documents pertaining to information on the value and total acreage of state land was ignored for six months. After the *Gleaner* made another request for the same information, an additional four months passed before access to the documents was finally granted.

Not only was access to information on occasion unreasonably delayed, it was sometimes categorically denied. In one example, the media asked the Office of Cabinet for access to documents outlining the number of meetings held by the new cabinet, as well as the number of members attending each one. This request was denied, and only after the minister of information intervened was access to the information granted. The act contains no sanctions or penalties to discourage the lack of response to applications.

Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups and other international bodies generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials often were cooperative and responsive to their views.

The IJCHR was the country's only formal organization concerned with all aspects of human rights. The NGO Jamaicans for Justice focused on the issues of police impunity, extrajudicial killings, and excessive use of force by the police. Many news editorials, as well as the minister for national security, criticized these groups, fuelling a public misperception that the organizations advocated only on behalf of accused criminals.

The Public Defender's Office provides services on behalf of those who charged that their constitutional rights were violated. The office contracted private attorneys to bring suits against the government on behalf of private citizens.

The government was generally supportive of international human rights concerns and humanitarian NGOs, although there was cause for concern during the year. In May Member of Parliament and Minister for National Security Dwight Nelson unleashed a firestorm of controversy when, speaking before the Jamaican Police Federation, he seemed to signal government tolerance of police misconduct in referring to police shootings as "collateral damage" and promised sympathy and legal assistance to police officers accused in such instances. Nelson soon apologized for his statements but returned to the headlines later in the year when he told a crime forum that "there are times when you have to restrict rights to bring

back order and discipline" and criticized human rights groups "who make a lot of noise about civil liberties and human rights..."

Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination based on race, gender, place of origin, political opinions, color, or creed. The government generally enforced these prohibitions in practice, although there continued to be widespread discrimination on the basis of political opinion in the distribution of scarce governmental benefits, including employment, particularly in the garrison communities.

Women

Rape is illegal and carries a maximum penalty of 25 years' imprisonment. The 2009 Sexual Offenses Act criminalizes spousal rape. During the year victims reported 671 rapes, a decrease of 21 percent from 2008. NGOs believed the actual numbers were much higher, but no detailed statistics were available. The JCF rape investigative and juvenile unit, which was headed by a female deputy superintendent, handled sex crimes. Only partial information was available as to the number of prosecutions and convictions obtained. For the period January through July, there were 20 rape prosecutions and six convictions, not including figures from the circuit courts in the rural parishes.

Social and cultural norms perpetuated violence against women, including spousal abuse. Violence against women was widespread, but many women were reluctant to acknowledge or report abusive behavior, leading to wide variations in estimates of its extent. The law prohibits domestic violence and provides remedies including restraining orders and other noncustodial sentencing. Breaching a restraining order is punishable by a fine of up to J\$10,000 (approximately \$114) and six months' imprisonment. Police were generally reluctant to become involved in domestic issues, which led to cases not being pursued vigorously when reported. The Bureau of Women's Affairs (BWA) operated crisis hotlines and managed a public education campaign to raise the profile of domestic violence, while the NGO Woman Inc. operated a shelter that received some government funds.

Although the law prohibits prostitution, it was widespread, particularly in tourist areas. Trafficking in women for prostitution and sex tourism continued to be a problem.

There is no legislation that addresses sexual harassment, and the BWA reported that it had become a "disturbing problem." There were anecdotal reports of sexual harassment of women by the police as well as in the workplace, but few statistics were available. The BWA and NGOs such as Woman Inc. and Women's Media Watch believed that women often did not report such incidents because there was no legal remedy.

Couples and individuals had the right to decide the number, spacing, and timing of children, and had the information and means to do so free from discrimination. Access to information on contraception and skilled attendance at delivery were widely available. However, essential obstetric and postpartum care was often lacking. Missionaries of the Poor, a Kingston-based NGO, provided counseling and medical services to expectant mothers. Women and men were given equal access to diagnostic services and treatment for sexually transmitted diseases, including HIV.

Although the law accords women full legal equality, including equal pay for equal work, in practice women suffered from discrimination in the workplace and often earned less than their male counterparts. The BWA, reporting to the minister of development, oversaw programs to protect the legal rights of women. These programs had limited effect but raised awareness of problems affecting women. Women sought jobs and served in almost every occupation in both the public and private sectors.

There was an active community of women's rights groups, including Women's Media Watch, the Women's Political Caucus, the St. Peter Claver Women's Housing Cooperative, the Women's Construction Collective, the Sistren Theatre Collective, Woman Inc., and the Centre for Gender and Development Studies at the University of the West Indies. Among the major concerns of these groups were the protection of victims of sexual abuse, participation of women in the political process, and legislative reforms affecting women.

Children

Every person born in the country after August 5, 1962, is entitled to citizenship. Persons born or adopted outside the country to one or more Jamaican parents can claim citizenship, and those married to Jamaican spouses may also claim citizenship. There is universal birth registration.

Actual school attendance rates hovered around 64 percent due to the expense of school uniforms, lunch, and books, coupled with lost wages for not working on family farms or selling items on the street. To address this, the Ministry of Social Security established a program to provide stipends to pay for educational expenses. However, students must maintain an 85 percent attendance rate to qualify, resulting in underutilization of the program.

Under the Child Care and Protection Act, the Child Development Authority (CDA) in the Ministry of Health is responsible for implementation of the government's programs to prevent child abuse. The Office of the Children's Advocate (OCA) has broad responsibilities for reviewing laws, policies, practices, and government services affecting children; providing legal services and investigating complaints against the government; and publishing reports and issuing best practice guidelines concerning the rights or best interests of children. The Ministry of Education, in collaboration with the police, the CDA, and the OCA, maintained a "safe school zone" program.

In October the OCA reported it had received 365 complaints during the year and conducted some preliminary investigations while referring other cases to appropriate government institutions. The OCA intervened to have students reinstated in schools, assigned lawyers to represent children in court cases, and successfully sought bail for minors accused of committing crimes. OCA officials met with the commissioner of corrections to discuss the treatment of children in penal institutions. As a result of the OCA's advocacy, the Department of Correctional Services provided psychological assessments, medical examinations, and individual and group counseling to minors.

There was no societal pattern of abuse of children; however, there were numerous reports of rape and incest, particularly in inner cities. The law prohibits statutory rape, defined as sexual relations with a person under 16 years old, the minimum age for consensual sex. Penalties for sexual relations by an adult with a child between the ages of 12 and 16 is a misdemeanor punishable by not more than seven years in prison; if the victim is under 12, it is a felony punishable by up to life imprisonment. In a 2008 Reproductive Health Survey, almost half of young women reported that they had been pressured or forced into sexual intercourse at the time of their first sexual experience. NGOs reported that inner-city gang leaders and sometimes even fathers initiated sex with young girls as a "right." There were 498 cases of carnal abuse reported to the JCF, a decrease of 18 percent over the same period from 2008.

The government expressed concern about child abuse and acknowledged that incidents were underreported. The Task Force on Child Abuse, established by the prime minister's office in October 2008, coordinated the "Ananda Alert" child protection system to search for missing children. The CDA held training sessions to familiarize police officers with the rights of children and to prepare them to enforce the Child Care and Protection Act. The OCA and the Family and Parenting Center conducted a child protection audit and training to prevent child abuse victims from being revictimized and to facilitate court proceedings in victimization cases. The Child Abuse Registry recorded a significant increase in reported cases compared with 2008. The Child Care Protection Act places responsibility on all citizens to report suspected abuse, with a penalty of up to J\$500,000 (\$5,600) for failure to do so.

Child prostitution and trafficking for the purpose of sexual exploitation were problems, especially in tourist areas.

In July Parliament approved a child pornography bill, criminalizing commercial sexual exploitation of children. The law applies to the production, possession, importation, exportation, and distribution of child pornography and carries a maximum penalty of 20 years' imprisonment and a fine of J\$500,000 (\$5,600).

Trafficking in Persons

The law prohibits all forms of trafficking; however, persons were trafficked to, from, through, and within the country.

Most trafficking victims were poor women and girls, but also increasingly boys, who were trafficked from rural to urban and tourist areas for commercial exploitation. Women were reportedly trafficked from Asia, the Dominican Republic, Russia, and Eastern Europe, while some women and girls were trafficked to Canada, the United Kingdom, the United States, the Bahamas, and other Caribbean destinations. Children trafficked within the country may also be subjected to domestic servitude and forced labor.

Victims were lured by the promise of jobs and education. Some victims were trafficked by family members, while others voluntarily answered employment advertisements without knowing what the job actually entailed. Girls recruited on the streets of Kingston and Montego Bay were also vulnerable to being trafficked into selling drugs or becoming drug couriers. In January, 10 Jamaicans, lured by the promise of work, traveled to Curacao but were locked up and forced into prostitution. Four victims escaped, but information was not available on the remaining six.

As a measure to limit trafficking for commercial exploitation, the Ministry of Labor significantly increased the work permit fees for foreign exotic dancers, resulting in a dramatic decrease in their presence on the island.

The Child Care and Protection Act specifically prohibits the sale or trafficking of minors and provides that violators receive the maximum penalty under the law. This law subjects convicted traffickers to a fine or imprisonment with hard labor for a term not exceeding 10 years, or both. The Trafficking in Persons Act provides penalties of up to 10 years' imprisonment for permitting or facilitating trafficking. It also allows for restitution to the victim. Three major crime hotlines were available to receive reports of trafficking 24 hours a day. In 2008 the DPP successfully prosecuted one case of trafficking in children before a court; authorities prosecuted a few such cases under other laws during the year.

The government's National Task Force against Trafficking in Persons, chaired by the Ministry of National Security, had the lead on all trafficking issues. A specialized police antitrafficking unit within the Organized Crime Division of the JCF compiled data on trafficking investigations and related legal proceedings. The task force was also involved in public education programs, maintained a hotline for trafficking victims, and worked with NGOs operating a shelter in Negril.

During the year the JCF conducted four raids and made two arrests on trafficking charges, although there were no convictions. In June authorities arrested Paul Lewis, a prominent preacher, in Westmoreland in June for having sex with a 15-year-old while a 14-year-old was present. His trial was scheduled to begin December 18.

Law enforcement training taught ways to identify trafficking victims and directed police not to charge the victims with crimes such as solicitation or pandering. The International Organization for Migration (IOM), in collaboration with the Ministry of National Security, trained judicial authorities and attorneys in the DPP's office to adequately address such issues.

The CDA managed facilities for at-risk children, and the government provided funding to NGOs that worked to reintegrate child laborers who were victims of trafficking.

The BWA integrated trafficking topics into its public education program. The IOM worked closely with government officials in conducting training, using its manual on prevention and suppression of trafficking. In July the Ministry of National Security conducted training for resident magistrates, prosecutors, JCF antitrafficking units, Narcotics and Transnational Units, the Ministry of Foreign Affairs and Foreign Trade, and NGOs during a two-day conference. The ministry also provided specialized training for operators in the Victim's Support Unit and maintained a trafficking hotline.

The Department of State's annual *Trafficking in Persons Report* can be found at www.state.gov/g/tip.

Persons with Disabilities

There are no laws prohibiting discrimination against persons with disabilities or mandating accessibility for persons with disabilities, and such persons encountered discrimination in employment and denial of access to schools. Health care and other state services were reported to be universally available. The Ministry of Labor has responsibility for the Jamaica Council for Persons with Disabilities, which had a budget of J\$47 million (\$500,000) in 2008-09. The ministry also has responsibility for the Early Stimulation Project, an education program for children with disabilities, as well as the Abilities Foundation, a vocational program for older persons with disabilities.

National/Racial/Ethnic Minorities

Maroons, descendants of slaves who escaped to the mountainous interior in the 17th and 18th centuries, consider themselves a group apart and maintain some African traditions distinct from those of the larger society. They continue to defend their rights and legal status, which stem from peace treaties signed with the British in 1739-40. In Maroon communities such as Accompong and Nanny Town, voters elect a Colonel for a five-year term, who governs the community assisted by an appointed 32-member council. Maroons also vote in general elections, and their leaders work with Parliament to ensure that their communities' needs are considered when making important decisions. Maroons are exempt from national taxes and land is held in common; however, there are major infrastructural needs that the Maroons feel the central government neglects. Formal education is not available in Maroon communities beyond the junior high school level, and unemployment rates are high. Many young Maroons leave the region for employment elsewhere, and the communities' rich culture and heritage is threatened by this migration and by the influx of popular island-wide culture.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

The law prohibits "acts of gross indecency" (generally interpreted as any kind of physical intimacy) between men, in public or in private, which are punishable by 10 years in prison. In October Prime Minister Golding, who upon taking office announced that no gays or lesbians would be allowed to serve in his cabinet, called for a constitutional prohibition against same-sex marriage.

The Jamaica Forum for Lesbians, All Sexuals, and Gays (J-FLAG) continued to report human rights abuses, including arbitrary detention, mob attacks, stabbings, harassment of homosexual patients by hospital and prison staff, and targeted shootings of such persons. Police often did not investigate such incidents. J-FLAG reported 33 cases of serious injuries to gays and lesbians over an 18-month period. The violence led many such persons to emigrate.

J-FLAG members also suffered attacks on their property and home intrusions, as people demanded to know the number of persons and beds in a home. In one instance, a fire bombing at the home of two men left one of them with burns on

more than 60 percent of his body. In addition such persons faced death and arson threats, with some of these directed at the J-FLAG offices. J-FLAG did not publicize its location due to such threats, and its officials reported feeling unsafe having meetings with clients at the organization's office.

On September 9, an honorary British consul in Montego Bay was strangled in bed, and a note left at the scene reportedly denounced the victim as gay. On October 12, a passerby accused a pedestrian on a Kingston sidewalk of being gay because he had been walking in an "effeminate manner." That person was subsequently attacked with a machete and four fingers were nearly severed.

The trial of six suspects arrested for the 2005 robbery and murder of prominent gay rights advocate Lenford "Steve" Harvey, initially begun and then postponed in 2007, was scheduled to recommence on January 25, 2010.

Male inmates deemed by prison wardens to be gay were held in a separate facility for their protection. The method used for determining their sexual orientation was subjective and not regulated by the prison system, although inmates were said to confirm their homosexuality for their own safety. There were numerous reports of violence against gay inmates, perpetrated by the wardens and by other inmates, but few inmates sought recourse through the prison system.

Gay men were hesitant to report incidents against them because of fear for their physical well-being. **Lesbian women were subject to sexual assault as well as other physical attacks.** Human rights NGOs and government entities agreed that brutality against such persons, primarily by private citizens, was widespread in the community.

Other Societal Violence or Discrimination

No laws protect persons living with HIV/AIDS from discrimination. Human rights NGOs reported severe stigma and discrimination against this group. The International Labor Organization (ILO) worked with the Ministry of Labor on a program to reduce the stigma of HIV/AIDS in the workplace and to assist employers in designing policies for workers with HIV/AIDS. Health care facilities were prepared to handle patients with HIV/AIDS, but health care workers often neglected such patients. The Ministry of Labor, in conjunction with the ILO and the Ministry of Health, conducted workplace education programs for HIV/AIDS issues.

Section 7 Worker Rights

a. The Right of Association

The law provides for the right to form or join a trade union, and unions functioned freely and independently of the government. Approximately 20 percent of the work force of 1.2 million was unionized. Some unions reported that it was not uncommon for private sector employers to lay off union workers and rehire them as contractors, a practice some unions did not oppose so long as labor and management agreed. In July the Appeals Court upheld a 2005 decision by the Industrial Disputes Tribunal to hold a representation rights poll for more than 300 hotel contract workers who had been unable to formalize union representation.

The law neither authorizes nor prohibits the right to strike, and strikes occurred. Striking workers could interrupt work without criminal liability but could not be assured of keeping their jobs, although there were no reports of any workers losing their jobs due to strike action during the year. Workers in 10 categories of "essential services" must first take disputes to the labor ministry before they can legally strike. The ILO has repeatedly criticized the government for broadly defining these 10 categories.

b. The Right to Organize and Bargain Collectively

The law permits unions to conduct their activities without interference, and the government protected this right in practice. An estimated 20 to 25 percent of the work force was covered by a collective agreement. An independent Industrial Disputes Tribunal (IDT) hears cases when management and labor fail to reach agreement. Any cases not resolved by the IDT pass to the civil courts. The IDT generally handled 35 to 40 cases each year. Most were decided within 90 days, but some took longer to resolve due to the complexity of the dispute or delays requested by the parties.

Collective bargaining is denied to a bargaining unit if no single union represents at least 40 percent of the workers in the unit in question or when the union seeking recognition for collective bargaining purposes does not obtain 50 percent of the votes of the total number of workers (whether or not they are affiliated with the union). The ILO Committee of Experts asked the government to change this, but the government disagreed with the recommendation and expressed no intent to change the existing law.

The law allows for union activity and prohibits antiunion discrimination. The law prohibits firing an employee for union activity, and employers generally respected the law in practice. However, there were several cases of antiunion activities during the year, including an incident in which 18 former employees of Solo Jamaica Ltd. accused the company of union-busting and wrongful termination. According to the former employees, management attempted to bribe them in order to dissuade them from unionizing and forced them to sign temporary contracts. When the National Workers Union submitted a claim to represent the workers' interests, management initially denied having received the claim and then laid off the workers. While union organizers and members are entitled to full legal protections that were effectively enforced, both management and workers were often unaware of their collective bargaining rights and obligations. In many cases, management easily intimidated and dissuaded less-educated workers from joining or organizing unions, and workers feared filing complaints with the Ministry of Labor.

Domestic labor laws applied equally to the "free zones" (export processing zones), but there were no unionized companies in any of the three publicly-owned zones. Organizers attributed this circumstance to resistance to organizing efforts by foreign owners in the zones and the belief that many free-zone employees were difficult to unionize since they feared losing their jobs. Employer-controlled "workers' councils" handled grievance resolution in most of these companies but did not negotiate wages and conditions, which were set by management.

c. Prohibition of Forced or Compulsory Labor

The country has ratified relevant ILO conventions, which carries a legal obligation to apply their provisions. Other than that, there are no specific laws prohibiting forced or compulsory labor, and there were reports of child prostitution and of girls in rural areas recruited for domestic labor and then forced into servitude.

d. Prohibition of Child Labor and Minimum Age for Employment

The law protects children from exploitation in the workplace and stipulates that every citizen has a duty to report child abuse. The minimum age for employment is 15 years, and the law prohibits the employment of children under age 13 in any type of work. Children between 13 and 15 years are permitted to engage in "light work," as prescribed the Ministry of Labor, which will not disrupt their education or be harmful to their health. The ministry's child labor unit was responsible for monitoring and controlling child labor.

The labor ministry assisted the Office of Health and Safety in child labor enforcement efforts. The CDA is responsible for carrying out investigations of abuse. According to CDA officials, resources to investigate exploitive child labor were insufficient. Children under the age of 12 peddled goods and services, begged on city streets, worked on plantations, farms, and construction sites, as well as in gardens, shops, and markets.

e. Acceptable Conditions of Work

The government sets the minimum wage in a transparent process after receiving recommendations from the tripartite National Minimum Wage Advisory Commission. The minimum wage was J\$4,070 (approximately \$46) per week for all workers except private security guards, whom some companies insisted were contractors. Several cases were before the courts to determine whether security guards were contractors or employees. The minimum wage did not provide a decent standard of living for a worker and family, but most workers were paid more than the legal minimum. The Ministry of Labor administered and enforced the minimum wage.

The law provides for a standard 40-hour workweek and mandates at least one day of rest per week. Work in excess of 40 hours per week or eight hours per day must be compensated at overtime rates, a provision that was generally respected, except by some security guard companies. The law does not prohibit excessive compulsory overtime, and some employees, including security guards, regularly were required to work 12-hour shifts without overtime compensation. There were differing practices among security guard companies, but workers were generally not paid for overtime unless they worked more than 12 hours.

The Ministry of Labor's Industrial Safety Division sets and enforces industrial health and safety standards, mainly through factory inspections. Insufficient staffing in the Ministries of Labor, Finance, National Security, and Public Service contributed to the difficulties in enforcing workplace regulations. The Industrial Safety Division conducted inspections, investigated accidents, warned violators, and gave them a time period in which to correct the violation. If the violation was not corrected within that time, the violator was taken to court. However, inspectors did not regularly and sufficiently monitor health and safety standards.

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.