

# JAMAICA 2018 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Jamaica is a constitutional parliamentary democracy. In national elections in 2016, the Jamaica Labour Party led by Prime Minister Andrew Michael Holness won 32 of the 63 seats in the House of Representatives. The party gained an additional seat in an October 2017 by-election to increase its majority in parliament to 33-30. International and local election observers deemed the elections transparent, free, and fair but noted isolated incidents of violence leading up to and on election day. Observers deemed the by-election transparent, free, fair, and peaceful.

Civilian authorities maintained effective control over the security forces.

Human rights issues included reports of arbitrary and unlawful killings by government security forces; harsh and life-threatening conditions in prisons and detention facilities; arbitrary detention; and corruption by officials. The law criminalizes consensual same-sex activity between men, but the government did not enforce the law during the year.

The government took some steps to investigate and prosecute officials who committed human rights abuses. Nonetheless, there was a general sense that full and swift accountability for some officials alleged to have committed human rights abuses remained elusive.

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

#### **a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

There were numerous reports that government security forces committed arbitrary and unlawful killings. The Jamaica Constabulary Force (JCF), the country's police force, was responsible for the majority of the cases. As of October 23, the Independent Commission of Investigations (INDECOM), the body parliament established in 2010 to investigate abuses by agents of state, had received 122 reports of security force-related fatalities, compared with 168 in 2017. These were cases where police or joint military-police activity led to the death of a civilian.

The government did not take sufficient action to address this problem. Of the cases of security force-related fatalities reported to INDECOM, fewer than 5

percent led to official charges, and fewer than 2 percent led to a conviction. Even egregious charges against members of the security forces could take years to process. In 2007 police constable Mark Russell shot and killed an unarmed teenage boy in Kingston. The court concluded Russell planted a police-issued rifle on the victim's person as he lay wounded in the street to corroborate a false report. Defense counsel used various procedural maneuvers to delay the case. In September the court sentenced Russell to 24 years in prison.

### **b. Disappearance**

There were no reports of disappearances by or on behalf of government authorities.

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

The constitution prohibits such practices, although there is no legal definition of torture. Allegations of cruel, inhuman, and degrading treatment or punishment towards individuals in police custody continued. The majority of reports described officials using physical force, intimidation, access to water, and extreme exposure to heat or cold to coerce a change in testimony. INDECOM investigated reports of alleged abuse committed by police and prison officials. Representatives from the nongovernmental organization (NGO) Jamaicans for Justice claimed abuse was likely underreported by victims, who feared reprisal or did not believe authorities would act on their complaint.

In one case an elderly woman, Desrine Morris, died while in police custody on or about March 1. The JCF arrested Morris for an unspecified bench warrant. Less than six hours later police reported she had hanged herself. There were no follow-up police reports, and the autopsy did not confirm a cause of death. Friends and family members were skeptical of this being a suicide. Media reports suggested that excessive punitive force may have led to the death.

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

Conditions in prisons and detention facilities were harsh and life threatening due to gross overcrowding, physical abuse, limited food, inadequate sanitary conditions and medical care, and poor administration. Reports existed of corrections officers using their authority to take bribes and control access to prisoners.

Physical Conditions: Some of the most egregious reports of human rights abuses took place in “lock-ups” (facilities to hold pretrial detainees). For example, when the government declared a state of emergency in the parish of St. James in January, it identified a lock-up in Montego Bay to facilitate the influx of detained suspects. The Ministry of Health reported major problems, including the lack of functioning bathroom facilities, lighting, and handwashing stations; poor ventilation; and inadequate drainage. Ministry inspectors noted illnesses caused by cockroaches, rats, mosquitoes, and flies. Detainees consumed nutritionally poor meals. There was no refrigeration on site for food storage. Detainees had less than one hour per day out of the cell to use shower facilities and get food. In some cases guards reportedly denied access to bathrooms and water in order to coerce and punish inmates.

Family members frequently had to wait in long lines to visit detainees held in the Montego Bay lock-up. The guards posted a sign instructing those who wished to purchase a meal for family members to visit a specific gasoline station. A credible report existed of families paying for meals, without receipts or confirmation that a meal was delivered, suggesting the administrators pocketed the money. Attorneys reported extreme difficulty reaching their clients and conveyed that in most cases their detainees did not know why they were arrested. After receiving citizen complaints and some media coverage, the government took some corrective actions to reduce the number of detainees and improve the conditions of the detention facility.

Physical conditions in correctional facilities were slightly better than police lock-ups, but overcrowding remained a concern. At times cells in the maximum-security facilities at Tower Street and St. Catherine held 200 percent of their intended capacity. Local NGOs reported that this occurred because prison administrators did not triage prisoners to lower-security facilities as they should have. Cells were very dark, had subpar bathroom and toilet facilities, and limited ventilation. Prisoners sometimes were unable to receive required medication, including medication for HIV, according to UNAIDS. The HIV prevalence rate among incarcerated populations (more than 3 percent) was reportedly as much as double that of the general population. Four part-time psychiatrists cared for at least 225 inmates diagnosed as persons with mental disabilities in 11 facilities across the island.

Administration: Independent authorities investigated allegations of abuse and inhuman conditions. Official complaints and investigations were infrequent and

likely underreported. The Office of the Children's Advocate investigated matters involving minors.

Independent Monitoring: Justices of the Peace and representatives from the Police Civilian Oversight Authority (PCOA) visited correctional centers and lock-ups regularly. The PCOA submitted reports to the Ministry of National Security with recommendations to improve conditions. Citizen groups and NGOs believed the ministry rarely acted upon the recommendations.

#### **d. Arbitrary Arrest or Detention**

The constitution prohibits arbitrary arrest and detention but permits arrest with "reasonable suspicion of [a subject] having committed or ...about to commit a criminal offense." The law provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court, and the government generally observed these requirements; however, abuses arose because police regularly ignored the "reasonable suspicion" requirement, arraignment procedures were very lengthy, and large portions of the country were under a state of emergency.

When a public state of emergency (SOE) is declared, the police and military have search, seizure, and arrest authority without a warrant. A state of emergency expires in 14 days unless parliament agrees to extend it. Additionally, the government can identify zones of special operations (ZOSOs), which confers the same authority to security forces, albeit within much smaller physical boundaries. During the year the prime minister declared three geographic areas to fall under an SOE--St. James Parish, announced in January; St. Catherine Parish North Division, declared in March; and a segment of Kingston and St. Andrew Parish, announced in September. Arbitrary and lengthy detentions took place in the execution of both the ZOSOs and SOEs. The Office of the Public Defender, commissioned by parliament to investigate civil and human rights abuses, received reports that security forces temporarily detained more than 2,000 persons in Montego Bay, which was within the St. James SOE, from January to October. Across the country police detained 6,000 persons during the same period. The average length of detention was four days. Extremely few of these arrests resulted in charges.

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

The prime minister has general authority over the Jamaican Defense Board and, as Chairman of the Board, has ministerial responsibility for defense-related matters including the command, discipline, and administration of forces. He is the de facto

Minister of Defense. The Ministry of National Security, however, functions as the ministerial home of the Jamaica Defense Force (JDF) and directs policy over the security forces. The JCF, with units for community policing, special response, intelligence gathering, and internal affairs, has primary responsibility for internal security. The JDF's mandate is to maintain the integrity of Jamaica's waters and airspace and to provide aid to the civil authorities when appropriate. The JDF, including the Coast Guard, has responsibility for national defense and maritime narcotics interdiction. When the prime minister and parliament declare a state of emergency, the JDF has arrest authority and operational partnership alongside the JCF. The Passport, Immigration, and Citizenship Agency has responsibility for migration.

Civilian authorities maintained effective control over security forces. The government had mechanisms to investigate and punish police abuse, but they were not always employed.

There were hundreds of abuse and wrongful harm complaints regarding the security forces. INDECOM investigated actions by members of the security forces and other agents of the state that resulted in death, injury, or the abuse of civil rights. When appropriate, INDECOM forwarded cases to the Office of the Director of Public Prosecutions for agents to make an arrest. INDECOM remained one of the few external and independent oversight commissions that monitored security forces, but it was unable to investigate each case thoroughly. As of October 23, INDECOM reported 122 security force-related fatalities.

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

Police officers may arrest without warrant where a felony, treason, or breach of the peace is committed or attempted in the officer's presence. Upon arrest, the officer is required to tell a suspect in clear language the offense(s) for which the individual is being arrested. Any officer may execute a warrant that is lawfully issued by a judge or justice of the peace without being in possession of the warrant. The officer must produce the warrant if the suspect requests it as soon as practical after the arrest. The decision to charge or release must be resolved within 48 hours, although a judge or justice of the peace may extend the period of custody.

Security forces did not always follow these official procedures. Government officials and members of civil society reported that the public perceived police could arrest regardless of judicial authorization.

Additionally, there were reports of arrests and prolonged periods of detention in which police did not inform the suspect of the official charges. There were multiple reports that detainees did not have access to legal counsel and that apprehended suspects could not notify family members. NGOs estimated that 90 percent of all arrests occurred without a warrant. A police officer could simultaneously arrest and deny bail. The relative looseness in procedure lent itself to low-level corruption where a police constable could accept bribes in lieu of an arrest.

Arbitrary Arrest: Cases of arbitrary detention were greatest in the parishes of St. James and St. Catherine. Since January and March, respectively, the government declared a SOE in these areas because of high levels of criminal and gang violence. The government deployed the military to support local law enforcement. Under these orders security forces carried out a wide-reaching campaign of arbitrary detention and incarceration in an attempt to contain the violence. Media reported that security forces arrested and detained more than 6,000 persons under these conditions. In some cases the police released persons after two weeks of imprisonment only to rearrest them and keep them in jail. Officials, NGOs, and security experts speculated security forces had orders to meet a specified number of arrests each day. There were few official investigations or prosecutions of security force members involved in arbitrary arrests.

Pretrial Detention: Lock-ups are intended for short-term detentions of 48 hours or less, but often the government held suspects in these facilities without charge or awaiting trial for much longer periods. A lack of administrative follow-through after the arrest created problems where persons were incarcerated without any accompanying paperwork. In some cases, weeks, days, or months later, authorities could not ascertain why someone was arrested.

The Office of the Public Defender received reports that when someone was arrested in a ZOSO, the average time in detention was four days. The majority of arrests ended with no charges and the suspect released. The Office of the Public Defender estimated that 14 persons arrested in a ZOSO during the year had been held without charge in excess of 100 days.

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

The constitution provides for an independent judiciary, and the government generally respected judicial independence and impartiality. An extreme backlog of criminal cases, however, led to a denial of fair public trial for thousands of citizens.

The Ministry of Justice estimated that more than 400,000 criminal cases were awaiting trial. This delay occurred from numerous causes. Defense attorneys often requested committal proceedings, which are lengthy and resource intensive. Additionally, the legal infrastructure in terms of buildings, judges, courts, and other facilities remained virtually the same despite the huge backlog. Finally, the courts were hesitant to implement technological improvements such as teleconferencing witness testimony or admitting videos recorded from a telephone. Consequently, criminal proceedings could extend for years. The government's statistical office reported the legal system failed to convict in more than 90 percent of murder cases. During the year courts made significant efforts to address the backlog by closely monitoring and reporting case throughput to the Ministry of Justice.

### **Trial Procedures**

The constitution provides for the right to a fair and public trial, and an independent judiciary generally enforced this right. The law provides defendants a presumption of innocence, the right to counsel, and the ability to confront witnesses. Defendants have the right to be informed of the charges against them and the right to a trial within a reasonable time. Defendants had ample time to prepare defense and may not be compelled to testify or confess guilt. They have the right to appeal. Public attorneys were available to defend the indigent, except those charged with drug-related crimes or high-level criminal conspiracy. The government provided free assistance of an interpreter as necessary. The Supreme Court tries serious criminal offenses, which include all murder cases.

### **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 to the courts for civil remediation, but awards were difficult to collect. The government is required to undertake pretrial negotiations or mediation in an attempt to settle out of court, but this rarely occurred. When there were settlements, the government often lacked the funds to pay, resulting in a backlog of awards.

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

Although the constitution prohibits such actions, the law gives security personnel broad powers of search and seizure. The law allows warrantless searches of a person, vehicle, ship, or boat if a police officer has good reason to be suspicious. Police on occasion were accused of conducting searches without warrants.

In the ZOSOs the government began taking biometrics from persons it temporarily detained. Security forces were able to apprehend wide swaths of the male population in ZOSOs under broad arrest authority. NGOs contended that ZOSOs became a subterfuge for the government to capture biometric data indiscriminately from the public without consent. Reports estimated that as many as 6,000 persons were affected.

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

### **a. Freedom of Expression, Including for the Press**

The constitution provides for freedom of expression, including for the press, and the government generally respected this right. An independent press, generally effective judicial protection, and a functioning democratic political system combined to promote freedom of expression, including for the press. Independent media were active and expressed a wide variety of views without restriction.

### **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority.

According to the International Telecommunication Union, 49 percent of the population used the internet in 2017.

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

There were no government restrictions on academic freedom.



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

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

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

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

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

### **d. Freedom of Movement**

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

The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, or other persons of concern.

### **Protection of Refugees**

Access to Asylum: The law does not provide for the granting of asylum or refugee status, and the government has not established a system for providing protection to refugees. The government handles each potential asylum seeker administratively on an individual basis. The government can grant a form of limited status to those with citizenship in a commonwealth country.

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

The law provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

### **Elections and Political Participation**

Recent Elections: Since the 2016 national elections, the country held by-elections in October 2017 and in March to fill four seats in parliament. The Jamaica Labour Party maintained a majority in parliament of 33 of 63 members in the House of Representatives. Observers judged all recent elections to be transparent, free, and fair.

Participation of Women and Minorities: No laws limit participation of women or members of minorities in the political process, and they did participate.

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

The law provides criminal penalties for corruption by officials, but the government generally did not implement the law effectively. Officials sometimes engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year, and it remained a significant problem of public concern. Media and civil society organizations continued to criticize the government for being slow and at times reluctant to prosecute corruption cases.

Corruption: It was unclear if the National Integrity Commission was investigating the state-owned petroleum refinery, Petrojam, for possible breaches of procurement procedures, cost overruns, missing funds, and the payment of exorbitant consulting fees, which were widely reported in the press. In July the Minister of Science, Technology, and Energy and three Petrojam board members resigned, and the prime minister transferred the energy portfolio into the Office of the Prime Minister temporarily. There were no official charges.

Financial Disclosure: The law requires that parliamentarians, public officials in prescribed positions, and civil servants earning 3.5 million Jamaican dollars (JMD) (\$26,500) or more per year disclose their income, liabilities, and assets annually. There were no reports of noncompliance or that the government sanctioned anyone who failed to disclose.

#### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights**

Domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were cooperative and responsive to their views.

Government Human Rights Bodies: The Office of the Public Defender investigates abuses of constitutional rights and engages with claimants in a process to seek remediation from the government. The public defender is not authorized to appear in court but may retain attorneys to represent clients on the office's behalf. The office cannot investigate cases affecting national defense or actions investigable by a court of law. As a commission of parliament, this organization's reach and effect hinges on the political will associated with the case. Parliament can ignore the commission's findings or demur from recommended action. This limited the overall efficacy of the organization.

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

### **Women**

Rape and Domestic Violence: The rape of women is illegal and carries a penalty of 15 years' to life imprisonment. The legal definition of rape is forced penile penetration of the vagina, so the law only considers rape of women. There are legal imbalances in the application of the law that led to unequal protection of citizens.

Married women do not have the same rights and protection as single women. The law criminalizes spousal rape only when one of the following criteria has been met: the act occurs after legal separation or court proceedings to dissolve the marriage; the husband is under a court order not to molest or cohabit with his wife; or the husband knows he suffers from a sexually transmitted disease. Legally, marriage implies sexual consent between husband and wife at all times.

Additionally, because the legal qualification for rape is forced penile penetration of the vagina, a criminal who commits sexual assault through anal penetration can be punished by a maximum of 10 years in prison. This distinction created wide discrepancies between cases that had the same element of sexual assault at their core.

According to estimates from the Ministry of National Security's Research Evaluation Unit, there were 442 rape cases in 2017, which corresponded to approximately a 16 percent reduction from the previous year. Advocacy groups, however, contended that rape was significantly underreported because victims had little faith in the judicial system and were unwilling to endure lengthy criminal proceedings.

Some cases occurred in gated, all-inclusive resorts on the northern coast. In each case reports noted a lack of action by the JCF, and no one was charged. Observers suspected that not all cases were reported, since foreign tourists could not stay in the country long enough to contend with a lengthy legal process.

The government operated a Victim Support Unit (VSU) to provide direct support, crisis intervention, legal advocacy, and technical services. The VSU managed 13 independent parish offices throughout the island, each with its own hotline and staff of trained providers. Furthermore, the VSU coordinated with a network of NGOs with capabilities such as counseling resiliency training, and shelters. The Child Protection and Family Services Agency provided similar services for children. Shelter facilities for women and children were insufficient and less available outside the capital area. Police officers and first responders had limited training to understand which services were available.

Sexual Harassment: No legislation addresses sexual harassment and no legal remedy exists for victims.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization.

Discrimination: Although the law provides for the same legal status and rights for women as for men, including equal pay for equal work, women suffered from discrimination in the workplace and often earned less than men. Domestic workers were particularly vulnerable to workplace discrimination and sexual harassment.

## **Children**

Birth Registration: Every person born in the country after independence in 1962 is entitled to citizenship. Persons outside the country born to or adopted by one or more Jamaican parents, as well as those married to Jamaican spouses, are entitled to citizenship.

Child Abuse: The law bans child abuse in all forms. Corporal punishment is illegal; however, it was practiced informally in the home, schools, and children's correctional facilities, as well as when a child was under state care. The penalty is a potential fine of 250,000 JMD (\$1,900) or a prison sentence with hard labor for a period not to exceed three months.

Legislation also 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 law requires anyone who knows of or suspects child abuse to make a report to the registry office, with a penalty of up to 500,000 JMD (\$3,800) and six months' imprisonment, or both, for failure to do so.

With regard to sexual assault, children have fewer legal protections than adults. The legal definition of rape is penile penetration of the vagina. Therefore, a criminal who commits anal rape of a child is punishable by only 10 years in prison. Similar to the situation for women, the distinction created wide discrepancies between cases that had the same element of sexual assault at their core. The risk of sexual assault reportedly was three times higher for children than adults.

Informal corporal punishment and other forms of child abuse were prevalent. Estimates from the NGO Jamaicans for Justice showed that 80 percent of children experienced psychological or physical violence administered as discipline, and a similar number had witnessed a violent crime in their home. Physical punishment in schools remained commonplace. Nonetheless, the NGO noted that overall reported instances of child abuse trended slightly downward during the year.

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

Sexual Exploitation of Children: The law criminalizes the commercial sexual exploitation of children and applies to the protection, possession, importation, exportation, and distribution of child pornography. It carries a maximum penalty of 20 years' imprisonment and a fine of 500,000 JMD (\$3,800). Reports continued of the commercial sexual exploitation of children.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data.html>.

## **Anti-Semitism**

Approximately 500 persons in the country practiced Judaism. There were no reports of anti-Semitic acts.

## Trafficking in Persons

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

## Persons with Disabilities

Although the law prohibits discrimination against persons with disabilities, it does not mandate accessibility standards. Persons with disabilities continued to encounter discrimination in employment and access to schools, usually due to the state of the infrastructure, which limited access to buildings and provided few accessible facilities.

There were limitations in access to education at the primary school level, due to insufficient resources allocated for persons with disabilities. There was also a lack of suitably trained faculty to care for and instruct students with disabilities, although the constitution provides for the right to primary education for all children. Health care reportedly was universally available but at times difficult to access, especially for persons with hearing disabilities and persons with mental disabilities.

The Ministry of Labor and Social Security has responsibility for the Jamaica Council for Persons with Disabilities. The council distributes economic empowerment grants of up to 150,000 JMD (\$1,140) to persons with disabilities to help them develop small businesses and 250,000 JMD (\$1,900) per person for the purchase of assistive aids.

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

The law criminalizes consensual same-sex sexual relations and anal sex between men. Physical intimacy between men, in public or private, is punishable by two years in prison, and anal sex between men is punishable by up to 10 years. There is no comprehensive antidiscrimination legislation.

The government enforced the portion of the law that criminalizes anal sex, or "buggery," only in cases of sexual assault and child molestation. Officials did not prosecute consensual same-sex sexual conduct between men. The legal definitions of rape and buggery create a phenomenon where, under certain circumstances, segments of the population have unequal legal protection from sexual assault. For

example, a man who sexually assaults a woman through penile penetration of the vagina is punishable by 15 years to life in prison. This same act, committed through penile anal penetration, of a woman, child, or man, would be punishable by only up to 10 years in prison. Local human rights advocates contended this was unequal protection under the law.

The law does not extend antidiscrimination protections to LGBTI persons on the basis of sexual orientation, gender identity or expression, or sex characteristics. Furthermore, the Inter-American Commission on Human Rights acknowledged that the law legitimizes violence towards LGBTI persons.

During the year major political leaders, including the prime minister and two of his senior ministers, stated they would have “no problem” for a gay person to serve in their cabinet. The JCF also published official policy guidance stipulating that the police force would not discriminate on the basis of sexual orientation. Nonetheless, the country was generally very homophobic with a culture of outward hostility toward LGBTI individuals.

The NGO J-FLAG (formerly Jamaica Forum for Lesbians, All-Sexuals, and Gays) reported that through June it received 17 reports of instances of discrimination on the basis of sex, sexual orientation, or gender identity against LGBTI individuals, compared with 15 reports in the previous year. It was difficult to obtain exact statistics, as observers believed these types of human rights violations were underreported.

Government agencies were often involved in acts of discrimination. In one instance a transgender woman reported being stopped by security officials at the capital’s international airport. Customs agents loudly and confrontationally questioned her gender. Security officers (two female and one male) then summoned her to a search area where they observed as she stripped naked. The officers made her hold various poses that exposed her genitals from different angles. The woman had been traveling to the country as an executive director of an NGO that focuses on transgender issues in the Caribbean.

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

Civil society, international organizations, and government officials cited stigma and discrimination as a factor contributing to low HIV-treatment coverage. This especially affected subpopulations such as LGBTI and female sex workers, in which the HIV epidemic was more concentrated.

The government collaborated with the Global Fund to address stigma and discrimination. Measures included training for health-care providers on human rights and medical ethics; sensitization of lawmakers and law enforcement agents; reducing discrimination against women in the context of HIV; legal literacy; legal services; and monitoring and reforming laws, regulations, and policies relating to HIV.

The law prohibits HIV-related discrimination in the workplace and provides some legal recourse to persons with HIV who experienced discrimination. In rural areas there was less knowledge of what government services and programming were available.

## **Section 7. Worker Rights**

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

The law provides for the rights of workers to form or join independent unions and to bargain collectively. The law does not provide for the right to strike, although the constitution provides for the freedom of peaceful assembly and association. Additionally, the law allows all workers to take part, at any appropriate time, in the activities of a trade union of which they are members. The law prohibits antiunion discrimination and provides for the Industrial Disputes Tribunal (IDT) to reinstate a worker if a dismissal is found to be unjustified. The law makes it a criminal offense to prevent or deter a worker from exercising the right to participate in trade union activities or to dismiss, penalize, or otherwise discriminate against a worker for exercising these rights.

There are aspects of the law that inhibit the ability to organize. The government defines 10 categories of services as “essential.” These include water, electricity, health, hospital, sanitation, transportation, firefighting, corrections, overseas telecommunication, and telephone services. Before workers in these categories can legally strike, they must take disputes to the Ministry of Labor and Social Security and allow the ministry to attempt to settle the dispute amicably. The International Labor Organization also raised concerns that this definition of essential services was too broad. Additionally, the government prohibited unionizing in export processing zones, which are industrial areas with special tax and trade incentives to attract foreign investment. This law heavily affected the bauxite industry, which employed thousands of workers.



The law mandates that in the case of any doubt or dispute as to whether workers may exercise bargaining rights, the labor minister must conduct a secret ballot requiring that a majority of workers vote. For unions that represent less than 30 percent of workers eligible to vote, the minister grants joint bargaining rights to two or more unions. The minister of labor may apply through the Supreme Court to curtail an industrial action such as a strike or lockout when the minister deems that industrial action to be harmful to national security or the national economy, or may have the potential to endanger the lives of a substantial number of persons. In such cases the minister refers industrial disputes to compulsory arbitration. The IDT hears cases when management and labor fail to reach agreement, including those involving nonunionized workers.

Although the government generally attempted to enforce the law, firms and other large employers were able to appeal and delay resolution of their cases for years. While cases are, by law, to be resolved within 21 days, the tribunal decided most cases in four to five months. Some took longer to resolve due to the complexity of the dispute or delays requested by involved parties. The IDT decisions are formal and binding unless challenged specifically on a point of law. Parties may apply for judicial review by the Supreme Court. Penalties were marginally sufficient to deter violations, but large firms such as those in the bauxite and construction industry used government influence to shape the court's decisions.

The government generally respected freedom of association and the right to collective bargaining. Worker organizations operated without interference, although the government maintained the right to monitor their activities. While employers generally respected the law prohibiting antiunion discrimination, some labor unions reported that private-sector workers were fearful of management retaliation against unionization. It was not uncommon for private-sector employers to dismiss union workers and rehire them as contractors.

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

The law criminalizes all forms of forced or compulsory labor. A national task force on trafficking in persons consisting of government entities continued its governmental and public outreach to sensitize citizens to forced labor and trafficking violations. The law also prohibits the trafficking of children and penalizes perpetrators with a fine or imprisonment.

The country is a source and destination for adults and children subjected to forced labor. Foreign citizens were compelled into forced labor aboard foreign-flagged

fishing vessels operating in the country's waters. More commonly, foreign women were exploited for commercial sex in nightclubs or trafficked into domestic servitude. The penalty for forced labor is imprisonment, a fine, or both, and it was sufficiently stringent to deter violations. While the government investigated some suspected cases of forced labor, it often did not effectively enforce applicable laws.

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

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

The law prohibits the worst forms of child labor and provides a minimum age of employment in all sectors. There are limitations on working hours. The government did not effectively enforce the law, and penalties only marginally deterred violations.

The minimum age for general employment is 15, with strict prohibitions on employing children under age 13 in any type of work. The law permits children between ages 13 and 15 to engage in "light work." While the labor ministry does not have an official definition for this status, it maintained a list of prescribed occupations applicable for those ages 13 to 15.

The government estimated that more than 24,400 children ages five to 14 years old were engaged in child labor. Government agencies did not inspect the informal sector, so the number was likely to be underreported. Children continued to work in farming, fishing, and in public markets. Children were employed as domestic servants in homes or for street work, such as peddling goods, services, begging, and garbage salvaging. In the worst forms of child labor, commercial sexual exploitation remained prevalent. Children were also victims of forced labor in domestic work. Violent gangs used children to courier drugs and weapons, as lookouts, and as armed gunmen.

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

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

Laws and regulations do not prohibit discrimination on the grounds of sexual orientation or gender identity. There were limited reports of cases filed for discrimination in employment or occupation during the year, but these instances

were likely to be underreported. Women's salaries lagged behind men's, and persons with disabilities often lacked access to the workplace. Those who were subject to workplace discrimination had little confidence that legal recourse was available to them.

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

The minimum wage was 7,000 JMD (\$53) per week. According to the World Bank, this wage was above the estimate for the poverty income level. Most workers received more than the legal minimum wage, and some minimum-wage earners held two or more jobs.

The law provides for a standard 40-hour workweek and mandates at least one day of rest per week. Employers must compensate work in excess of 40 hours per week at overtime rates, a provision employers generally respected. The law also provides for paid annual holidays. The government did not universally apply the law that restricts workdays to 12 hours or less.

The Industrial Safety Division enforced industrial health and safety standards. It conducted inspections, investigated accidents, warned violators, and gave them a period in which to correct violations. If a violation was not corrected within the given time, the violator was taken to court. The law stipulates penalties and fines, and the minister of labor and social security has the authority to increase any monetary penalty. The government sets occupational safety and health standards, which were appropriate for the main industries in the country.

The government did not effectively enforce the law. Insufficient staffing in the Ministries of Labor and Social Security, Finance and Public Service, and National Security contributed to difficulties in enforcing workplace regulations. Legal fines or imprisonment were marginally sufficient to deter violations, and the labor ministry gained compliance in the vast majority of cases by threatening legal action. The ability of defendants to appeal a case repeatedly in the court system mitigated the effectiveness of penalties. The law has no provisions that explicitly give workers the ability to remove themselves from hazardous conditions without jeopardy to employment.

Unofficial sources estimated that up to 40 percent of citizens worked in the informal sector, where the labor law applied. Most violations pertaining to acceptable conditions of work occurred in the informal sector.