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## 2010 Human Rights Report: Jamaica

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

### 2010 Country Reports on Human Rights Practices

April 8, 2011

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. There were instances in which elements of security forces acted independently of civilian control.

There were serious human rights 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, violence against and sexual abuse of children, trafficking in persons, and violence against persons 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 309 killings involving police during the year. This figure does not include the 73 civilians security forces killed in May during operations to arrest an alleged drug lord and gain control of a criminally controlled area.

Reliable sources indicated that many killings by police 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.

Violent crime remained rampant, and on many occasions the Jamaica Constabulary Force (JCF) employed lethal force in apprehending criminal suspects. 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. The BSI completed 308 investigations during the year and sent 291 to the DPP for further consideration. However, it takes 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. In August the government created an Independent Commission of Investigations (INDECOM), with the power to take over and direct BSI investigations.

The BSI investigated and the DPP brought charges against a constable in connection with the April 9 killing of 17-year-old Shanna-Kaye Clarke. The constable reportedly was involved in a relationship with Clarke. The constable identified another suspect in connection with the incident, but subsequent investigations led to the constable being arrested and charged.

In May security forces entered West Kingston, after gunmen loyal to former Tivoli Gardens don Christopher "Dudus" Coke set fire to police stations and barricaded themselves inside the community. Seventy-three civilians and three security force members were killed. Preliminary forensics reports suggested that some individuals were shot execution-style. An official report authored by the Public Defender's Office with the support of international donors is scheduled to be released in 2011.

In June security forces shot and killed Keith Clarke, businessman and brother of former government minister Claude Clarke, inside his St. Andrew home during the search for the fugitive Coke. A report documented that Clarke sustained 20 gunshot wounds. As of October the police commissioner declared the investigation partially completed and pending forensic and ballistic reports.

On July 29, an amateur video clip carried on a local newscast showed policemen beating Ian Lloyd on the ground and shooting him in full view of a crowd. The video contradicted reports by the police that Lloyd was killed after he attacked police. Authorities charged one policeman with murder, and his case remained before the court.

On September 23, police shot and killed Leroy Berry, and his death sparked angry protests. Berry and his wife were involved in an altercation with police in 2006, an incident that was caught on camera and caused outrage because of how Berry was treated. The September killing was controversial because a vehicle carrying Transport Authority staff and police rammed a car carrying Berry, his wife, and two children in an effort to stop the car. During an ensuing argument Berry was reportedly shot in the stomach.

On November 4, police shot and killed Frederick "Mickey" Hill, a prominent businessman in Negril, where numerous eyewitnesses observed the incident. Hill was confronted by seven or eight police officers wearing masks or with "kerchiefs" tied over their faces. They demanded that he tell them what was in a bag that he carried. When Hill was in the process of showing them the contents of the bag (cornmeal and condensed milk), the police shot him twice at point-blank range. On December 23, an investigation was completed and the results forwarded to the DPP, with a recommendation to charge the security officers. At year's end the DPP had yet to evaluate the evidence collected or make a determination as to whether charges should be filed.

On November 16, security forces shot and killed Pastor Trevor Edwards when he was returning home from work by taxi. Police chased and fired through the rear of the moving taxi, which was carrying unarmed passengers. A bullet hit Edwards in the back, puncturing his heart. According to Edwards' brother, the police stated the taxi was stolen.

The case of the policeman charged with the murder of Paul Brown, who was driving a bus in January 2009 when he allegedly hit a policeman's personal car, remained before the Home Circuit Court with trial scheduled for February 5, 2011.

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The BSI completed the investigation of the January 2009 police killing of Anthony Nelson, a security guard, at Nelson's workplace and referred the file to the DPP in September 2009. By year's end the DPP had not reached a decision on whether charges should be filed.

The BSI completed its investigation into the April 2009 killing of 16-year-old Hussein McCormack and referred the file to the DPP in April. The DPP had not reached a decision by year's end.

The BSI continued its investigation into the May 2009 police killing of Ramon Hopkins. It completed its investigation into the May 2009 police killing of Dane Daley and referred the case to the DPP on February 25. The DPP had not reached a determination on the matter by year's end.

In December 2009 police shot and killed entertainer Robert Hill at his Kingston home in what police accounts called a "shootout." The DPP ruled that the matter should be referred to Kingston and St. Andrew Coroner's Court. An inquest was set to begin on January 25, 2011.

In February 2009 the DPP brought murder charges against Christopher Thompson, the police officer accused of murdering Randeem Hall in 2008. The Home Circuit Court set the case for trial in November but postponed it until January 4, 2011.

The Home Circuit Court postponed the trial of the police officers charged in the 2008 murder of Carlton Grant, the 17-year-old son of dancehall artist Spragga Benz, until February 21, 2011.

The BSI completed the investigation into the killing of Jehvanie Robinson in 2008 and sent the case to the DPP in April 2009, but the DPP had not made a ruling on the matter by year's end. The BSI completed the investigation of the 2008 death of Fabian Wray and forwarded the file to the DPP in December 2009, but there had not been a ruling on the matter by year's end. The 2008 death of Randal Richards was under investigation by the BSI at year's end.

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 on whether to bring charges. The DPP had not made a ruling by year's end.

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. The Home Circuit Court set a trial date for March 14, 2011.

An inquest into the 2005 shooting death of Jeff Smellie started in November 2007 and was concluded on July 5 with a verdict of "death caused by accident." The matter involving the 2005 police killings of Nicholas Weir and Donald Allen was referred to Spanish Town Coroner's Court, which commenced hearings on August 23 and was scheduled to continue taking evidence on January 24, 2011.

In June 2009 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. The Home Circuit Court set a trial date of February 14, 2011.

In May 2009 the DPP, in response to a Privy Council ruling, decided not to prosecute police officer Rohan Allen a second time for the 2000 killing of 12-year-old Janice Allen. In April the Supreme Court upheld the DPP's decision, deciding there was no need for judicial review.

Mob killings continued to be a problem and often went unpunished. On April 13, three men armed with guns and knives robbed several persons in the community of St. Catherine. An alarm went off, and the residents reportedly attacked the men, killing one, stabbing and holding another, while the third one escaped.

On July 14, a mob killed Omar Levy, who was wanted by the Christiana police in a case of shooting with intent. Police reports stated that officers saw Levy in the area, but he managed to elude them. Residents went in search of him and inflicted vigilante "justice." While trying to rescue Levy, a police officer was injured. Police took Levy to the hospital, where he succumbed to his injuries.

On August 20, a mob in Kingston killed an unidentified man. According to the police, the man was involved in a dispute with another person, whom he had wounded. The mob later stabbed this man to death.

#### b. Disappearance

There were no reports of politically motivated disappearances.

During the security operations that took place in West Kingston's Tivoli Gardens, teenagers Dale Anthony Davis, Dwayne Edwards, and Andre Smith vanished and their whereabouts remained unknown. On October 8, the BSI, which was investigating the matter, stated that checks with the National Intelligence Bureau, the Inspectorate Branch, and a review of the list of detainees held at the National Arena in Kingston turned up no trace of the three. Andre Smith's body was later found in a marked grave in May Pen cemetery.

#### 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 raise allegations of abuse by correctional officers, the charges are 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 sanitation. Tower Street Adult Correctional Center, located in downtown Kingston, housed approximately 1,600 inmates, nearly double the capacity for which the facility was built. Men and women were incarcerated in separate facilities under similar conditions. Female prisoners were generally incarcerated under better conditions than their male counterparts. Cells in some facilities had little natural light, inadequate artificial light, and poor ventilation.

On February 8, a prison riot broke out at the Horizon Remand Center, where as many as 40 inmates suffered injuries when 128 detainees in three security areas managed to remove the locks from their cells before gathering in a corridor. The riot began as inmates protested poor living conditions at the facility, including the lack of water caused by a shortage that affected several parishes, and a failure to provide breakfast by noon. At St. Andrew Juvenile Remand Center, notorious for repression and corporal punishment, boys were kept indoors at all times, never being permitted activity in the open air.

Hunt's Bay Lockup held prisoners in a cage-like structure open to the rain and sun and the gazes of passersby. The women's prison, Fort Augusta, with about 200 inmates, had no indoor water supply. Inmates had to obtain water from a central source in containers they provided themselves. 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.

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. Prisoners in need of dentures and unable to eat the prison food encountered difficulties in gaining access to a dentist.

In May 2009 seven girls perished in a fire at the Armadale Juvenile Correctional Facility, and many more were injured. The results of a three-month investigation were leaked to the media in March. According to investigators, a police officer, responding to a disturbance, discharged a tear gas canister into the dormitory. The key to the main door could not be located during the fire, and the surviving girls were rescued through barred dormitory windows. The staff testified during the investigation that there were no fire extinguishers, fire drills, or emergency training.

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. Armadale remained closed, and the 50 female juveniles previously held there were moved to the Horizon maximum-security remand center, where the island's most violent male offenders are held, and to Fort Augusta Women's Prison. Juveniles and adults were housed together in these facilities. In one case a 16-year-old was held in detention with adult arrestees for more than two months while the judicial process was underway.

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") after they were removed from their homes. However, because the law does not clearly define an "uncontrollable child," a large number of minors were classified as uncontrollable and detained for long periods of time without regard to the nature of their offenses.

In October 2009 the Office of the Children's Advocate investigated reports of children being held in police lock-ups and made a number of recommendations to Parliament, including a request that the Child Care and Protection Act of 2004 be revised to limit to 90 days the amount of time children spent in lock-up, thereby preventing extended detention. However, Parliament did not address the issue.

Reliable reports indicated that there was no clear separation of detainees according to the different stages of criminal procedure. Persons detained without charges, remandees, and convicted persons were held together in the same facility, and often shared cells.

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. Prisoners were able to make complaints to the Public Defender's Office without censorship, and representatives generally were able to enter the detention centers and interview prisoners without problems. Although access was denied after a riot at the Horizon Remand Center, the prime minister subsequently ordered the center to restore access.

The government invited a UN special rapporteur to conduct a fact-finding mission in February regarding detention facilities, where he was promised access to senior state officials, representatives of civil society, and detainees. He

reported, however, that officers at the Hunt's Bay Police Station were "very obstructive, uncooperative, aggressive, and openly threatened his team during their visit." After completion, he presented his preliminary findings and recommendations to the government, including: reduce police custody to 48 hours and ensure remandees are held in proper remand centers and not in police lock-ups, introduce accessible complaint mechanisms within places of detention, ensure investigations of all allegations of abuse or excessive force, ensure that justices of the peace and magistrates conduct regular visits to all police lock-ups, remove all children from adult detention facilities, and abolish capital punishment. By year's end, however, the government had not taken any action on his report.

#### 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 they can legally hold persons for 24 to 48 hours before charging or releasing them, police sometimes reportedly held individuals for as long as five weeks.

During the period from May 23 to July 22, authorities detained and then released more than 4,000 persons under a declared state of emergency, initiated to allow security forces to enter West Kingston and regain control after gunmen barricaded themselves inside the community. Most of the individuals detained were young men who were fingerprinted, photographed, and interviewed by detectives and were later released without being charged for any offense.

#### 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 routinely conducts joint patrols and checkpoints in conjunction with the JCF. As the minister of defense, and outside of a state of emergency, the prime minister is the approval authority for all JDF operations in support of the JCF. The Ministry of National Security exercises the prime minister's authority for oversight of the JCF and JDF.

The JCF is headed by a commissioner who delegates authority through the ranks to constables. The force maintains divisions focusing on community policing, special response, intelligence gathering, and internal affairs.

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 932 cases with 37 full-time and nine part-time investigating officers. In August INDECOM replaced the civilian Police Public Complaints Authority; the new body has the power to take over and direct BSI 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 the Community Safety and Security Branch, during the year the JCF conducted targeted training of 309 officers in 38 communities, trained community safety officers, and assigned JCF personnel 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.

#### 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 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.

If a detainee requests access to counsel, the law 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; however, authorities continued to wait until after detainees had been identified in a 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 authorities sometimes remanded suspects 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 from 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, and evidence went missing, rotted in the warehouse, or could not be located when needed.

The resident magistrate's courts, which handle 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. This 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 has ever been killed.

#### Trial Procedures

Most trials are public and adjudicated by a lone judge. More serious criminal offenses are tried with juries in circuit court at the Supreme Court level. There was a persistent problem seating 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 on behalf of persons who have had their constitutional rights violated but the OPD cannot appear in court on their behalf. Although the OPD contracted with private attorneys to represent indigent clients, funds were insufficient to meet 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. Newspapers were independent and free of government control. Broadcast media were largely state owned but open to pluralistic points of view.

Some local media professionals expressed concern that the country's libel laws limited 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. In a speech on May 17, Prime Minister Golding expressed the need to reform the libel laws to enable greater transparency and accountability in government.

The Press Association of Jamaica (PAJ) continued to advocate for changes in the country's "antiquated" libel and defamation laws. The PAJ also advocated repealing the Official Secrets Act, "which runs counter to the Access to Information Act," requested that whistle-blower legislation be enacted to help the media expose corruption, and called for strict separation between management and editorial departments since a free press "requires the absence of undue influence of media owners on newsroom output."

Some journalists also stated that they censored their political coverage based on fear of violent reprisals, and the UN Human Rights Council's *2010 Freedom in the World Report* stated that journalists sometimes faced intimidation in the run-up to elections.

In July the police attempted to confiscate the camera of a CVM TV correspondent at the scene of an alleged police killing in St. Ann. Authorities detained the journalist and later released him. Later that month, in a meeting with representatives from the PAJ and the Media Association Jamaica Limited, Commissioner of Police Owen Ellington pledged to publish guidelines governing conduct between members of the JCF and the media at crime scenes. However, no guidelines had been published by year's end. Ellington also said the JCF would take action against officers who prevented journalists from carrying out legitimate duties at crime scenes.

##### 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 58 Internet users per 100 inhabitants in 2009.

#### 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. Since 2009 the JBC banned certain lyrics deemed inappropriate to broadcast, including dancehall songs referring to the simulation of aggressive or violent sex, and employed editing methods to expunge lyrics thought unfit for broadcast. 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

For a complete description of religious freedom, please see the *2010 International Religious Freedom Report* at [www.state.gov/g/drl/irf/rpt/](http://www.state.gov/g/drl/irf/rpt/).

#### 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

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 was prepared to cooperate with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in assisting refugees and asylum seekers, should such cases arise.

Following the January earthquake in Haiti, the government stated that it would provide temporary accommodations, health inspections, and food for Haitians fleeing the earthquake until they could safely return home. Between March and April, the government provided temporary shelter and medical treatment for 93 Haitians who landed in three vessels. The government stated that due to financial constraints, the Haitians would be repatriated. The JDF Coast Guard returned all 93, plus an additional 24 who were being held on immigration violations, to Haiti by the end of April.

#### 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 JLP 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, the Supreme Court ordered by-elections, each of which was won by the incumbent JLP parliamentarian after renouncing dual nationality. On June 2, the parliamentary seat held by Shahine Robinson was vacated after she was alleged to be a foreign citizen when nominated for the 2007 general election. On November 26, the prime minister called for a by-election for the empty seat, and Robinson regained her seat on December 20.

In August Betty Ann Blaine, along with 10 other founding members, launched a new political party, the New National Coalition. It announced plans to contest all 60 constituencies in the next election.

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. The contractor general stated in his 2009 annual report that 30 formal criminal offenses were referred to the DPP, with no criminal charge, arrest, or prosecution arising out of any of the matters.

The JCF 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 were noted. However, suspicions of corruption and impunity within the force remained, despite a notable increase in the number of arrests of officers for corruption.

In February JCF officers seized a large load of weapons in Kingston that were traced back to the police armory. Authorities arrested 11 suspects, including a police sergeant, in connection with the seizure. A full investigation by the Anti-Corruption Branch of the JCF ensued. In October three civilians charged in the case pleaded guilty, and a court sentenced them to prison terms ranging from 10 to 13 years. The sergeant was charged with illegal possession of 18 firearms and 9,540 rounds of ammunition and was awaiting trial in Gun Court at year's end.

In August the JCF announced that 149 rogue police officers had been removed in the first seven months of the year; by year's end 188 police officers had been dismissed. Authorities arrested 21 police personnel and charged them with breaches of the Corruption Prevention Act. Police personnel are required to sign five-year contracts with renewal contingent upon good conduct. They are barred from reenlisting whenever there is information that they are not efficient or effective in carrying out their duty with integrity.

Also in August authorities dismissed Lenice Barnett, executive director of the Student Loan Bureau (SLB), and forced the resignation of its Board of Directors, following an audit conducted by the Public Accountability Inspectorate of the Ministry of Finance. The ministry stated that Barnett was augmenting her pay through receipt of a gratuity paid on a monthly basis, implementing an unapproved monetary incentive scheme, and providing access to loans without SLB management's knowledge.

In October Prime Minister Golding announced that a commission of inquiry would be formed to probe the government's handling of an extradition request for alleged drug lord Christopher "Dudus" Coke. The commission was to look into charges that the government hired a foreign lobbying firm, possibly to derail the request. The prime minister had approved the extradition request in May and stated that when the lobbying firm was hired, he was not acting as the government leader but only in his capacity as head of the JLP.

In October 2008 authorities arrested Kern Spencer, a former junior minister, and charged him with fraud, corruption, and money laundering in a scheme to distribute and install energy efficient light bulbs donated by Cuba. His trial began on June 30, and the matter was still before the Magistrate Court at year's end.

In December 2009 a court found former police superintendent Harry Daley guilty of corruption, and a judge sentenced him to 18 months of hard labor. However, at year's end he was on bail pending an appeal hearing.

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 various other ministries are responsible for their own investigations.

Despite provisions in the Access to Information Act to promote transparency, media accounts indicated that access to information was sometimes categorically denied. The act contains no sanctions or penalties to discourage 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 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 nongovernmental organizations (NGOs). The government invited a UN special rapporteur to conduct a fact-finding mission in February regarding detention facilities, where he had access to senior state officials, representatives of civil society, and detainees (see section 1.c.).

#### Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination based on race, gender, place of origin, political opinion, 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, but only in certain circumstances. Human rights groups continued to advocate for a more comprehensive law. While that law replaced an existing patchwork of laws relating to sexual assault, rape, and incest, the authorities had yet to implement many of its provisions. The number of rapes victims reported declined slightly to 668, compared with 695 in 2009. NGOs believed the actual numbers were much higher, but no other statistics were available. The JCF Rape Investigative and Juvenile Unit, which was headed by a female deputy superintendent, handled sex crimes.

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.

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. The UN Population Fund reported a 2008 maternal mortality ratio of 89 deaths per 100,000 live births and a modern contraceptive prevalence rate of 66 percent. 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. According to the World Economic Forum's *2010 Global Gender Gap Report*, women earned 36 percent less than men for comparable work. 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, which focused on 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, either in the hospital at the time of birth or at a local registrar's office if the child is not born in a hospital.

There was no societal pattern of abuse of children; however, child abuse, especially sexual abuse, was a substantial problem. The Office of Children's Registry (OCR) receives, records, and stores data relating to the mistreatment and abuse of children. The law requires anyone who knows of or suspects a child is being abused to make a report to the OCR, with a penalty of up to J\$500,000 (\$5,800) for failure to do so. The OCR received approximately 6,330 reports of child abuse, compared with 6,778 cases reported in 2009.

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. According to the CDA, sexual assault was the most common reason for children to be taken to hospitals, with children under age 10 accounting for 17 percent of all sexual assault cases and children between the ages of 10 and 19 accounting for 57 percent. In the 2008 Reproductive Health Survey (the most recent one conducted), 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 538 cases of carnal abuse reported to the JCF, compared with 578 cases reported in 2009.

The Office of the Children's Advocate (OCA) has broad responsibilities for reviewing laws, policies, practices, and government services affecting children, as well as providing legal services to protect the best interests of children. In February the OCA launched a Web site to provide information on children's rights. The site also includes downloadable forms so that persons can lodge complaints electronically or by fax. The OCA reported it received over 400 complaints during the year, conducted some preliminary investigations, and referred other cases to appropriate government institutions.

Child prostitution and sex tourism were problems, especially in tourist areas. In September authorities uncovered a prostitution ring in Kingston, involving an undisclosed number of minors.

The law prohibits statutory rape, defined as sexual relations with a person less than 16 years old, the minimum age for consensual sex. Sexual relations by an adult with a child between the ages of 12 and 16 are 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. The 2009 Sexual Offences Act included the establishment of a Sex Offenders Registry, which children's rights advocacy groups considered a vast improvement over the old legislation in terms of its ability to protect children.

In September 2009 Parliament enacted the Child Pornography (Prevention) Act, criminalizing the commercial sexual exploitation of children. The law applies to the protection, possession, importation, exportation, and distribution of child pornography and carries a maximum penalty of 20 years' imprisonment and a fine of J\$500,000 (\$5,800).

The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information on international parental child abduction, please see the Department of State's annual report on compliance at [http://travel.state.gov/abduction/resources/congressreport/congressreport\\_4308html](http://travel.state.gov/abduction/resources/congressreport/congressreport_4308html).

#### Anti-Semitism

There was a small practicing Jewish congregation in the country. There were no reports of anti-Semitic acts.

#### Trafficking in Persons

For information on trafficking in persons, please see the Department of State's annual *Trafficking in Persons Report* at [www.state.gov/g/tip](http://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 (JCPD), which had a budget of J\$48 million (\$560,000) in 2009-10. The JCPD distributes Economic Empowerment Grants of up to J\$50,000 (\$580) to persons with disabilities to help them embark on small entrepreneurial ventures such as vending or furniture making, or to provide them with assistive aids, such as prosthetics or hearing aids. These economic empowerment grants are significantly larger than the maximum sum of J\$15,000 (\$174) that persons with disabilities occasionally received in the form of rehabilitation grants ostensibly for the same purposes. The Ministry of Labor 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, considered themselves a group apart and maintained some African traditions distinct from those of the larger society. They continued 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 worked 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 believe the central government neglects. Formal education was not available in Maroon communities beyond the junior high school level, and unemployment rates were high. Many young Maroons leave the region for employment elsewhere; this migration and the influx of popular island-wide culture threatened the communities' 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.

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 gay and lesbian patients by hospital and prison staff, and targeted shootings of such persons. Police often did not investigate such incidents. During the year, J-FLAG received 43 reports of sexually motivated harassment or abuse, which included 26 cases of attempted or actual assault, including three murders and three cases of rape. This violence created a climate of fear that prompted many gay persons to emigrate, while the gross indecency laws left those who remained vulnerable to extortion from neighbors who threatened to report them to the police unless they were paid off.

In September six men brutally gang-raped a lesbian woman and cut her genitals after the assault ended. These men had previously taunted their victim, and this attack typified a phenomenon known as "corrective rape," whereby rapists justify their actions under the rationale that forcing their victim into sex will somehow convert the injured party to heterosexuality. Three days later a taxi driver raped another lesbian woman in an unrelated attack staged in the same northern parish of

St. Ann's. J-FLAG protested both rapes, stating that the women were attacked because of their sexual orientation. The organization believed that, as with heterosexual women, many homosexual rape victims were hesitant to report their abuse out of fear, shame, or for any number of personal reasons, suggesting that the actual incidence of sexual violence perpetrated against such persons could be notably higher.

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. Victims reported numerous cases of threats and intimidation to J-FLAG. In many instances family members expelled their own relatives from homes because of sexual orientation. In other cases neighbors drove gay and lesbian persons out of their communities, slashing tires and hurling insults. Many gays and lesbians faced death and arson threats, with some threats also directed at J-FLAG offices. As a result of such threats, J-FLAG elected not to publicize its location, and one of its officials reported feeling unsafe having meetings with clients at the organization's office.

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 in early 2011.

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. 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 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 on HIV/AIDS issues. Laws banning homosexual acts and societal attitudes prevented distribution of condoms in prisons and similar institutions.

#### 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. It was not uncommon for private-sector employers to lay off union workers and rehire them as contractors, a practice unions did not oppose so long as labor and management agreed.

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 Ministry of Labor before they can legally strike. The ILO has repeatedly criticized the government for its

broad definition of these 10 categories. Nurses and other public sector workers--although taking their disputes to the Ministry of Labor as required--circumvented the ministry's permission to strike by holding "sick outs" during the year.

#### 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 bargaining agreement. An independent Industrial Disputes Tribunal (IDT) hears cases when management and labor fail to reach agreement. Cases not resolved by the IDT pass to the civil courts. The IDT received 23 cases during the year, with most cases decided within 90 days. Some took longer to resolve due to the complexity of the dispute or delays requested by involved parties.

Collective bargaining is denied to a bargaining unit if no single union represents at least 40 percent of the workers in the unit or when the union seeking recognition does not obtain support from 50 percent of the workers (whether or not they are affiliated with the union). The ILO Committee of Experts asked the government to change this threshold, but the government expressed no intention to change the existing law.

The law allows for union activity and prohibits antiunion discrimination. Employers generally respected the law in practice. However, some labor unions reported that private-sector workers were increasingly fearful of management retaliation against unionization as the job market contracted in the past year. While union organizers and members were entitled to full legal protections that were enforced effectively, both management and workers were often unaware of their rights and obligations.

Domestic labor laws apply equally to the country's "free zones" (export processing zones), but there were no unionized companies in any of these three publicly owned zones. Union organizers suspected that foreign owners in the zones resisted organization efforts and that many free-zone employees chose not to unionize for fear of 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. There are otherwise no specific laws prohibiting forced or compulsory labor. There were reports of girls in rural areas recruited for domestic labor and then forced into servitude. Some cases of coerced employment of suspected trafficking victims were reported and were being treated in the court system. Also see the Department of State's annual *Trafficking in Persons Report* at [www.state.gov/g/tip](http://www.state.gov/g/tip).

#### 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 defined by 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 Ministry of Labor 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, and worked on plantations, farms, and construction sites, as well as in gardens, shops, and markets. In May the CDA reported that there were approximately 6,000 street and working children in the country.

#### 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 \$47) per week for all workers, although there were some reports of domestic workers receiving less. The minimum wage did not provide a decent standard of living for a worker and family, leading most minimum-wage earners to work two or more jobs. However, 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. The law does not prohibit excessive compulsory overtime, and some employees, notably security guards, were regularly required to work 12-hour shifts without overtime compensation.

The Ministry of Labor's Industrial Safety Division (ISD) 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 difficulties in enforcing workplace regulations. The ISD 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.

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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