

# **JAMAICA 2012 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Jamaica is a constitutional parliamentary democracy. In December 2011, the opposition People's National Party (PNP) won 42 of the 63 seats in the House of Representatives, and PNP leader Portia Simpson Miller took office as prime minister on January 5. International election observers deemed the elections transparent, free, fair, and without violence. During the year there were instances in which elements of security forces acted independently of civilian control.

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

Other human rights problems included an overburdened 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, and vigilante justice meted out by violent mobs.

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, on June 2, police killed Kavorn Shue in an alleged "shootout" in his home. The police stated they were conducting searches in the area early in the morning, entered a home, and two men fired upon them. The police declared they returned fire, killing Shue, while the other man escaped. However, residents of the area alleged that a police team entered Shue's house and immediately opened fire.

The victim's brother said that he heard the police discussing how they would report the shooting. The Independent Commission of Investigations (INDECOM) was investigating the incident at year's end.

The director of public prosecutions (DPP) acted swiftly to place criminal charges, including murder, against Police Corporal Dwayne Smart for the September 1 fatal shooting of Kayann Lamont and the wounding of her sister during a public altercation involving Kayann's use of "bad language" in public. Kayann was eight months' pregnant at the time of the shooting, and her killing sparked public outrage.

According to official INDECOM statistics, there were 219 killings involving police during the year. Human rights monitors indicated that some killings by police were 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 scams controlled communities and were often better armed than the police force.

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. However, 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.

Noteworthy trials included that of police corporal Malica Reid, charged with the 2010 killing of prominent businessman Frederick "Mickey" Hill; the trial began in October 2011 and continued at year's end. The case of Detective Sergeant Lloyd Kelly, charged with 2010 killing of a mentally disturbed man, went to court in January 2012 and continued at year's end.

The Public Defender's Office, with the support of international donors, worked on an official report on the 2010 Tivoli Gardens killings of at least 73 civilians and one security force member but had not released the report by year's end.

## **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 evidence is found to support the allegations. However, official complaints and investigations were infrequent.

### **Prison and Detention Center Conditions**

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

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. However, there was considerable overcrowding, since rated capacity reflected both high- and low-security facilities, some capacity was unusable due to staffing shortfalls, and most inmates were held in high-security facilities. There was no separate facility for female juveniles. Although the law prohibits the incarceration of children in adult prisons in most cases, approximately 100 juveniles were held in adult jails. Another 347 juveniles were 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 Horizon Adult Remand Center, built originally as a warehouse, held 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 were held in 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 1,200. Intended to hold 50 detainees, each cell held an average of 138. Police officers at the facility reported that mentally ill detainees were locked in the bathroom of the holding section. Some detainees also were held in the prison's medical facility.

The Tower Street Adult Correctional Center, located in downtown Kingston, held approximately 1,700 inmates, exceeding the facility's 800-person maximum intended capacity. Men and women were incarcerated in separate facilities, although female prisoners generally were incarcerated under better conditions than their male counterparts. Cells in some facilities had little natural light, inadequate artificial light, subpar bathroom and toilet facilities, and poor ventilation. Hunt's Bay lock-up held prisoners in a cage-like structure open to the elements and the gazes of passersby. Detainees were crowded, with up to six persons per cell, and soiled with garbage and urine. Potable water generally was available, but detainees were required 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.

The women's prison, Fort Augusta, with nearly 300 inmates, had no indoor water supply. Inmates had to obtain water from a central source in containers they provided themselves. Female juveniles also were held at Fort Augusta. Renovation delays caused by budget shortages postponed the planned December transfer of Fort Augusta inmates to an upgraded South Camp Facility, where juveniles would be separated from adults; no new transfer target date was scheduled.

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\$174 (\$1.90) was budgeted to provide a prisoner three meals per day. At least seven prisoners died in detention during the year, five from natural causes, one due to an unknown cause, and one by hanging. At year's end authorities were investigating whether the hanging victim was a suicide or a victim of foul play.

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

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.

The government took no tangible actions to address the UN special rapporteur's findings in 2010 that officers at the Hunt's Bay Police Station were "very obstructive, uncooperative, aggressive, and openly threatened his team during their visit." However, reacting to what she deemed "terrible conditions" in the prisons, the chief justice instructed all resident magistrates to conduct regular visits of police lock-ups and forward their observations to her office in writing. She counseled the magistrates to remind police of detainees' right to due process.

Improvements: With foreign assistance, there were some improvements for juvenile male remandees at the Metcalf Juvenile Remand Center in Kingston, a pretrial facility designed to hold a maximum of 208 male juveniles 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. There was no similar facility for remanded female juveniles nor for any convicted juveniles.

Female juveniles still resided at St. Augustus, although a facility for remanded girls similar to Metcalf was set for construction in Stony Hill. By including classrooms, the commissioner of corrections provided education for minors, which is technically compulsory until age 16. According to Jamaicans For Justice (JFJ), a human rights nongovernmental organization (NGO), in September the minister of education ordered a team to assess the educational needs of the children in the detention facilities. Another 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. A 2011 anticrime bill extended from 48 to 72 hours the time the security forces can legally hold persons before charging or releasing them. However, police sometimes reportedly held individuals for as long as five weeks.

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

The JCF has primary responsibility for internal security and is assisted by the Island Special Constabulary Force. The Jamaica Defence Force (JDF) 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. The JCF is headed by a commissioner who delegates authority through the ranks to constables. The force maintains divisions focusing on community policing, special response, intelligence gathering, and internal affairs.

In 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. In April 2011 INDECOM replaced the JCF's Bureau of Special Investigations (BSI) as the lead investigator of incidents involving fatal shootings by police.

INDECOM had 47 staff members, including 30 investigators, but cited lack of resources to perform forensic analysis and identification of security personnel involved in incidents as major obstacles faced in its investigations of police killings. The DPP issued its rulings on cases involving security forces on average 27 months after the final submission of files from the BSI or INDECOM. In 2011 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, 192 police officers, or 48.5 percent of the 396 officers who took voluntary lie-detector tests during the year, did not pass or complete the test. The assistant police commissioner did not state whether the officers who failed would be disciplined in any way. However, during the year officials retired 15 officers and denied reenlistment to 27 officers for corruption or ethics reasons. In addition authorities dismissed nine officers for corruption, charged 43 other officers with corruption, and charged 45 citizens with corrupting JCF staff.

The 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 since it took the DPP so long to determine that police personnel should be charged with a crime, there was possible 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. Through the Community Safety and Security Branch, during the year the JCF conducted targeted training of 2,735 officers, 778 of whom were deployed in 360 communities islandwide. The branch trained community safety officers and assigned JCF personnel to targeted schools as resource officers to stem school violence. These officers also served as liaisons between the students, faculty, parents, and police. The government bolstered these efforts through public education and by nominating deputy divisional commanders with responsibility to introduce community policing to all the communities within their division. All JCF officers were required 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; however, arrests may be made without warrants. Police often used the warrant as the first step in an investigation to search for evidence. The law requires detained suspects to be charged or released within 72 hours of arrest, unless a justice of the peace or a resident magistrate grants a special waiver. In practice 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. A 2011 constitutional amendment 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, in practice authorities sometimes remanded suspects for psychiatric evaluation, at times for as long as three years when their cases were “lost in the

system.” Magistrates were required to inquire at least once a week into the welfare of each person listed by the JCF as detained, but few did so in practice, especially in the busy Kingston/St. Andrew corporate area.

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

Although the law provides for an independent judiciary, the judicial system relied entirely on the Ministry of Justice for all resources.

Trials in many instances were delayed for years, and some cases were dismissed 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.

Some criminal trials were dismissed because witnesses failed to come forward as a result of 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 was ever killed.

#### **Trial Procedures**

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

The constitution provides 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. In practice, however, trials were frequently postponed 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 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.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

There is an independent and impartial civil judiciary process. Complainants may bring human rights abuse cases for civil remediation to the courts, but awards can be difficult to collect. The government is required to undertake pretrial negotiations or mediation in an attempt to settle out of court, but the government often did not do so. When there were settlements, whether in or out of court, the government often lacked the funds to pay, resulting in a backlog of awards.

### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

Although the constitution prohibits such actions, the Constabulary Force Act gives security personnel broad powers of search and seizure. This act allows search without a warrant of a person on board or disembarking from a vehicle, ship, or boat if a police officer has good reason to be suspicious. In practice the police conducted searches without warrants.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

The law provides for freedom of speech and press, and the government generally respected these rights in practice. An independent press, generally effective judicial protection, and a functioning democratic political system combined to ensure freedom of speech and press. The independent media were active and expressed a wide variety of views without restriction. Broadcast media were largely state owned but open to pluralistic points of view.

Libel Laws/National Security: The Press Association of Jamaica (PAJ) continued to advocate reforms to defamation and libel laws. Although the government was reviewing these laws, the PAJ criticized the slow speed and extent of this review process. According to the PAJ, officials used existing laws to prevent critical information from reaching the public. A PAJ representative said that the threat of libel or slander prosecutions forces journalists to ensure that they possess hard evidence before they can take controversial matters to the public sphere, noting that a corrupt environment might make such evidence difficult if not impossible to obtain. The PAJ also advocated repealing the Official Secrets Act, asserting that it “runs counter to the Access to Information Act.” Parliament enacted “whistle-blower” legislation to help the media expose corruption.

### **Internet Freedom**

There were no government restrictions on access to the Internet or credible reports that the government monitored e-mail or Internet chat rooms without judicial oversight. According to the International Telecommunication Union, 18 percent of households had Internet access, and 31 percent of citizens used the Internet in 2011.

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

There were no government restrictions on academic freedom.

With respect to cultural events, the Jamaica Broadcasting Commission sought to regulate and limit the dissemination of certain popular music deemed inconsistent with public morality. The commission banned certain lyrics deemed inappropriate to broadcast, including dancehall songs referring to the simulation of aggressive or violent sex, and employed editing methods to expunge lyrics thought unfit for broadcast. The commission stated that its directive was aimed at “all types of musical broadcast output, including soca music and carnival music.”

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

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

## **c. Freedom of Religion**

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

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

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

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

## **Protection of Refugees**

Access to Asylum: The government has established a system for processing and providing protection to refugees. In practice the government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened, and it handled refugee or asylum cases administratively.

## **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The law provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic elections based on universal suffrage.

## **Elections and Political Participation**

Recent Elections: In general elections held in December 2011, the opposition PNP won 42 of the 63 seats in the House of Representatives, and PNP leader Portia Simpson Miller was sworn in as prime minister on January 5. Simpson Miller, who also served as prime minister in 2006-07, 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, as it did in every election since 1998. In a preliminary assessment, the OAS cited adherence to agreements negotiated by the country's Electoral Office between the parties on media, advertising protocols, and campaigning rules as important elements that helped strengthen the democratic process. The OAS recommendations included ensuring adequate space to guarantee voter privacy, clarifying the duties of political liaison officers, providing copies of the voters' lists at polling stations, and improving signage at the entrance to polling stations.

All citizens age 18 and over have the right to vote by secret ballot. The relative lack of violence and intimidation in the December 2011 elections was notable, 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 60-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 official corruption, but the government did not implement the law effectively. The Office of the Contractor General's (OCG) 2011 annual report stated that the OCG concluded four special investigations into a number of public sector procurement and contract award issues. The OCG reported all four to Parliament and referred three investigations to the DPP, auditor general, and other agencies. Authorities levied criminal charges in one case in which the accused pled guilty and was fined. The OCG reported a consistent pattern of abuses related to conflicts of interest, breaches of duty on the part of

accounting and accountable officers, breaches of duty on the part of boards of directors, and a seeming disregard for applicable laws and regulations. The OCG also reported challenges to its statutory authority and credibility, noting that it had repeatedly made many recommendations with few results. The report also stated that despite its operating and organizational attainments, “both the OCG, and Jamaica, still have a considerable way to go before the battle against the scourge of corruption in Jamaica can be won.” The outgoing contractor general noted in the report that, “corruption is considered today by many to be the largest single impediment to our country’s attainment of sustained economic growth and development.”

The Ministry of Justice and the Attorney General’s Office have overall responsibility to combat official corruption, but other ministries are 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 bar police personnel from reenlisting whenever there was information that they were not efficient or effective in carrying out their duties with integrity. During the year the ACB criminally charged 43 police officers with corruption. Of the 29 cases that went to trial by the end of the year, 18 resulted in convictions. Authorities did not permit 27 police officers to reenlist, dismissed nine police officers for corruption, and forced 15 police officers to retire for corruption or ethics reasons. Six other police officers voluntarily retired because of corruption investigations. However, suspicions of corruption and impunity within the force remained, despite a notable increase in the number of arrests of officers for corruption.

The Corruption Prevention Act requires many government officials to file financial declarations; however, reports indicated that more than 5,000 civil servants failed to file or filed late or incomplete financial declarations required under the act. Officials to whom the act applies 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. They are also required to file a

declaration 12 months from the date of 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.

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; 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; however, 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 Public Defender's Office provides services on behalf of those who charged that their constitutional rights were violated. The office contracted private attorneys to sue the government on behalf of private citizens.

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

In 2011 the Charter of Rights amended the constitution to strengthen fundamental rights and freedoms. The law prohibits discrimination based on race, gender, place of origin, political opinion, color, or creed. The government generally enforced these prohibitions in practice, although there continued to be widespread

discrimination on the basis of 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 2009 Sexual Offenses Act criminalizes spousal rape, but only in certain circumstances, namely when the parties have separated or when proceedings to dissolve the marriage or have it annulled have begun, when the husband is under a court order not to molest or cohabit with his wife, or when the husband knows he suffers from a sexually transmitted infection. Human rights groups continued to advocate for a more comprehensive law on spousal rape. The authorities reported 833 rapes and 763 cases of carnal abuse (sexual relations with girls under the age of 16), compared with 738 rapes and 637 cases of carnal abuse in 2011. 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 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 (\$112) and six months' imprisonment. The NGO Woman Inc. reported that women frequently complained that police failed to treat domestic violence as a crime and take the necessary reports. The JCF instituted a domestic abuse sensitivity training program for police officers in downtown Kingston. The BWA submitted to Parliament a draft National Plan of Action on Violence against Women and Gender-Based Violence that aims to provide a comprehensive strategy guiding the government's response to the problem and began implementing some of the strategies while awaiting its approval. 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

advocated for legislation on sexual harassment since the early 1990s and continued to advocate for the immediate drafting and enactment of such legislation.

Reproductive Rights: Couples and individuals have the right to decide the number, spacing, and timing of children and had the information and means to do so without hindrance. Access to information on contraception and skilled attendance at delivery were widely available. 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, in practice 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 comprised less than 15 percent of the Parliament and 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 are 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) 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 (\$5,618) for failure to do so. Through September the OCR received 6,485 reports of child abuse, compared with approximately 7,000 cases reported in 2011. The number of child abuse reports increased by more than 1,000 percent since establishment of the registry in 2007, when it received 455 reports. The OCR credited the growth to an increase in awareness facilitated by the OCR's public advertising campaign, including the staffing of a 16-hour-per-day hotline and the development in July of a free, 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. 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 and sometimes even fathers initiated sex with young girls as a "right." There were 763 cases of carnal abuse reported to the JCF, compared with 637 cases reported in 2011.

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

Child 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 carnal abuse, defined as sexual relations with a person less than 16 years old, the minimum age for consensual sex. Sexual relations by an adult with a child between the ages of 12 and 16 are a misdemeanor punishable by not more than seven years in prison; if the victim is

under 12, it is a felony punishable by up to life imprisonment. The 2009 Sexual Offences Act included the establishment of a Sex Offenders Registry. The law criminalizes the commercial sexual exploitation of children and applies to the protection, possession, importation, exportation, and distribution of child pornography. It carries a maximum penalty of 20 years' imprisonment and a fine of J\$500,000 (\$5,618). 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\\_3781.html](http://travel.state.gov/abduction/country/country_3781.html).

### **Anti-Semitism**

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

### **Trafficking in Persons**

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

### **Persons with Disabilities**

There are no laws prohibiting discrimination against persons with disabilities or mandating accessibility for persons with disabilities. Persons with disabilities encountered discrimination in employment and denial of access to schools. Discrimination in access to education was particularly pronounced at the primary level. 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.

Prior to the December 2011 elections, Human Rights Watch pointed out that many polling stations were inaccessible to persons with disabilities, but the government responded that it would be impractical to make changes to ensure accessibility so

close to the elections. Nonetheless, election officials made efforts to accommodate voters with accessibility issues, by recruiting other voters to carry a wheelchair up a flight of steps or moving and carrying the prefabricated cardboard voting booth to the voter.

The Ministry of Labor has responsibility for the Jamaica Council for Persons with Disabilities, which had a budget of J\$48 million (\$540,000) in 2011-12. The council distributes economic empowerment grants of up to J\$50,000 (\$562) 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 (\$168) are available for similar purposes. The Ministry of Labor also has responsibility for the Early Stimulation Project, an education program for children with disabilities, as well as the Abilities Foundation, a vocational program for older persons with disabilities.

### **National/Racial/Ethnic Minorities**

Maroons, descendants of slaves who escaped to the mountainous interior in the 17th and 18th centuries, considered themselves a group apart and maintained some African traditions distinct from those of the larger society. There were major infrastructural needs that the Maroons alleged the central government neglected. Formal education was not available in Maroon communities beyond the junior high school level, and unemployment rates were high. Many young Maroons left the region for employment elsewhere; this migration and the influx of popular island-wide culture threatened the communities' culture.

### **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

The law prohibits "acts of gross indecency" (generally interpreted as any kind of physical intimacy) between persons of the same sex, in public or in private, which are punishable by 10 years in prison. There is also an "antibuggery" law that prohibits consensual same-sex sexual conduct between men, but it was not widely enforced. Homophobia was widespread in the country, and through the songs and the behavior of some musicians, the country's dancehall culture helped perpetuate homophobia.

The Jamaica Forum for Lesbians, All Sexuals, and Gays (J-FLAG) continued to report serious human rights abuses, including assault with deadly weapons,

“corrective rape” of women accused of being lesbians, arbitrary detention, mob attacks, stabbings, harassment of gay and lesbian patients by hospital and prison staff, and targeted shootings of such persons. Police often did not investigate such incidents. During the year J-FLAG received 68 reports of sexually motivated harassment or abuse, which included 53 cases of attempted or actual assault, including at least two killings, and 15 reports of displacements. 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 were hesitant to report incidents against them because of fear for their physical well-being. Human rights NGOs and government entities agreed that brutality against such persons, primarily by private citizens, was widespread in the community. An assistant commissioner of police claimed just before he retired in July that the country’s reputation as homophobic was merely “hype” and that life for lesbian, gay, bisexual, and transgender (LGBT) persons was improving. He suggested the real problem was gay-on-gay crime and members of the community cross-dressing in public. In November two campus security guards beat a reportedly gay university student when he sought refuge in their office from a mob of fellow students who were chasing him. The incident sparked outrage and condemnation across a wide spectrum of society. The security company fired the two guards, and the university established a working group of administrators, teachers, and students to develop a sensitization and education program to deal with intolerance and bullying and to recommend corrective measures.

Male inmates deemed by prison wardens to be gay were held in a separate facility for their protection. The method used for determining their sexual orientation was subjective and not regulated by the prison system, although inmates were said to confirm their sexual orientation for their own safety. There were numerous reports of violence against gay inmates, perpetrated by the wardens and by other inmates, but few inmates sought recourse through the prison system.

In September 2011 the group AIDS-Free World filed an anonymous petition on behalf of two gay Jamaican men, challenging the antibuggery law at the Inter-American Commission on Human Rights because the constitution has a provision called the “savings law clause” which protects such law from being contested in Jamaican courts. The petition claimed that the law effectively criminalizes gay

men and their sexual orientation and gives license to public officials and private individuals alike to commit violence and abuse against LGBT individuals.

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 antibuggery law and free members of her party to vote their conscience on this issue.

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. For example, on September 17, Donovan Hazley was hacked to death and his daughter seriously wounded when a mob attacked and firebombed their house. The mob was reacting to the death by drowning of 10-year-old Alex Brown and seven-year-old Javani Brown, whose bodies were found September 13 in the Martha Brae River. Family and friends accused Hazley’s stepson of having abused and murdered the boys. Police arrested four suspects in Hazley’s murder and continued to investigate the deaths of the two boys. On October 3, an angry mob chased and killed teacher Michael Melbourne after the car he was driving struck and injured at least four people who had gathered in the road to help the victim of an earlier hit-and-run driver. Melbourne got out of his car, panicked, and tried to run away but the enraged onlookers chased, beat, and stabbed him to death.

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

## **Section 7. Worker Rights**

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

The law, including related regulations and statutes, protects the right to form or join unions and to bargain collectively, but it neither authorizes nor prohibits 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 could not be assured of keeping their jobs. Workers in 10 categories of “essential services” must first take disputes to the Ministry of Labor before they can legally strike. The ILO repeatedly criticized the government for its broad definition of these 10 categories. Collective bargaining is denied to a bargaining unit if no single union represents at least 40 percent of the workers in the unit or when the union seeking recognition does not obtain support from 50 percent of the workers (whether or not they are affiliated with the union).

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

The government in general effectively enforced applicable laws. However, 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. 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 during the year, compared with 37 cases in 2011. 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 and can only be challenged on a point of law, such as an error in applying the law. However, 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 were generally respected in practice. Worker organizations were independent of the government and political parties. Employers generally respected the law prohibiting antiunion

discrimination. However, some labor unions reported that private sector workers were increasingly fearful of management retaliation against unionization as the job market contracted. 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 court system adjudicated some cases of coerced employment of suspected trafficking victims, the JCF was lax in investigating and identifying victims of trafficking that could potentially be prosecuted. There were reports of girls in rural areas recruited for domestic labor and then forced into servitude. Authorities arrested four persons in two separate instances of suspected forced servitude, removed the two victims, and provided them 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. Children between ages 13 and 15 are permitted to engage in "light work," as defined by the Ministry of Labor, which will not disrupt their education or be harmful to their health. Children are not to work more than four hours in a day. The law prohibits hazardous work for all children under 18.

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 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.

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; however, the OCR received 146 reports of possible child labor cases through September. 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 (\$56.18) per week for all workers. 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; however, 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. The formal penalties for violations of acceptable conditions were sufficient, but the ability of defendants to appeal a case through the court system for years mitigated their effectiveness.

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