

# **JAMAICA 2013 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 elections transparent, free, fair, and without violence. Authorities failed at times to maintain effective control over the security forces. Security forces allegedly committed human rights abuses.

The most serious human rights issues were alleged unlawful security force killings; cases involving the violation of rights that were not resolved in a timely way; and poor prison and jail conditions, including abuse of detainees and prisoners and severe overcrowding.

Other human rights issues included an overburdened, under resourced, and ineffective judicial system, and frequent lengthy delays in trials, violence against and sexual abuse of children, violence and discrimination against women, trafficking in persons, violence against persons based on their suspected sexual orientation or gender identity, and mob violence.

The government took steps to investigate and punish members of the security forces who committed abuses, but in many instances a lack of witnesses and insufficient forensics equipment precluded arrests or prosecutions, thus providing the appearance of 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 occurrences where citizens accused the government's security forces or its agents of committing arbitrary or unlawful killings.

For example, the Director of Public Prosecution (DPP) filed criminal charges July 19 against police constable Ricketto Graham for the murder of Christopher Hill and attempting to pervert the course of justice. Police injured Hill in a shooting incident on July 12, and he was taken to a hospital where he died of his injuries on July 14. Constable Graham allegedly pulled his firearm and fired two rounds in

Hill's direction, hitting him once, after he allegedly reached into the front of his pants and pulled out a knife. The police claimed they recovered a knife at the scene, but civilian onlookers gave a conflicting account, which prompted the Independent Commission of Investigations (INDECOM) to believe that the officer intended to wound Hill.

There was no update on the INDECOM investigation into the police-involved shooting death of Kavorn Shue in June 2012.

At a July 5 hearing, judicial authorities scheduled the trial for police corporal Dwayne Smart for December 2. The DPP charged Smart with murder for the September 2012 killing of Kayann Lamont.

According to official INDECOM statistics, there were 211 killings involving police through October. Six police officers also were killed in the line of duty during that time. Human rights monitors indicated that some killings by police went unreported, with police allegedly meting out the justice they believed was 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 not credible, because the killings occurred in areas where well-armed gangs, trafficking in weapons and narcotics, and running lottery and advance fee scams, controlled communities and were often better armed than police.

Violent crime remained a serious concern, and on many occasions the Jamaica Constabulary Force (JCF) employed lethal force in apprehending criminal suspects. INDECOM investigated all police killings, and when appropriate, forwarded cases to the DPP for prosecution. It takes many years to bring police officers to trial for alleged unlawful killings, and the courts have convicted only one police officer of an extrajudicial killing since 2006; the court convicted that officer of murder in 2012 and sentenced him to life in prison on March 1. Lengthy trials with numerous delays were a systemic problem, not confined to cases only involving police officers.

The trial proceedings against police Corporal Malica Reid, charged with the 2010 killing of prominent businessman Frederick "Mickey" Hill, began in October 2011 but have suffered repeated postponements. At the October 21 hearing, the court of appeals dismissed Reid's motion, challenging the power of INDECOM to arrest and bring charges against police personnel.

In July authorities charged Corporal David Hutchinson and Constable Kenneth Daley with murder for the August 2010 shootings of Derrick Bolton and Rohan Dixon. The two officers accused were among eight officers who had unsuccessfully filed a motion with the Constitutional Court, challenging an order from INDECOM to give statements on the police operation at the time. The court challenge delayed the investigation, which INDECOM could not complete until January. The DPP recommended in June that the two officers be criminally charged with murder, and the Home Circuit Court charged them on July 2. Bail was set at Jamaican \$700,000 (\$6,731) each, and the two awaited the start of their trial.

In May the Office of the Public Defender (OPD) released an interim report on the 2010 Tivoli Gardens security operation that left at least 73 civilians and one security force member dead. The report catalogued complaints made to the OPD in the aftermath of the security operations. The report noted allegations of 44 instances of extrajudicial killings and at least four disappearances, among other complaints. The Public Defender recommended the government establish a commission to conduct a judicial enquiry into the activities of the security forces and illegal gunmen during the state of emergency.

### **b. Disappearance**

There were no reports of politically motivated disappearances.

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

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

When prisoners 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 there is evidence 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.

Physical Conditions: Overcrowding and poor living conditions remained severe problems. With a maximum rated capacity of 4,652 inmates, the corrections system contained approximately 4,000 adult inmates, including at least 200 women and girls. There was considerable overcrowding in particular facilities, since some capacity was unusable due to staffing shortfalls, and because the rated capacity reflected both high- and low-security facilities, and most inmates were held in high-security facilities. Authorities required detainees to provide everything needed for their time in state custody including clothes, soaps, and a water bottle. Although the law prohibits the incarceration of children in adult prisons in most cases, authorities held approximately 25 juveniles in adult jails and kept another 299 juveniles in detention in juvenile-only facilities.

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. At the Admiral Town lock-up, jailers let juveniles 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. The Metcalf Juvenile Remand Center in Kingston is a pretrial facility designed to hold a maximum of 208 male juvenile remandees from ages 12 to 17. It held 135 boys and provided comprehensive services, including medical and mental health screening, assessment and treatment; counseling and other therapeutic interventions; education and skills training; behavior modification programs, including drug treatment and prevention; sports and recreational activities; and spiritual engagement. There was a classroom and one-on-one instruction at the Metcalf facility.

The Horizon Adult Remand Center, built originally as a warehouse, held 488 inmates, including some of the country's most hardened criminals, approximately 80 percent of whom had links to criminal gangs. Authorities did not clearly separate detainees according to their different stages of criminal procedure. Persons detained without charges, remandees, and convicted criminals shared the same facility and often shared cells. 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 1,263. Intended to hold 50 detainees, cell blocks held an average of 138. Police officers at the facility

reported that mentally ill detainees were locked in the bathroom of the holding section. Authorities also held some detainees in the prison's medical facility. Inmates remained in their cells from 3 p.m. to 9 a.m. with no means to address their hygienic needs. They received a slop bucket to use, but administrators strongly encouraged the inmates not to use them. These conditions at times led to violence and serious health problems among prisoners. The superintendent noted the problems, but insufficient resources prevented prisoners from remaining outside their cells for a larger portion of the day. Bed bugs also were common.

The Tower Street Adult Correctional Center in downtown Kingston held 1,659 inmates, exceeding the facility's 800-person maximum intended capacity. Men and women were incarcerated in separate facilities, although female prisoners generally lived in better conditions than their male counterparts. Cells in some facilities had little natural light, inadequate artificial light, sub-par bathroom and toilet facilities, and poor ventilation. Hunt's Bay lock-up held prisoners in 11 cage-like structures, which were open, in varying degrees, to the elements and the gazes of passersby. Cells were crowded, with up to 10 persons per cell. As a result, cells were often soiled with garbage and urine. Detainees told the local nongovernmental organization (NGO) Jamaicans for Justice (JFJ) that authorities allocated cellmates just 15 minutes two to three times a day to bathe, use the bathroom, and fill water bottles. Potable water generally was available, but officials required detainees to provide their own containers to carry water. Male prisoners had limited access to latrine facilities. Between 4:00 p.m. and 7:00 a.m. the following day, the prisoners' only option was to relieve themselves in a slop bucket. The commissioner of corrections made several attempts to disinfect the facilities and obtain new mattresses for the inmates, but lack of funds hindered his efforts, and the center had to rely on donations to conduct routine disinfectant spraying of mattresses and cells.

The women's prison, Fort Augusta, with nearly 300 inmates, had no indoor water supply. Inmates obtained water from a central source in containers they provided themselves. In September the government removed all female juveniles from Fort Augusta and transferred them to the renovated South Camp Facility.

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. Additionally,

only approximately J\$200 (\$1.92) was budgeted to provide a prisoner three meals per day. At least 14 prisoners died in detention during the year, including 12 from natural causes, one during an altercation with prison guards, and one by hanging. INDECOM's investigation determined the hanging victim committed suicide.

Allegations of physical abuse of prisoners by guards continued, despite efforts by the government to remove abusive guards and improve procedures. INDECOM investigated all reports of abuse by prison officials.

Administration: The budget for prisons and lockups was inadequate in light of the overwhelming challenges and demands facing the system. Nonviolent youth offenders were under the jurisdiction of the social services agency, which generally sent them to unsecured halfway houses (called "places of safety" or "juvenile remand centers") after removing them from their homes. Because the law does not clearly define an "uncontrollable child," authorities classified a large number of minors as uncontrollable and detained them for long periods without regard to the nature of their offenses. In the case of juveniles held in two of the adult facilities, even when police attempted to have officers from the social services agency retrieve minor detainees, the agency failed to do so, thereby obliging the police to comingle them with adults. Authorities trained officers handling juvenile detainees in child psychology, behavioral modification techniques, child-management strategies, and national and international human rights laws.

There was no specific prison ombudsman. Although prisoners could make complaints to the Public Defender's Office without censorship, and representatives usually could enter the detention centers and interview prisoners without hindrance, official complaints and investigations were infrequent. Authorities permitted prisoners and detainees to receive visitors and attend religious observances.

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: Female juveniles moved to the renovated South Camp facility from Fort Augustus and obtained access to classrooms and courses. The NGO Stand Up For Jamaica worked with prison authorities to provide basic education and vocational training to approximately 700 inmates, including children.

#### **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. Although security forces can legally hold persons for 72 hours before charging or releasing them, 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, assisted by the Island Special Constabulary Force. The Jamaica Defence Force (JDF) has responsibility for national defense, maritime narcotics interdiction, and JCF support. The JDF routinely conducted joint patrols and checkpoints in conjunction with the JCF. In her capacity as minister of defense, the prime minister approves 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. A commissioner heads the JCF, who delegates authority through the ranks to constables. The force maintains divisions focusing on community policing, special response, intelligence gathering, and internal affairs.

In 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 had 87 staff members, including 42 investigators and eight forensic examiners. The Constitutional Court ruled in July that INDECOM had the power to file charges and no longer needed to send its files to the DPP for a decision. The court’s decision streamlined the judicial process, as the DPP issued its rulings on cases involving security forces on average 27 months after the final submission of files from the Bureau of Special Investigations or INDECOM. In 2012 INDECOM awaited rulings from the DPP on 40 cases. INDECOM also expressed concern that agents of the state concealed their identities in interactions with the public, including incidents of killings by security forces.

According to JCF records through August, 95 police officers, or 50 percent of the 190 who took voluntary lie detector tests, did not pass or complete the test. The assistant police commissioner did not state whether he would discipline the officers who failed in any way.

JFJ reported that at least 21 police officers responsible for fatal shootings in recent years had fled the country and were living abroad. The JFJ alleged that the lengthy time it took the DPP to determine that police personnel should be charged with a crime suggested collusion between the accused police officers and their colleagues, allowing accused officers to escape.

The JCF continued a community 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 on professional development courses at the academy. The Community Safety and Security 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 when possible to take a “graduated response” before using lethal force. 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 While in Detention**

Arrests normally require warrants signed by a police officer of the rank of station sergeant or higher, although 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. Although the law requires detained suspects be charged or released within 72 hours of arrest, unless a justice of the peace or a resident magistrate grants a special waiver, suspects could remain in custody for weeks, awaiting an identification lineup before witnesses.

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 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.

Although the law requires police to present a detainee in court within a reasonable time, authorities sometimes remanded suspects for psychiatric evaluation, at times for as long as three years when their cases were “lost in the system.” The law requires magistrates to inquire at least once a week into the welfare of each person listed by the JCF as detained, but few did so, especially in the busy Kingston/St. Andrew corporate area. In September local media reported two examples of persons who were “lost in the system.” Roger Nando appeared before a judge for the first time in two years. He told the judge he had been in custody for five years, awaiting the start of his murder trial. The judge postponed Nando’s case again because his lawyer was not in court. Hopeton Wright died in July at the Horizon Remand Center. The JFJ’s interview with the family revealed that authorities charged him in 2004 and assigned bail. A judge revoked his bail in 2008 for failing to appear in court after a police officer allegedly told Wright that his case was thrown out. He remained in custody from 2008 until his death in July. Based on the family’s statement, he awaited trial for nearly nine years and spent the last five years in custody.

#### **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.

In many instances authorities delayed trials for years and dismissed some cases because files could not be located or had been destroyed. Some trials suffered from 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.

The resident magistrate’s courts, which handled 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.

Judges dismissed some criminal trials because witnesses failed to come forward due to threats, intimidation, or their murder. Some of those who appeared 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 had ever been killed.

### **Trial Procedures**

Most trials are public and adjudicated by a lone judge. More serious criminal offenses are tried with juries in circuit court 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 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 and public trial by jury without undue delay. Judicial authorities frequently postponed trials because witnesses, counsel, or the required number of jurors failed to appear in court. 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 Dangerous Drugs Act and in the case of offenses in which the defendant is not liable to incarceration. The 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.

### **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. 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 ensure freedom of speech and 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: In November parliament passed a new Defamation Act that replaced the 162-year-old Libel and Slander Act and the 52-year-old Defamation Act. The new act provides fair remedies for persons whose reputations have been harmed by the publication of defamatory matter; promotes “speedy and non-litigious methods of resolving disputes;” and ensures that there are no “unreasonable limits” on freedom of expression, especially on “matters of public interest.”

#### **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 without appropriate legal authorization. According to the International Telecommunication Union, 18 percent of households had internet access in 2011, and 46.5 percent of citizens used the internet in 2012.

#### **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 and music videos 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.

### **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 internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

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 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 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 through periodic elections based on universal suffrage.

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

Recent Elections: In general 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. Simpson Miller also served as prime minister in 2006-07. The PNP defeated the Jamaica Labour Party (JLP), led by then prime minister Andrew Holness. International election observers from the Caribbean Community and the Organization of American States (OAS) deemed the elections transparent, free, fair, and without violence. A local organization, Citizen Action for Free and Fair Elections, also provided volunteer election observers. 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. Election watchers noted the relative lack of violence and intimidation in the 2011 elections, especially because in past elections voters living in inner-city areas dominated by one of the two major political parties faced substantial pressure. This pressure came from politically connected gangs and young men helping one political party by intimidating supporters of the opposing side. Civil society activism and pressure from the private sector, churches, and civic watchdogs discouraged past practices of intimidation.

Participation by Women and Minorities: Voters elected eight women to the 63-seat House of Representatives, 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. There were five women appointed to the 21-seat Senate. One of the 16 cabinet ministers was a woman, two women were appointed ministers without portfolio, and another a minister of state. The DPP and the chief justice were women.

## **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.

Corruption: Through September the Office of the Contractor General (OCG) concluded three special investigations into a number of public sector procurement and contract award issues. The OCG reported all three to parliament and referred one investigation to the DPP.

The Ministry of Justice and the Attorney General's Office have overall responsibility to combat official corruption, but other ministries were responsible for their own investigations. All agencies operated independently without much collaboration among themselves, much less with civil society. Most agencies claimed they had insufficient resources to do an effective job, but the OCG stated repeatedly that the real obstacle was the lack of political will.

The JCF Anti-Corruption Branch (ACB), headed by an assistant commissioner of police, has responsibility for addressing corruption in the force, and observers noted some improvements. Police personnel undergo a rigorous vetting process, including polygraph examinations, and are required to sign five-year contracts with renewal contingent upon good conduct. While authorities rarely charged or convicted police personnel, authorities barred police personnel from re-enlisting whenever there was information that they were not efficient or effective in carrying out their duties with integrity. Through September the ACB criminally charged 38 police officers with corruption; and 59 cases went to trial, including cases carried over from previous years, resulting in five convictions, four acquittals, and 15 dismissals. The ACB had 29 pending as of October. Authorities did not permit 13 police officers to reenlist and dismissed four police officers for corruption. Three police officers voluntarily retired because of corruption investigations. Despite a notable increase in the number of arrests of officers for corruption, suspicions of corruption and impunity within the force remained.

Whistleblower Protection: The Protected Disclosure Act provides for protection of public and private employees who make lawful private or public disclosures of evidence of illegality, including criminal offenses, failure to carry out a legal obligation, and conduct that is likely to result in a miscarriage of justice, to threaten the health or safety of a person, or to threaten or damage the environment.

The act also encompasses disclosure that shows gross mismanagement, impropriety or misconduct in the carrying out of any activity involving the use of public funds, an act of reprisal against or victimization of an employee; conduct that tends to show unfair discrimination on the basis of gender, race, place of origin, social class, color, religion or political opinion; or willful concealment of such acts. Authorities generally implemented the law effectively.

Financial Disclosure: The Corruption Prevention Act requires many government officials to file financial declarations, although reports indicated that more than 5,000 civil servants failed to file or filed late or incomplete financial declarations required under the act. Officials covered by the act must furnish the Commission for the Prevention of Corruption an annual declaration of their assets, liabilities, and income, including those of their spouses and children. The act also requires them to file a declaration 12 months after leaving office. 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 OCG can investigate but not prosecute official corruption involving government contracts.

Public Access to Information: Despite provisions in the Access to Information Act to promote transparency, media accounts indicated that the government sometimes categorically denied access to information. The act contains no sanctions or penalties to discourage lack of response to applications. Documents exempt from disclosure include those classified for national security reasons; those considered confidential to protect essential public interests or the private/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 respond in writing to all requests for information, inform the requester within 30 days of receipt of the application if the information will be disclosed, and inform the requester of the right to appeal disclosure denials. There is a charge for reproducing documents, but authorities may waive, reduce, or refund the fee when justifiable.

## **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 OPD provides services on behalf of those who charged that authorities violated their constitutional rights. The office contracted private attorneys to sue the government on behalf of private citizens.

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

The 2011 Charter of Rights amendment to 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 widespread discrimination based on party affiliation in the distribution of scarce governmental benefits, including employment, particularly in the 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, but only in the following circumstances: 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 JCF reported 589 rapes through September. The Sexual Offenses Act of 2011 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 new law replaced the carnal abuse provision of the previous law. 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, headed by a female deputy superintendent, handled sex crimes.

Social and cultural norms perpetuated violence against women, including spousal abuse. The Broadcasting Commission banned the transmission of content that promotes violence against women, children, and other vulnerable persons (see Section 2.a.). 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 (\$96.15) 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. A Victim Support Unit, located within the Ministry of National Security, operated in all 14 parishes. It provided counseling, emotional support, and other services to victims of gender-based violence in volatile communities. NGOs 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: No legislation addresses sexual harassment, and no legal remedy exists for victims of sexual harassment. The BWA carried out workshops to sensitize public sector workers to the issue of sexual harassment. NGOs have unsuccessfully advocated for legislation on sexual harassment since the early 1990s.

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 without hindrance. Access to information on contraception and skilled attendance at delivery were widely available. The UN Population Fund reported a maternal mortality rate of 110 maternal deaths per 100,000 live births. A review of maternal deaths revealed that a delay in receiving appropriate care in the hospital was the main contributor to maternal deaths. The incidence of HIV/AIDS in the antenatal population has been a significant factor, as well as morbidity from hypertension, heart disease (now the second leading cause of maternal death), and diabetes, often associated with obesity even in young mothers. The UN Population Fund reported a modern contraceptive prevalence rate of 66 percent. According to UNICEF, 91 percent of pregnant women received quality prenatal care at least once during pregnancy, and skilled personnel delivered 97 percent of 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, women suffered from discrimination in the workplace and often earned less than men. 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 held less than 15 percent of the

seats in parliament and the senate. The National Policy for Gender Equality, aimed at providing equal opportunities for men and women in social, political, and economic life, established Gender Focal Points (GFPs) in each of the ministries, which were committees of selected senior-level representatives, charged with developing, implementing, and monitoring gender-sensitive policies and programming. The government trained 100 statisticians to assist the GFPs in collecting and monitoring data, and most ministries and agencies held the required quarterly GFP meetings. The BWA followed up with the remaining agencies.

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 particular societal pattern of abuse of children, child abuse, including sexual abuse, was substantial and widespread. The Office of Children's Registry (OCR) processes, receives, records, 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 J\$500,000 (\$4,808) for failure to do so. Through August, the OCR received 8,030 reports of child abuse compared to 8,741 reports for all of 2012. Of the reports received, 1,730 represented children who went missing. Reporting improved during the year due to increased public awareness and reporting opportunities, facilitated by the OCR's public advertising campaign, including the staffing of a 16-hour-per-day hotline, an improved website that contained contact information and downloadable forms to report abuse, and a downloadable cellphone application that permitted the public to report suspected cases of child abuse.

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. On August 12, the cabinet approved the drafting of an amendment to the Child Care and Protection Act that would end the practice

of sending so-called “uncontrollable” children to correctional facilities. According to the CDA, sexual assault was the most common reason for hospitalization of children, 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 being pressured or forced into sexual intercourse at the time of their first sexual experience. NGOs reported that inner-city gang leaders, sometimes including fathers, initiated sex with young girls as a “right.” Studies reported that 50 percent of men reported having hit their partner, while 30 percent of adolescents worried about fighting and violence they saw in the home. Nearly one-quarter of all murders in the past three years resulted from domestic violence.

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. The OCA received 218 complaints through September, conducted preliminary investigations, and referred other cases to appropriate government institutions.

Forced and Early Marriage: The legal minimum age for marriage is 18, although children may marry at 16 with parental consent. UNICEF estimated the rate of marriage under 18 at 9 percent.

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 are punishable by up to life imprisonment. The 2011 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 (\$4,808). There were anecdotal reports of children being involved in commercial sexual exploitation, but police investigations of alleged incidents failed to find confirming evidence.

Child prostitution and sex tourism were problems, especially in tourist areas.

International Child Abductions: 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\\_5987.html](http://travel.state.gov/abduction/country/country_5987.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. Persons with disabilities encountered discrimination in employment and access to schools. In May Senator Floyd Morris was sworn in as the first blind president of the senate; he staunchly promoted rights of persons with disabilities, and he began advocating with local businesses and organizations to help fund projects to improve access to sidewalks and buildings by persons with disabilities. Discrimination in access to education was particularly pronounced at the primary level due to insufficient facilities and access for persons with disabilities. The deficiencies were due primarily to lack of funding. There were fewer reports of problems in secondary schools, and 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 has responsibility for the Jamaica Council for Persons with Disabilities. The council distributes economic empowerment grants of up to J\$50,000 (\$481) 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 (\$144) were 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. The Maroons alleged that the central government neglected the construction and repair of important infrastructure in their areas. Formal education was not available in Maroon communities beyond the junior high school level, and led to high unemployment rates. Many young Maroons left the region for employment elsewhere; this migration and the influx of popular island-wide culture threatened the communities' culture.

In recent years there has been an influx of immigrants from China to work on large Chinese-financed and managed construction projects. Many remained after completing the projects to open small businesses of their own. The growing and relatively prosperous Chinese community tended to rely on cash transactions rather than banks, making them more susceptible to thieves and other criminal elements. In response to complaints by Chinese diplomats, senior police officials met in August with officials of the Chinese Embassy, business owners, and civic groups to discuss the problem. The police agreed to take additional security measures to protect the community and their businesses and assigned an assistant commissioner of police to act as a national liaison officer to the community.

### **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, punishable by two years in prison. There is also an “antibuggery” law that prohibits consensual same-sex sexual conduct between men, which is punishable by up to 10 years in prison, but it was not widely enforced. Homophobia was widespread in the country, perpetuated by the country’s dancehall culture through the songs and the behavior of some musicians. Lesbian, gay, bisexual, and transgender (LGBT) persons faced violence, harassment, and discrimination.

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. Stigma and intimidation was likely a factor in preventing victims from reporting incidents of discrimination in employment, occupation, and housing. Although individual police officers

expressed sympathy for the plight of the LGBT community and worked to prevent and resolve instances of abuse, J-FLAG reported that the police force in general did not recognize the extent and seriousness of bullying and violence directed against members of the LGBT community and failed to investigate such incidents.

During the year J-FLAG noted an increase in the number of reports of sexually motivated harassment or abuse. Advocates attributed this to more widespread citizen awareness of LGBT discrimination, a greater willingness within the community to bring attention to the problem, and the expanded availability of channels for reporting incidents of abuse. 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 meant those who remained were vulnerable to extortion from neighbors who threatened to report them to the police as part of blackmailing schemes.

Gay men hesitated 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. In July, 17-year-old Dwayne James was beaten and then stabbed to death during a mob attack outside a dance hall in Montego Bay. He attended the dance dressed in women's attire, and several male assailants subsequently attacked him when they realized they had danced with a man. By October the police had not made an arrest in the case because witnesses claimed they could not identify the attackers.

Prison wardens held male inmates considered gay 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 reports of violence against gay inmates, perpetrated by the wardens and by other inmates, but few inmates sought recourse through the prison system.

In February an official at J-FLAG filed a petition with the Supreme Court challenging the anti-buggery law. The NGO Aids-Free World filed the petition on his behalf, based on the argument that the privacy provisions contained in the 2011 Charter of Fundamental Rights and Freedoms conflict with the anti-sodomy provisions of the penal code, the enforcement of which could require breaching a person's right to privacy.

In a December 2011 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. She also said that she would permit parliament to reexamine the anti-buggery law and free members of her party to vote their conscience on this issue, although parliament took no action during the year to re-examine the law.

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, resumed and proceeded slowly during the year.

### **Other Societal Violence or Discrimination**

Mob killings continued to be a problem and often went unpunished. There were no updates in the investigation into the September 2012 mob killing of Donovan Hazley, nor into the October 2012 killing of Michael Melbourne.

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. Societal attitudes supporting laws against same-sex sexual activity prevented distribution of condoms in prisons and other gender-separating institutions.

## **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, but it does not protect the right to strike. The law prohibits antiunion discrimination and provides for the Industrial Disputes Tribunal (IDT) to reinstate a worker if a dismissal is deemed unjustifiable. The law states that workers are entitled to reasonable time off to conduct union activities.

Striking workers are not criminally liable but the law does not protect them from losing their jobs for union activities. 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. 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 does not obtain support from 50 percent of the workers (whether or not they are affiliated with the union).

Labor law entitles all persons categorized as workers to protection, including migrants and those working in special trade zones. It denies contract workers coverage under certain statutory provisions, such as redundancy benefits.

Although the government, in general, effectively enforced applicable laws, the effectiveness of applicable remedies and penalties was mitigated by the ability of defendants to appeal and tie the case up in the court system for years. Under the Factory Act, fines of up to J\$500,000 (\$4,808) 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 had broad power to refer industrial disputes to arbitration, including disputes that were not in essential public services. 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 38 cases in 2012, the latest data available. While cases are, by law, to be resolved within 21 days, the tribunal decided most cases within four to five months. Some took longer to resolve due to the complexity of the dispute or delays requested by involved parties. IDT decisions are formal and binding unless challenged specifically on a point of law, such as an error in applying the law. Parties can appeal awards to the Supreme Court, and the appeal process can postpone the enforcement of such decisions for years.

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 that private sector workers were increasingly fearful of management retaliation against unionization as the job market contracted. 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 that this hampered workers’ ability to organize and bargain collectively. Although they took their disputes to the Ministry of Labor as

required, nurses circumvented the ministry's permission to strike by holding "sick outs" during the year.

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

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

While the government investigated some suspected cases of forced labor, it was lax in investigating and identifying victims of trafficking and developing cases to prosecute offenders. There were reports of children subjected to forced labor (see section 7.c.). Authorities arrested four persons in two separate instances of suspected forced servitude, identified the two victims, and provided them with housing while court cases were pending.

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 minimum age for employment is 15 years, and the law prohibits the employment of children under age 13 in any type of work. The law permits children between ages 13 and 15 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.

The government did not effectively enforce child labor laws. The Ministry of Labor's Child Labor Unit (CLU) was responsible for monitoring and controlling child labor, although its resources and ability to enforce the law effectively were limited. The CLU received reports from the public. The ministry assisted the Office of Health and Safety in child labor enforcement efforts. If the CLU determines that it is appropriate, it must forward reports of child labor violations to the CDA for enforcement. The Factories Act and accompanying regulations hampered CLU's investigatory efforts by limiting labor inspectors to the formal sector. The overwhelming majority of incidents of reported child labor occur in the informal sector. 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. Penalties for child labor in the formal sector are as high as

J\$1,500,000 (\$14,424) or 5 years of hard labor and were sufficiently stringent to deter violations.

The government continued the Tackle Child Labor through Education program to help build mechanisms to implement policies and enforce laws and regulations against child labor.

The government did not track the number of children involved in child labor. There were no confirmed cases of child labor violations during the year, but the OCR received 204 reports of possible child labor cases through August. Reports indicated that persons recruited girls in rural areas for domestic labor and then forced them into domestic servitude. 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. 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 anecdotal reports of children in commercial sexual exploitation (see section 6, Children).

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\$5,000 (\$48) per week for all workers. The government did not provide information on an official poverty income level. 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. Some employees, notably security guards, were regularly required to work 12-hour shifts without overtime compensation.

The Ministry of Labor is responsible for enforcing the minimum wage. The ministry's 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 ministry employed 12 inspectors to monitor all violations in workplaces, but the law's limited definition of a workplace placed constraints on the purview of the ministry's inspectors. 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 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. There was no information available about the penalties for violations. The ability of defendants to appeal a case through the court system for years mitigated the effectiveness of penalties.

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