

JAMAICA 2019 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 maintained a majority through by-elections in 2017, 2018, and 2019. 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-elections transparent, free, fair, and peaceful.

The prime minister has general authority over the Jamaican Defence 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 Ministry of National Security is the bureaucratic home of the Jamaica Defence Force (JDF) and directs policy over the security forces. The Jamaica Constabulary Force (JCF) 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 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 the security forces.

Significant human rights issues included reports of arbitrary and unlawful killings by government security forces; arbitrary detention; harsh and life-threatening conditions in prisons and detention facilities; corruption by officials; and forced child labor. 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 there was not full and swift accountability for all officials alleged to have committed human rights abuses.

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, and there were hundreds of abuse and wrongful harm complaints. The JCF was involved in the majority of the reports, both independently and as part of joint military-police activity. Overall, the total number of fatalities involving security forces, justifiable or otherwise, decreased markedly, with 82 reports as of December 10, compared with 136 by the same date in 2018.

The government did not take sufficient action to address police abuse and unlawful killings. The government had mechanisms to investigate and punish police 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.

The Independent Commission of Investigations (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 due to manpower limitations and significant delays in obtaining scientific reports from the Institute of Forensic Science and Legal Medicine.

Even egregious charges against members of the security forces continued to take years to process, primarily due to investigatory backlogs, trial delays, and appellate measures. For example, although arrested in 2013, Constable Collis Brown of the JCF was not convicted until late 2018 and not sentenced until 2019. Part of the Clarendon “Death Squad” trials, Constable Brown was sentenced to life in prison for shooting and killing three men in a series of incidents between 2009 and 2012. The court concluded that Brown planted firearms and prepared statements to deceive the public as part of a process to kill persons accused of being criminals. Following Brown’s original arrest, more than a dozen other members of the JCF’s Clarendon division faced similar charges, and at year’s end many were awaiting 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

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

These fears were substantiated by cases such as that of Kamoza Clarke, a man with a mental disability who died in custody after being beaten into a coma. Three police officers were charged with manslaughter, and although the incident occurred in 2013, the accused police officers remained free, and the case had yet to go to trial due to significant procedural delays and repeated plea hearings.

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 alleged that corrections and law enforcement officers used their authority to solicit bribes and to control access to prisoners improperly.

Physical Conditions: Physical conditions in correctional facilities remained significantly overcrowded. At times cells in the maximum-security facilities at Tower Street and St. Catherine held 200 percent of their intended capacity. Cells were very dark, had subpar bathroom and toilet facilities, and limited ventilation. There were reports of prisoner-on-prisoner violence, including the January stabbing of a female inmate by a cellmate in Fort Augusta Correctional Centre. A number of inmates who had shared a cell with the alleged assailant appeared on a Facebook video to express concern about the alleged assailant's past behavior and pattern of violence.

Prisoners sometimes were unable to 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 official complaints likely underrepresented the number of problems.

Independent Monitoring: Justices of the Peace and representatives from the Police Civilian Oversight Authority (PCOA) visited correctional centers and lock-ups 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.

Improvements: The government took significant corrective measures over the year to address reports of human rights abuses in prison “lock-ups” that hold pretrial detainees. The Office of the Public Defender commended the JCF for its work cleaning and organizing the worst of the detention facilities.

d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention but allows arrest if there is “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 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 were under a public state of emergency (SOE).

The country continued to suffer from high levels of homicide, crime, and violence. Several areas of the country were declared to be in an SOE during the year, granting the police and military the ability to search, seize, and arrest citizens without a warrant. The prime minister can declare an SOE for 14 days or less; extensions require parliamentary approval. Additionally, the government can 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. (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 in SOEs. High detention rates continued to be a concern. Early reports indicated a 68 percent increase year-on-year of detentions in certain regions. 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, the officer is required to tell the suspect in clear language the offense(s) for which the individual is being 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 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. According to government officials and civil society, 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. A police officer could simultaneously arrest and deny bail. The relatively loose procedure lent itself to low-level corruption where 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. Under these orders, security forces carried out a wide-reaching 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: 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 an arrest created situations where persons were incarcerated without any accompanying paperwork. In some cases, days, weeks, or months later, authorities could not ascertain why someone was arrested. In a particularly egregious example, a former police officer was granted bail after 31 years awaiting trial. According to reports, the officer was deemed mentally unfit to plead following his original arrest for murder in 1987. Although subsequent reevaluations had declared him fit for trial, his case was never forwarded to the director for public prosecutions. The director declared that her office would not undertake a trial given the circumstances, pending final forensic psychiatric evaluation.

The Office of the Public Defender received reports that security forces detained persons arrested in a ZOSO for an average of four days. The majority of arrests ended with no charges and the suspect being released.

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 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 began to use recent legislative amendments to expedite certain cases. The need for legislative changes limited the benefits from admitting evidence using new technologies such as teleconferencing witness testimony and 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 approximately 50 percent of murder cases. During the year courts continued their efforts to address the case backlog by further developing regional parish justice centers 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, 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 their

defense. They cannot be compelled to testify or confess guilt. They have the right to appeal. 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. Duty Counsels were available to everyone, regardless of charges, from when the person was taken into custody up to their first appearance in court. 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. Plea bargains were rarely offered by the prosecution and even more rarely accepted by defendants. 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 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 continued taking biometrics from temporarily detained persons. The Office of the Public Defender publicly challenged the government regarding the biometric information collected for persons who were detained but later released. They argued that keeping the information and failing to delete it after police released the detained person effectively criminalized persons who subsequently were not charged. When reauthorizing SOEs in September, the government agreed to review how and for what duration personally identifiable information is kept, but no concrete proposals

were offered. Security forces were able to apprehend wide swaths of the population in ZOSOs and SOEs under broad arrest authority.

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.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom.

The Broadcasting Commission of Jamaica continued to bar 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.

Abuses of these freedoms often involved the lesbian, gay, bisexual, transgender, and intersex (LGBTI) community. In September officials in Montego Bay denied use of the Montego Bay Cultural Center for an LGBTI festival, “Montego Bay Pride.” Officials stated that the cultural center was a building under the management of a government agency and should not be used to hold a function to promote same-sex marriage, which is inconsistent with constitutional mandates. A press release by the Montego Bay Pride group claimed that after the ban,

alternative venues either cancelled prior arrangements or refused to rent space “at a reasonable rate.” Event organizers further described being mobbed by angry vendors shouting homophobic slurs and threatening violence. Local police advised the situation was so volatile that the police could not provide security for the event without extraordinary measures and expense, effectively forcing the group to cancel the festival.

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.

e. Internally Displaced Persons

Not applicable.

f. 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. Through registration the government can grant Jamaican citizenship to those with citizenship in a commonwealth country.

g. Stateless Persons

Not applicable.

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: After the 2016 national elections, the country held by-elections in October 2017, March 2018, and April 2019 to fill seats in Parliament. The Jamaica Labour Party maintained a majority of 33 of the 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 corruption 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: In March Senator Ruel Reid, then minister of education, youth, and information, resigned following allegations of misuse of public funds made by the opposition party's leadership. Further investigation by the Office of the Director of Public Prosecutions indicated that key players in the scandal might have breached at least four criminal laws. Reid, along with four others, was arrested in October and charged with several counts of corruption, conspiracy to defraud, and misconduct in a public office.

Financial Disclosure: The law requires that members of Parliament, public officials in prescribed positions, and civil servants earning 3.5 million Jamaican dollars (JMD) (\$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. The office cannot investigate cases affecting national defense or actions investigable by a court of law. As a commission of Parliament, this organization's impact depends on the political will associated with the case. Parliament can ignore the commission's findings or decline to act on recommended actions. 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 a woman, legally defined as forced penile penetration of the vagina, is illegal and carries a penalty of 15 years to life imprisonment. A criminal who commits sexual assault through anal penetration of either a male or female, however, can only be punished by a maximum of 10 years in prison. This strict definition created wide discrepancies between cases that otherwise had similar elements of sexual assault. The government tried to enforce the law effectively with respect to the rape of a woman but was less effective in cases involving the rape of a man.

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. Legally, marriage implies sexual consent between husband and wife at all times.

According to estimates by the Jamaican Constabulary Force Statistics and Information Management Unit, there were 432 rape cases in 2018, approximately a 12 percent reduction from 2017. Advocacy groups, however, continued to contend that rape was significantly underreported because victims had little faith in the judicial system and were unwilling to endure lengthy criminal proceedings.

Rape cases continued to occur in gated, all-inclusive resorts on the northern coast, with limited police response. In 2018 a hotel employee entered the hotel room of two foreign women and raped them at gunpoint before being shot by one of the

victims. The man escaped from the hotel room but was later arrested after seeking medical assistance at a nearby hospital.

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. The Child Protection and Family Services Agency (CPFSA) provided similar services for children, although both VSU and CPFSA were 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 available outside the capital area. Police officers and first responders had limited training about services available to crime victims.

Sexual Harassment: No legislation addresses sexual harassment, and no legal remedy exists for victims. Harassment was a common occurrence, regardless of position or gender. Interviews with junior medical providers indicated that almost all had either experienced harassment or knew a colleague who had. A bill outlining sexual harassment, prohibiting related conduct, and providing provisions for the aggrieved to file complaints was brought to committee in Parliament in July. In July the Ministry of Education, Youth, and Information advised schools and training institutions of their obligation to develop comprehensive policies to address sexual harassment.

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 encountered 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, including neglect. 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 (\$1,800) or a prison sentence with hard labor for a period not to exceed three months. The CPFSA stated that despite outreach campaigns, more than 15,000 incidents of abuse were reported in 2018.

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

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. The NGO noted that reports 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 production, possession, importation, exportation, and distribution of child pornography. It carries a maximum penalty of 20 years' imprisonment and a fine of 500,000 JMD (\$3,500). 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.

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. The legal definition of rape is penile penetration of the vagina. A person who commits anal rape of a child is punished 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. Cases were widespread and varied, involving children as young as age four.

Law enforcement continued to be implicated in reports of child rape. A police constable was taken into custody following allegations that he raped a 15-year-old girl in protective custody.

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 continued to encounter difficulties accessing education, employment, health services, communications, transportation, and other services due to the lack of accessible facilities.

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 difficult to access, especially for persons with hearing disabilities and persons with mental disabilities. Access problems were more pronounced in rural regions, where limited overall funding restricted the government's ability to make an impact.

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 with hard labor. There is no comprehensive antidiscrimination legislation.

The government enforced 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 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, or 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 continued to be a problem, as many of the persons who made reports were reluctant to go to police because of fear of discrimination or police inaction. Other NGOs reported hostility towards LGBTI persons including increased screening for transgender persons at airports.

Government agencies were involved in acts of discrimination (see section 2.b. for additional details).

HIV and AIDS Social Stigma

Civil society, international organizations, and government officials continued to cite stigma and discrimination as factors contributing to low HIV-treatment

coverage. The country's ban on homosexual acts as part of the Offenses against the Person Act disproportionately affected subpopulations such as men who have sex with men and LGBTI individuals, where HIV infection levels were higher than average. 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 continued to collaborate 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 minister of health and wellness called for the elimination of stigma and discrimination associated with HIV/AIDS.

The law prohibits HIV-related discrimination in the workplace and provides some legal recourse to persons with HIV who experience discrimination. In rural 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 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 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 10 categories of services as "essential": water, electricity, health, hospital, sanitation, transportation, firefighting, corrections, overseas telecommunication, and telephone services. Before workers in these categories

can legally strike, they must take their dispute to the Ministry of Labour and Social Security and attempt to settle the dispute through negotiation. The International Labor Organization (ILO) continued to raise 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 can 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 that 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.

The government did not effectively enforce the law. Firms and other large employers continued to be able 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. Some cases took longer to resolve due to the complexity of the dispute or delays requested by involved parties. IDT decisions are formal and binding unless challenged specifically on a point of law. Parties may apply for judicial review by the Supreme Court. Penalties were marginally sufficient to deter violations, but large firms allegedly used their influence on the court and the government to shape 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 feared 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. The law also prohibits trafficking in persons and penalizes perpetrators with a fine or imprisonment. Penalties were not sufficient to deter violations. A national task force on trafficking in persons continued outreach to sensitize citizens to forced labor and other trafficking violations, but the government did not effectively enforce the law, and the vast majority of violators were not held criminally accountable.

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.

The ILO expressed concern over 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 does not prohibit all the worst forms of child labor. It provides a minimum age of employment in all sectors. The ILO expressed concern that the use of children for prostitution and the use of children in the trafficking and production of illegal drugs do not appear to be specifically prohibited. The law includes occupational safety and health restrictions for children and 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 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 Labour 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 estimated that more than 53,000 children ages five to 17 years old, an age range in line with ILO standards, were engaged in child labor. Government agencies did not inspect the informal sector, so the number was likely to be underreported. Children worked in farming, fishing, and in public markets. Children also worked as domestic servants in homes or for street work, such as peddling goods, services, begging, and garbage salvaging. Some children were subjected to forced labor in these sectors. There were sporadic reports of commercial sexual exploitation of children. There were also reports of children forced into domestic work. Violent gangs used children for forced begging, as lookouts, as armed gunmen, and as couriers of drugs and weapons.

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

Laws and regulations do not prohibit discrimination on the grounds of sexual orientation or gender identity. There were limited numbers of cases filed for discrimination in employment or occupation during the year, but it was likely these cases were underreported due to strong stigma in the workplace against older women, persons with disabilities, members of the LGBTI community, and persons with HIV/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. Persons with disabilities often lacked access to the workplace.

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.

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 the given timeframes. The law stipulates penalties and fines, and the minister of labor and social security has the authority to increase any monetary penalty. The number of inspectors was insufficient to deter violations, and the inspections took place only in the formal sector.

The government did not effectively enforce the law. Insufficient staffing in the Ministry of Labour and Social Security, Ministry of Finance and Public Service, and Ministry of National Security contributed to difficulties in enforcing workplace regulations. Legal fines or imprisonment were insufficient to deter violations, and the Labour and Social Security 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 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.

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