

# **JAMAICA 2015 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Jamaica is a constitutional parliamentary democracy. The People's National Party (PNP) led by Prime Minister Portia Simpson Miller controlled 42 of the 63 seats in the House of Representatives. International election observers deemed the 2011 general elections transparent, free, fair, and without violence. Civilian authorities maintained effective control over the security forces.

The most serious human rights issues were an overburdened, under-resourced, and dysfunctional judicial system, which obstructed access to justice for victims of crime and their families, and allegedly unlawful killings by government security forces.

Other human rights issues included inadequate prison and jail conditions; violence against and sexual abuse of children; and violence and discrimination against women, and against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.

The government's efforts resulted in charging a much larger number of police officers with abuses than the previous year. A lack of willing witnesses and inefficiencies in the judiciary, however, continued to plague the justice system, and trials languished.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Arbitrary or Unlawful Deprivation of Life**

While there were no reports that the government or its agents committed politically motivated killings, there were reports that government security forces committed arbitrary or unlawful killings to eliminate suspected criminals and exact justice unavailable through the dysfunctional judicial system. Official Independent Commission of Investigations (INDECOM) statistics indicated that 93 persons were killed by police through December 2, on pace for a significant decline from the 150 killings that occurred in 2014. Local human rights organization Jamaicans for Justice, however, alleged that police out of uniform at times committed unlawful killings that were not reflected in the INDECOM statistics.

On July 19, police beat Marlon Cherrington at the Hunts Bay police lock-up, where authorities were holding him for alleged involvement in the killing of a police officer. Cherrington later died. At year's end INDECOM's investigation continued.

In August a court deferred its preliminary examination of Corporal Elaine Stewart, Constable Marlon Grant, and Constable Juliana Clevon, who were charged in 2014 with manslaughter in the August 2014 beating death of Mario Deane at the Barnett Street Police Station.

In August authorities charged police officers Malica Reid and Omar Simpson with the 2007 murder of a father and son.

A government-established commission continued its inquiry into the activities of the security forces during the 2010 Tivoli Gardens security operation that left at least 73 civilians and one security force member dead. The commission, which began hearings in December 2014, held sessions into the late fall--well beyond its mandated three-month period. Eyewitness testimony by officials, soldiers, and residents described police killings in detail.

## **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 but decreased compared with the previous year, according to Jamaica's Department of Correctional Services. INDECOM investigated all reports of abuse by prison officials.

## **Prison and Detention Center Conditions**

Dilapidated buildings, inconsistent health care, and overcrowding in some facilities presented challenges to the prison and detention center systems.

Physical Conditions: Overcrowding in some facilities and difficult conditions remained problems. Authorities held most inmates in high-security facilities,

although during the year the government transferred 700 inmates from high- to medium- and low-security facilities to finish their sentences.

The law prohibits the incarceration of children in adult prisons, and the government completed prisoner transfers to ensure that juveniles and adults do not share the same facility.

Female prisoners generally were provided better conditions than male inmates. Cells in some facilities had little natural light, inadequate artificial light, subpar bathroom and toilet facilities, and limited ventilation.

At the maximum security St. Catherine Adult Correctional Institution, inmates remained in their cells from 4 p.m. to 8 a.m. with a slop bucket to use but no other means to address their hygienic needs. Bedbugs were a problem.

Hunts Bay lock-up held prisoners in 11 cage-like structures, in plain view of passersby and exposed in varying degrees to weather conditions. Cells were crowded, with up to 10 persons per cell, and often soiled with garbage and urine. Detainees claimed authorities allocated cellmates 15 minutes two or three times a day to bathe, use the bathroom, and fill water bottles.

Medical care was limited. The system employed three full-time and several part-time doctors, one full-time nurse, and one dentist, and accessed the public medical system when necessary. Four part-time psychiatrists cared for at least 225 inmates diagnosed as mentally ill in 11 facilities across the island. Prisoners could not obtain dentures, but prisons accommodated the dietary needs of those with dental impairments.

Approximately \$200 Jamaica dollars (JMD) (\$1.68) was budgeted to provide each prisoner three meals per day. Prison authorities often ignored inmates' dietary restrictions. Families could bring prisoners additional food on Wednesdays.

Administration: There was no specific prison ombudsman. Official complaints and investigations were infrequent. Independent authorities investigated credible allegations of inhuman conditions. The Office of the Children's Advocate (OCA) investigated complaints concerning children in conflict with the law. Children detained in a juvenile correctional or remand facilities lodged complaints directly with the OCA. The OCA accepted complaints on behalf of children from the independent civilian-constituted Juvenile Boards of Visitors appointed for each juvenile facility.

Independent Monitoring: 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.

Improvements: The government began construction of a new cellblock designed to hold 304 inmates at Tamarind Farm Correctional Center.

#### **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. Security forces can legally hold someone for 48 hours before they must be charged or released.

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

The Jamaica Constabulary Force (JCF) has primary responsibility for internal security, assisted by the Island Special Constabulary Force. The Jamaica Defense Force (JDF), including the Coast Guard, has responsibility for national defense, maritime narcotics interdiction, and JCF support. The JDF at times conducted joint operations with the JCF. The Ministry of National Security exercises the prime minister’s authority for oversight of the JCF and JDF. The JCF maintained divisions for community policing, special response, intelligence gathering, and internal affairs. The Passport, Immigration, and Citizenship Agency has responsibility for migration. Civilian authorities maintained effective control over the JCF and JDF. The government has increasingly effective mechanisms to investigate and punish abuse and corruption in general.

INDECOM investigates 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 and, when appropriate, forwards cases to the Director of Public Prosecutions (DPP) for prosecution. There were no reports of impunity involving the security forces during the year.

Lengthy trials with numerous delays continued to be a systemic problem, not confined to cases involving police officers. From 2006 through 2014, the courts took many years to complete trials against police officers; in that period three

police officers were convicted of extrajudicial killings. As of the end of June, however, the DPP and INDECOM had 54 active cases of criminal charges against 64 police officers for their alleged involvement in unlawful killings.

The JCF continued a community-based citizen safety and security policing initiative to address the long-standing antipathy between the security forces and many poor inner-city neighborhoods. Community-based policing training was a central part of the basic training provided to new recruits, as well as in-service training provided to JCF members through professional development courses. The JCF trained community safety officers and assigned personnel to targeted schools as resource officers to stem school violence. The JCF Human Rights and Use of Force and Firearms Policy required all JCF officers to use an appropriate and graduated response to conflict, disorder, and violence. Officers were also required to take an annual refresher course on the use of nonlethal equipment, but this did not always occur due to a lack of funds and equipment.

### **Arrest Procedures and Treatment of Detainees**

Arrests ordinarily require warrants signed by a police officer of the rank of station sergeant or higher, but police may make arrests without warrants in some circumstances. 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 48 hours of arrest, unless a justice of the peace or a resident magistrate grants a special waiver, but at times persons were detained for slightly longer periods due to administrative processing or ongoing security operations.

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. There was a functioning bail system. Authorities allowed detainees prompt access to family members. The constitution 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.

The law requires justices of the peace and magistrates to inquire at least once a week into the welfare of each person listed by the JCF as detained.

Pretrial Detention: Police-administered lock-ups were intended for short-term detentions of 48 hours, but at times detainees were held in these facilities without charge for slightly longer periods.

### **e. Denial of Fair Public Trial**

The law provides for an independent judiciary. The independent Court Management Services maintained its own budget but the Ministry of Justice provided resources for the judiciary's large items such as vehicles for judges, the introduction of new technologies, and new court buildings.

Trials were often delayed for years, and at times cases were even dismissed due to delay tactics, including no-shows by witnesses, challenges impaneling juries, antiquated rules of evidence, and lack of equipment for collecting and storing evidence, among other reasons. For example, drug evidence collected in an arrest must be stored in its entirety; samples or photographs were not acceptable. Storage facilities were inadequate and understaffed, and evidence occasionally disappeared, deteriorated in the warehouse, or could not be located when needed.

The resident magistrate's courts, which handled more than 90 percent of the cases in the court system, operated night courts to reduce the backlog. For example, the judiciary twice ran a four-week circuit court in St. Ann parish. The Supreme Court and resident magistrate's courts alleviated some of the civil case backlog by using alternative dispute resolution in place of traditional trials.

There is a witness protection program, but many eligible witnesses either refused protection or violated the conditions of the program. According to the JCF, no participant in the witness protection program who abided by the rules of the program has ever been killed.

### **Trial Procedures**

The constitution provides defendants a presumption of innocence and the right to counsel and to confront witnesses against them. Defendants have the right to be informed of the charges against them and the right to a fair trial. While the norm had been for a jury to decide criminal cases where the potential punishment exceeded 12 months' imprisonment, in recent years lone judges have increasingly adjudicated criminal trials with potential punishment of five years' imprisonment for drug charges or life imprisonment in the gun court. The Supreme Court tries serious criminal offenses, including all murder cases. Citizens' reluctance to serve as jurors resulted in a persistent problem of seating jurors, which contributed to the judicial backlog. Defendants are provided ample time to prepare defense and are not compelled to confess guilt. They have the right to appeal. Legal Aid attorneys

were available to defend the indigent, except those charged with certain offenses under the Money Laundering Act or the Dangerous Drugs Act, as well as defendants not liable to incarceration. The Office of the Public Defender (OPD) may bring cases on behalf of persons who claim violations of their constitutional rights, 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.

In October, Parliament passed the Jury Amendment Act to improve the jury impaneling process. The act widens the pool of potential jurors by using the voters and tax registration lists, increases the stipend for jurors, modifies rules concerning peremptory challenges allowed in the jury selection process, permits trial by judge when the prosecution and defendants agree, and protects jurors against adverse action from their employers.

### **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 it 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. Police often 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 press, and the government generally respected these rights. An independent press, generally effective judicial protection, and a functioning democratic political system combined to promote freedom of speech and press. Independent media were active and expressed a wide variety of views without restriction.

### **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content. There were no credible reports that the government monitored private online communications without appropriate legal authority. According to the International Telecommunication Union, 40.5 percent of the population used the internet in 2014.

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

There were no government restrictions on academic freedom.

The Jamaica Broadcasting Commission barred certain lyrics and music videos, including songs referring to violent sex or violence against women, children, and other vulnerable persons, and edited and expunged lyrics deemed inappropriate to broadcast.

### **b. Freedom of Peaceful Assembly and Association**

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

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).

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

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation. The government generally respected these rights.

The government cooperated with the International Organization for Migration, UN Children's Fund, Office of the UN High Commissioner for Refugees, and other humanitarian organizations.

### **Protection of Refugees**

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government had a system for processing and providing protection to refugees. The government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened, and handled refugee or asylum cases administratively.

### **Section 3. Freedom to Participate in the Political Process**

The law provides citizens the ability to choose their government in free and fair periodic elections based on universal and equal suffrage, and citizens exercised that right.

#### **Elections and Political Participation**

Recent Elections: In elections held in 2011, the PNP won 42 of the 63 seats in the House of Representatives, and PNP leader Portia Simpson Miller was sworn in as prime minister in January 2012. International election observers from the Caribbean Community and the Organization of American States deemed the elections transparent, free, fair, and without violence. A local organization, Citizen Action for Free and Fair Elections, provided volunteer election observers. Local government elections, held in March 2012, were also considered free and fair.

### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively, and officials sometimes engaged in corrupt practices with impunity. The government continued efforts to interdict and prosecute officials' corrupt practices and raise public awareness on corruption. Media and civil society organizations, however, continued to criticize the DPP for being slow and at times reluctant to prosecute corruption cases. For example, the DPP did not order an investigation of a former mayor for nepotism in the award of public contracts until after a court, in December, ruled in favor of the Contractor General in deciding the DPP could prosecute.

The Ministry of Justice and the Attorney General's Office have overall responsibility to combat official corruption; other ministries were responsible for their own investigations.

Corruption: Through September the JCF's Major Organized Crime and Anti-Corruption Agency arrested and charged 10 officials for public-sector corruption and 22 police officers for corruption. During the same period, courts reached 27 convictions, three acquittals, and 14 dismissals. Pending in the courts were 159 corruption cases from 2008 to 2015.

Financial Disclosure: The Corruption Prevention Act requires public servants earning two million JMD (\$16,800) or more per year to disclose income, liabilities, and assets annually, and carries administrative sanctions for noncompliance. In February, 51 employees from the country's central bank, including the senior deputy governor, pleaded guilty and were fined between \$3,000 JMD (\$25) and \$5,000 JMD (\$42) each for failing to file statutory declarations in the previous three years. The Commission for the Prevention of Corruption, which implements this law, stated that 38 percent of required declarations remained outstanding. It cited lack of awareness among public servants as the primary reason for the low rate of compliance, and established in February a public education program across all government entities.

Public Access to Information: The Access to Information Act authorizes public access to government information. Although the last mandatory review of the law concluded in 2010, the government generally implemented the law effectively. The act does not include a mechanism to sanction or penalize officials who do not respond to access-to-information applications. Documents exempt from disclosure include those classified for national security reasons; those considered confidential to protect essential public interests or the private or business affairs of others; cabinet documents; investigative documents compiled for law enforcement proceedings; those affecting the national economy, personal privacy, or the government's deliberative process; and documents subject to legal privilege. The government must inform all requesters in writing within 30 days of receipt of the application if it will disclose the information and of the right to appeal disclosure denials.

## **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.

Government Human Rights Bodies: The independent Office of the Public Defender provides services for those charging that authorities violated their constitutional rights. The office contracts private attorneys to sue the government on behalf of private citizens.

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

The constitution prohibits discrimination based on race, gender, place of origin, political opinion, color, or creed. The government generally enforced these prohibitions, although there continued to be discrimination based on political affiliation in the distribution of scarce governmental benefits, including employment, particularly in poor inner city communities.

### **Women**

Rape and Domestic Violence: Rape is illegal and carries a maximum penalty of 25 years' imprisonment. The law criminalizes spousal rape only under the following conditions: when spouses have separated or begun proceedings to dissolve the marriage; 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. The law criminalizes sexual relations by an adult with a child--male or female--under the age of 16 and provides for penalties ranging from 15 years to life imprisonment. The JCF reported 460 rapes through October 24, a 20 percent decrease from the same period in 2014. The Bureau of Women's Affairs (BWA) in the Office of the Prime Minister believed 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 government's 2014 *Economic and Social Survey of Jamaica* indicated sexual assault was the cause of more than a thousand emergency room visits (one-eighth of the total).

The JCF Center for Investigation of Sexual Offenses and Child Abuse (CISOCA) comprised a multidisciplinary team, which included police officers, social workers, and counselors from the Victim Support Unit, that handled sex crimes and offered integrated services, including providing legal information. CISOCA officers received tailored training on sexual offense investigations.

Violence against women continued to be a severe problem. 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 \$10,000 JMD (\$84) and six months' imprisonment. The nongovernmental organization (NGO) Woman Inc. reported that women frequently complained that police failed to treat domestic violence as a crime and take the necessary reports. Studies reported that domestic violence was widespread. The Ministry of National Security's Victim Support Unit, Dispute Resolution Foundation, Peace Centers, and Women's Centers as well as various faith-based institutions offered counseling countrywide. Woman Inc. Crisis Centers in Kingston and Montego Bay provided counseling, shelter facilities, and support groups for rape victims, adult survivors of incest, and victims of gender-based violence. NGOs expressed concern that resources were insufficient for police investigations of gender-based violence and for counseling and shelter for victims.

NGOs reported the criminal justice system failed to hold perpetrators of violence against women and children accountable with the necessary urgency and seriousness.

Sexual Harassment: No legislation addresses sexual harassment and no legal remedy exists for victims of sexual harassment, although the prime minister presented a sexual harassment bill in the House of Representatives in December. The BWA worked with UNESCO on a project entitled "Addressing the Gap of Gender-based Violence between the State and Vulnerable Women and Girls" to strengthen awareness of gender-based violence, sexual harassment, and the need to combat trafficking in persons. The BWA also continued to provide sensitization and training to public-sector workers to ensure that gender considerations were integrated into all plans, policies, programs, projects, and operations.

Reproductive Rights: Couples and individuals have the right to decide the number, spacing, and timing of their children, manage their reproductive health, and have access to the information and means to do so, free from discrimination, coercion, or violence. Access to information on modern contraception and skilled health attendance during pregnancy and at delivery was widely available. The UN Population Fund (UNFPA) reported a modern contraceptive prevalence rate of 66 percent. Women have access to emergency health care, including for the management of consequences arising from abortions; however, the standard of care varied widely, especially in rural communities. According to the UN Children's Fund, 91 percent of pregnant women received quality prenatal care at least once

during pregnancy, and skilled personnel delivered 97 percent of births. Nevertheless, in 2010 (most recent available data) UNFPA reported a maternal mortality rate of 110 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 provides for the same legal status and rights for women as for men, including equal pay for equal work, women suffered from discrimination in the workplace and often earned less than men (see section 7.d.). The government repealed legislation that had restricted night work for women. Domestic workers were particularly vulnerable to workplace discrimination and sexual harassment. 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. As of September a total of 26 government ministries, departments, and agencies had received the Gender Equality Certification and Seal under the National Policy for Gender Equality (NPGE). To earn the certificate each entity must have established a gender focal point, participated in at least 80 percent of NPGE-approved training sessions, and developed an action plan with the principal's approval to implement the NPGE.

## **Children**

Birth Registration: Every person born in the country after August 5, 1962, is entitled to citizenship. Persons outside the country born to or adopted by one or more Jamaican parents, as well as those married to Jamaican spouses, can 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: Child abuse, including sexual abuse, was substantial and widespread. NGOs reported that gang leaders, sometimes including fathers, initiated sex with young girls as a "right," and missing children often were fleeing violent situations and sexual abuse. The Office of Children's Registry (OCR) receives, records, processes, and stores data relating to the mistreatment and abuse of children. The law requires anyone who knows of or suspects child abuse to make a report to the OCR, with a penalty of up to \$500,000 JMD (\$4,200) and/or six months' imprisonment for failure to do so. The OCR increased public awareness and reporting opportunities through its public outreach and advertising campaign, which included a 16-hour-per-day hotline, an improved website with contact information and downloadable forms to report abuse, and a downloadable

cell phone application that permitted the public to report suspected cases of child abuse.

The Child Development Authority (CDA) in the Ministry of Youth and Culture provides housing and day-to-day care for orphans, destitute children, and those with unsuitable parents, and administers the foster care and adoption programs. The 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. The OCA has an investigative function that gives it concurrent jurisdiction with the police whenever a child is the victim or complainant. The OCA also has the power to investigate government agencies and officials, including from the CDA, JCF, and elected public officials, and to institute legal proceedings against agents of government. Through August the OCA received 174 complaints directly from individuals and an additional 307 referrals from the OCR. It conducted preliminary investigations in some cases, and referred other cases to appropriate government institutions. Corporal punishment is illegal in early childhood centers and for all children in state care, but it remained legal elsewhere, including in schools.

Early and Forced Marriage: The legal minimum age for marriage is 18, but children may marry at 16 with parental consent.

Sexual Exploitation of Children: The law prohibits sexual intercourse with a person less than 16 years old, the minimum age for consensual sex. Sexual relations by an adult with a child under the age of 16 is punishable by up to life imprisonment. The law provides for a Sex Offenders Registry, which the Department of Corrections administers.

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 \$500,000 JMD (\$4,200). There were reports of children being involved in commercial sexual exploitation. The OCA investigated sex crimes when the victim was below 18 years of age. Depending on the case, the complaint was lodged directly with the OCA or referred to the OCA from the Children's Registry for investigation.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information see the Department of State's report on compliance

at [travel.state.gov/content/childabduction/en/legal/compliance.html](http://travel.state.gov/content/childabduction/en/legal/compliance.html) and country-specific information at [travel.state.gov/content/childabduction/english/jamaica.html](http://travel.state.gov/content/childabduction/english/jamaica.html).

### **Anti-Semitism**

Approximately 500 persons in the country practiced Judaism. 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/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

### **Persons with Disabilities**

While the law prohibits discrimination against persons with disabilities, it does not mandate accessibility standards. The 2014 Disabilities Act provides for the “full and effective participation and inclusion in the society for persons with disabilities on an equal basis with others” and establishes a disabilities rights tribunal to hear complaints. Persons with disabilities nevertheless continued to encounter discrimination in employment and access to schools, usually due to the state of the infrastructure, which limited access to buildings and provided few special facilities.

Limitations in access to education were particularly pronounced at the primary school level, due to insufficient access to facilities for persons with disabilities. There was also a lack of suitably trained faculty to care for and instruct students with disabilities. There were fewer reports of problems in secondary schools. Tertiary institutions, including community colleges, increasingly drafted policies to promote full inclusion of persons with disabilities. Health care reportedly was universally available.

The Ministry of Labor and Social Security has responsibility for the Jamaica Council for Persons with Disabilities. The council distributes economic empowerment grants of up to \$50,000 JMD (\$420) to persons with disabilities to provide assistive aids and to help them develop small businesses. The Ministry of Labor and Social Security also has responsibility for the Early Stimulation Project, an education program for children with disabilities, and for 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 cultural traditions distinct from those of the larger society. While formal education was not available within Maroon communities beyond the junior high school level, Maroons were able to attend high school in nearby communities.

## **Acts of Violence, Discrimination, and Other Abuses 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, and provides a penalty of two years in prison for the offense. There is also an “antibuggery” law that criminalizes consensual as well as nonconsensual anal intercourse, punishable by up to 10 years in prison. During the year, it was only enforced in cases of sexual assault and child molestation and was not used to prosecute consensual same-sex sexual conduct between men. Homophobia was widespread in the country.

The NGO J-FLAG reported that during the year approximately 100 LGBTI persons were subjected to discrimination, harassment, violence and other forms of abuse, including 19 cases of physical assault, 34 of verbal assault, 22 involving threat and intimidation, and four mob attacks. According to J-FLAG, an estimated 100 LGBTI persons reported being forced to flee their homes and rendered homeless over the past six years; another group of approximately 30 individuals remained homeless in Kingston. Through J-FLAG and other local NGOs, LGBTI persons were able to address these issues in the media and public forums and advocate for their human rights. Several high-ranking political leaders expressed support for safeguarding human rights of LGBTI persons.

The Ministry of Health and J-FLAG trained more than 200 healthcare workers in 2014 and 2015 to sensitize them to LGBTI patients. Although the country has universal health care, members of the LGBTI community relied mainly on the Jamaica AIDS Support for Life clinic, claiming that the staff in the government’s health system did not understand their needs and was unwelcoming. Training programs such as those conducted by J-FLAG, public advocacy by other NGOs and international donors, and increased focus by the government on the public

health issue of HIV/AIDS increased the number of LGBTI persons accessing public-sector health care facilities.

### **HIV and AIDS Social Stigma**

The 2013 HIV and AIDS legal assessment for Jamaica shows significant improvement in the nation's response to HIV, including a new governance structure of the National HIV/Sexually Transmitted Infection program, which has been integrated within the National Family Planning Board under the new Sexual and Reproductive Health Authority for Jamaica. There has been a dramatic reduction of HIV prevalence among sex workers. The country is close to eliminating the transmission of HIV and AIDS between mother and child. The country adopted the National HIV/AIDS Workplace Policy prohibiting HIV-related discrimination in the workplace, and increased public awareness and engagement on HIV for various vulnerable populations. Criminalization of private, consensual same-sex acts, sex work, and drug use continued to exacerbate stigma and discrimination against the most vulnerable populations and impede their access to health information and services. A high-level political declaration in 2011 to address stigma and discrimination has not been translated into concrete legal or policy reforms.

## **Section 7. Worker Rights**

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

The law, including related regulations and statutes, provides for the rights of workers to form or join unions and to bargain collectively. The freedom to strike is granted pursuant to the Jamaica Constitution in the Charter of Fundamental Rights and Freedoms provision for peaceful assembly and association. The law prohibits antiunion discrimination and provides for the Industrial Disputes Tribunal (IDT) to reinstate a worker if a dismissal is found to be unjustified.

The law makes it a criminal offense to prevent or deter a worker from exercising the right to participate in trade union activities or to dismiss, penalize, or otherwise discriminate against a worker for exercising these rights. Due to lessening adversarial worker-employer relationships, less rivalry among unions, and amendments to the Labor Relations Industrial Disputes Act that require a three-stage process for dispute resolution, labor union participation has steadily declined in recent years.

The government defines workers in 10 categories as “essential services,” the interruption of which would endanger the life, personal safety, or health of the whole or part of the population. The International Labor Organization (ILO) continued to criticize the government for its broad definition of these 10 categories. Before they can legally strike, these workers must first take disputes to the Ministry of Labor and Social Security and must allow the ministry to attempt to settle their disputes amicably. During the year nurses and police officers took their disputes to the Ministry of Labor and Social Security as required, but they also circumvented the process by holding “sick-outs.”

The law denies collective bargaining 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 obtains support from fewer than 50 percent of the workers (whether or not they are members of the union).

Labor law entitles all persons categorized as workers to protection, including migrants and those working in special trade zones. Independent contractors are not covered under certain statutory provisions, such as redundancy benefits. Part-time employment constitutes about 10 percent of the working population, while an estimated 90 percent of workers have permanent employment status.

Although the government in general attempted to enforce applicable laws, the effectiveness of applicable remedies and penalties was mitigated by the ability of defendants to appeal and tie up their cases in the court system for years. Under the Factory Act, fines or six months’ imprisonment were not sufficient to deter violations due to lengthy delays in their application. The ILO reiterated its concern that the minister of labor and social security had broad powers to refer industrial disputes to arbitration, including disputes that were not in public services designated as essential. The independent IDT hears cases when management and labor fail to reach agreement, including those involving nonunionized workers. While cases are, by law, to be resolved within 21 days, the tribunal decided most cases in four to five months. Some took longer to resolve due to the complexity of the dispute or delays requested by involved parties. The IDT decisions are formal and binding unless challenged specifically on a point of law. Parties can apply for a judicial review of the award by the Supreme Court.

Freedom of association and the right to collective bargaining generally were respected. Worker organizations operated without government or political parties’ interference. While employers generally respected the law prohibiting antiunion discrimination, some labor unions reported private-sector workers were fearful of

management retaliation against unionization. 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. The International Trade Union Confederation noted this hampered workers' ability to organize and bargain collectively.

### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor. A national task force consisting of government entities continued its interministerial and public outreach to sensitize citizens to forced labor.

While the government investigated some suspected cases of forced labor, it often did not effectively enforce applicable laws. In June a court convicted a forced labor trafficker and ordered him to pay more than \$4.5 million JMD (\$37,500) in fines and approximately \$2.4 million JMD (\$21,000) in restitution to three victims. There were reports of children subjected to forced labor (see section 7.c.).

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

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The law prohibits the employment of children under age 13 in any type of work. Although the law permits children between ages 13 and 15 to engage in "light work," as defined by the Ministry of Labor and Social Security, the activities have yet to be defined, except for the general guidance that such activities should not disrupt a child's education or be harmful to their health. The law prohibits children from working more than four hours a day and from engaging in hazardous work, including night work, work in industrial undertakings, mining, street begging, and selling alcoholic beverages.

The government did not effectively enforce its child labor laws. The Ministry of Labor and Social Security's Child Labor Unit (CLU) is responsible for monitoring and controlling child labor, although its resources and ability were limited. The CLU received reports from the public and assisted the Office of Health and Safety in child labor enforcement efforts. The JCF assists with investigations, depending upon the nature and severity of the case, especially in cases involving the worst forms of child labor, including trafficking and sexual exploitation.

The government did not adequately track the number of children involved in child labor. During the year the government collaborated with the ILO on a four-year project to increase its capacity to collect data on child labor. The government also continued the Tackle Child Labor through Education program to help build mechanisms to implement policies and enforce laws and regulations against child labor.

Despite some efforts by the government, child labor remained a pervasive and common phenomenon. Reports indicated that persons recruited girls in rural areas for domestic labor and then forced them into domestic servitude. In 2010 the ILO estimated that more than 26,000 children worked as vendors, agricultural and commercial laborers, domestic helpers, and prostitutes, among other forms of employment. 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. There were reports of children in commercial sexual exploitation (see section 6, Children). A 2013 survey conducted by the Statistical Institute of Jamaica estimated that more than 16,000 children were engaged in various forms of labor, but the actual number was unknown and believed to vary, depending on season of the year.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/).

#### **d. Discrimination with Respect to Employment and Occupation**

Laws and regulations prohibit discrimination on the grounds of race, sex, gender, place of origin, social status, color, disability, religion, or political opinions. The law does not prohibit discrimination based on sexual orientation or gender identity or HIV-positive status. The 2014 Disabilities Act seeks to safeguard and enhance the welfare and ensure the full and fair participation and inclusion in society of persons with disabilities.

There were no reports of cases filed for discrimination in employment or occupation during the year; however, anecdotal evidence from NGOs indicated that certain groups, especially members of the LGBTI community, experienced discrimination when seeking or maintaining employment. Individuals may file legal complaints against employers in such cases, but observers noted that fear of social stigma and lack of confidence in the inefficient legal system probably discouraged victims from actively pursuing their complaints.

### **e. Acceptable Conditions of Work**

The minimum wage, which the government reviews each year, was \$5,600 JMD (\$47) per week. Some unofficial sources estimated that up to 40 percent of Jamaicans worked in the informal sector, for which no good wage statistics existed. 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 employers generally respected. The law also provides for paid annual holidays. The law does not prohibit excessive compulsory overtime, and some employees, notably security guards, were regularly required to work 12-hour shifts without overtime compensation. The government sets occupational safety and health standards, which are current and appropriate for the main industries in the country but are not adequately enforced.

The Ministry of Labor and Social Security is responsible for enforcing the minimum wage. The ministry's Industrial Safety Division enforces industrial health and safety standards, mainly through factory inspections. The ministry employed 16 inspectors to monitor health and safety violations in workplaces throughout the country. Insufficient staffing in the Ministries of Labor and Social Security, Finance, National Security, and Public Service contributed to difficulties in enforcing workplace regulations. The safety division conducted inspections, investigated accidents, warned violators, and gave them a period in which to correct the violation. If the violation was not corrected within that time, the violator was taken to court. No information was available about the penalties for violations. The ability of defendants to appeal a case in the court system for years mitigated the effectiveness of penalties.

Some minimum wage earners held two or more jobs, but most workers received more than the legal minimum. There were reports of domestic workers receiving less than the minimum wage. No information was available about workplace accidents or deaths.