

# JAMAICA

## EXECUTIVE SUMMARY

Jamaica is a constitutional parliamentary democracy. On December 29, the opposition Peoples National Party (PNP) won 42 of the 63 seats in the House of Representatives, and PNP leader Portia Simpson Miller was sworn in as prime minister on January 5, 2012. The leader of the defeated Jamaica Labour Party (JLP), Andrew Holness, served as prime minister after October 23, following the unexpected resignation of Prime Minister Bruce Golding. International election observers deemed the elections transparent, free and fair, and without violence. During the year there were instances in which elements of security forces acted independently of civilian control.

The most serious human rights problems in the country were alleged unlawful security force killings, instances where cases involving the violation of rights were not resolved in a timely way, and poor prison and jail conditions, including abuse of detainees and prisoners.

Other human rights problems included an overburdened judicial system and frequent lengthy delays in trials, violence against and sexual abuse of children, violence and discrimination against women, trafficking in persons, and violence against persons based on their suspected or known sexual orientation.

The government took some steps to punish members of the security forces who committed abuses, but there were other instances where no arrests or prosecutions occurred, providing impunity for police who committed crimes.

### **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 politically motivated killings, there were numerous accounts alleging that the government's security forces or its agents committed arbitrary or unlawful killings.

For example, on October 31, police killed Michael Grinnion in an alleged "shootout" in his home and reported that they recovered a loaded pistol. However, Grinnion's family claimed that there was no sign of a shootout and that Grinnion was killed somewhere else. A relative said witnesses heard Grinnion pleading for

his life before he was taken away in a police jeep, and also claimed that the body at the morgue showed signs of bruising and physical abuse. The family urged a full investigation; no further information was available by year's end.

According to official statistics, there were 236 killings involving police during the year. Human rights monitors 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.

In October Jamaica Constabulary Force (JCF) Commissioner Owen Ellington spoke publicly about two deaths in police custody--those of Ricardo Irons and Keith Mitchell. He said that acceptance of the explanation given by the JCF would "amount to dereliction of our duty of care for the safety and well-being of persons in our custody." Investigations into the two deaths continued at year's end.

Violent crime remained a serious concern, and on many occasions the JCF employed lethal force in apprehending criminal suspects. The JCF's Bureau of Special Investigations (BSI) and the Independent Commission (INDECOM) investigated all police killings, and when appropriate, forwarded cases to the director of public prosecutions (DPP) for prosecution. However, it usually takes many years to bring police officers to trial for alleged unlawful killings. For example, on May 30, a jury returned a not guilty verdict for four police officers charged with murder in the 2007 death of Andre Thomas. On June 16, a Home Circuit Court judge dismissed the case of the police officers charged in the 2008 murder of Carlton Grant, the 17-year-old son of dancehall artist Spragga Benz. On April 13, a Home Circuit Court jury convicted police officer Vince Edwards of the extrajudicial killing of Tyrone Powell in 2009. No other police officer accused of human rights violations has been convicted since 2006.

Other scheduled trials included that of police corporal Malica Reid, charged with the November 2010 killing of prominent businessman Frederick "Mickey" Hill, which began on October 28 and was rescheduled for January 2012. The case of Detective Sergeant Lloyd Kelly, charged with the July 2010 killing of a mentally disturbed man, was also to go to court in January 2012. The Home Circuit Court rescheduled the trial of three policemen, Loui Lynch, Paul Edwards, and Victor

Barrett, involved in the 2004 abduction and killing of Kemar Walters and Oliver Duncan, to April 16, 2012. The Special Coroner Court was scheduled to consider the 2007 police shooting deaths of Dexter Hyatt and Tian Wolfe in November but postponed it to a later date.

In May 2010 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. At least 73 civilians and three security force members were killed. Preliminary forensics reports suggested that some individuals were shot execution-style. The Public Defender’s Office, with the support of international donors, prepared an official report on the incident, but had not released it by year’s end.

### **b. Disappearance**

There were no reports of politically motivated disappearances.

There was no definitive resolution of the disappearance of three young people, one of whose body later was found in a cemetery grave, who disappeared during the May 2010 security operations that took place in West Kingston’s Tivoli Gardens.

### **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**

Prisons and detention centers were severely overcrowded and presented serious threats to life and health. The UN special rapporteur on torture in a 2010 report called the conditions of detention “appalling” and in some cases “inhumane,” although it did not find instances of torture. The government could not protect the

physical safety of prisoners. With a maximum rated capacity of 4,402 inmates, the corrections system contained approximately 4,000 adult inmates, including at least 200 women. Another 366 juveniles remained in detention in juvenile-only facilities. However, there was considerable overcrowding, since rated capacity reflected both high- and low-security facilities, some capacity was unusable due to staffing shortfalls, and most inmates were held in high-security facilities. Although the law prohibits the incarceration of children in adult prisons in most cases, approximately 60 juveniles were held in adult jails. At least 14 prisoners died in detention during the year.

Detainees were not clearly separated according to their different stages of criminal procedure. Persons detained without charges, remandees, and convicted persons were held together in the same facility and often shared cells.

The government failed to protect the physical safety of prisoners. For example, on April 4, an inmate plucked out the eye of another prisoner awaiting transfer from the Port Antonio lock-up to the Tower Street Adult Correctional Facility. On July 6, Garfield Campbell was electrocuted as he attempted to open the metal grille door to his cell at the St. Catherine Adult Correctional Institution in Spanish Town. The government never clarified how the door became electrified, and no one was prosecuted for the suspected homicide. Suicide also remained a problem. Over the course of two weeks in September, prison authorities at the same institution in Spanish Town failed to prevent two inmates from hanging themselves with electrical cord.

Overcrowding and poor living conditions remained severe problems. At the St. Catherine Adult Correctional Institution in Spanish Town, inmates shared dark, unventilated, and dirty cells. Designed to hold 800 inmates, the facility held 1,200. Constructed to hold 50 detainees, each cell held an average of 138 detainees. Police officers at the facility reported that the mentally ill detainees were locked up in the bathroom of the holding section. Some detainees also were held in the prison's medical facility.

The Tower Street Adult Correctional Center, located in downtown Kingston, held approximately 1,500 inmates, exceeding the 800-person maximum capacity for which the facility was built. Men and women were incarcerated in separate facilities, although female prisoners generally were incarcerated under better conditions than their male counterparts. Cells in some facilities had little natural light, inadequate artificial light, and poor ventilation. Hunt's Bay lock-up held prisoners in a cage-like structure open to the elements and the gazes of passersby.

Detainees, crowded in numbers of up to six persons per cell, mixed with garbage and urine. Potable water generally was available, but detainees were required to provide their own containers to carry water.

The women's prison, Fort Augusta, with at least 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. Female juveniles also were held at Fort Augusta.

Conditions at the juvenile lock-ups were poor. Investigations into the Moneague, Half-Way Tree, Admiral Town, and Glengoffe juvenile detention facilities revealed that minors reported contracting fungus from the conditions in the cells and from sleeping on cold concrete. Juvenile inmates also complained of roaches crawling over them during the day and at night. Juveniles at the Admiral Town lock-up were let out of their cells for only five minutes each day to bathe and use the toilet. At both Admiral Town and Half-Way Tree, the minor inmates were provided with bottles in which to urinate.

Throughout the system medical care was poor, primarily a result of having only three full-time doctors and one full-time nurse on staff. Four part-time psychiatrists cared for at least 225 diagnosed mentally ill inmates in 12 facilities across the island. Prisoners in need of dentures and unable to eat the prison food encountered difficulties gaining access to a dentist. Prison food was poor, and prison authorities frequently ignored inmates' dietary restrictions.

Nonviolent youth offenders were under the jurisdiction of the social services agency and generally were sent to unsecured halfway houses (called "places of safety" or "juvenile remand centers") after being 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 without regard to the nature of their offenses.

Although the law prohibits children being held in detention or lock-up with adults, approximately 60 juveniles remained in two of the adult facilities. Reports indicated that even in cases when police attempted to have officers from the social services agency retrieve minor detainees, the agency failed to do so, thereby forcing the police to comingle them with adults. Officers handling juvenile detainees were trained in child psychology, behavioral modification techniques, child-management strategies, and national and international human rights laws.

Reports of physical abuse of prisoners by guards continued, despite efforts by the government to remove abusive guards and improve procedures. INDECOM received eight reports of abuse by prison officials, none of which had been resolved at year's end.

Although prisoners were able to make complaints to the Public Defender's Office without censorship, and representatives were mostly able to enter the detention centers and interview prisoners without hindrance, official complaints and investigations were infrequent.

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.

The Office of the Children's Advocate again made a number of recommendations to Parliament, including a request that the law be revised to limit to 90 days the amount of time children spend in lock-up. Parliament, however, did not address the issue.

The government similarly took no tangible actions to address the UN Special Rapporteur's findings that officers at the Hunt's Bay Police Station were "very obstructive, uncooperative, aggressive, and openly threatened his team during their visit." However, reacting to what she deemed "terrible conditions" in the prisons, the chief justice instructed all resident magistrates to conduct regular visits of police lock-ups and to forward their observations to her office in writing. She counseled the magistrates to remind police of detainees' rights to due process.

The Department of Corrections opened the Metcalf Juvenile Remand Center in Kingston in July. The facility is designed to house a maximum of 208 male juveniles from ages 12 to 17. It is a pretrial facility, and the number of detainees varied daily. A typical number of people housed at the facility was 131 boys with an additional 50 men separated from the youth. Metcalf was built to international standards, with adequate space and a state-of-the-art fire escape and suppression system. There is a classroom and one-on-one instruction at the Metcalf facility. Female juveniles were still housed at St. Augustus, although a facility for remanded girls similar to Metcalf was set for construction in Stony Hill. The commissioner of corrections was addressing the need to provide education for minors, which is technically compulsory until age 16.

#### **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 and enforced curfews, during which they detained persons and took them into custody. A new anticrime bill passed during the year extended the time the security forces can legally hold persons from 48 to 72 hours before charging or releasing them. However, police sometimes reportedly held individuals for as long as five weeks.

### **Role of the Police and Security Apparatus**

The JCF has primary responsibility for internal security and is assisted by the Island Special Constabulary Force. The Jamaica Defence Force (JDF) is charged with national defense, maritime narcotics interdiction, and JCF support. The JDF routinely conducted 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.

In August 2010 the government created INDECOM to investigate actions by members of the security forces and other agents of the state that result in death or injury to persons or the abuse of the rights of persons. INDECOM gradually was replacing the JCF’s BSI as the main investigator of incidents involving fatal shootings by police. The BSI and INDECOM conducted administrative and criminal investigations into all incidents involving fatal shootings by police. The BSI, unable to keep up with its caseload, had a backlog of 841 cases with approximately 37 full-time and nine part-time investigating officers. During the year the BSI completed 308 investigations and forwarded 88 cases to the DPP.

INDECOM received 236 reports of fatal shootings by police officers, completed 92 investigations, and sent two to the DPP for further prosecution. INDECOM opened 724 cases for investigation and had a backlog of 632 cases at year’s end. INDECOM cited lack of resources to perform forensic analysis and identification of security personnel involved in incidents as major obstacles faced in its investigations of police killings. Rulings from the DPP on cases involving security forces were issued on average 27 months after the final submission of files from the BSI or INDECOM. At year’s end INDECOM awaited rulings from the DPP

on 40 cases. INDECOM also expressed concern that agents of the state concealed their identities in interaction with the public, including incidents of killings by security forces. A report released in August discussed how this anonymity contributes to the lack of accountability.

According to JCF records, 146 police officers, or 40 percent of the 362 officers who took voluntary lie-detector tests during the year, did not pass or complete the test. The assistant police commissioner did not say whether the officers who failed would be disciplined in any way. However, during the year officials retired two officers and denied reenlistment to 72 officers for corruption or ethics reasons. In addition authorities dismissed 11 officers for corruption, charged 39 other officers with corruption, and charged 19 citizens with corrupting JCF staff.

Authorities reported that at least 16 policemen charged with crimes, including at least five responsible for fatal shootings, had fled the country and were living abroad. Jamaicans for Justice, a human rights nongovernmental organization (NGO), alleged that since it takes the DPP so long to hand down a ruling that police personnel should be charged with a crime, there was possible collusion between the accused policemen and their colleagues, allowing accused officers to escape. For example, in September Mark St. Aubyn Russell was ordered extradited for the 2007 murder of 18-year-old Ravin Thompson. The DPP did not charge Russell with murder until 2009, after he had fled the country.

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 5,609 officers, 778 of whom were deployed in 360 communities island-wide. The branch 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. All JCF officers were required to take a “graduated response” before the use of lethal force when possible. Officers were also required to take an annual refresher course on the use of nonlethal equipment.

### **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 72 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. A constitutional amendment passed during the year ensures legal assistance if someone does not have sufficient means to pay for legal representation and provides that a civil organization may initiate an application on behalf of a detainee or a mentally ill person.

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, deteriorated in the warehouse, or could not be located when needed. In October the justice minister stated that endemic corruption in the legal system resulted in long delays in investigations and in cases coming to trial.

The resident magistrate's courts, which handle more than 90 percent of the cases in the court system, continued operation of a night court 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 was ever killed.

### **Trial Procedures**

Most trials are public and adjudicated by a lone judge. More serious criminal offenses are tried with juries in circuit court and at the Supreme Court level. There was a persistent problem seating jurors for cases, which contributed to the extensive judicial backlog. Some 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 claim to 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**

##### **Status of 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. An independent press, generally effective judicial protection, and a functioning democratic political system combined to ensure freedom of speech and of the press. The independent media were active and expressed a wide variety of views without restriction. Broadcast media were largely state owned but open to pluralistic points of view.

Libel Laws/National Security: The Press Association of Jamaica (PAJ) continued to advocate reforms to defamation and libel laws. In her 2010 annual report, the special rapporteur for freedom of expression of the Organization of American States (OAS) also called for changes to the libel laws, noting that Jamaica has ratified the American Convention on Human Rights but has not upheld elements of the convention that prohibit criminal libel and require public officials to demonstrate actual malice to prove defamation. Although the government was reviewing these laws, the PAJ criticized the slow speed and extent of this review process. According to the PAJ, officials used existing laws to prevent critical information from reaching the public. A PAJ representative said that the threat of libel or slander prosecutions forces journalists to ensure that they have hard evidence in hand before they can take controversial matters to the public sphere,

noting that a corrupt environment might make such evidence difficult if not impossible to obtain. The PAJ also advocated repealing the Official Secrets Act, asserting that it “runs counter to the Access to Information Act.” Parliament enacted “whistle-blower” legislation to help the media expose corruption.

### **Internet Freedom**

There were no government restrictions on access to the Internet or credible reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the expression of views via the Internet, including by e-mail.

### **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom.

With respect to cultural events, the Jamaica Broadcasting Commission sought to regulate and limit the dissemination of certain popular music deemed inconsistent with public morality. The commission 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**

See the Department of State’s *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/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 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.

### **Protection of Refugees**

Access to Asylum: 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.

### **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**

Recent Elections: In general elections held on December 29, the opposition PNP won 42 of the 63 seats in the House of Representatives, and PNP leader Portia Simpson Miller was to be sworn in as prime minister on January 5, 2012. Simpson Miller, who also served as prime minister in 2006-07, defeated the JLP led by Prime Minister Andrew Holness. International election observers from the Caribbean Community and the OAS deemed the elections transparent, free and fair, and without violence. A local organization, Citizen Action for Free and Fair Elections, also provided volunteer election observers, as it did in every election since 1998. In a preliminary assessment, the OAS cited adherence to agreements negotiated by the country's Electoral Office between the parties on media, advertising protocols, and campaigning rules as important elements that helped strengthen the democratic process. The OAS recommendations included ensuring adequate space to guarantee voter privacy, clarifying the duties of political liaison officers, providing copies of the voters' lists at polling stations, and improving signage at the entrance to polling stations.

All citizens age 18 and over have the right to vote by secret ballot. The relative lack of violence and intimidation in the December elections was notable, especially because in past 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 helping one political party by intimidating supporters of the opposing political party. Unlike in the past, however, civil society activism and pressure from the private sector, churches, and civic watchdogs made it difficult for either party to continue past practices of intimidation, lack of transparency, and back-room deals.

Participation by Women and Minorities: On December 29, voters elected eight women to the new Parliament, including three of the JLP's 13 female candidates and five of the six PNP nominees, including the party leader and candidate for prime minister. During the year there were eight female members in the 60-seat House of Representatives and three women appointed to the 21-seat Senate. One of the 16 cabinet ministers was a woman. A woman was elected speaker of the house on July 12, the second woman in the country's history to hold the position.

#### **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 Office of the Contractor General's (OCG) 2010 annual report stated that the OCG concluded 10 special investigations into a number of public sector procurement and contract award issues. The OCG reported nine to Parliament and referred six investigations to the DPP, attorney general, and other agencies, but no criminal charges had been levied at the time of the report. The OCG reported a consistent pattern with abuses related to conflicts of interest, breaches of duty on the part of accounting and accountable officers, breaches of duty on the part of boards of directors, and a seeming disregard for the applicable laws and regulations. The OCG also reported challenges to its statutory authority and credibility. The report noted that many of its recommendations had been repeated multiple times with few results. The report also stated that unless "powerful sanctions are promulgated for criminal breaches," and unless transgressions are investigated and prosecuted, "public officers and their private sector coconspirators will obviously continue to pay scant regard to due observance of the laws to the certain detriment of the public purse, the people, and taxpayers of Jamaica."

The JCF Anti-Corruption Branch (ACB), headed by a British police officer hired as assistant commissioner of police, has responsibility for addressing corruption in the force, and some improvements were noted, such as a public awareness campaign including a 1-800-CORRUPT initiative and advertising. Police personnel are required to sign five-year contracts with renewal contingent upon

good conduct. While it is rare that police personnel are charged or convicted, they can be barred from reenlisting whenever there is information that they are not efficient or effective in carrying out their duty with integrity. Between January and December, the ACB arrested 64 police personnel and charged 40 of them. Authorities did not permit 70 police officers to reenlist and dismissed nine police officers for corruption. However, suspicions of corruption and impunity within the force remained, despite a notable increase in the number of arrests of officers for corruption.

On July 2, the ACB caught a police inspector with three cardboard boxes and a knapsack filled with compressed marijuana with an estimated weight of over 150 pounds in the trunk of his vehicle.

The Commission of Enquiry formed by the government to probe the government's handling of an extradition request for alleged drug lord Christopher "Dudus" Coke failed to find any official misconduct by the prime minister or his government. While the commission looked into charges that the government hired a foreign lobbying firm, possibly to derail the extradition request, the commission was not tasked to investigate other aspects of the Tivoli Gardens operation.

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 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. The OCG can investigate but not prosecute official corruption involving government contracts.

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.

UN and Other International Bodies: The government cooperated with a number of domestic NGOs, including Jamaicans for Justice, to present its report to the Universal Periodic Review by the UN Human Rights Council in October.

Government Human Rights Bodies: 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.

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

In March the Charter of Rights amended the constitution to strengthen fundamental rights and freedoms. 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 and Domestic Violence: 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, namely when the parties have separated or when proceedings to dissolve the marriage or have it annulled have begun, when the husband is under a court order not to molest or cohabit with his wife, or when the husband knows he suffers from a sexually transmitted infection. Human rights groups continued to advocate for a more comprehensive law on spousal rape. The authorities reported 738 rapes and 637 cases of carnal abuse of women and girls, compared with 668 rapes and 531 cases of carnal abuse in 2010. The Bureau of Women's Affairs (BWA) believed that the true incidence was significantly higher than these statistics indicated, given the problem of underreporting, due to fear of stigma, retribution, or further violence. The JCF Center for Investigation of Sexual Offenses and Child Abuse, which was headed by a female deputy superintendent, handled sex crimes.

Social and cultural norms perpetuated violence against women, including spousal abuse. 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 \$123) and six months' imprisonment. The NGO Woman Inc. reported that women frequently complained that police failed to treat domestic violence as a crime and take the necessary reports. The JCF instituted a domestic abuse sensitivity training program for police officers in downtown Kingston. The BWA developed a draft National Plan of Action on Violence against Women and Gender-Based Violence, which aims to provide a comprehensive strategy guiding the government's response to the problem. NGOs meanwhile expressed concerns that in the short term there was insufficient funding for police investigations of gender-based violence and for counseling and shelter for victims. Woman Inc., with a small subsidy from the government, operated the only shelter for battered women in the country.

Sexual Harassment: There is no legislation that addresses sexual harassment and no legal remedy for victims of sexual harassment. The BWA carried out workshops to sensitize public sector workers to the issue of sexual harassment. NGOs have advocated for legislation on sexual harassment since the early 1990s and continued to advocate for the immediate drafting and enactment of such legislation.

Reproductive Rights: Couples and individuals have 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 modern contraceptive prevalence rate of 66 percent and a maternal mortality rate of 89 deaths per 100,000 live births.

Discrimination: Women sought jobs and served in almost every occupation in both the public and private sectors. 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. Domestic workers were particularly vulnerable to workplace discrimination and sexual harassment. Women's rights activists also expressed concern about the continued underrepresentation of women in politics: women comprised less than 15 percent of the Parliament and Senate. In March the cabinet approved a National Policy for Gender Equality aimed at providing equal opportunities for men and women in social, political, and economic life. This policy establishes Gender

Focal Points in each of the ministries, which are committees charged with developing, implementing, and monitoring gender-sensitive policies and programming.

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**

Birth Registration: 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.

Child Abuse: While there was no societal pattern of abuse of children, child abuse, including sexual abuse, was substantial and widespread. 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 (\$6,130) for failure to do so. The OCR received approximately 7,000 reports of child abuse, compared with 6,330 cases reported in 2010. The number of child abuse reports increased by more than 1,000 percent since the registry was established in 2007, when it received 455 reports. The OCR credited the growth to an increase in awareness among Jamaicans.

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. According to 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 637 cases of carnal abuse reported to the JCF, compared with 538 cases reported in 2010.

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 more than 400 complaints during the year, conducted some preliminary investigations, and referred other cases to appropriate government institutions.

Sexual Exploitation of Children: 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. The law criminalizes the commercial sexual exploitation of children and applies to the protection, possession, importation, exportation, and distribution of child pornography. It carries a maximum penalty of 20 years' imprisonment and a fine of J\$500,000 (\$6,130).

Sex Tourism: Child prostitution and sex tourism were problems, especially in tourist areas. In 2010 authorities uncovered a prostitution ring in Kingston involving an undisclosed number of minors.

International Child Abduction: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For country-specific information, see [http://travel.state.gov/abduction/country/country\\_3781.html](http://travel.state.gov/abduction/country/country_3781.html).

### **Anti-Semitism**

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

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

## **Persons with Disabilities**

There are no laws prohibiting discrimination against persons with disabilities or mandating accessibility for persons with disabilities. Although the government ratified the UN Convention on the Rights of Persons with Disabilities in 2007, there were no reports of actions taken to implement the provisions of the convention. Persons with disabilities encountered discrimination in employment and denial of access to schools. Discrimination in access to education was particularly pronounced at the primary level. Fewer problems were reported in secondary schools, and tertiary institutions, including community colleges, were increasingly drafting policies ensuring full inclusion of persons with disabilities. Health care reportedly was universally available.

Prior to the December elections, Human Rights Watch pointed out that many polling stations were inaccessible to persons with disabilities, but the government responded that it would be impractical to make changes to ensure accessibility so close to the elections. Nonetheless, election officials made efforts to accommodate voters with accessibility issues, by recruiting other voters to carry a wheelchair up a flight of steps or moving and carrying the prefabricated cardboard voting booth to the voter. After the December elections, both houses of Parliament announced plans to provide the oath of allegiance in Braille to accommodate visually impaired persons.

The Ministry of Labor has responsibility for the Jamaica Council for Persons with Disabilities, which had a budget of 54 million (\$661,770) in 2010-11. The council distributes economic empowerment grants of up to J\$50,000 (\$613) 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. Smaller rehabilitation grants of up to J\$15,000 (\$185) are available for similar 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. There were major infrastructural needs that the Maroons believed the central government neglected.

Formal education was not available in Maroon communities beyond the junior high school level, and unemployment rates were high. Many young Maroons left 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 persons of the same sex, in public or in private, which are punishable by 10 years in prison. There is also an “antibuggery” law that prohibits consensual same-sex sexual conduct between men, but it was not widely enforced. Homophobia was widespread in the country, and through the songs and the behavior of some musicians, the country's dancehall culture helped perpetuate homophobia.

The Jamaica Forum for Lesbians, All Sexuals, and Gays (J-FLAG) continued to report serious human rights abuses, including assault with deadly weapons, “corrective rape” of women accused of being lesbians, 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 84 reports of sexually motivated harassment or abuse, which included 71 cases of attempted or actual assault, including at least two killings, and 21 reports of displacements. Members of the police force reportedly were the perpetrators in 12 cases. J-FLAG data showed that young people, ages 18 to 29, continued to bear the brunt of violence based on sexual orientation. 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 July a high-level police official asserted that gay men were mainly responsible for lottery scams that defrauded many citizens, including many persons living abroad. The police commissioner promptly denounced the statement, notable because disapproval of homophobia by a public official was very rare.

In September the group AIDS-Free World filed an anonymous petition for two gay Jamaican men challenging Jamaica's antibuggery law at the Inter-American Commission on Human Rights. The petition claims that the law effectively criminalizes gay men and their sexual orientation and gives license to public

officials and private individuals alike to commit violence and abuse against lesbian, gay, bisexual, and transgender (LGBT) community members.

A number of high-profile events led to more public discourse on the issues of sexual orientation and gender identity, but this did not result in a change in conditions in society. In August J-FLAG released a public service announcement encouraging families to embrace LGBT family members. The announcement featured former Miss Jamaica World and Miss Jamaica Universe and her gay brother. J-FLAG wanted the announcement to appear on national television, but Television Jamaica refused, reportedly due to criticism from church leaders.

In a December debate leading up to the national elections, then PNP leader Portia Simpson Miller said that she would appoint cabinet ministers based on ability and that sexual orientation would not be a factor, in contrast to former prime minister Golding's statement that he would not appoint a "homosexual" to his cabinet. She also said that she would permit parliament to reexamine the antibuggery law and free members of her party to vote their conscience on this issue. After Simpson Miller's statements became a campaign issue, some candidates and a local newspaper produced anti-LGBT campaign rhetoric and material.

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, had not resumed by year's end.

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 sexual orientation 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**

Mob killings continued to be a problem and often went unpunished. For example, on March 8, Roja Martin, Roshane Brown, and a third man attempted to steal a bus

in the community of Patty Hill, Hanover. Residents blocked the road exiting the community, forcing the men to stop. The three men allegedly attacked the crowd with knives and a gun before trying to run away. The crowd caught Martin and Brown and beat them to death. The third man escaped in a car.

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 same-sex sexual activity and societal attitudes prevented distribution of condoms in prisons and similar institutions.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law provides for the right to form or join unions and to bargain collectively, but it neither authorizes nor prohibits the right to strike. The law allows for union activity, prohibits antiunion discrimination, and provides for the Industrial Disputes Tribunal (IDT) to reinstate a worker if a dismissal is deemed unjustifiable. The law permits unions to conduct their activities without interference and states that workers are entitled to reasonable time off to conduct union activities.

Striking workers could interrupt work without criminal liability but could not be assured of keeping their jobs. Workers in 10 categories of “essential services” must first take disputes to the Ministry of Labor before they can legally strike. The ILO repeatedly criticized the government for its broad definition of these 10 categories.

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).

All persons categorized as workers are entitled to protection under the law, including migrants and those working in special trade zones. Contract workers, however, are denied certain statutory provisions, such as redundancy benefits.

The independent IDT hears cases when management and labor fail to reach agreement, including those involving nonunionized workers. Cases not resolved by the tribunal pass to the civil courts. The tribunal received 37 cases during the year, compared with 23 cases in 2010. While cases are to be resolved within 21 days, most cases were decided within four to five months. Some took longer to resolve due to the complexity of the dispute or delays requested by involved parties. Awards can be appealed to the Supreme Court. There is no authority to enforce the IDT decisions.

Although freedom of association and the right to collective bargaining were generally respected in practice, workers faced some challenges during the year. Worker organizations were independent of the government and political parties. Employers generally respected the law prohibiting antiunion discrimination. However, some labor unions reported that private sector workers were increasingly fearful of management retaliation against unionization as the job market contracted. 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.

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.

There were no reports of any workers losing their jobs due to strike action during the year. 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. Prohibition of Forced or Compulsory Labor**

The antitrafficking law prohibits forced labor, but there are otherwise no specific laws prohibiting all forms of forced or compulsory labor. However, the country has ratified relevant ILO conventions, which carries a legal obligation to apply their provisions. The government responded to complaints but did not take additional actions to enforce the ILO conventions. While some cases of coerced employment of suspected trafficking victims were being treated in the court

system, the JCF was lax in investigating and identifying victims of trafficking that could potentially be prosecuted. There were reports of girls in rural areas recruited for domestic labor and then forced into servitude. In four instances authorities removed the individuals and provided them housing while court cases were pending. A national task force broadened its interministerial and public outreach to sensitize citizens to forced labor.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. 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 ages 13 and 15 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. Children are not to work more than four hours in a day. The law prohibits hazardous work for all children under 18.

Although the country signed the ILO convention to abolish child labor, the government did not effectively enforce it. The Ministry of Labor's Child Labor Unit (CLU) was responsible for monitoring and controlling child labor, and the ministry assisted the Office of Health and Safety in child labor enforcement efforts. The ministry employed approximately 25 inspectors to monitor all violations in workplaces, and the CLU received reports from the public. If the CLU determines that it is appropriate, it forwards reports of child labor violations to the CDA for enforcement. The JCF handles cases of the worst forms of child labor, including trafficking and sexual exploitation. The CDA is responsible for carrying out investigations of abuse, but resources to investigate exploitive child labor were insufficient.

There were no confirmed cases of child labor violations during the year. However, the Factory Act's limited definition of a workplace placed constraints on the purview of the ministry's inspectors. The Ministry of Labor also made efforts to establish stronger sanctions against guardians and parents involved in child labor activities. The government established the Tackle Child Labor through Education program to help build mechanisms to implement policies and enforce laws and regulations against child labor.

The ILO estimated that more than 26,000 children worked as vendors, agricultural and commercial laborers, domestic helpers, and prostitutes, among other forms of engagement. The government does not track the number of children involved in child labor. 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. Reports also indicated that children worked in garbage dumps, collecting scrap metal. Children were also engaged in commercial sexual exploitation.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

The minimum wage was J\$4,500 (\$55.15) per week for all workers. In practice some minimum-wage earners worked two or more jobs, but most workers were paid more than the legal minimum. There were, however, some reports of domestic workers receiving less than 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 also provides for paid annual holidays. The law does not prohibit excessive compulsory overtime. Some employees, notably security guards, were regularly required to work 12-hour shifts without overtime compensation.

The Ministry of Labor's Industrial Safety Division sets industrial health and safety standards. The law provides workers with the right to remove themselves from dangerous work situations without jeopardy to their continued employment if they are trade union members or covered by the Factories Act. The law covers any premises in which 10 or more persons are engaged in manual labor, whether they belong to a union or not. The law does not specifically protect other categories of workers in those circumstances.

The Ministry of Labor administered and is responsible for enforcing the minimum wage. The Industrial Safety Division 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 in both the formal and informal sectors. The 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.

There were 151 workplace accidents reported to the Ministry of Labor, compared with 168 in 2010. Of these reports, 89 qualified for investigation and 64 were investigated. There were three reported workplace deaths, compared with four in 2010.