

# JAMAICA 2020 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Jamaica is a constitutional parliamentary democracy. In national elections on September 3, the Jamaica Labour Party, led by Prime Minister Andrew Michael Holness, won 48 of the 63 seats in the House of Representatives. International and local election observers deemed the elections transparent, free, fair, and generally peaceful.

The Ministry of National Security is the bureaucratic home of the Jamaica Defense Force and directs policy over the security forces. The prime minister has authority over the Jamaican Defense Board and as chairman of the board has responsibility for defense-related matters including command, discipline, and administration. He is the de facto minister of defense. The Jamaica Constabulary Force is the country's police force. It has primary responsibility for internal security and has units for community policing, special response, intelligence gathering, and internal affairs. When the prime minister and Parliament declare a state of emergency, the Jamaica Defense Force has arrest authority and operational partnership alongside the Jamaica Constabulary Force. The Passport, Immigration, and Citizenship Agency has responsibility for migration. Civilian authorities maintained effective control over the security forces. Members of the security forces committed some abuses.

Significant human rights issues included: numerous reports of unlawful and arbitrary killings by government security forces; harsh and life-threatening conditions in prisons and detention facilities; arbitrary arrest and detention; serious corruption by officials; lack of accountability for violence against women; and sex and labor trafficking. The law criminalizes consensual same-sex sexual conduct 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 were credible reports that some officials alleged to have committed human rights abuses were not subject to full and swift accountability.

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### **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 during the year that government security forces committed arbitrary and unlawful killings, and there were hundreds of abuse and wrongful harm complaints. The Jamaica Constabulary Force (JCF) was cited in the majority of the reports, both independently and as part of joint military-police activity, although there were several reported incidents involving the Jamaica Defense Force. Overall, the total number of fatalities involving security forces, justifiable or otherwise, increased, with 83 reports as of September 29, compared with 67 by the same date in 2019.

Charges against members of the security forces took years to process, primarily due to investigatory backlogs, trial delays, and appellate measures. For example, although first brought before the court in 2014, Constables Garrett Davis and Christobel Smith of the disbanded JCF Mobile Reserve unit were not convicted until late 2019 and not sentenced until January. Constable Davis was sentenced to life in prison, while Constable Smith was sentenced to more than six years' imprisonment for the shooting and killing of Omar Marshall in 2009. The court concluded that Davis and Smith planted firearms and prepared statements to deceive the public as part of a process to kill persons accused of being criminals. Numerous other cases, particularly the Clarendon "Death Squad" trial, awaited prosecution.

#### **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**

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The constitution prohibits such practices, although there is no definition of torture in the law. There were allegations of cruel, inhuman, and degrading treatment or punishment of individuals in police custody. The Independent Commission of Investigations (INDECOM) investigated reports of alleged abuse committed by police and prison officials. The majority of reports to INDECOM described excessive physical force in restraint, intimidation, and restricted access to medical treatment. Representatives of nongovernmental organizations (NGOs) expressed concern regarding underreporting by victims, particularly among the vulnerable or persons with mental disabilities.

These concerns were highlighted by the case of Noel Chambers, an 81-year-old inmate with mental disabilities who died on January 27 at Tower Street Adult Correctional Center under inhuman conditions after serving 40 years in prison without trial. Reports showed that at the time of death, his clothing was filthy and his body was emaciated. Further, he was found to be covered in vermin bites, live bedbugs, and bedsores. Chambers, originally incarcerated in 1980, was being held under the court's authority, having been deemed unfit to plead to a murder charge.

Rapes were occasionally perpetrated by security forces. In July, Correctional Officer Gavin Wynter was arrested and charged with rape after he reportedly sexually assaulted a woman at the Tower Street Adult Correctional Center in Kingston. As of October the case had not been tried.

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 reported it was unable to investigate each case thoroughly due to manpower limitations and significant delays by police in conducting identification parades of suspects.

De facto impunity for security forces was a problem since cases against officers were infrequently recommended for criminal trial or saw substantial procedural delays. Many cases, such as that of Kamoza Clarke, a man with a mental disability who died in custody after being beaten into a coma, did not go to trial due to

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continued delays in court and plea hearings. These problems were exacerbated by a Privy Council ruling in May that INDECOM does not have the power to arrest, charge, or prosecute.

The government did not take sufficient action to address abuse and unlawful killings by security forces. The government has mechanisms to investigate and punish abuse, but they were not always employed. Fewer than 10 percent of the investigations of abuse resulted in recommendations for disciplinary action or criminal charges, and fewer than 2 percent of the investigations led to a conviction.

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

Conditions in prisons and detention facilities were harsh and life threatening due to gross overcrowding, physical abuse, limited food, poor sanitary conditions, inadequate medical care, and poor administration.

**Physical Conditions:** Correctional facilities were significantly overcrowded. At times cells in the maximum-security facility at Tower Street held 200 percent of the intended capacity. Cells were very dark and dirty, with poor bathroom and toilet facilities and limited ventilation. There were reports of prisoner-on-prisoner violence, including the June assault on a prisoner with a mental disability by another inmate at the St. Catherine Adult Correctional Center. The assailant was one of numerous patients with mental disabilities transferred from Tower Street Adult Correctional Center after the death there of Noel Chambers.

Prisoners sometimes did not receive required medication, including medication for HIV, according to UNAIDS. The HIV prevalence rate among incarcerated populations (more than 6.9 percent) was reportedly as much as three times that of the general population. Four part-time psychiatrists cared for at least 313 inmates diagnosed as persons with mental disabilities in 11 facilities across the island.

**Administration:** Independent authorities investigated allegations of abuse and inhuman conditions. Investigations were infrequent, and the number of official complaints likely underrepresented the number of problems. Notably, official reports did not indicate signs of malnourishment in the case of Noel Chambers despite clear postmortem evidence.

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**Independent Monitoring:** Justices of the peace and representatives from the Police Civilian Oversight Authority (PCOA) visited correctional centers and lockups regularly. Justices of the peace reported their findings to the Ministry of Justice, while the PCOA submitted reports to the Ministry of National Security. Both entities made recommendations to improve overall conditions. Citizen groups and NGOs believed the ministries rarely acted upon the recommendations.

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

The constitution prohibits arbitrary arrest and detention but allows arrest if there is “reasonable suspicion of [a person] having committed or...about to commit a criminal offense.” The law provides for the right of any person to challenge in court the lawfulness of his or her arrest or detention, and the government generally observed these requirements. Abuses arose, however, because police regularly ignored the “reasonable suspicion” requirement, arraignment procedures were very slow, and large portions of the country operated under a public state of emergency (SOE) for most of the year.

The country suffered from high levels of homicide, crime, and violence. The declaration of an SOE grants the police and military the ability to search, seize, and arrest citizens without a warrant. The prime minister may declare an SOE for 14 days or less; extensions require parliamentary approval. Additionally, the government may identify zones of special operations (ZOSOs), which confer to security forces the same authorities as in SOEs, albeit within much smaller physical boundaries. During the year the prime minister declared or extended eight such zones, although all were allowed to expire in time for national elections. (The government views SOEs and ZOSOs as necessary to reduce crime and violence in areas with high crime and violence.) Combined, these areas included more than 50 percent of the population. Arbitrary and lengthy detentions took place in ZOSOs and SOEs. High detention rates continued to be a concern. Extremely few of these arrests resulted in charges.

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

Police officers may arrest without a warrant when a felony, treason, or breach of the peace is committed or attempted in the officer’s presence. Following an arrest,

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the officer is required to tell the suspect in clear language the offense(s) for which the individual was arrested. An 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 as soon as practical after the arrest if the suspect requests it. The decision to charge or release must be made 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. According to government officials and civil society, the public perception was that police could make arrests regardless of judicial authorization.

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. Every person charged with an offense was entitled to consideration for bail, although those charged with murder, treason, or other crimes punishable by imprisonment could be denied bail on “substantial grounds” of belief that they would fail to surrender to authorities or would commit another offense while on bail. A police officer could simultaneously arrest and deny bail. The procedure lent itself to low-level corruption in which a police constable would accept bribes in lieu of an arrest.

**Arbitrary Arrest:** Most cases of arbitrary detention were in the parishes of St. James and St. Catherine. The government declared an SOE in these areas because of high levels of criminal and gang violence. The government deployed the military there to support local law enforcement authorities. Under these orders security forces carried out a wide-ranging campaign of detention and incarceration in an attempt to contain violence. There were few official investigations or prosecutions of security force members involved in arbitrary arrests.

**Pretrial Detention:** Lockups 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 an arrest created situations where persons were incarcerated without any accompanying paperwork. In some cases, days, weeks, months, or years later,

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authorities could not ascertain why someone was arrested. NGOs estimated hundreds of detainees endured such treatment between 2018 and the end of the year, including the particularly egregious case of Gavin Noble, who was held at the Negril police station for 458 days without trial before the Supreme Court declared his detention unconstitutional in a September ruling.

### **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, continued to lead to the denial of a fair public trial for thousands of citizens.

Delays were often due to procedural requirements, although the Office of the Director of Public Prosecutions sought plea bargains and settlements to expedite certain cases. Reports indicated that the government needed to manage better the timely placement of new documents into the legal record system and to schedule hearings more effectively. Criminal proceedings sometimes extended for years. The Supreme Court reported the legal system failed to convict in approximately 7 percent fewer murder cases than in the previous year, with conviction rates as low as 22 percent in the court's first quarter. During the year courts continued their efforts to address the case backlog by developing parish justice centers, promoting alternative dispute resolution methods, and closely monitoring 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. Defendants have the right to be informed of the charges against them and the right to a trial within a reasonable time. Defendants have the right to be present at their trial. They have the right to counsel. Legal aid attorneys (public defenders) were available to indigents, except to those charged with money laundering, drug manufacturing, drug trafficking, possession of large quantities of drugs, or any offense not punishable with imprisonment. Limited legal aid attorneys (duty counsels) were also available to everyone, regardless of charges,

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from when persons were taken into custody up to their first appearance in court. Defendants have ample time and facilities to prepare their defense. The government provides the free assistance of an interpreter as necessary. Defendants have the right to confront witnesses. They may not be compelled to testify or confess guilt. They have the right to appeal. 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. Plea bargains were rarely offered by the prosecution and even more rarely accepted by defendants.

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

Although the constitution prohibits arbitrary or unlawful interference, the law gives broad powers of search and seizure to security personnel. The law allows warrantless searches of a person, vehicle, ship, or boat if a police officer has a reasonable suspicion of criminal activity. On occasion police were accused of conducting searches without warrants or reasonable suspicion.

In the areas with ZOSOs and SOEs, government security forces took biometrics from temporarily detained persons. The Office of the Public Defender and civil society challenged this practice, arguing that keeping the information and failing to delete it after police released the detained person effectively criminalized persons who subsequently were not charged. Security forces apprehended wide swaths of the population in ZOSOs and SOEs under broad arrest authority.

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



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### **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.

#### **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; violence against women, children, and other vulnerable persons; or questions of race. Such lyrics were expunged prior 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 <https://www.state.gov/religiousfreedomreport/>.

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

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

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### **e. Status and Treatment of Internally Displaced Persons**

Not applicable.

### **f. Protection of Refugees**

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

**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. Through registration the government may grant Jamaican citizenship 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:** In national elections on September 3, the Jamaica Labour Party won 48 of the 63 seats in the House of Representatives. Observers judged the elections to be transparent, free, fair, and generally peaceful.

**Participation of Women and Members of Minority Groups:** No laws limit participation of women or members of minority groups in the political process, and they did participate. In national elections on September 3, 18 women (29 percent of total seats) were elected to the House of Representatives out of 30 candidates, a substantial increase from the 2016 general election.

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

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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 corruption was a significant problem of public concern. Media and civil society organizations criticized the government for being slow and at times reluctant to prosecute corruption cases.

**Corruption:** In May, Manchester Parish Court convicted five former local government officials on numerous corruption charges, including conspiracy to commit fraud, possession of criminal property, obtaining money by means of false pretense, issuing forged documents, and engaging in a transaction that involved criminal property. The charges stemmed from 2016 allegations that as employees of the Manchester Parish Council, they used their positions to commit acts of corruption and fraud through parish council contracts for their own benefit. The schemes included the creation and approval of falsified bank checks, invoices, and payment vouchers using false names for contract work on behalf of the parish.

**Financial Disclosure:** The law requires that members of Parliament, public officials in prescribed positions, and civil servants earning 3.5 million Jamaican dollars (\$25,000) 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.

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The office may not investigate cases affecting national defense or actions investigatable by a court of law. The Office of the Public Defender's impact depends on the political will associated with the case. Parliament may ignore the findings of the Office of the Public Defender or decline to act on recommended actions. This limited the overall efficacy of the public defender.

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

#### **Women**

**Rape and Domestic Violence:** The rape of a woman is legally defined only as forced penile penetration of the vagina by a man; it is illegal and carries a penalty of 15 years' to life imprisonment. Anal penetration of a woman or man is not legally defined as rape and may be punished by only a maximum of 10 years in prison. This strict definition created wide discrepancies between cases that otherwise had similar elements of rape. The government tried to enforce the law effectively with respect to the vaginal rape of a woman but was less effective in cases involving male victims.

Married women do not have the same rights and protections as single women. The law criminalizes spousal rape only when one of the following criteria is 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 has a sexually transmitted disease. By law marriage always implies sexual consent between husband and wife.

According to estimates by the Jamaica Constabulary Force Statistics and Information Management Unit, there were 411 rape cases reported through November, approximately a 14 percent reduction from the same period in 2019. 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.

The country had an extremely high rate of female homicides, with 11 of every 100,000 women killed annually. Based on estimates from the Statistical Institute

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of Jamaica, one in five women ages 15 to 24 experienced partner violence in their lifetime.

The government operated a Victim Support Unit (VSU) to provide direct support to all crime victims, including crisis intervention, counselling, and legal advocacy. The VSU managed 13 independent parish offices throughout the country, each with its own hotline and staff of trained providers. The VSU coordinated with a network of NGOs capable of providing services such as resiliency counseling and operating shelters, although overall NGO capacity was limited. Few government services sensitive to the impact of trauma on their constituents were available in the country.

The Child Protection and Family Services Agency (CPFSA) provided similar services for children, although both the VSU and CPFSA were critically understaffed and lacked sufficient capacity to provide comprehensive care to the populations they served. There was an insufficient number of shelters in the capital area for women and children, and even fewer were available outside the capital area, or for males. Police officers and first responders had limited training about services available to crime victims.

Extended periods of quarantine and stay-at-home orders to combat the spread of COVID-19 led to worries of an increase in violence against women and children. The Ministry of Health and Wellness therefore included gender-based violence sensitization training for all COVID-19 support hotline volunteers.

**Sexual Harassment:** No legislation addresses sexual harassment, and no legal remedy exists for victims. One in four women reported being sexually harassed during their lifetime.

**Reproductive Rights:** Couples and individuals generally have the right to decide the number, spacing, and timing of their children. LGBTI individuals faced significant challenges due to social pressure and social stigma. Abortion remained illegal, leading many to seek out unsafe, clandestine services. Spousal rape continued to be explicitly excluded from legal definitions of rape (see Section 6, Rape and Domestic Violence against Women).

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Access to contraception and skilled health attendance during pregnancy and childbirth was available, although limited in impoverished or rural communities. Social and religious pressure against contraceptive use also created significant barriers for women. The National Family Planning Board found that in 2008, 79 percent of women of reproductive age had their need for family planning satisfied with modern methods.

Women had access to emergency health care, including for the management of consequences arising from abortions; the standard of care varied widely, however, especially in rural communities. The government provided access to sexual and reproductive health services for sexual violence survivors.

**Coercion in Population Control:** There were no reports of coerced abortion or involuntary sterilization on the part of government authorities.

**Discrimination:** Although the law provides for the same legal status and rights for women as for men, including equal pay for equal work, the government did not enforce the law effectively, and women encountered discrimination in the workplace. Women often earned less than men while performing the same work. 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, including neglect. The penalty is a potentially large fine or a prison sentence with hard labor for a period not to exceed three months. The CPFSA stated that more than 14,000 incidents of abuse were reported in 2019. Corporal punishment is illegal in “places of safety” for children, including residential child-care facilities, children’s correctional facilities, and most schools; however, it was frequently practiced.

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The law requires anyone who knows of or suspects child abuse, whether physical, psychological, or sexual, to make a report to the registry office, with a potential penalty of a large fine, six months' imprisonment, or both for failure to do so.

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 witnessed a violent crime in their home. Physical punishment in schools remained commonplace.

**Child, 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, which applies to the production, possession, importation, exportation, and distribution of child pornography. The crime carries a maximum penalty of 20 years' imprisonment and a large fine. The law prohibits child sex trafficking and prescribes a penalty of up to 30 years' imprisonment, a fine, or both. There were continued reports of the commercial sexual exploitation of children and child sex trafficking.

The law criminalizes sexual relations between an adult and a child--male or female--younger than 16 and provides for penalties ranging from 15 years' to life imprisonment. Children have fewer legal protections than adults concerning sexual assault, as criminal "sexual intercourse with a person under sixteen" is defined only as penile penetration of the vagina. A person who commits anal rape of a child is punished by 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. Cases were widespread and varied. For example, in August two men were arrested and charged with rape, sexual intercourse with a person younger than 16, abduction, and grievous sexual assault following allegations that they took their victim from Kingston to a residence in Portmore to have sexual intercourse.

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Also see Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report>.

**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/reported-cases.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 <https://www.state.gov/trafficking-in-persons-report>.

### Persons with Disabilities

The law prohibits discrimination against persons with disabilities, although it does not mandate accessibility standards. The law was not fully implemented. Persons with disabilities encountered difficulties accessing education, employment, health services, communications, transportation, and other services due to the lack of accessible facilities. In September, Kojo Dawes won a Supreme Court case permitting him judicial review of a 2019 decision by the National Environment and Planning Agency to force him into early retirement following his loss of vision. NGOs indicated there were at least 10 similar cases over the past five years.

Insufficient resources were allocated for persons with disabilities. There were limitations in access to primary school education, although the constitution provides for the right to primary education for all children. There was also a lack of suitably trained faculty to care for and instruct students with disabilities. Postprimary and postsecondary educational services, vocational training, and life skills development opportunities were limited. Health care reportedly was at times



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difficult to access, especially for persons with hearing disabilities and persons with mental disabilities. Access problems were more pronounced in rural regions.

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

The law criminalizes consensual same-sex sexual conduct between men, with penalties of up to 10 years in prison with hard labor. Attempted same-sex sexual conduct between men is criminalized, with penalties up to seven years in prison. Physical intimacy, or the solicitation of such intimacy, between men, in public or private, is punishable by two years in prison under gross indecency laws. There is no comprehensive antidiscrimination legislation protecting the rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.

The government enforced the law that criminalizes same-sex sexual relations 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” (that is, anal sex) 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 on the basis of sexual orientation, gender identity, gender expression, or sex characteristics. Furthermore, the Inter-American Commission on Human Rights stated the law legitimizes violence towards LGBTI persons.

The NGO J-FLAG (formerly Jamaica Forum for Lesbians, All-Sexuals, and Gays) reported that it received a similar number of cases of discrimination on the basis of sex, sexual orientation, and gender identity against LGBTI individuals during the year, compared with previous years. Many of the cases reported during the year occurred in prior years. Underreporting was a problem, since many of the persons who made reports were reluctant to go to police because of fear of discrimination

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or police inaction. Other NGOs reported hostility towards LGBTI persons, including increased screening for transgender persons at airports.

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

Civil society, international organizations, and government officials cited stigma and discrimination as factors contributing to low numbers of individuals being treated for HIV. The country's legal prohibition of same-sex sexual conduct between men disproportionately affected HIV treatment for subpopulations, such as men who have sex with men and LGBTI individuals, where HIV infection levels were higher than average. NGOs also expressed concern about the role of sexual abuse in the transmission of HIV to girls and young women, with approximately 45 percent of adolescent mothers with HIV having been sexually abused as children. Some individuals with HIV reported difficulty obtaining medical care, to the extent that some delayed seeking medical attention or traveled abroad to receive treatment.

The government collaborated with the Emergency Plan for AIDS Relief and the Global Fund to address HIV-related stigma and discrimination. Measures included training for health-care providers on human rights and medical ethics; sensitization of lawmakers and law enforcement officials; 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 experience discrimination. In rural areas or poor urban areas, there was less knowledge of the government services and programming available related to HIV.

## **Section 7. Worker Rights**

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

The law provides for the right 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 freedoms of peaceful assembly and association. The

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law prohibits antiunion discrimination and provides for the Industrial Disputes Tribunal (IDT) to reinstate a worker for unjustified dismissal. 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.

Aspects of the law inhibit the ability of some workers to organize. The government defines the following 10 categories of services as “essential”: water, electricity, health, hospital, sanitation, transportation, firefighting, corrections, overseas telecommunication, and telephone services. Before workers in these categories may legally strike, they must take their dispute to the Ministry of Labor and Social Security and attempt to settle the dispute through negotiation.

The International Labor Organization (ILO) raised concerns that the country’s definition of essential services was too broad. The government prohibits unionizing in export processing zones, which are industrial areas with special tax and trade incentives to attract foreign investment. The ILO expressed concern that penalties may be imposed on workers for their membership and participation in an unregistered trade union. The ILO also expressed concern that the government may carry out inspections and request information about trade union finances at any time.

The law mandates that in the case of doubt or dispute as to whether workers may exercise bargaining rights, the labor and social security minister must conduct a secret ballot requiring that a majority of workers vote. If two or more unions each represent less than 30 percent of workers eligible to vote, the minister grants joint bargaining rights to each of those unions.

The minister of labor and social security may apply through the Supreme Court to curtail an industrial action such as a strike or lockout when the minister determines the action may be harmful to national security or the national economy, or may have the potential to endanger the lives of a substantial number of persons. The minister refers such cases to compulsory arbitration. The IDT hears cases when management and labor fail to reach agreement, including those involving nonunionized workers.

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The government enforced the law in most cases, but burdensome legal procedures allowed firms and other large employers to appeal and delay resolution of their cases for years. While cases should by law be resolved within 21 days, the tribunal took several months to decide most cases. Parties could apply for judicial review by the Supreme Court. Penalties were commensurate with similar violations, but large firms allegedly used their influence on the court and government to shape decisions.

The government generally respected freedom of association and the right to collective bargaining in the formal sector except in export processing zones. 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 feared management retaliation against unionization. For example, it was not uncommon for private-sector employers to dismiss union workers and rehire them as contractors with fewer worker protections.

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

The law criminalizes all forms of forced or compulsory labor. The law also prohibits trafficking in persons but penalizes perpetrators with penalties that were not commensurate with those for similar crimes. A national task force on trafficking in persons continued outreach to sensitize citizens to forced labor and other trafficking violations. The task force also facilitated sensitization training programs for all levels of government, from police to prosecutors.

The government did not effectively enforce the law. The vast majority of violators were not held criminally accountable; between April 2019 and March, two persons were charged with labor trafficking, and there were no convictions. The country continued to be a source and destination for persons subjected to forced labor, including in domestic work, begging, and the informal sector. Gang members subjected boys to forced criminal activity (see section 7.c.). Foreign citizens were compelled into forced labor aboard foreign-flagged fishing vessels operating in the country's waters.

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The ILO expressed concern regarding the law's provision for the imposition of forced prison labor for seafarers in the case of disobedience, neglect of duty, impeding the progress of the voyage, desertion, or absence without leave.

Also see the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report>.

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

The law prohibits the worst forms of child labor. The law prohibits the exploitation of children in prostitution, the recruitment of children into criminal organizations, and the use of a child for "purposes contrary to decency or morality," but it does not further define these terms. The law includes occupational safety and health restrictions for children and prohibits night work between 10 p.m. and 5 a.m.

The minimum age for general employment is 15, with a strict prohibition on employing children younger than 13. The law permits children between ages 13 and 15 to engage in "light work." While the Ministry of Labor and Social Security does not have an official definition for "light work," it maintained a list of occupations acceptable for children ages 13 to 15. The government does not have a list of types of hazardous work prohibited for children. Those who legally hire children are not required to keep any records.

The government did not effectively enforce the law. Most penalties were criminal and commensurate with those for similar crimes, but penalties for sex trafficking that allowed for a fine in lieu of imprisonment were not commensurate with similar crimes. Government surveys estimated that more than 53,000 children ages five to 17 were engaged in child labor, mostly in the informal sector. Government agencies did not inspect the informal sector, limiting the government's ability to enforce child labor laws. Children worked in farming, fishing, and in public markets. Children also worked as domestic helpers in homes or in street work such as peddling goods, services, begging, and garbage salvaging. Some children were subjected to forced labor in these sectors.

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Children were subjected to commercial sexual exploitation. Girls, sometimes coerced by family members, were subjected to sex trafficking by men who provided monetary or material payment to the girls or their families in exchange for sex acts. Local observers reported this form of child sex trafficking may be widespread in some communities. Violent criminal gangs used children for forced begging; as lookouts, armed gunmen, and couriers of drugs and weapons; and for lottery scams.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>.

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

The constitution provides for the right to freedom from discrimination on the basis of gender, race, place of origin, social class, skin color, religion, and political opinion. The law and regulations do not prohibit discrimination on the grounds of ethnicity, nationality, sexual orientation, or gender identity. Policy from the Ministry of Labor and Social Security prohibits discrimination on the basis of HIV status. There were limited numbers of cases filed for discrimination in employment or occupation during the year, but it was likely there was underreporting due to strong stigma in the workplace against older women, persons with disabilities, members of the LGBTI community, and persons with HIV or AIDS. Those persons subject to workplace discrimination had little confidence that effective legal recourse was available to them. Although the law requires equal pay for male and female employees, salaries for women lagged behind salaries for men, and women were concentrated in lower-paying occupations. Persons with disabilities often lacked access to the workplace. There is no law mandating equal pay for equal work.

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

The minimum wage was above the nationally estimated poverty line. Most workers received more than the legal minimum wage, while some minimum-wage earners held two or more jobs.

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

The Occupational Safety and Health Department enforced industrial health and safety standards under ILO guidelines as appropriate for each industry. It conducted inspections, investigated accidents, warned violators, and gave them a period in which to correct violations. The department took violators to court if they did not correct violations within given time frames. The law stipulates penalties and fines, and the minister of labor and social security has the authority to increase any monetary penalty.

The government did not effectively enforce the law. Insufficient staffing in the Ministry of Labor and Social Security, Ministry of Finance and Public Service, and Ministry of National Security contributed to difficulties in enforcing workplace regulations. The number of inspectors was insufficient to enforce compliance, and the inspections took place only in the formal sector.

Legal fines or imprisonment for workplace health and safety violations were not commensurate with similar crimes. The Ministry of Labor and Social Security 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 dulled 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, although the IDT may reinstate workers unfairly dismissed.

In 2017 the Inter-American Development Bank estimated the informal economy generated more than 40 percent of GDP. Most violations pertaining to acceptable conditions of work occurred in the informal sector.