



2008 Human Rights Report: Jamaica

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

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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 suspected or known homosexuals.

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.

The police employed lethal force in apprehending criminal suspects on many occasions, which resulted in 224 deaths during the year, a drop from the 272 fatal police shootings of civilians in 2007. Many police officials attributed the decline in fatalities to the December 2007 appointment of a new commissioner of police, whom his officers perceived as a disciplinarian who would not tolerate police misconduct.

While complaints of "police murder" remained frequent, the validity of some allegations was suspect. Well-armed gangs that trafficked in narcotics and guns controlled many inner-city communities. The gangs often were better equipped than the police force and conducted coordinated ambushes of joint security patrols.

In five killings by security forces during the year, police alleged that the victims were carrying firearms and opened fire on them. In each of the five cases, eyewitness testimony contradicted the police accounts. These cases included the deaths of Fabian Wray, age 24, killed October 21; Jehvanie Robinson, age 13, killed September 22; Carlton Grant, age 17, killed August 23; Randeem Hall, age 16, killed July 29; and Randall Richards, age 18, killed June 24. In all five cases, the Bureau of Special Investigations (BSI) continued investigating at year's end.

In the Carlton Grant case, a bystander went to the office of a local nongovernmental organization (NGO) to report the incident and speak to BSI officials. Three unidentified gunmen carrying high-powered weapons entered the premises and kidnapped a person they believed to be the witness. The NGO reported the incident to the police

commissioner, and police recovered the kidnapping victim, who was physically unharmed, the same day. The investigation of this incident remained pending at year's end.

The BSI completed its inquiry into the September 2007 shooting death of Andre Thomas by police. Authorities charged four police officers with murder; the trial was scheduled for January 2009.

The BSI also investigated the September 2007 police shooting deaths of Dexter Hyatt and Tian Wolfe in St. Thomas. Police stated that Hyatt fired at them and Wolfe was part of a crowd protesting police treatment of Hyatt. Witnesses claimed that police shot unprovoked. The BSI submitted its findings to the Director of Public Prosecutions (DPP) in November 2007. At year's end the DPP was awaiting further forensic evidence before making a determination.

The BSI reported that the investigation remained open in the police killings of four men in Alexandria and one detainee in custody in 2006.

The case in coroner's court continued against the police accused of killing Jeff Smellie in 2005. Witnesses gave evidence at hearings through December, but the case was not completed at year's end.

Police involved in the 2005 killing of Nicholas Weir and Donald Allen faced charges in the coroner's court; their trials were in progress at year's end.

As with most criminal cases, it can take many years to bring police officers to trial for unlawful killings. The trial of three police officers charged in the 2001 killing of Richard Williams continued in the circuit court after repeated delays. A new trial date had not been set for the three police officers charged in 2003 with the 1999 killing of Noel Barnes in a shoot-out with police, after the first trial ended with a hung jury.

Appeals also can take years to process. In October 2007 the Court of Appeals granted final leave for attorneys representing the mother of Janice Allen, killed by police in 2001, to take her case to the Privy Council, but the council had not ruled by year's end. The family had appealed the dismissal of the case against the responsible police officer.

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.

Prison and Detention Center Conditions

Prison conditions remained poor, primarily due to overcrowding and poor sanitary conditions. Medical care also was poor, primarily a result of having only three full-time doctors, one full-time nurse, and one psychiatrist to cover 13 facilities with 4,790 inmates across the island.

Men and women were incarcerated in separate facilities under similar conditions, except that women's prisons were generally not overcrowded.

Although the law prohibits the incarceration of children in adult prisons, some juveniles were held in adult jails because there were no juvenile facilities with adequate security. Adults and juveniles were segregated in the prison system. The social services agency deals with nonviolent youth offenders, who are sent to unsecured halfway houses if they are removed from their homes.

The majority of pretrial detainees were held in police custody either in police stations or in remand centers, generally separate from convicted prisoners.

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.

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 for processing.

Role of the Police and Security Apparatus

The Jamaica Constabulary Force (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, created in late 2007, has responsibility for tackling corruption in the force. The JCF was not fully effective in combating crime, and the perception of corruption and impunity within the force remained despite a notable increase in the number of arrests of officers for corruption. Authorities arrested 55 rank-and-file officers on corruption-related charges and one senior officer for corruption. Trial dates were set for the majority of the cases, but none had commenced at year's end. Human rights groups identified systematically poor investigative procedures and weak oversight mechanisms as factors contributing to corruption.

The JCF conducted administrative and criminal investigations into all incidents involving fatal shootings by police. The JCF's BSI, which employed 21 investigators, specifically addressed police shootings. In an estimated 672 exchanges of fire between police and civilians in the Kingston metropolitan area during the year, more than 500 persons were injured. In rural areas, there were 444 such exchanges of fire, with more than 160 civilians injured. However, no officer was found criminally liable during the year. BSI supplements the civilian Police Public Complaints Authority, which oversees investigations by the other two bodies and may initiate 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 newly 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. With NGO assistance the police developed a community policing manual that the police academy used in training police officers on citizens' rights and human rights. The government bolstered these efforts through public education.

Arrest and 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. The law requires detained suspects to be charged or released within 24 hours of arrest, unless a justice of the peace or a resident magistrate grants special permission.

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), if requested by the detainee upon detention; however, authorities continued to wait until after detainees had been identified in an identification lineup before contacting duty counsel for them. There was a functioning bail system. The state provides indigent detainees access to counsel through the legal aid program, 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 continued to detain suspects for lengthy periods (often up to two or three years), which the government attributed to an overburdened court 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.

e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected this provision in practice. However, the judicial system was overburdened and operated with inadequate resources.

The judiciary's lack of sufficient staff and resources hindered due process, and the BSI also had a backlog of approximately 960 cases. With only 21 investigating officers to cover upward of 30 allegations of excessive force per month, the BSI was unable to keep up with the caseload. Trials in many cases were delayed for years, and other cases were dismissed because files could not be located or had been destroyed. A night court continued to operate in an effort to reduce the backlog of resident magistrate 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, resident magistrate's courts, and the Supreme Court, which has unlimited jurisdiction in civil and criminal matters. Defendants have the right to appeal a conviction in any of the three trial courts to the Court of Appeal, the highest court in the country. The Privy Council in the United Kingdom is the final court of appeal.

Trial Procedures

Most trials are public and use juries. There was a persistent problem seating enough jurors for cases, which contributed to the extensive judicial backlog. Defendants are presumed innocent, have the right to counsel, and have the right 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. The public defender may bring cases for persons who have had their constitutional rights violated. Although the Public Defender's Office contracted private attorneys to represent 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 civil authority did not always have enough money to award each case, resulting in a backlog of awards. There is a process to undertake pretrial negotiations between the complainant and the state in order to avoid trial.

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 and the Media Association of Jamaica continued to advocate changes in the libel laws, which they stated had a "chilling effect" on the media's ability to report effectively, especially on political issues.

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.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

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 2008 International Religious Freedom Report at 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 law does not provide for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, but the government has established a system for 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. These factors impeded the free exercise of their right to vote. During the 2007 national election campaign, police placed a moratorium on political gatherings due to politically motivated violence. On November 16, at the opposition party's annual conference held at the National Stadium in Kingston, an altercation between party members turned violent, resulting in the shooting death of one person and the wounding of two others.

In the September 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 the constitution, which bars from office those who have "sworn allegiance to a foreign power." Three of the candidates renounced their foreign citizenship. A court ruled that regardless of a candidate's current citizenship status, if the candidate had retained dual citizenship at the time of running for office, the seat could not be retained. In one of the four cases, in the West Portland district, a PNP challenger to the elected JLP dual national candidate sought to be directly appointed to the parliamentary seat, but the court called for a by-election. The JLP candidate, who renounced his foreign citizenship after the election in the wake of the court ruling, said he would run for office again if necessary. The PNP candidate filed an appeal against the by-election requirement; a determination remained pending at year's end. All four challenged members of parliament continued to hold their seats pending final determinations on their respective cases. The other three contested cases were unlikely to proceed until the Appeals Court rules in the West Portland case.

There were eight women elected to the 60-seat House of Representatives and three women appointed to the 21-seat Senate. Two of the 18 cabinet ministers were women.

Government Corruption and 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 nearly 50 percent of all government employees corrupt. After the JCF, parish council members and customs officers were seen as the most corrupt.

The government appointed a new commissioner of customs, with a reputation as a reformer, in mid-year. He immediately began to reorganize the customs office and move or dismiss personnel suspected of corruption. Within his first month in office, customs' revenue increased by 25 percent.

In February authorities arrested the former junior minister of energy, mining, and telecommunications and two others and charged them with fraud, corruption, and money laundering in connection with a light bulb scandal. The JLP government alleged that the previous administration, through the Petroleum Corporation of Jamaica, paid more than J\$114 million (\$1.7 million) to two corporations not registered as government contractors to distribute and install the four million bulbs donated by Cuba. Both firms were incorporated just before the distribution program began and never submitted invoices for services rendered. The trial, initially set for May, was delayed and expected to resume in 2009.

Although an investigation was undertaken into reports that the PNP returned approximately J\$31 million (\$465,000) allegedly deposited by Trafigura, a Dutch company, in 2006 to an account used to pay for the PNP's annual conference that year, no results were made public by year's end.

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 provides public access to information held by government ministries and agencies. Many agencies reportedly delayed providing information and gave incomplete responses, although when NGOs pressed on behalf of citizens, the government did respond to such requests.

Section 4 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 Independent Jamaica Council for Human Rights 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 and wrote a weekly newspaper column. Many news editorials criticized the group, fuelling a public misperception that the organization advocated only on behalf of accused criminals.

The Public Defender's Office brings cases 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.

Section 5 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 was illegal and carried a penalty of up to 25 years' imprisonment with hard labor. Spousal rape is not recognized as a crime. During the year 774 rapes were reported. NGOs believed the actual numbers were much higher, but they could not provide any detailed statistics. The JCF rape investigative and juvenile unit, which was headed by a female deputy superintendent, handled sex crimes. No information was available as to the number of prosecutions and convictions obtained.

Social and cultural traditions 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 \$117) and six months' imprisonment. There was a general reluctance by the police to become involved in domestic issues, which led to cases not being pursued vigorously when reported. The Bureau of Women's Affairs operated crisis hot lines and shelters and managed a public education campaign to raise the profile of domestic violence.

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

There is no legislation that addresses sexual harassment, and it was a problem. There were reports of sexual harassment of women by the police, but some observers believed that women often did not report such incidents because there was no legal remedy.

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 Bureau of Women's Affairs, 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

The government was committed to improving children's welfare. The Ministry of Education, Youth, and Culture is responsible for implementation of the government's programs for children. In 2007 the government established an Office of the Children's Advocate (OCA). The office 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. On October 6, the education minister announced that his ministry distributed safety and security guidelines to schools to help ensure greater protection of children. He also said that officials from the Ministries of Education and National Security had begun meeting to identify and implement "school safe zones." The minister added that he would confer with police, the Child Development Agency (CDA), the OCA, and church and community organizations.

On November 5, the OCA reported it had received 333 complaints during the year, conducting some preliminary investigations while referring other cases to appropriate government institutions. The OCA intervened to have 15 students reinstated in schools, assigned lawyers to represent children in 54 court cases, and successfully sought bail for 22 minors accused of committing crimes. OCA officials twice met with the commissioner of corrections to discuss the treatment of children in penal institutions. As a result of the OCA's advocacy, the Correctional Services Division began providing 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. NGOs reported that inner-city gang leaders and sometimes even fathers initiated sex with young girls as a "right." During the year there were 462 cases of carnal abuse reported, a decrease of 9 percent from 2007. The government expressed concern about child abuse and acknowledged that incidents were underreported. 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.

Child prostitution and trafficking for the purpose of sexual exploitation were problems.

Trafficking in Persons

The law prohibits all forms of trafficking; however, persons were trafficked to, from, through, and within the country. Most 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 the Dominican Republic, Russia, and Eastern Europe, while some women and girls were trafficked to Canada, the United States, the Bahamas, and other Caribbean destinations. Children trafficked within the country may also be subjected to domestic servitude and forced labor.

In 2006 the International Labor Organization (ILO) estimated that several hundred minors were involved in the country's sex trade. 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.

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 hot lines were available to receive reports of trafficking 24 hours per day.

During the year the DPP convicted two persons for conspiracy to traffic in persons. Four additional trafficking cases were pending in the courts at year's end.

The government's National Task Force against Trafficking in Persons, led by the Ministry of Justice, has the lead on all trafficking issues. A specialized police antitrafficking unit within the Organized Crime Division of the JCF compiles data on trafficking investigations and related legal proceedings.

Law enforcement training taught ways to identify trafficking victims and directed police not to charge the victims with crimes such as solicitation or pandering. In January the International Organization for Migration (IOM) helped repatriate a foreign victim of trafficking who had been doing uncompensated domestic work in the home of another national from her country. The police trafficking unit, the DPP, and the IOM cooperated to assist the victim, who was placed in a women's shelter before she was able to return to her country.

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 Bureau of Women's Affairs integrated trafficking topics into its public education program. The IOM worked closely with government officials in conducting training and in 2007 published a manual on prevention and suppression of trafficking.

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

Persons with Disabilities

There were 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. Several government agencies and NGOs provided services and employment to various groups of persons with disabilities, but there was no government agency specifically charged with assisting persons with disabilities.

Other Societal Abuses and Discrimination

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 homosexual patients by hospital and prison staff, and targeted shootings of homosexuals. Police often did not investigate such incidents.

J-FLAG members also suffered attacks on their property, home intrusions as people demanded to know the number of persons and beds in a home, and in one instance, a fire bombing at the home of two men that left one of them with burns on more than 60 percent of his body. In addition homosexuals 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.

In February a mob broke into the home of four presumed homosexual men, killing three of them. The fourth was missing and presumed dead. The men had reported being harassed for their perceived sexual orientation prior to the fatal attack. Police made some inquiries in the case but did not conduct a full investigation or make any arrests by year's end.

The trial of six suspects arrested for the 2005 robbery and murder of Lenford "Steve" Harvey, initially begun and then postponed in 2007, was scheduled to recommence in January 2009.

Male inmates deemed by prison wardens to be homosexual 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 homosexual inmates, perpetrated by the wardens and by other inmates, but few inmates sought recourse through the prison system.

Homosexual 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 homosexuals, primarily by private citizens, was widespread in the community.

No laws protect persons living with HIV/AIDS from discrimination. Human rights NGOs reported severe stigma and discrimination against this group. The 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. Although health care facilities were prepared to handle patients with HIV/AIDS, health care workers often neglected such patients.

Section 6 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 union workers charged that private sector employers laid them off and then rehired them as contractors with reduced pay and benefits, a practice that was legal as long as workers received severance pay.

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 broad categories of "essential services" are prohibited from striking, a provision the ILO repeatedly criticized as overly broad.

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 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 law allows for union activity and prohibits antiunion discrimination. The law prohibits firing an employee for union activity, and employers respected the law in practice. Union organizers and members are entitled to full legal protections that were effectively enforced.

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, asserting that there was an unwritten agreement among them to prevent free zone workers from participating in trade unions. According to the International Trade Union Confederation, unions reported that many employers continued to prevent workers from seeking union representation. 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 law does not specifically prohibit forced or compulsory labor, including by children, and there were reports of child prostitution and of children trafficked into domestic servitude and forced labor.

d. Prohibition of Child Labor and Minimum Age for Employment

The Child Care and Protection Act provides that children under the age of 12 shall not be employed except by parents or guardians and that such employment may be only in domestic, agricultural, or horticultural work. It also prohibits children under the age of 15 from industrial employment. The police are mandated to conduct child labor inspections, and the CDA is charged with finding places of safety for children. However, according to CDA officials, resources to investigate exploitive child labor were insufficient. Children under the age of 12 peddled goods and services or begged on city streets. There were also reports that underage children were employed illegally in fishing communities, prostitution, and domestic servitude.

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\$3,700 (approximately \$51) per week for all workers except private security guards, whose minimum was J\$5,500 (approximately \$76) per week.

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. Historically the JCF was exempt from the 40-hour workweek; however, in August the Ministry of National Security signed a new work contract that included a mandatory 40-hour week, with retroactive lump sum payments for overtime worked since April.

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.

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.